



# Under fire

Israel's enforcement of Access Restricted Areas in the Gaza Strip

**iDMC** internal  
displacement  
monitoring  
centre





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January 2014

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The Palestinian Centre for Human Rights (PCHR) is a non-governmental organisation based in Gaza city. PCHR is dedicated to protecting human rights, promoting the rule of law and upholding democratic principles in the occupied Palestinian territory.

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Cover photo: Home destroyed in central Gaza in November 2012. Credit: Emad Badwan

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## Executive summary

The Gaza Strip has suffered a long history of displacement. The majority of its inhabitants are registered as refugees with the *UN Relief and Works Agency* for Palestine Refugees in the Near East (*UNRWA*) and have been displaced since 1948. Large-scale Israeli military operations have caused a number of acute periods of displacement, set against a general backdrop of protracted displacement over several decades and with no prospects of durable solutions being achieved in the foreseeable future. The Israeli-imposed blockade, which has been in place for six years, means that those affected are unable to leave the territory. Palestinians living inside restricted areas and those whose livelihoods depend on them are particularly vulnerable to forced displacement, the repeated destruction of their property and threats to their physical safety. Eighty per cent of Palestinians in Gaza are dependent on international aid and more than 50 per cent are food insecure.

The use of access restrictions on land and at sea, the levelling of land, forced displacement and arbitrary detentions as means of enforcing security zones has been common practice since the start of the second intifada in September 2000, particularly in what have become known in the international community as “access restricted areas” (ARA). These are in place along the fence that runs the entire length of Gaza’s land border with Israel, and at sea.

There is currently no clear or consistent definition of ARA. Israel has dropped leaflets and released military statements to inform Palestinians of new limits to its security zones, but these are not clearly marked on the ground and are not in keeping with existing legal agreements such as the Oslo Accords. In practice, Palestinian access is severely restricted within 1.5km of the fence and beyond six nautical miles from the coast. This will serve as a definition for the purposes of this report.

Between 2006 and May 2013, 539 Israeli military incursions into ARA on land were documented, resulting in the detention of 150 Palestinians. During the same time period, 544 shooting incidents were recorded, resulting in at least 179 civilian deaths and 751 injuries. In the past two years, there have been an average of around seven incursions each month.

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), an estimated 178,000 Palestinians, or 12 per cent of Gaza’s population, are directly

affected by ARA on land and at sea. The restrictions on land cover 62.6 square kilometres, accounting for 35 per cent of agricultural land and 17 per cent of all land in the territory. Of the total, 24.4 square kilometres have been levelled and would require significant investment to develop or farm. The restrictions have led to the annual loss of an estimated 75,000 tonnes of agricultural output, worth around \$50 million. Urban communities within ARA, particularly those in northern Gaza such as Beit Hanoun, have suffered repeated displacement as a result. In the absence of accurate figures, however, the scale of the phenomenon is unknown.

Around 85 per cent of the maritime areas authorised under the Oslo Accords are off-limits to the Palestinian fishing fleet, resulting in an estimated loss of 75 per cent in monthly catch during sardine season and a 65 per cent rise in unemployment among fishermen since 2000.

Issues related to internal displacement in the West Bank feature prominently in humanitarian and policy discussions, but there has been less focus on the impact of the occupation, blockade and access restrictions on displacement in Gaza. There is no comprehensive database or tracking system in place, nor is there adequate understanding of the specific vulnerabilities of the large number of people displaced from ARA over the past decade. Any humanitarian discussion of displacement in Gaza tends to define it narrowly as a shelter issue, leading to a response focused on damaged or destroyed housing.

The November 2012 ceasefire agreement between Israel and Hamas, mediated by Egypt, raised hopes among many Palestinians of an end to ARA. Within a month, however, at least two unarmed civilians had been killed and 28 injured near the fence, and there is little indication that those displaced from ARA have been able to return. Fishermen also continue to be shot at and arbitrarily detained. In the six months following the ceasefire, 66 shooting incidents targeting fishermen were documented.

As part of the research for this report, 12 focus group discussions involving nearly 150 fishermen and farmers were conducted, with sessions distributed evenly across Gaza. Farmers expressed serious concerns about access to food, health and education, and all participants noted a sharp decline in the quantity and quality of food they were able to cultivate. Nearly all farmers said they had seen their homes damaged or destroyed, but had received little or no compensation and were heavily in debt. Seventy





Mohamed Saleh from Jabalia Camp shows his house that was destroyed during the Pillar of Defense.

per cent said that either they or a family member had been injured by Israeli military activity in ARA in the past ten years. In Beit Hanoun, a community where 85 per cent of residents are farmers, 93 per cent of participants said they had been unable to access their land in 2012 because of the Israeli military's use of live ammunition. Between 1997 and 30 November 2013, there were also 522 documented shooting incidents targeting fishermen at sea, resulting in nine civilian deaths, 47 injuries and 422 detentions.

The report found Israel's use of lethal force before exhausting other non-lethal means of engagement to be in violation of international human rights law and standards. This is particularly alarming in light of Israel's capacity to implement non-lethal measures of law enforcement in Gaza, as highlighted by its frequent incursions into ARA on land. On the basis of a legal precedent set by the International Criminal Tribunal for the Former Yugoslavia (ICTY), the manner in which the Israeli military has used live ammunition in ARA could constitute grounds for investigation under international law. Reckless disregard for the protection of civilian life that results in the wilful killing or serious injury of non-combatants, particularly during periods of relative calm outside military operations, can amount to a grave breach of the Fourth Geneva Convention.

This report aims to analyse the cumulative impact of Israel's enforcement of ARA with specific reference to the November 2012 ceasefire. It focuses on the repeated destruction of homes, greenhouses, orchards and fields and with it local livelihoods, and highlights the forced displacement of Palestinians this has caused. The first section covers the humanitarian impact of Israeli enforcement, and the second analyses its methods under international legal frameworks. The report also explores potential means of protecting communities from further displacement through redress, accountability and the establishment of economic sustainability.



## Recommendations

### To the Israeli government:

- Israel should cease its collective punishment of the Palestinian population in Gaza in line with its obligations under international law. As the occupying power, Israel should also take all measures to prevent the forced displacement of the civilian population from ARA and to minimise risks to people and property in these areas.
- Israel should ensure that Palestinians forcibly displaced from ARA are able to return in safety and access their land, and it should provide adequate financial compensation for their losses incurred as a result of demolitions and the leveling of land. Farmers and fishermen whose livelihoods have been disrupted or destroyed should also be entitled to claim.
- Israel should cease its enforcement of ARA at sea, which has no clear security justification and has a deeply negative impact on fishermen's livelihoods. It should extend Gaza's fishing limits to at least 12 nautical miles (nm), as called for in the 2002 Bertini agreement, to allow access to better stocked and more diverse fishing grounds.
- Israel should cease its use of lethal force against civilians as a first means of enforcing ARA with immediate effect, and publicise its rules of engagement in the areas both on land and at sea. All military activity in ARA should adhere to Israel's obligations under international humanitarian law (IHL), including the principles of distinction, proportionality and precaution. Live ammunition should only be used in self-defence and the defence of others, particularly when less serious and non-lethal alternatives are available. Effective warning must also be given.
- Israel should immediately cease the detention, interrogation and harassment of fishermen in Gaza's territorial waters, including its policies of confiscating and destroying boats and fishing equipment.
- Israel should allow building materials into Gaza and permit the construction of new homes and buildings in ARA in accordance with the terms of the Oslo Accords.
- Israel should allow the export and transfer of agricultural products from Gaza to the West Bank, as required under the Oslo Accords as part of its recognition of Palestinian territory as one single territorial entity.
- Israel should ensure legal accountability for all violations resulting from its enforcement of ARA, including criminal and civil remedies. It should facilitate and support the conduct of independent criminal investigations, as recommended in the Turkel Commission's second report, and remove all the barriers Palestinian civilians from Gaza face in accessing Israeli courts.

### To the Palestinian Authority (PA) and local authorities in the Gaza Strip:

- Local authorities should adopt coherent and coordinated agricultural strategies, including the meaningful participation of local farming communities and civil society. Such strategies should enable farming communities displaced from their land to re-establish their traditional livelihoods.
- Local authorities should reinstitute their land survey, allowing for the proper registration and demarcation of land in Gaza.
- Local authorities should ensure that farmers and all affected parties are informed, consulted and provided with the opportunity to respond before the implementation of public works projects, particularly when such projects may result in eviction or displacement. Remedies should also be made available to those displaced.
- PA should make use of its UNESCO membership and pass an intangible cultural heritage law that includes special protection for fishermen.<sup>1</sup>
- PA should ensure that current plans to explore gas reserves off the coast of Gaza include measures to protect the interests of the Palestinian people, such as ensuring that any electricity generated from the reserves is affordable to Gaza's low-income population. It should also examine the legal aspects of mapping maritime boundaries and the international mechanisms for the settlement of disputes over such issues.

### To the international community:

- Given its third state responsibility for ensuring respect for international law, the international community should use political and legal measures to pressure Israel into complying with its international legal obligations.
- The international community should monitor any displacement from ARA in a holistic manner and implement protection and advocacy initiatives, rather than focusing purely on shelter concerns. The database managed by UN OCHA in the West Bank allows for the systematic tracking of the impact of displacement, and similar monitoring should be introduced in Gaza.
- The international donor community should fund efforts to improve human rights monitoring and documentation in Gaza, particularly in relation to the losses incurred by Palestinian civilians as a result of Israel's enforcement of ARA, including personal injuries. This would allow for a more accurate assessment of humanitarian needs and



Figure 1: UN OCHA access and closure map of the Gaza Strip, December 2012



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trends, and would support any future litigation efforts.

- The humanitarian community should work to reduce the risks and effects of displacement. This should include the provision of long-term cash-for-works schemes for farmers, fishermen and their families to mitigate the unpredictable nature of their income and provide them with a basis from which to escape their cycle of debt.

These communities also need logistical and economic support in accessing medical assistance and education facilities.

- The international donor community should continue efforts to build vital civilian infrastructure such as water and sanitation facilities and schools in ARA.



## Acronyms

ARA	Access restricted areas
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CLA	Israeli Coordination and Liaison Administration for Gaza
COGAT	Coordinator of Government Activities in the Territories
FAO	Food and Agricultural Organisation of the United Nations
IDP	Internally displaced person
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDMC	Internal Displacement Monitoring Centre
IHL	International humanitarian law
IHRL	International human rights law
MAG	Military Advocate General
NGO	Non-governmental organisation
NM	Nautical mile
NRC	Norwegian Refugee Council
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	United Nations Office of the High Commissioner for Human Rights
PCHR	Palestinian Centre for Human Rights
PNA/PAP	Palestinian National Authority/Palestinian Authority
PLC	Palestinian Legislative Council
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

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## Historical timeline

### 1949

24 February 1949. Egypt and Israel sign the Armistice Agreement demarcating the Gaza Strip's boundaries, subject to Egyptian administration.

### 1967

Following the war between Israel and neighbouring states Egypt, Jordan and Syria, Israel occupies territory, including the West Bank and Gaza, and establishes a military administration.

### 1987

9 December 1987. The first intifada begins in Gaza's Jabalia refugee camp.

### 1993

13 September 1993. Israel and the Palestinian Liberation Organisation (PLO) sign the Declaration of Principles on Interim Self-Government Arrangements, also known as the Oslo Accords, in Washington DC.

### 1950

Egypt and Israel sign the Modus Vivendi Agreement, which jointly establishes a "buffer zone" to be patrolled within the 1949 armistice line.

### 1970

Kfar Darom becomes the first Israeli settlement established in Gaza. Between 1970 and 2005, 21 Israeli settlements are established. Combined with Israeli military installations, they occupy nearly 20 per cent of Gaza's land.

### 1991

3 October 1991. Israel ratifies five major UN human rights treaties: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC).

## 1995

24 September 1995.  
The PLO chairman, Yas-  
ser Arafat, and the Israeli  
prime minister, Yitzhak  
Rabin, sign the Interim  
Agreement on the West  
Bank and the Gaza Strip,  
also known as the Oslo II  
Agreement, in Washing-  
ton DC. The agreement  
establishes PA, and a  
delimiting line, a security  
perimeter and maritime  
activity zones for Gaza.

## 2002

11-19 August 2002.  
UN envoy Catherine Ber-  
tini brokers an agreement  
to extend Gaza's territo-  
rial waters back to 12nm.  
The agreement, however,  
is never implemented.

## 2005

12 September 2005.  
Israel withdraws its  
military personnel from  
Gaza, dismantles all set-  
tlements and thereafter  
maintains that its partial  
disengagement ends all  
Israeli control over, and  
responsibility for the  
territory. It continues,  
however, to maintain con-  
trol over Gaza's airspace  
and territorial waters  
and to control all access  
between Gaza and the  
West Bank.

## 2007

14 June 2007.  
Following Hamas's  
military takeover of Gaza,  
Israel and Egypt impose a  
blockade on all movement  
of people and goods in  
and out of the territory.

September 2007.  
Israel's security cabinet  
deems Gaza a "hostile  
territory" and extends its  
restriction on the move-  
ment of people and goods  
in and out the territory  
to include materials and  
supplies for humanitarian  
projects. The Interna-  
tional Committee of the  
Red Cross (ICRC) publicly  
denounces the move  
as an act of collective  
punishment.

## 1994

Peace negotiations  
between Israel and the  
PLO culminate in the  
Gaza-Jericho Agreement,  
which codifies key provi-  
sions on access to land  
and sea for Palestinians  
in Gaza. The agreement  
is later included in and  
superseded by the 1995  
Interim Agreement,  
which recognises that  
Gaza's boundaries are  
inconsistent with the 1949  
Armistice Agreement and  
subject to final status  
negotiations.

## 2000

29 September 2000.  
The second intifada  
begins. Palestinian  
access to the sea is in-  
termittently suspended  
for months at a time  
between 2000 and  
2005, on top of a ban  
on Gaza's fishermen  
sailing 12nm from the  
coast in place since  
before 2000. Large-  
scale land-levelling op-  
erations destroy around  
24.4 square kilometres  
of agricultural land,  
resulting in economic  
impoverishment, the  
displacement of farm-  
ers and the disruption  
or destruction of their  
livelihoods.

## 2004

9 July 2004.  
An advisory opinion by  
the International Court of  
Justice (ICJ) on the legal  
consequences of the  
fence affirms that Israel  
is bound by ICESCR's  
provisions in relation to  
occupied Palestinian  
territory.

## 2006

January 2006.  
Hamas wins Palestinian  
parliamentary elections  
and forms a majority  
government within the  
Palestinian Legislative  
Council (PLC). Israel  
announces a complete  
severing of relations with  
PA.

25 June 2006.  
The Israeli soldier Gi-  
lad Shalit is kidnapped  
via underground tun-  
nels near the Kerem  
Shalom crossing and  
held incommunica-  
do. He is eventually  
released as part  
of a prisoner swap  
between Hamas and  
Israel on 18 October  
2011.





# Historical timeline

## 2008

27 December 2008  
Israel launches a 23-day military offensive in Gaza codenamed Operation Cast Lead. The operation results in at least 1,400 Palestinian deaths and significant damage to infrastructure and homes.

## 2011

September 2011.  
The Palestinian president, Mahmoud Abbas, formally submits a proposal to the UN Security Council seeking UN membership for Palestine.

14 November 2012.  
Israeli launches an airstrike that kills the Hamas military leader, Ahmed Jabari, in Gaza City. An eight-day military operation codenamed Operation Pillar of Defence ensues, during which at least 158 Palestinians are killed, 103 of whom are civilians, including 13 women and 33 children.

29 November 2012.  
The UN General Assembly passes a resolution to upgrade Palestine's status from "non-state observer" to "non-member state observer".

## 2009

January 2009.  
The Israeli air force drops leaflets on Palestinian areas near the fence warning that anyone who comes within 300m of it "exposes himself to danger as the IDF will take all necessary steps to keep them away, including when necessary, the use of live fire". Similar leaflets are dropped near coastal towns outlining no-go zones at sea, and the fishing limit is reduced to 3nm.

## 2012

November 2012.  
The Israeli parliament's constitution, law and justice committee reviews Amendment No. 8 to the Civil Wrongs (Liability of State) Law, which exempts Israel from civil liability for all unlawful acts carried out during a "combat action".

21 November 2012.  
Israel and Hamas agree to an Egyptian-brokered ceasefire, though no signed document has been made publicly available. According to a press release announcing the ceasefire, Israel agrees to refrain from "targeting residents in border areas" in Gaza.

## 2013

April 2013.  
Israel's Military Advocate General (MAG) closes all 79 criminal complaints filed by the Palestinian Centre for Human Rights (PCHR) on behalf of victims of Operation Pillar of Defence.

25 February 2013.  
Israel's Coordinator of Government Activities in the Territories (COGAT) publishes statements on its website that the maritime limit for Gaza's fishermen has been extended from 3nm to 6nm, and that farmers are allowed to access land up to 100m from the fence. Both statements are, however, removed from the COGAT website several days later.

21 May 2013.  
Six months after the 21 November 2012 ceasefire agreement, the Israeli military publishes a statement on its website that the fishing limit has been reinstated at 6nm.

6 February 2013.  
The second report of Israel's Turkel Commission on the state's mechanisms for investigating complaints related to the laws of war recommends that MAG open investigations whenever there is reasonable suspicion of criminal activity. It also proposes the creation of a new department to deal with complaints submitted to MAG, and the conduct of investigations in Arabic.

21 March 2013.  
An Israeli military spokesperson announces that the fishing limit has been reduced from 6nm to 3nm in response to rocket fire from Gaza.

21 April 2013.  
An Israeli military spokesperson responds to a freedom of information request from the Israeli NGO Gisha, confirming that the no-go area on land extends to 300m from the fence.

3 July 2013.  
The UN's humanitarian coordinator for occupied Palestinian territory, James Rawley, states in a press release that 57 per cent of Gaza's population are unable to afford to buy sufficient food and that 80 per cent receive some form of international aid.



# Introduction

## Objectives of the report

Since 2005, displaced Palestinians in Gaza have regained some access to their private and public property, particularly along the coast, following the dismantling of Israeli settlements and military installations. A number of Israeli security practices have, however, persisted and intensified to the detriment of Gaza's fishermen and its farmers near the fence. These include land levelling, the use of excessive force, the destruction of property and maritime closures. Following Operation Cast Lead in December 2008 and January 2009, the Israeli military dropped leaflets along the fence and on coastal communities informing residents of no-go zones on land and at sea that would be imposed by the use of force. These have become known among the humanitarian community as "access restricted areas" (ARA) and in practice they have been imposed over far greater territory than officially declared. UN records show, for example, that land levelling, injuries and death resulting from Israeli enforcement have taken place as far as 1.5km from the fence. For the purposes of this report, this defines the extent of ARA.

In late 2012, the issue of Israel's enforcement of ARA was brought to the political foreground, as access to areas near the fence was specifically referenced in the terms of the ceasefire agreed by Hamas and Israel on 21 November. At the end of the month, COGAT published a report stating that the maritime limit for Gaza's fishermen would be extended from 3nm to 6nm, and in February 2013 it stated that farmers could access land to within 100m of the fence, suggesting an easing of Israel's restrictions.

The purpose of this report is to analyse the cumulative impact of Israel's enforcement of ARA on the displacement of Palestinian farming and fishing communities, with specific focus on developments after the November 2012 ceasefire agreement. The first part of the report is based on research conducted in April and May 2013 to investigate both past and present trends in the humanitarian impact of Israeli enforcement, and the second part analyses its methods through the prism of international law and human rights. In light of the opportunity presented by the November 2012 agreement to re-examine Israel's enforcement of ARA, the report also identifies possible avenues for establishing accountability and redress as a means of protecting communities against further harm, and for supporting their efforts towards the achievement of economic sustainability.

## Research questions

This report seeks to provide evidence and guidance on the current status and impact of Israel's enforcement of ARA by:

- Providing the historical background to the establishment of ARA on land and at sea, and the displacement it has caused;
- Reviewing the legal status governing ARA on land and at sea, under both international and Israeli legal frameworks;
- Identifying the triggers for attacks in ARA and their effects, including their impact on displacement, health, economic conditions and livelihoods;
- Highlighting the coping mechanisms of those affected by ARA;
- Analysing legal remedies and access to justice for victims of attacks, incidents and displacement in ARA, including the number of cases filed, their status, procedural barriers and outcomes;
- Describing incidents in ARA and analysing displacement patterns by geographical areas, farming and fishing seasons and political developments;
- Documenting patterns of attacks and incidents in ARA both before and after the November 2012 ceasefire agreement, and presenting statistics on them;
- Analysing changes in access and incidents that have taken place in ARA since 21 November 2012, through discussions with international and local NGOs, local authorities, and farmers and fishermen living in or displaced from the affected areas;
- Identifying livelihood changes for farmers and fishermen displaced or at risk of displacement in ARA in terms of crops planted and harvested, and fish caught;
- Assessing the responses of international and local NGOs and local authorities in ARA, including the implementation of programmes and access for doing so;
- Providing recommendations to improve the current humanitarian response in ARA, with a focus on protection and displacement concerns;
- Drafting recommendations to address gaps in programming so that humanitarian agencies might better support farmers and fishermen at risk of displacement in ARA.

## Research methodology

Aside from an extensive review of the relevant literature and legal documents, information was collected via 12 focus groups distributed evenly across Gaza, and thematically among fishermen and farmers. There were an average of 12 participants in each session. Separate sessions were held for men and women in keeping with cultural norms, and each session included at least two youths.

Surveys were distributed during the sessions to collect more detailed data on the destruction of property, personal injuries and forced displacement caused by Israel's enforcement of ARA over the years, and to get a sense of current coping mechanisms. A total of 144 participants completed the surveys, 55 per cent of whom were women. Follow-up interviews were arranged with participants who had particularly emblematic stories to share. In light of the relatively limited sample size and the emphasis given to qualitative methods of research for this report, its findings are indicative of general trends but are not intended as statistical analysis.

Semi-structured interviews were also conducted with 32 officials from UN agencies, international organisations and local NGOs, local authority employees and independent experts. Vital data was also gathered from three human rights monitoring organisations: the Palestinian Centre for Human Rights (PCHR), the Al Mezan Centre for Human Rights (Al Mezan) and the UN Office of the High Commissioner for Human Rights (OHCHR).

### 1.1 Historical developments and context

The Gaza Strip is an enclave on the south-eastern Mediterranean coast with a surface area of 365 square kilometres. It is 45km long and between six and 12km wide. The history of Gaza is deeply marked by successive waves of displacement which, combined with a lack of development and the deprivation of essential resources, has exhausted the population's coping mechanisms. The vast majority of Gaza's inhabitants are descendants of refugee families who lost their homes and livelihoods in the 1948 war, both before and after the establishment of the State of Israel.<sup>2</sup> Since the 1948 war, the fate of its then 80,000 residents and 200,000 new refugees<sup>3</sup> has been irrevocably bound to the territory's political predicament. With a population today of 1.7 million, Gaza is one of the most densely populated places on earth.<sup>4</sup>

With the cessation of hostilities in 1949, the boundaries and administrative structures of what until then had been the sub-district of Gaza in Mandatory Palestine became obsolete.<sup>5</sup> The population was put under Egyptian administration and their movements limited to the boundaries demarcated in the 1949 Armistice Agreement between Egypt and Israel.<sup>6</sup> In the Modus Vivendi Agreement signed in 1950, Egypt and Israel agreed to jointly patrol a "buffer zone" inside the 1949 armistice line. In practice, Israel took control of the buffer zone, which it consolidated after the June 1967 war.

#### 1.1.1 Israeli occupation (1967 to present)

Israel's occupation of the Gaza Strip in 1967 resulted in the rearrangement of its civilian administrative structures. The territory was consequently governed via a series of Israeli military orders and enforcement operations carried out by local commanders.<sup>7</sup> Both private and public Palestinian land was confiscated and appropriated for the building of Israeli settlements, roads and military installations. Between June 1967 and September 2005, 21 Israeli settlements housing 8,000 settlers were established, taking up 20 per cent of Gaza's land.<sup>8</sup> This expansion caused significant internal displacement of Palestinians from the settlements themselves, surrounding areas and associated military outposts.

With Israel exerting control over all of these areas, Palestinians were effectively deprived of possession of, and free access to about 30 per cent of their private and public property for nearly 40 years (see figure 2). In the name of protecting Israeli settlement areas, they were also subjected to severe restrictions of movement, the

levelling of agricultural land, the demolition of houses, maritime closures, the use of excessive force and punitive detentions without charge. Despite Israel's security concerns, and bearing in mind that the transfer of Israeli citizens into occupied territory was in itself a grave breach of IHL, it is indisputable that its measures had an disproportionate impact on Gaza's civilian population.<sup>9</sup>

#### 1.1.2 Oslo Accords and Gaza's borders (1993 to 2000)

##### Key provisions of the Oslo Accords on access to land and sea

- Gaza's boundary with Israel was deemed inconsistent with the 1949 Armistice Agreement, and its future border subject to final status negotiations.
- A "security perimeter" was to be established along the fence. No new construction was permitted within 100m and strict building restrictions applied to the next 500m. Palestinian police were to patrol the area to prevent "infiltrations".
- Palestinian fishermen were to be allowed to sail up to 20nm from Gaza's coast, with the exception of two no-go zones along its boundaries with Israel and Egypt – one mile wide in the south and 1.5 miles wide in the north.

Peace negotiations between Israel and the PLO in the early 1990s resulted in further security and territorial changes in Gaza. These were codified in the 1994 Gaza-Jericho Agreement and later included in the 1995 Israeli-Palestinian Interim Agreement - better known as the second agreement in the Oslo Accords, or Oslo II - which superseded Gaza-Jericho.<sup>10</sup> Oslo II established three key provisions on Palestinians' access to land and sea.

First, it recognised that Gaza's boundary with Israel was inconsistent with the 1949 Armistice Agreement and subject to final status negotiations. This point is particularly relevant to farmers who own land on the other side of the fence, and to fishermen whose livelihoods are intrinsically linked to Palestine's maritime boundaries, which will be technically derived from Gaza's final borders.

Palestine's future maritime boundaries will, in turn, set the terms for its claim to vital natural resources such as the off-shore gas reserves found at 13.5nm and 16.2nm off



Gaza's coast, the former straddling the current boundary with Israeli waters.<sup>11</sup>

Oslo II refers to the Gaza-Israel boundary on land as the "Delimiting Line" that "follows the fence on the ground".<sup>12</sup> For the sake of legal clarity, this report refers to the boundary as "the fence".

Annex I, section 1, paragraph (a) of Oslo II reads: "For the purpose of the present Agreement only, and without prejudice to the permanent status negotiations on borders, the line delimiting the northern and eastern edge of the Gaza Strip follows the fence on the ground, as delineated on attached map No. 2 by an unbroken green line (hereinafter 'the Delimiting Line') and shall have no other effect."

This remains the Palestinians' official position in their negotiations with Israel.<sup>13</sup>

Second, the agreement established a "Security Perimeter" along the fence (see Figure 2).<sup>14</sup> No new construction was permitted within 100m and strict building restrictions applied to the next 500m from the fence. Palestinian police were to patrol the first 100m of the perimeter to prevent "infiltrations" and "arms, ammunition or related equipment" from entering the area.<sup>15</sup> The terms of the perimeter also purported to preserve the "predominantly agricultural character" of the area, a rather ironic claim in light of the current difficulties farmers living near the fence face.<sup>16</sup>

Annex 1, section 3, paragraphs (a) and (b), Section 3 of Oslo II state: "The existing buildings, installations and natural and artificial culture in the Gaza Strip within a distance of 100 meters from the Delimiting Line shall remain as they are at present," and that: "Within the next 500 meters of the Security Perimeter, and within the Yellow Area, buildings or installations may be constructed, provided that: (1) one building or installation may be constructed on each plot, the size of which shall not be less than 25 dunams; and (2) such building or installation shall not exceed two floors, of a size not exceeding 180 sq. meters per floor. The Council [the future Palestinian Legislative Council] shall maintain the predominantly agricultural character of the remaining areas of the Security Perimeter."

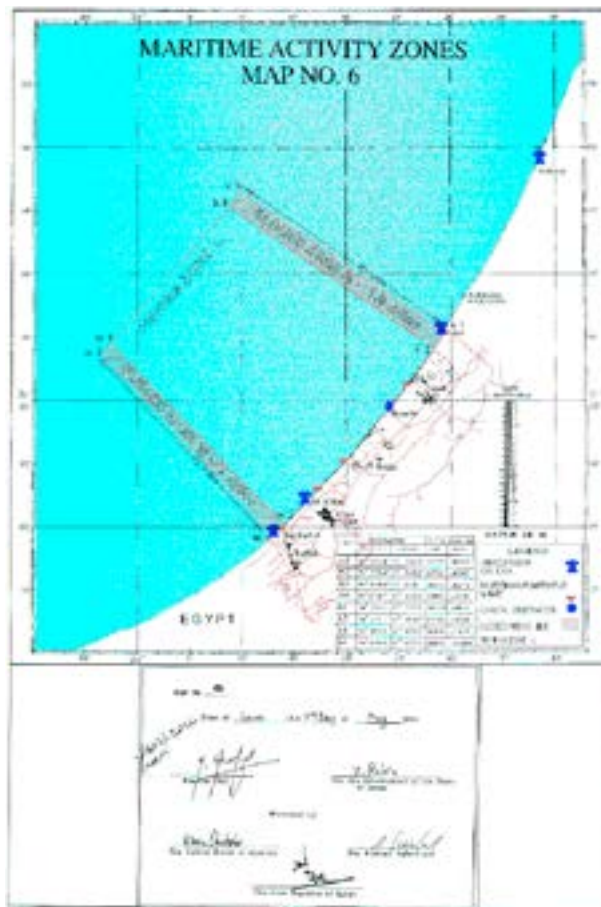
The third key provision concerns Israeli security measures at sea. The agreement demarcated an activity zone up to 20nm off Gaza's coast, with the exception of two no-go zones along its boundaries with Egypt and Israel - a mile wide in the south and 1.5 miles wide in the north (see figure 3).<sup>17</sup> It established the Palestinian Coastal Police, plans for a Gaza port and port authority, and the provision of licenses for both fishing vessels and crew.<sup>18</sup> It also placed limits on the power of fishing boat engines - 25 horsepower for outboards and a maximum speed of

**Figure 2: Map of Gaza's security zones on land as per the 1994 Gaza-Jericho Agreement.**



Source: Aronson, G, 1996

**Figure 3: Map of Gaza's Maritime Activity Zone in accordance with the 1994 Gaza-Jericho Agreement**



Source: Israel Ministry of Foreign Affairs

18 knots for inboards – for four months after the signing of the agreement.<sup>19</sup> After that the limit was to have been raised to 40 horsepower,<sup>20</sup> but Israel continues to confiscate outboards with more than 25 horsepower.<sup>21</sup> The agreement also listed several types of vessel whose activities were to be limited to 6nm. Fishing boats were not included, suggesting some recognition that such a limit would be too restrictive for fishing.

### 1.1.3 Second intifada

The Israeli military responded to the second intifada, which started on 29 September 2000, with the demolition of housing and land-levelling operations that forcibly displaced thousands of Palestinians throughout Gaza. By the end of 2004, at the height of the uprising,<sup>22</sup> 31,494 dunams (3,149.4 hectares), or 20 per cent of Gaza's agricultural land had been levelled and 4,885 houses partially or completely destroyed.<sup>23</sup> At least 1,496 Palestinians had been killed and 8,545 injured.<sup>24</sup> Farmers living near the fence were particularly affected by the devastation, and many have had their land levelled a number of times both during and since the second intifada (see figure 4).<sup>25</sup> The difficulties fishermen currently face by also began during

the uprising. Despite a 2002 agreement brokered by the UN envoy Catherine Bertini to extend Gaza's maritime boundary to 12nm,<sup>26</sup> Israel forbade access to the sea intermittently for months at a time until 2005, declaring it a closed military zone.<sup>27</sup> Bertini's agreement has never been implemented, and Gaza's fishermen have not been able to sail 12nm from the shore since the beginning of 2000.

### 1.1.4 Dismantling of Israeli settlements in Gaza

Between 15 August and 12 September 2005, Israel unilaterally withdrew its troops and settlers from the Gaza Strip and dismantled its settlements and military installations. It referred to its withdrawal as "disengagement" and said it no longer held any responsibility for the territory as an occupying power. The international consensus, however, is that Gaza remains occupied by virtue of the fact that Israel continues to exert "effective control".

Israel's security concerns have shifted as a result of its withdrawal, but its methods of enforcement, such as land levelling and the use of live ammunition, have not changed significantly. Its security concerns since 2005 have related primarily to the change of political leadership in Gaza and a subsequent increase in the number of rockets fired at Israel from the territory.<sup>28</sup> Since September 2005, rockets and mortars fired from Gaza have killed 17 Israeli civilians and injured dozens more.

### 1.1.5 Palestinian parliamentary elections and Hamas takeover of Gaza (2006 to present)

In January 2006, the political party Hamas won the majority of seats in elections to the Palestinian Legislative Council, but was effectively prevented from taking office.<sup>29</sup> In June 2006, Palestinian armed groups based in Gaza captured the Israeli soldier Gilad Shalit.<sup>30</sup> Twelve months later Hamas forcibly took over the PA offices in Gaza and replaced Fatah-affiliated officials with their own. Shortly afterwards, a parallel Fatah-led government was formed by presidential decree and continues to operate from Ramallah in the West Bank, but it has only very limited representation in Gaza. An important exception is the Ministry of Agriculture, which is also responsible for fishing and continues to be controlled by PA. In September 2007, Israel's security cabinet pronounced Gaza a "hostile territory" and banned the movement of goods and people in and out of the territory,<sup>31</sup> including materials and supplies for humanitarian projects.<sup>32</sup> The closure was met with international condemnation and ICRC publicly denounced it as an act of collective punishment.<sup>33</sup>

The blockade, compounded by two wars within four years of each other sparked by Israeli military offensives, has plunged the territory into a humanitarian emergency. The first offensive, Operation Cast Lead, lasted from 27 December 2008 until 18 January 2009 and left more than



**Figure 4: Aerial photographs of vegetation loss on agricultural land near the fence around Beit Hanoun in October 2001 and October 2004.**



Source: OCHA, August 2005

1,400 civilians dead, more than 5,400 injured and more than 150,000 displaced. Of those who fled their homes, around 15,700 were still displaced as of early 2013.<sup>34</sup> According to the Unified Shelter Sector Database (USSD), 3,481 housing units were completely destroyed, 2,755 suffered serious damage and 55,000 minor damage.<sup>35</sup> Twelve per cent of the destroyed property was in ARA.<sup>36</sup> According to an inter-agency needs assessment, Gaza's agricultural sector was irreparably damaged. It sustained losses put at \$180.7 million, including \$77.8 million in damage to wells, roads, poultry farms and greenhouses.<sup>37</sup> During the war, Israel also fired shells containing white phosphorous into urban and rural areas,<sup>38</sup> a substance which farmers say has reduced the productivity of their land.<sup>39</sup>

Operation Cast Lead was also the first time Israel declared the dimensions of its no-go zones on land and at sea.<sup>40</sup> Leaflets were dropped warning farmers not to go within 300m of the fence, and fishermen not to sail beyond certain landmarks.<sup>41</sup> These became widely known as the "buffer zone" or in more legally accurate terms, access restricted areas (ARA).<sup>42</sup>

"Six months after Cast Lead, our land caught fire. After all the rainwater had evaporated, the land was still toxic and our plants and equipment were burned. We used to grow red peppers, eggplant and courgettes but now we only grow wheat. The soil has recently got better, but we do not feel safe. We still hear gunfire from the border."

-- Female farmer, focus group in Wadi Salqa, Deir Al-Balah governorate.

On 14 November 2012, Israel launched an eight-day offensive codenamed Operation Pillar of Defense, during which 174 Palestinians were killed. Of the fatalities, 101 are believed to have been civilians, including 13 women and 33 children.<sup>43</sup> A hundred and eighty-four houses were completely destroyed, 194 suffered severe damage and 10,000 minor damage,<sup>44</sup> leading to the displacement of 20,925 people.<sup>45</sup> The Ministry of Agriculture estimates that Gaza's agricultural sector suffered direct and indirect losses of \$20.6 million. These include \$16.6 million in lost crop production, \$2.2 million in lost livestock and \$1.2 million in damage to irrigation infrastructure.<sup>46</sup> It also suffered badly in the period between the two wars. Israel's recurrent land-levelling operations and open-fire policy in ARA rendered 35 per cent of Gaza's agricultural land all but unproductive.<sup>47</sup> The conflict ended on 21 November 2012 with the announcement of a ceasefire agreement that referred to the easing of the blockade and the restrictions in place on Gaza's border areas. The ceasefire has by and large held, but a year on Israel continues to enforce ARA on land and at sea and to severely restrict the movement of people and goods in and out of Gaza as a whole.

"I have 10 dunams about 50m away from the border, 40 dunams that are now inside Israel and five dunams about 350m from the border. On 22 November 2012, I went to see my land. I had never reached the border before. I went, I looked and I haven't been back since. I hadn't seen the land at 350m from the border since 2000. I was unable to recognise it. It had all been levelled, including the 350m marker. What I want is compensation. In 1993, I used to grow almonds. The trees have all been uprooted now. I was unable to get a damage statement from PA because they claim they could not determine who was responsible."

-- Farmer, focus group in Wadi Salqa, Deir Al-Balah governorate.

"I live in Al-Shoka and have 12 dunams of land next to the border that I can't reach at all. The last time we accessed the land was in 2003 and we had to pass a checkpoint to get there so we used to grow wheat. They shot at my husband when he was there. That was the last time he went. Then in December 2012, after the ceasefire, we went again but we were unable to recognise the land."

-- Female farmer, focus group in Al-Shoka, Rafah governorate.

During 2012, 13 civilians were killed and 185 injured by Israel's enforcement of ARA on land, and one fisherman was killed, two injured and 84 detained as a result of its enforcement of ARA at sea.<sup>48</sup> The confiscation of 32 boats and damage caused to fishing equipment also deprived dozens of families of their livelihoods.<sup>49</sup> Israel's control of Gaza's crossings continued to make the humanitarian crisis worse by impeding both the response and economic development. By the end of 2012, Israel had approved 75 per cent of aggregated international projects that had been awaiting authorisation as of mid-2010,<sup>50</sup> but it took an average of 12 months for each approval to be granted.<sup>51</sup>

Fuel shortages have led to a decline in the productivity of Gaza's power plant and greater dependence on Israeli supplies. More than two-thirds of Gaza's electricity, or around 120MW, comes from Israel via power lines located in ARA, between 10m and 20m from the fence. These power lines have been regularly damaged by both military operations and the enforcement of ARA. Maintenance and repairs have to be coordinated with Israel and can take days to complete.<sup>52</sup> Fuel shortages and power cuts lasting more than 16 hours a day continue to severely hamper the provision of health services in Gaza.<sup>53</sup>

## 1.2 Impact of ARA on displacement in Gaza

Given all of the above, displacement has become the norm rather than the exception for Palestinians in Gaza. Its acute and protracted nature, however, means that the specific vulnerabilities of internally displaced people (IDPs) are often indistinguishable from those of their host communities. In ARA, the levelling of land and the use of live ammunition have led to displacement, depopulation and the loss of land and livelihoods. In the 23 days of Operation Cast Lead alone, 319 homes were destroyed. Ongoing access restrictions make reconstruction difficult if not impossible, and the families affected remain displaced five years later.<sup>54</sup> Many of those displaced before and during Cast Lead continue to live in rented accommodation or with family members.

Places in ARA particularly exposed to vulnerabilities and risks include Shawka Al-Sufa, Al-Shawka Al-Janobiya, Abassan Al-Kabira, Khuza'a, Juhur Al-Deek and Beit Hanoun. Protection concerns and access restrictions have made it difficult, however, to carry out research and assessments in these areas. A December 2012 report on urban displacement in Gaza by the Overseas Development Institute (ODI) noted that field research was not undertaken in ARA because of "the risk to researchers in accessing them".<sup>55</sup>

The blockade of Gaza has meant that its inhabitants have had few if any options to flee outside the territory, leaving the displaced to seek shelter in areas where living space is already at premium. Many families and even entire communities live in overcrowded and often unsafe or inadequate conditions as a result.

There is little quantitative data on displacement in ARA, despite the protection and safety risks that exist there and the destruction of property that has taken place. The literature that does exist tends to focus disproportionately on displacement caused by Israel's large-scale military operations and less on that which takes place outside such acute periods. This is, in part, a consequence of how the international community's understanding and definition of ARA has evolved over the past decade. Until Israel's disengagement from Gaza in 2005, Palestinian access was restricted in the areas surrounding settlements and military installations, and there was no specific tracking of displacement near the fence. Nevertheless, "Palestinians living in the Khan Younis camp were regularly targeted for housing demolitions for security reasons, as the Israeli settlement of Gush Katif butted up to the camp,"<sup>56</sup> and between 2000 and 2004, the demolition of more than 2,500 houses in the southern city of Rafah caused displacement of 16,000 people.<sup>57</sup>

The Shelter Sector monitors displacement caused by the demolition, destruction and damage of housing in Gaza, but not that resulting from protection and safety concerns. Nor does it monitor those who have lost their livelihoods as a result of access restrictions.<sup>58</sup> Local and international organisations established DWG in 2007 to improve the coordination of responses to displacement.<sup>59</sup> Its mandate covered all occupied Palestinian territory, but in practice it only operated in the West Bank.<sup>60</sup> OHCHR leads an ARA working group within the Gaza protection cluster, but it does not manage a comprehensive database and reporting focuses deaths, injuries, the detention of fishermen and other human rights violations.

According to ODI's survey on urban displacement in Gaza:

Displaced families are not recorded in a protection of civilians database and the evidence that OCHA

holds in the West Bank (where monitoring is more systematic) is lacking in Gaza. Ongoing displacement in Gaza is not systematically tracked and its extent is unclear. In addition, little is known about the vulnerabilities of the large number of people who are still in displacement, or whether those who have found alternative housing consider their displacement to have ended. The discussion around 'preferred solutions' is especially pertinent regarding those who have been displaced from the 'Access Restricted Area', who may be unwilling or unable to return. There are also concerns that displacement has been defined too narrowly as a shelter issue, when what is needed is a holistic approach involving a protection assessment, legal response and advocacy. In the West Bank the DWG has been crucial in making a distinction between 'shelter needs' and displacement as a condition.<sup>61</sup>

The lack of systematic monitoring means that there is no proper understanding of displacement in ARA. Nor are there any accurate figures for those forced to flee since the start of the second intifada in 2000, those who are still displaced or those at risk of future or repeated displacement. Through qualitative analysis from focus group findings and a quantitative review of statistics available from human rights organisations, this report attempts to fill some of these gaps. Ultimately, however, the humanitarian community should establish a tracking system for displacement in Gaza modelled on the one used in the West Bank. The specific causes and patterns of displacement may differ between the two places, but in both cases displacement is a product of Israel's occupation and the conflict".<sup>62</sup>

### 1.3 Impact of ARA on Gaza's health, education and water sectors

There are vital water and sanitation projects planned in ARA. Japan has funded a sewage treatment plant in Khan Younis in southern Gaza, around 400m from the fence, and the World Bank has plans for a similar facility in Jabalia in the north, around 200m from the fence.<sup>63</sup> Assuming that it goes ahead as planned, the World Bank plant will treat the sewage of more than 500,000 people, or around a third of Gaza's population, and filter the treated effluent back into the aquifer.<sup>64</sup> Given that as much as 95 per cent of the water from Gaza's aquifer is currently not of drinking quality, and that the Palestinian Water Authority expects demand for fresh water to increase by 60 per cent by 2020,<sup>65</sup> Israel should allow the materials for these projects to be brought in and lift its restrictions on access and construction in ARA as a matter of urgency.

There are 13 schools in ARA, which provide education to 4,477 children under the age of 16, and livelihoods to 279

teachers and staff.<sup>66</sup> Aside from the strains of learning in crowded classrooms and teaching double shifts, which is true of schools across Gaza, children and teachers in ARA regularly put themselves at risk in pursuit of their basic right to education and livelihoods.

There is a shortage of 250 schools in Gaza as a whole.<sup>67</sup> With its population growing fast, demand is expected to increase by an average of 14,000 new pupils a year between now and 2020, meaning that 440 schools will need to be built in the next seven years,<sup>68</sup> some of them in ARA to service communities near the fence. Here again, Israel must allow in construction materials and ease its enforcement of ARA on land if the humanitarian community and local authorities are to respond adequately to Gaza's education needs. As highlighted in a 2012 report by the UN Country Team, Gaza will become unliveable by 2020 unless urgent action is taken to improve its water, electricity, health and education infrastructure.<sup>69</sup>

"We need medical care. UNRWA only provides basic care. We cannot afford clothing for our kids or to send them to school even though we all went to school. This is the first generation that will be denied schooling. Our houses are overcrowded and falling apart. There are sometimes 15 people in one house of two rooms."  
-- Fisherman, focus group in Gaza City

"We live in daily insecurity. We cannot afford to pay for university. We must send our children one term at a time depending on our earnings. The war on the Rafah border also affects us. Our houses were destroyed when the settlements were here."  
-- Fisherman, focus group in Swedish Village, Rafah governorate.

The imposition of ARA and the severe restrictions it places on access to agricultural land and fishing grounds have prevented Gaza from achieving sustainable growth and perpetuated high levels of unemployment, food insecurity and aid dependence.<sup>70</sup> According a press release published on 3 July 2013 by James Rawley, the UN's humanitarian coordinator for occupied Palestinian territory, 57 per cent of people in Gaza are unable to afford to buy enough food and 80 per cent of families receive some form of international aid.<sup>71</sup> Chronic poverty has taken a significant toll on the population's health and wellbeing. A report published in July 2013 revealed an average of 30 attempted suicides per month, or one a day, most of them involving unemployed youths.<sup>72</sup> Access restrictions



and the damage they do to already overstretched health, sanitation and education services create individual and cumulative conditions that may lead to further displacement from ARA.

#### 1.4 Developments following the November 2012 ceasefire agreement

Following Operation Pillar of Defense, Hamas and Israel agreed to a ceasefire brokered by Egypt on 21 November 2012. The US secretary of state, Hillary Clinton, and the Egyptian foreign minister, Mohamed Kamel Amr, publicly endorsed the agreement at a Cairo press conference, and an accompanying statement was distributed. It read as follows:<sup>73</sup>

*[No Title]*

*A. Israel shall stop all hostilities in the Gaza Strip land, sea and air including incursions and targeting of individuals.*

*B. All Palestinian factions shall stop all hostilities from the Gaza Strip against Israel including rocket attacks and all attacks along the border.*

*C. Opening the crossings and facilitating the movement of people and transfer of goods and refraining from restricting residents' free movements and targeting residents in border areas. Procedures of implementation shall be dealt with after 24 hours from the start of the ceasefire.*

*D. Other matters as may be requested shall be addressed.*

No signed document has ever been produced.

"The biggest change for me after the ceasefire is that I can go to my land near the border anytime. I usually go in the daytime between 6am and 6pm. Before I would time it for when the solidarity activists were there, between 7am and 3pm only. But in terms of planting, we all know informally that there is no point in planting trees anywhere up to 2,000m from the border. There's no point."

-- Farmer, focus group Khan Younis governorate.

"I heard of the ceasefire in November 2012 via the newspapers. I immediately went to the sea with three more fishermen and I was shot at around 2nm out. There wasn't even the warning that they usually give. We were told by microphone to remove our clothes and jump into the sea. We were surrounded by smaller rubber dinghies."

-- Fisherman, focus group in Gaza City.

Despite reference to the opening of Gaza's crossings and the easing of restrictions in border areas, the agreement did not specify how Israel was to implement its provisions. Aside from the cessation of hostilities, the first sign of any Israeli intention to abide by the terms of the ceasefire came at the end of November when COGAT published its monthly report stating that the fishing limit would be extended from 3nm to 6nm.<sup>74</sup> On 25 February 2013, COGAT published a statement on its website confirming the new 6nm limit and informing farmers that they could now access land up to 100m from the fence. A few days later, however, both references were removed, and on 21 March the Israeli army announced that the fishing limit had been reduced back to 3nm in response to rocket fire from Gaza. Two months later, and exactly six months after the ceasefire, it published a statement on its website reversing its decision once again:<sup>75</sup>

*"Prime Minister, Mr. Benyamin Netanyahu, and the Minister of Defense, Mr. Moshe (Bogie) Ya'alon, approved the expansion of the Gaza Strip's designated fishing zone from 3 to 6 nautical miles. The designated fishing zone was limited due to rocket fire from the Gaza Strip toward Southern Israel on March 21, 2013. The Coordinator of Government Activities in the Territories, Colonel Eitan Dangot, has informed senior Palestinian, international, and Egyptian officials about the decision."*

The statement also confirmed that Israel's decision to reduce the fishing limit to 3nm had been in response to rocket fire from Gaza. As such, it amounted to the direct punishment of an entire community for acts over which it had no control, which would satisfy the definition of collective punishment under international law.<sup>76</sup>

## 2.1 Israeli definition of ARA on land

Israel has never officially demarcated ARA on land beyond the leaflets it dropped during Operation Cast Lead and on two other known occasions since.<sup>77</sup> In January 2009, it dropped leaflets on Palestinian areas near the fence warning that anyone going within 300m of it would be repelled, if necessary with the use of live ammunition (see figure 5).<sup>78</sup> The leaflet read:

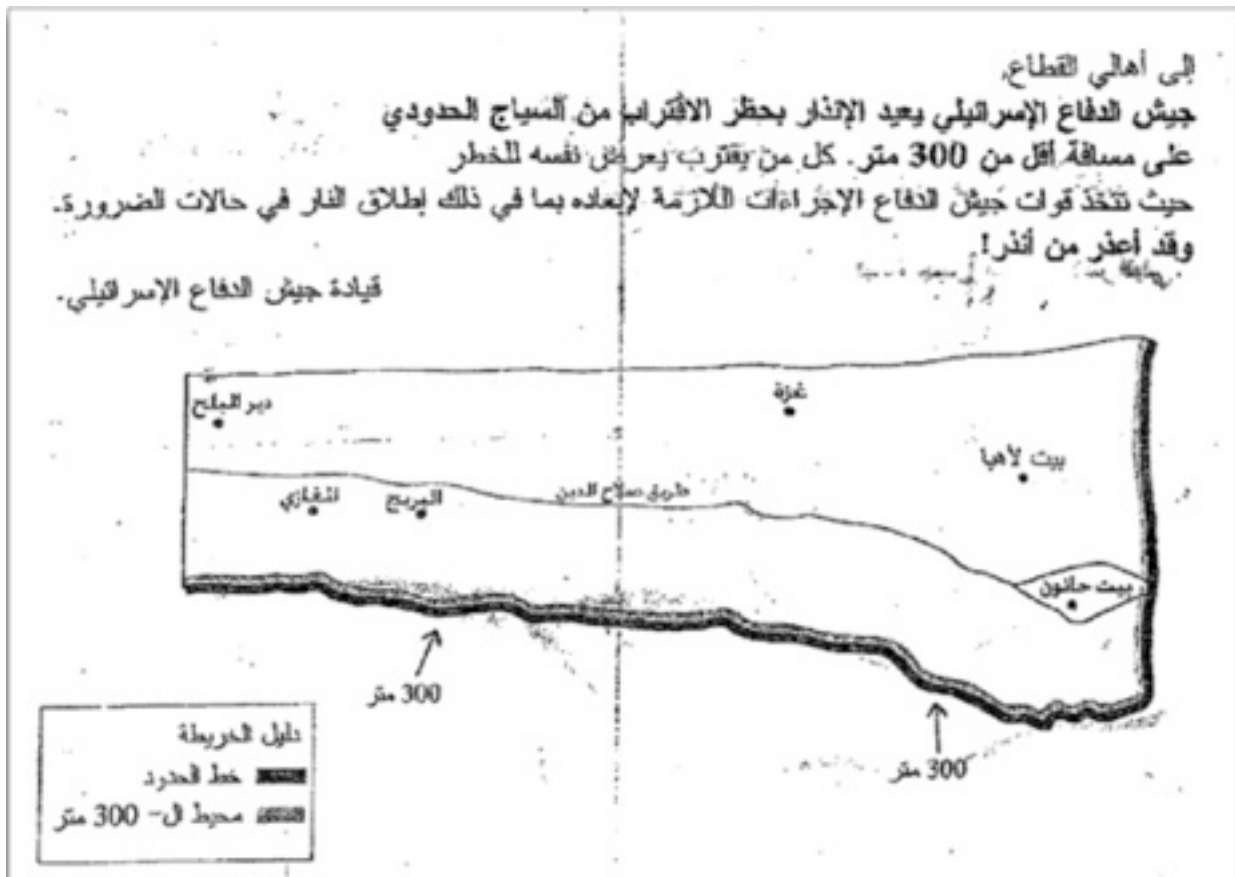
*"To the residents of the Strip: The IDF repeats its warning about coming within 300m of the border fence. Anyone who comes close to the fence exposes himself to danger as the IDF will take all necessary steps to keep them away, including when necessary, the use of live fire. Those who warn are pardoned! The leadership of the IDF"*

[unofficial translation]

The leaflets, however, were misleading. Farmers have regularly been shot at, and some have been killed and injured at distances much further than 300m from the fence. According to the UN, Israel effectively maintains a 500m no-go zone along the entire length of the fence, with people at high risk of being fatally shot as far away as 1.5km in some areas.<sup>79</sup> The fact that Israel issues warnings does not mitigate its obligation to distinguish between civilians and combatants in all military engagements, in accordance with customary IHL.

Uncertainty over the extent to which farmers can regain access to their land has increased since the November 2012 ceasefire. For several days immediately afterwards, Palestinians approached the fence to celebrate and to attempt to access their land, many for the first time in nearly a decade. Some held picnics in open areas and occasional demonstrations also took place. Palestinian

**Figure 5: Leaflet outlining no-go zone on land, dropped by Israeli military during Operation Cast Lead in January 2009.**



Source: Al Haq, 2011

## Case study

***A Palestinian farmer, 28 years old, who is unmarried and supports his parents.  
Interviewed on 12 May 2013 at his home in the Deir Al-Balah governorate***

"I own six dunams of land about 400m from the fence. It was all levelled in 2007 and I didn't go back until after the November 2012 ceasefire. Since the ceasefire I have been there everyday, first to replant olive trees and then to water them. I have a well that my family and I built and I've cleaned it up and started to reuse it.

The problems began on 15 July 2007 when militants started using our land for their activities. Shortly afterwards, two bulldozers came in through a gate in the fence, together with three tanks, and levelled my land. I lost 150 mature olive trees. My most beautiful memories were there among the olive trees. I also used to make 20,000 Jordanian dinar [\$28,000] from olive oil each year. The quality was so good that my family used to be known for its olive oil. We had special orders from people and we didn't even need to take it to the market to sell it. We have never received proper compensation for our losses. Even after Operation Cast Lead, when many people received compensation for white phosphorous damage, my family didn't receive anything because we are not Hamas supporters.

Since the November ceasefire I have replanted 120 olive trees. They are already mature and cost me 50 Israeli shekels [\$14] each from Israel. The repair of the water well set me back more, 1,500 dinars [\$2,120]. Deep down I expect to have to do this all over again someday. I know the situation is not stable. Still, there are days when I am hopeful. Once, when I tried to visit my land at night with my father I was stopped by some Hamas police who were patrolling the area. They are trying to keep to the ceasefire. But in March 2013, my neighbours were injured by Israeli gunfire while planting okra. One was hit in the thigh and the other in the shoulder.

As long as there is shooting, there is no ceasefire. Even though the situation is not stable I hope to harvest olives in October 2014. What other choice do I have? There are no other jobs in Gaza anyway. I am a farmer and this is my reality. I have to live it."



Destroyed greenhouses

human rights organisations reported that four unarmed civilians were killed and 78 injured in the first month following the ceasefire.<sup>80</sup> During the three months of confusion over restrictions on fishermen and farmers in early 2013 and detailed in the previous section, Gisha, an Israeli NGO based in Tel Aviv, lodged a freedom of information request seeking clarification. On 21 April 2013, the Israeli military replied in a letter confirming that the no-go area on land was 300m from the fence. The letter also referred to Israel's security concerns and its open-fire policy. The first and fourth paragraphs read as follows:

*"Following your letter and a further inquiry in relation thereto, we wish to clarify that due to security reasons and in light of intentions by terrorist organizations to commit terror attacks against citizens of Israel and IDF soldiers, residents of the Gaza Strip are prohibited from getting within 300m of the security fence.*

*...*

*IDF soldiers take action to prevent unauthorized entry by Gaza residents into the zone by warning those entering in various ways. The manner in which warnings are given and the measures used are provided for in the open-fire regulations, which we are unable to specify for obvious reasons."*

[Copy of IDF letter to Gisha is provided as a scanned image in the appendix of this report]

In practice, Israel enforces ARA in the following ways:

- The levelling of land up to 300m from the fence;
- The destruction of crops and any structures taller than 80cm up to around 500m from the fence;
- The use of live ammunition to deter people from approaching the fence at distances of up to 1.5km;

Whether the shots fired are intended to kill, injure or intimidate can only be determined on a case-by-case basis, but the overall effect of Israel's open-fire policy is that farmers are prevented from accessing their land as they normally would at distances of up to 1.5km from the fence, which has a negative impact on their livelihoods.

## 2.2 Impact of Israel's enforcement of ARA on land

### 2.2.1 Cumulative impact

Justified as a security measure to protect Israeli localities and military installations, the destruction of Palestinian land in Gaza became widespread practice during the second intifada, when tens of thousands of dunams were levelled and thousands of people displaced. Many of the farmers interviewed for this report identified the uprising as the beginning of their current predicament. They said

Israel's practices intensified after 2006 and described Operation Cast Lead in December 2008 and January 2009 as a period of total devastation. They have never recovered from the cumulative effect of these measures.

In order to better understand patterns in the enforcement of ARA, this report collated information gathered by local human rights organisations over the last 13 years. Given the extreme difficulties the organisations faced both during and following periods of intense fighting and war - and the fact it was impossible to predict the evolution of ARA - the information available ten years ago was not easily comparable with contemporary data. With careful disaggregation, however, some trends become clear. Most of the data available focused on displacement caused by the destruction and damage of houses, and civilian deaths and injuries. Other more comprehensive information on displacement and figures for Palestinians who fled as a result of protection concerns or loss of livelihoods were scarce. Given these gaps, available data on land levelling and shooting incidents was analysed to identify key displacement threats and trends. Efforts were made to triangulate and verify most of the information and statistics presented in this section from multiples sources, but there were limitations in the amount of data available.

"I am 27 years old. I have two dunams about 800m from the border in Khuza'a. I used to plant watermelon and okra, and before 2000 I made 8,000 shekels [\$2,250] a year. Now I make 1,000 shekels [\$280] maximum. In 2000, the land was levelled. I returned to it afterwards and tried to remove all the sand and pieces of broken things that were in it. It cost me about 2,000 shekels [\$560] to put right. I replanted wheat. After one very bad harvest when very little grew, I bought fertiliser and pesticides but it didn't make much difference. In 2007, the land was levelled twice during two incursions. In 2008, it was damaged by artillery fire and white phosphorous during Cast Lead. In 2010, I tried to plant wheat again as it is one way to clean the land. It was a terrible harvest. We could not eat it. It was contaminated. We need support to rehabilitate of our land, to improve the quality of our harvest."

-- Farmer, focus group in Khan Younis governorate.

Levelling operations and displacement around Israeli localities close to the fence such as Ele Sinai, Nisanit, Kissufim and Dugit; crossings such as Karni and Erez; and the military installation near Gaza airport are all within 1km of the fence. As such, levelling operations and displacement around them during the second intifada are considered to have taken place within ARA. Table 1 shows a combination

of data from PCHR, which began reporting on human rights violations in 1995, and Al Mezan, which began systematically documenting levelling operations in 2006. Their records show that Israel was carrying out land levelling in Gaza as early as 1998 and increased such operations tenfold in 2000. Within ARA, the sharpest increase came in 2006 - with the exception of Operation Cast Lead, the year in which most land was levelled. All land within 300m of the fence has been levelled a number of times. This has not only caused direct losses in terms of destruction and future earnings. It has also damaged both the topsoil and subsoil, contaminating them with rubber piping from irrigations systems, metal poles and wire, concrete, other construction debris and the remains of trees and plants.<sup>81</sup>

Table 1 shows how, after Israel's removal of its settlements and military installations in 2005, levelling operations were only carried out to maintain and expand ARA. By 2008, some areas, such as the agricultural land around Beit Hanoun, were completely levelled up to 1.5km from the fence (see figure 6). For years in which no levelling is recorded, data was not available from PCHR or Al Mezan. The absence of figures does not necessarily indicate that no levelling took place.

**Table 1: Land levelled in the Gaza Strip since documentation began**

	Total land levelled in Gaza (dunams)	Land levelled in ARA (danums)
1997	235.0	–
1998	929.0	14
1999	121.0	–
2000	5,557.5	1,101.5
2001	12,257.5 (Jan-Sept)	1,302.0 (Jan-Feb)
2002	15,763.4 (July 2002 - April 2004)	711.4 (Jan-June)
2003	–	–
2004	9,559.5 (July 2002 - April 2004)	–
2005	–	–
2006	2,184.8	2,184.8
2007	744.6	744.6
2008	–	–
2009	7,073.2 (Cast Lead)	7,073.2 (Cast Lead)
2010	86.6	86.6
2011	8.7	8.7
2012	410.8	410.8
2013 (May)	0.5	0.5

Source: PCHR and Al Mezan Centre for Human Rights

“Our problem is that when compared with other lands in Gaza, ours is effectively confiscated as we have no access to it and it has been destroyed. We can't even tell which is our land anymore.”  
 -- Farmer, focus group in Beit Hanoun, North Gaza governorate.

With the exception of Operation Cast Lead, Israel's use of live ammunition in Gaza since 2006 has predominantly been to enforce ARA. Around 60 per cent of all shooting incidents have been in North Gaza governorate, with the second most frequent use of live fire occurring in Khan Younis (see table 3). The graph in figure 7 clearly shows a sharp increase in the number of incidents just after 2011, which has then declined since. The apparent dip in the graph for 2007 and 2008 is due to lack of data.

**Table 2: Use of live ammunition in the Gaza strip since documentation began**

	Palestinians killed in Gaza		Palestinians injured in Gaza	
		Civilians		Civilians
1997	3	3	13	–
1998	8	8	500	–
1999	1	1	6	–
2000	6	6	2,500	–
2001	–	–	–	–
2002	378	–	1,181	–
2003	369	–	–	–
2004	482	–	1,844	–
2005	129	–	129	–
2006	–	–	1,700	–
2007	190	190	650	–
2008	1,417	1,181	6,412 (Cast Lead)	–
2009	47	–	–	–
2010	72	29	173	–
2011	108	49	467	406
2012	255 (Pillar of defense)	174,103	1,485	–
2013 (July)	3	–	40	–

Source: OCHA, PCHR, Al Mezan Centre for Human Rights



Figure 6: Aerial photograph of Beit Hanoun's agricultural land near the fence in 2008.



Source: OCHA, 2010

The shooting incidents have resulted in hundreds of deaths and injuries, depopulation and displacement from ARA. According to OCHA, between 2007 and July 2013, 214 Palestinians - including at least 127 civilians - were killed within 1.5km of the fence, and 825 were injured - including at least 761 civilians.<sup>82</sup> Table 4 shows an annual breakdown of such incidents since 2009, as recorded by Al Mezan. As OCHA collates data from various human rights organisations and table 4 shows data from only one such source, there is a discrepancy between OCHA's figures and those in the table. It still serves, however, to identify relational trends. From 2011 onwards, the proportion of civilians killed to those injured has been lower, and in 2012 there were less injuries and civilian deaths despite a rise in the number of shooting incidents. Without access to Israel's rules of engagement, it is impossible to know what lies behind these trends, but the data points to a shift towards less use of lethal force and may indicate a change in practice on the part of Israeli soldiers enforcing ARA. Gisha has submitted official requests for informa-

tion about Israel's rules of engagement in Gaza, but no information has been forthcoming.<sup>83</sup>

In the first six months after the November 2012 ceasefire, Israel used live ammunition against Palestinians near the fence on at least 55 different occasions, killing two civilians and injuring 28. Nearly all of the incidents, 85 per cent, occurred in North Gaza.

"In December 2012, my cousin and I were walking on my land next to the border with my sheep when we heard gunshots and fell to the ground. They fired live ammunition and four of my seven sheep were shot dead. We had heard about the ceasefire from the Red Cross and believed we could now reach our land. We did not take part in the demonstrations."  
-- Farmer, focus group in Wadi Salqa, Deir Al-Balah governorate.

**Table 3: Shooting incidents in ARA on land since 2006, per governorate**

	Northern Gaza	Gaza	Middle Area	Khan Younis	Rafah	Annual total
2006	128	1	2	16	6	153
2007	–	–	–	–	–	–
2008	–	–	–	–	–	–
2009	16	1	4	2	23	46
2010	12	1	5	12	5	35
2011	61	18	15	13	6	113
2012	77	9	16	31	9	142
2013 (May)	47	1	6	0	1	55
<b>TOTAL</b>	<b>341</b>	<b>31</b>	<b>48</b>	<b>74</b>	<b>50</b>	<b>544</b>

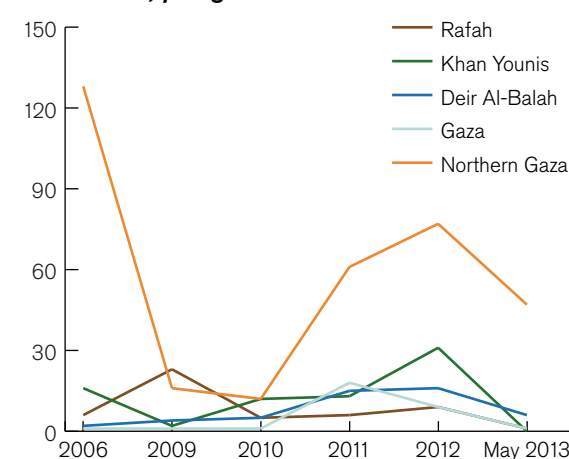
Source: Al Mezan Centre for Human Rights

**Table 4: Palestinian civilians injured and killed as a result of shooting incidents in the ARA**

	Shooting incidents and incursions on land	Civilians injured	Total killed	Civilians killed
2009	85	39	12	10
2010	108	26	22	9
2011	160	201	30	21
2012	188	180	30	10
2013 (May)	137	44	8	4
<b>TOTAL</b>	<b>678</b>	<b>490</b>	<b>102</b>	<b>54</b>

Source: Al Mezan Center for Human Rights

**Figure 7: Shooting incidents in ARA on land since 2006, per governorate**



Source: Al Mezan Center for Human Rights

Note: Statistics for 2007 and 2008 were unavailable.

## Case study

***Mahmoud Sami Naim is 21 years old and recently married. His first child was born in June 2013  
Interviewed on 11 May 2013 at his home in Beit Hanoun, North Gaza governorate***

"My family owns 400 dunams of land in east Beit Hanoun, about 300m from the fence. We used to have about 360 citrus trees, both lemons and oranges, which produced 25 tonnes of fruit each year, even more in a good year. We would sell our fruit in Gaza and even export some to Europe via Israel, earning about 2,000 Jordanian dinar [\$2,800] a year. I remember going for family picnics when I was a boy and riding my bike there. I loved our place away from the city. It was like paradise.

But since 2000 it became difficult to reach the land because of Israeli military activity, and parts of it were levelled. The last time I visited the land was in 2001, to help my dad and uncle spray some pesticide. I remember Israeli soldiers shouted at us from the fence, telling us to leave the area and not to come back. They even shot into the air to scare us off. We stopped going after that. By 2002, all of our land had been levelled and the whole area was unrecognisable. We lost all our fruit trees. The combined value of the land and trees at the time was 90,000 dinar [\$127,000]. My family lost all of that, not to mention our annual income.

One morning, on 28 November 2013, I heard on the radio that following the ceasefire between Hamas and Israel, we were allowed to return to our land. My friend called me to say that he and some other friends wanted to celebrate and they invited me to drive down to our land. I agreed and when we were 400m from the fence we saw a lot of people. Everyone was celebrating, including women and children. The problem now was that we didn't recognise my land so we stopped to ask for directions. We were told to go a bit further and then I recognised the stump of a tree and a destroyed irrigation pool. I knew I had reached my land. I walked around. My brother had warned me against touching unexploded ordnance so I was being careful. I found an old well, about 85m deep, with pieces of metal inside it. I found debris everywhere - metal, mud, pieces of tree. It was all a big mess. Still, I was excited.

I called my cousin to tell him I was on our family's land and that's when I saw two Israeli military jeeps rushing towards a gate in the fence. I began to run and saw everyone else running too. But it was difficult because of all the debris, mud and uneven ground. About a minute later I heard gunshots. I remember noticing that I was slower than the others and being worried about it. Then I felt an explosion inside my body. I had been shot. I tried calling for help but words wouldn't come out of my mouth. I was breathless. I felt my chest and saw blood on my hand. I fell and raised my bloody hand hoping someone would see it.

My brother returned. He risked his life to come and get me. He struggled to get me out of there but eventually someone with a motorbike came to help and I was taken to the nearest hospital. My brother had called an ambulance and they tried to find us, but because the land had been levelled it was difficult to explain where we were. The Israeli soldiers' shooting also made it dangerous for the medical team to come close to the fence. Once in hospital, I was operated on and spent eight days in recovery. Doctors told me I had been lucky. The bullet missed my heart by half an inch.

Now I still need regular medical checkups and have not been able to go back to work. I was a day labourer on construction sites and used to make 40 shekels [\$11] a day. I am worried because my wife is pregnant and about to give birth, which costs \$200 in our local hospital. I used to own a clothes shop but had to close it because of the bad economic situation. So first we lost the land, then the shop and now my ability to work. I have no idea when things will be normal again, or when I'll be able to even see our land again."

### **2.2.2 Current humanitarian and displacement trends in ARA on land**

The following analysis is based on comments made by 73 members of farming communities in focus group discussions and survey responses. Their primary concerns can be summarised as follows:

#### ***Access to livelihoods***

There is little information about this issue in Gaza, but it is clear that IDPs must include those forced to abandon “their homes and livelihoods”.<sup>84</sup> The inability of farmers and fishermen to continue their traditional livelihoods has not only had a devastating economic impact on their fam-

ilies. It must also be seen through a broader displacement lens. Despite having security of tenure, insofar as they own their homes or live in houses owned by their spouses or extended family, all farmers in the focus groups said they were heavily in debt. Most have had their property destroyed a number of times, and they have not been fully compensated. Most said that government assessments after Operation Cast Lead had underestimated their losses, and that payments had not been prioritised transparently. Efforts by local and international organisations to replace damaged equipment have been “one-size-fits-all” initiatives with farmers offered predetermined options of low quality materials. In one project, damaged irrigation

### **Case study**

***Ayman Subuh is 39 years old and married with nine children, five boys and four girls. He is the family's main breadwinner.***

***Interviewed on 22 April 2013 at a strawberry farm near Beit Lahiya, North Gaza governorate***

“I have been a farmer all my life. My father was a farmer and my five brothers also became farmers. We've never owned land but rented, and my two brothers - three have since passed away - gave up farming in 2001 after Israeli bulldozers leveled their plots. The plots were about 1,200m from the fence and 1,000m from the Israeli settlement block of Dugit in North Gaza. One of my brothers also had a greenhouse bulldozed in 2006. They both now drive taxis because they cannot afford to rent land. There just isn't enough of an export market to make ends meet. I managed to survive as a farmer because in better days, before 2000, I bought my own house. I also belong to the strawberry farmers' cooperative, which still manages to export some goods to Israel, but I am severely in debt.

Three plots of land I rented were levelled in 2003 and 2004, two in Beit Lahiya and one in East Jabaliya, and all at about 400m from the fence. The damage alone cost me \$3,000 to repair. I used to grow flowers, but the damage caused by the levelling made it too expensive. Since 2006, I have rented around 10 dunams of land in two plots. One is 700m from the fence, where I plant potatoes and carrots because they need less looking after, minimising my exposure to Israeli gunfire. The other is 1,400m from the fence, where I plant strawberries. Strawberries used to be called “red gold” because you could get \$8 a kilo. Now you only get \$3 a kilo. There is a lot of competition from Egypt, and the Gaza cooperatives cannot compete, especially with the extra cost of using back-to-back trucks to cross Israeli checkpoints and the losses we suffer when the checkpoint is closed.

The overall closure of Gaza is also a big problem. The cost of fertiliser has gone up 400%. Before 2006, I spent about \$150 to fertilise one dunam for a whole year. Now I pay \$600. This is because Israel has banned the import of fertiliser so we depend on the tunnel economy to get it and there is less supply than demand. The cost of fuel for the pump to irrigate the land has also gone up. And as my costs have risen, my sales have decreased. Before 2006, I sold 20 to 30 tonnes of strawberries every year, mostly in the West Bank through coordination with Israel. My strawberries now have to wait between 10 and 30 days to cross Karem Shalom and many go to waste before they reach the West Bank. The cooperative only pays me for what gets sold, often through an Israeli intermediary. I get about 1.5 shekels [\$0.42] a kilo during strawberry season and three shekels [\$0.85] a kilo off-season.

Luckily, I don't have to pay labour costs as the entire family helps out. My sons and nephews work on the land with me, and my wife helps with the packing. I do have one extra expense though, which has got me further into debt. My son Subhi lost his leg in 2003 and he's had special health and education needs ever since. What I worry about most is that with my debts we can't afford to eat meat everyday, only on Fridays. This is the only time we eat a full cooked meal. Otherwise we survive on bread, yogurt, cheese, tomatoes and peppers, that kind of thing.”



systems were replaced with plastic hoses that could not withstand the heat of the sun. Farmers also said they needed help in analysing the current state of the soil in ARA, and in devising collective strategies to return their land to its full productive capacity and maximise its potential. Farmers in central and southern Gaza were particularly concerned about the long-term effects of white phosphorous on their land. Some said they had noticed a decrease in the quality and quantity of their produce.

Israel's enforcement of ARA continues to severely limit the productivity of around 35 per cent of Gaza's agricultural land. In Beit Hanoun, where 85 per cent of residents are farmers - who between them own 130,000 dunams of land between the town and the fence - only seven per cent of those interviewed said they had been able to access their lands in 2012 because of Israel's use of live ammunition. Around 70 per cent said either they or a family member had been injured in the last ten years while working their land. The majority of reported injuries were in the south of the Gaza strip, where more than half of those affected said they had been unable return to work as farmers as a result. The loss of their livelihoods has led in turn to their displacement.

#### ***Access to land after November 2012 ceasefire***

All of the farmers interviewed said they had been able access their land near the fence within days of the November 2012 ceasefire. Most, however, had been displaced and unable to visit for several years, and they were unable to recognise their land because it had been levelled. They did not go back again beyond an initial visit after the ceasefire because of Israel's persistent use of live ammunition. Farmers with land further than 500m from the fence have generally returned to cultivate their land, but most plant rain-fed crops to minimise their exposure to Israeli gunfire.

Many of those displaced from their agricultural land by Israeli military activity and enforcement of ARA now face further challenges and possible eviction as a result of proposed public works by local authorities in Gaza. Farmers in central and southern Gaza were concerned about a recent wave of eviction notices and confiscations of land by Hamas to make way for road building and widening projects. They said they had not been consulted in advance and would not benefit from the projects because they did not own cars.

### **Case study**

***Nawal Musa Abu Haddaf is 41 years old and married with seven children, five girls and two boys. Two of her children are still at school and one is deaf. Her husband has trouble walking as a result of a leg injury.***

***Interviewed on 5 May 2013 in Wadi Salqa, Deir Al-Balah governorate***

"I have 20 dunams of land next to my house, which my family gave to me, and I have the use of another 20 that my husband's family shares with us. One day, in either July or August 2012, I went to work on my land and found a group of people working there. When I approached them, they said they were building a road across my land. I protested, but they said they were under orders.

Within five days they had finished building the road and I had lost two dunams of the land my family had given to me. I used to plant wheat there, which would produce about 150kg of grain that I would sell at market for about 300 shekels [\$85]. I am very upset because I was not consulted or offered any compensation for my loss of land and income. When I complained to the municipality, they said it was not their responsibility because they were implementing an old plan for which the previous government was to blame. The road also took about one dunam of my neighbours' land. They also complained, but I don't know what happened.

I am also upset because this is not the first time I have suffered losses, and the government's actions have just made a bad situation worse. Before Operation Cast Lead, I used to grow plenty of fruit and vegetables on the 20 dunams that my family gave me. I had red peppers, watermelons, beans, cucumbers; it changed according to the season. But after Cast Lead, I was unable to cultivate anything. I cleared the top layers of soil, which had been visible marked by white phosphorous, but the vegetables I planted did not grow normally. They took a long time to mature and were very small. I spent a whole year after Cast Lead trying to grow vegetables because we need them for food, but in 2010 I gave up and planted wheat instead."



"My son will lose half of his house because of the widening of this road. They will only take one dunam but part of his house is built on it. We were told about this three months ago, but were not told how to complain or when the work would start."

-- Female farmer, focus group in Al-Shoka, Rafah governorate.

#### **Access to food, health and education**

All focus group participants said they had experienced a sharp decline in the quality and quantity of food they were able to cultivate or buy since 2006. Farmers who used to let their plots while they worked in Israel and those who grew high-yield produce for export, such as citrus fruit, strawberries and olives, have suffered loss of income to the extent that they no longer able to buy enough food or invest in agricultural production. Those who rented land or depended on subsistence farming are no longer able to access their plots to grow crops or rear sheep to meet their own needs. For both groups, land-levelling operations and the use of live ammunition up to 1.5km from the fence are the underlying cause of their food shortages.

"I have problems with my husband because we need many things. We need milk, clothes and equipment for our young children. We have lots of arguments. We have three dunams in Al-Shoka that were levelled during Cast Lead. We rehabilitated them after the war with the help of an international organisation and planted beans and wheat, but sometimes there is not enough for us to eat."

-- Female farmer, focus group in Al-Shoka, Rafah governorate.

Many farmers living near the fence struggle to access health services. For those living in Wadi Salqa, for example, the nearest hospital is either in the town of Khan Younis or Deir Balah. There is no public transport so they depend on taxis, which usually cost around 20 shekels (\$5.70) each way. The journey takes about half an hour, and many drivers refuse to go within 600m of the fence without coordinating with the Israeli army via ICRC to ensure the safety of an approaching vehicle. This can take anything from half an hour to several hours to organise.

Women farmers in Beit Lahiya in the north were concerned about the psychosocial impact of Operations Cast Lead and Pillar of Defense on their children, and the limited support available to them. They were satisfied with the methods of support but felt sessions were not long or regular enough to meet their needs. Women farmers in

southern Gaza expressed concern about their teenage sons becoming addicted to the prescription painkiller Tramadol. One young man told a recent report into drug use in Gaza that anxiety about poverty and unemployment had caused his addiction.<sup>85</sup>

Farmers were also very concerned about the cost of higher education, particularly given that their children are under pressure to establish new ways to make a living because farming is no longer viable. Farmers' lack of income has often meant that their children have to take turns to study at university by attending alternate semesters. Other families have chosen to send their sons rather than their daughters. All participants who discussed gender preference emphasised that they valued their daughters' education just as much as their sons'. They said, however, that their finances would not stretch both, and that their sons would be more likely find work after graduation.<sup>86</sup>

#### **2.2.3 Implications for Gaza's food, education and health sectors**

##### **Food**

Israel's enforcement of ARA has prevented farmers from cultivating their land and Gaza's agricultural sector from reaching its full productive capacity. Until November 2012, access restrictions resulted in the annual loss of around 75,000 metric tonnes of agricultural produce, valued at \$50.2 million.<sup>87</sup> Farmers unable to cultivate and fishermen unable to put to sea freely are left facing an increased risk of displacement, and 41 per cent of Gaza's population is food insecure.<sup>88</sup> As one participant in a food security survey carried out by the UN Food and Agriculture Organisation (FAO) and the UN World Food Programme (WFP) explained:

*"Food security here is a special case [...] We can be starving one day because there is no supply of food, and we can have more food than we ever need on another because we can freely fish and cultivate our lands and go to work [...] Food security to us is mostly related to the political situation [...] We are food secure if the Israelis leave us alone and stop trying to make our lives into a nightmare. If they do that, then we can be food secure because we can earn a living, cultivate our lands, raise our animals, eat fish and import food as we desire."<sup>89</sup>*

The survey concluded that supporting Gaza's means of food production, particularly by protecting the livelihoods of those such as farmers and fishermen who are directly involved in the food chain, would contain humanitarian needs and help to protect entitlements to land and water resources. It also suggested that sustainable employment generation schemes could play a vital role in restoring Gaza's capacity to produce food.<sup>90</sup>

"The international organisations could design special programmes on human security for us ... We need sheep for meat and for sale. We need irrigation equipment, but not all of us need the same kind of hoses. We need help with our debt. We also need help to rehabilitate our land so it can grow vegetables again. We usually use plastic to suffocate the earth and kill pests in a natural way. We also need help with drinking water. It is very high in nitrates at the moment."

-- *Female farmer, focus group in Beit Lahiya, North Gaza governorate.*

### Education

There are currently 13 schools in ARA, which employ around 280 staff and cater for around 4,500 students.<sup>91</sup> There are seven schools between 500m and 1,000m from the fence and these have had classes interrupted and classrooms damaged by gunfire. Students and staff have been traumatised and left feeling insecure both at school and on their way to and from it. Regular Israeli incursions cause further anxiety, and a significant number of schools have been repeatedly damaged during periods of war. Many are yet to be repaired and in some cases shipping containers serve as temporary classrooms. Such difficulties make communities vulnerable to displacement, and unless the impact on education is not mitigated, that risk will only increase. Possible protection concerns also arise as children continue to go to schools in insecure areas.

"We are frustrated. We have had about 15 needs assessments in the last five years and only four projects were actually implemented. These things are often a waste of time, but we keep coming and participating because we need help. What else can we do?"

-- *Farmer, focus group in Beit Hanoun, North Gaza governorate.*

### Health

Gaza's aquifer is on the brink of irreversible damage, and up to 95 per cent of its water is not of drinking quality.<sup>92</sup> There are currently two projects planned in ARA that aim to address this problem, but their going ahead depends of Israel allowing both the construction materials needed into Gaza and freedom of access to ARA. One is a Japanese-funded sewage treatment plant around 400m from the fence in Khan Younis in the south, and the other is similar facility funded by the World Bank around 200m from the fence in Jabalia in the north. Assuming it goes ahead as planned, the Jabalia plant will treat the sewage of more than 500,000 people, or around a third of Gaza's population, and filter the treated effluent back into the aquifer.<sup>93</sup> The sewage is currently disposed of without any filtering and as such is danger to public health and the environment.

### 3.1 Israel's definition of ARA in Palestinian waters

In January 2009, during Operation Cast Lead, Israel dropped leaflets on coastal towns in northern and southern Gaza outlining no-go zones at sea along the boundaries with Israel and Egypt (see figure 8).<sup>94</sup> The zones in the leaflets are referred to using the same terminology as in the Oslo Accords, but they restrict access over far greater areas. Under the Oslo Accords, "Zone M" covered an area of up to a mile from the Egypt-Gaza border, but the 2009 leaflet stipulated a distance of around 1.5 miles, stretching as far as Rafah port. Similarly, the Oslo Accords established "Zone K" as ending 1.5 miles from the Gaza-Israel fence, but the leaflet stipulated a distance of 2.2 miles, extending as far as Al Waha resort. It is unclear whether these new boundaries are clearly marked at sea. Israeli buoys are not visible to the naked eye from the coast in the south, while fishermen have said that they stay within the limit marked by buoys in the north, but are still detained on a regular basis. The majority of recent detentions have taken place near Al Waha resort. Many fishermen said they had been detained while in rowing boats between a few hundred metres and 2nm from the shore.

The leaflet for Zone K reads:

*"Fishing is totally forbidden north of Al Waha area/ Zone K. Anyone found within this no-fishing zone will be considered to have breached the law and will be punished as fitting. The navy allows fishermen to fish in the permitted areas without any obstruction." [Unofficial translation]*

The second leaflet contains identical text but in reference to Zone M. The Israeli navy also imposed a fishing limit of 3nm off Gaza's coast in January 2009, a restriction that remained in place until late 2012.

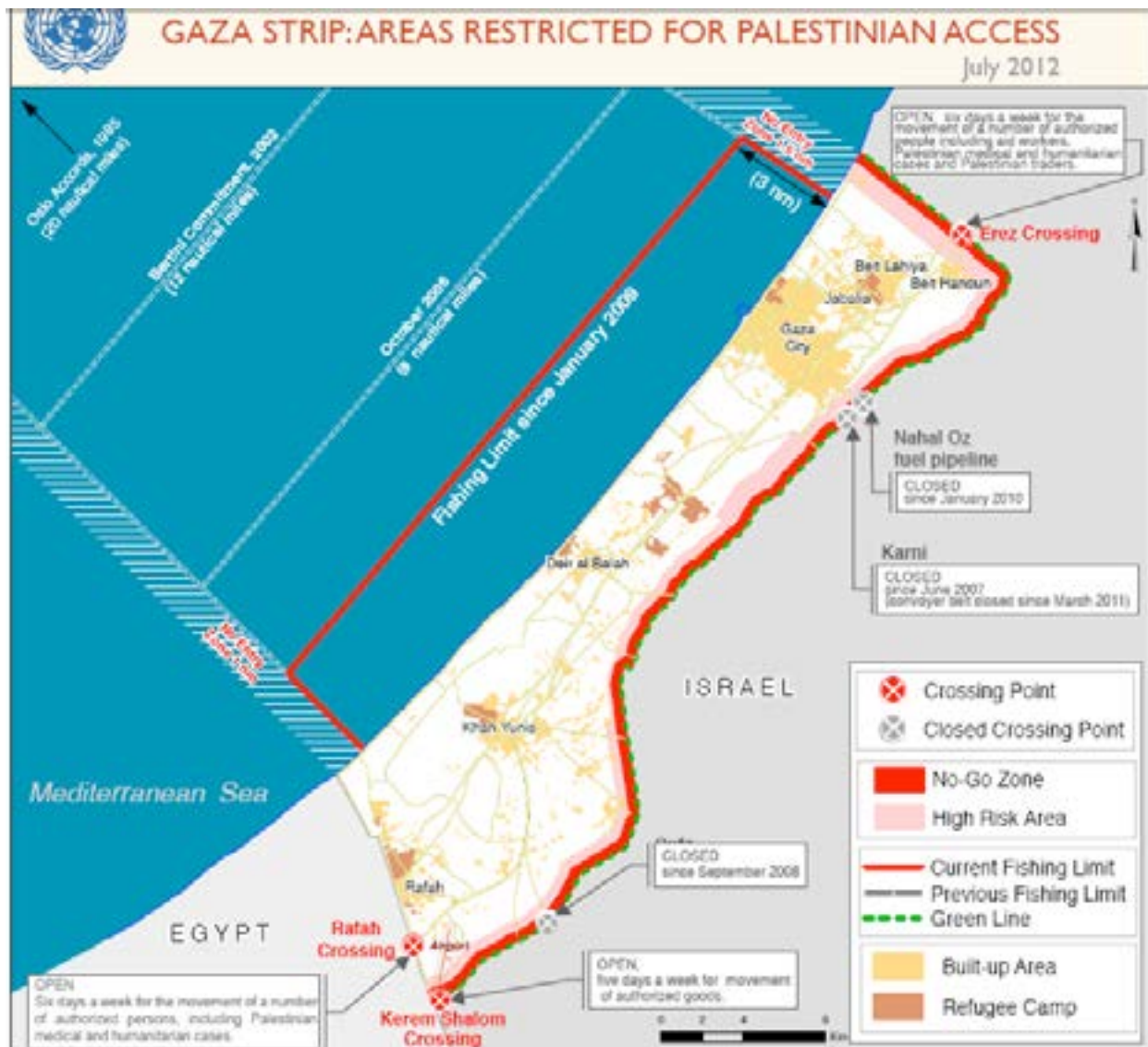
The November 2012 ceasefire agreement between Hamas and Israel mentioned the easing of access restrictions "in border areas". The terminology is vague, but it was taken by many to signify a general easing of ARA both on land and at sea. The first sign of Israel's intention to abide by the terms of the ceasefire came at the end of November when COGAT published its monthly report stating that the fishing limit would be extended from 3nm to 6nm.<sup>95</sup> On 25 February 2013, COGAT published a statement on its website confirming the new 6nm limit

**Figure 8: Leaflets outlining 'no-go' zones at sea in the north and south, dropped by Israel in the immediate aftermath of Operation Cast Lead in January 2009.**



Source: Al Haq, 2011

and informing farmers that they could now access land up to 100m from the fence. A few days later, however, both references were removed, and on 21 March the Israeli army announced that the fishing limit had been reduced back to 3nm in response to rocket fire from Gaza. The move was widely denounced as a collective punishment, as there was no discernible link between the rocket fire and access for fishing being extended from 3nm to 6nm. Two months later, and exactly six months after the ceasefire, the military published another statement on its website reversing its decision again and re-establishing the fishing limit at 6nm.<sup>96</sup>



Source: OCHA, July 2012

### 3.2 Impact of Israel's enforcement of ARA at sea

#### 3.2.1 Cumulative impact

Data collated for this report shows that the Israeli navy has shot at and detained Palestinian fishermen at sea since the 1990s. The number of incidents increased significantly during the second intifada and other periods of escalation in hostilities such as Operations Cast Lead and Pillar of Defense. Table 5 shows the number of shooting incidents and detentions at sea over the last 16 years, since documentation of the issue began. The data comes from two human rights monitoring organisations, PCHR and Al Mezan. Both record incidents involving Palestinian civilians only. Obtaining systematic data over such a long period of time was difficult, particularly as the work of monitoring organisations is also affected by hostilities and wars. So as to avoid duplication but enable trends to

be identified, data from just one organisation was used for each year; PCHR for 1997 to 1999 and Al Mezan for 2000 to 2013. The exercise reveals trends and patterns in the enforcement of ARA, but it does not purport to be a comprehensive summary of all incidents that have occurred.

Table 5 reveals an inverse relationship between the fishing limit and the number of shooting incidents. The closer to shore the limit, the higher the number of incidents. Smaller fishing grounds mean less catch available, pushing some fishermen to cast their nets outside the designated area or even sail just outside it in order to secure a vital food source and means of livelihood. Figure 9 shows a strong correlation between the number of shooting incidents and detentions, adding substance to fishermen's claims that live ammunition is often used when they are detained. The confiscation of boats also

emerges as a regular practice since 2007, the year in which Israel declared Gaza a “hostile territory” and implemented the naval blockade and closure of the territory. In the absence of any clear security justification from Israel for its practice of shooting at and detaining fishermen, it appears arbitrary and to reflect a wider policy of collective punishment.

An analysis of detentions broken down by geographical area is also revealing of Israeli practices. Table 6 shows the number of fishermen detained while at sea since 2000, disaggregated by governorate. The data comes from a single source and is not comprehensive, but it is still useful in establishing trends. For example, 2009 saw a sharp increase in the number of fishermen detained. The figure was almost double that of any previous year. More than 67 per cent of all detentions recorded in the past 13 years have taken place since 2009, the vast majority of them in northern Gaza. This corroborates the observation that the restrictions Israel announced by dropping leaflets in January 2009, which were wider than those previously agreed in the Oslo Accords, led some fishermen to breach the limits unwittingly or otherwise.

It is unclear how many and when fishermen actually saw the leaflets, and some also claim that there were no demarcation buoys at sea. Irrespective of whether or not fishermen were aware of the new limit, Israel's use of live ammunition and detention without charge as routine methods of enforcement give rise to serious protection concerns. Most fishermen detained in the north also had their boats and nets confiscated and/or damaged, hampering them further from pursuing their livelihoods.

Aside from denying them access to food and livelihoods, Israel's enforcement of ARA at sea also exposes fishermen to forced displacement, threats to their personal security, detention, and the damage and confiscation of their property. As a result, thousands have abandoned their trade. There were approximately 10,000 fishermen registered with Gaza's fishing union in 2000. Today there are just 3,500, a drop of 65 per cent in just over a decade.<sup>97</sup> Of those registered, only about 1,200 make their living from fishing.<sup>98</sup> The former head of the fishing union, Nezar Ayash, has also said that between 2000 and the end of 2009, the fishing sector endured direct losses amounting to \$17 million.<sup>99</sup>

**Table 5: Palestinian civilians injured and killed as a result of shooting incidents in the ARA**

Fishing limit		Shooting incidents	Fishermen		
			killed	injured	detained
20nm	1997	–	–	–	–
	1998	4	–	–	13
	1999	11	–	2	2
20nm - closed	2000	14	–	1	3
	2001	69	–	2	29
12nm - closed	2002	–	–	10	65
	2003	5	–	–	24
	2004	1	–	–	10
6nm	2005	1	–	1	5
	2006	4	1	3	–
3nm	2007	11	–	3	22
	2008	12	–	2	19
	2009	21	–	4	42
	2010	52	7	5	26
	2011	61	–	6	43
3nm - 6nm	2012	121	1	2	97
3nm - 6nm	2013 (Nov)	135	0	8	22
	<b>TOTAL</b>	<b>522</b>	<b>9</b>	<b>47</b>	<b>422</b>

Source: PCHR and Al Mezan Centre for Human Rights

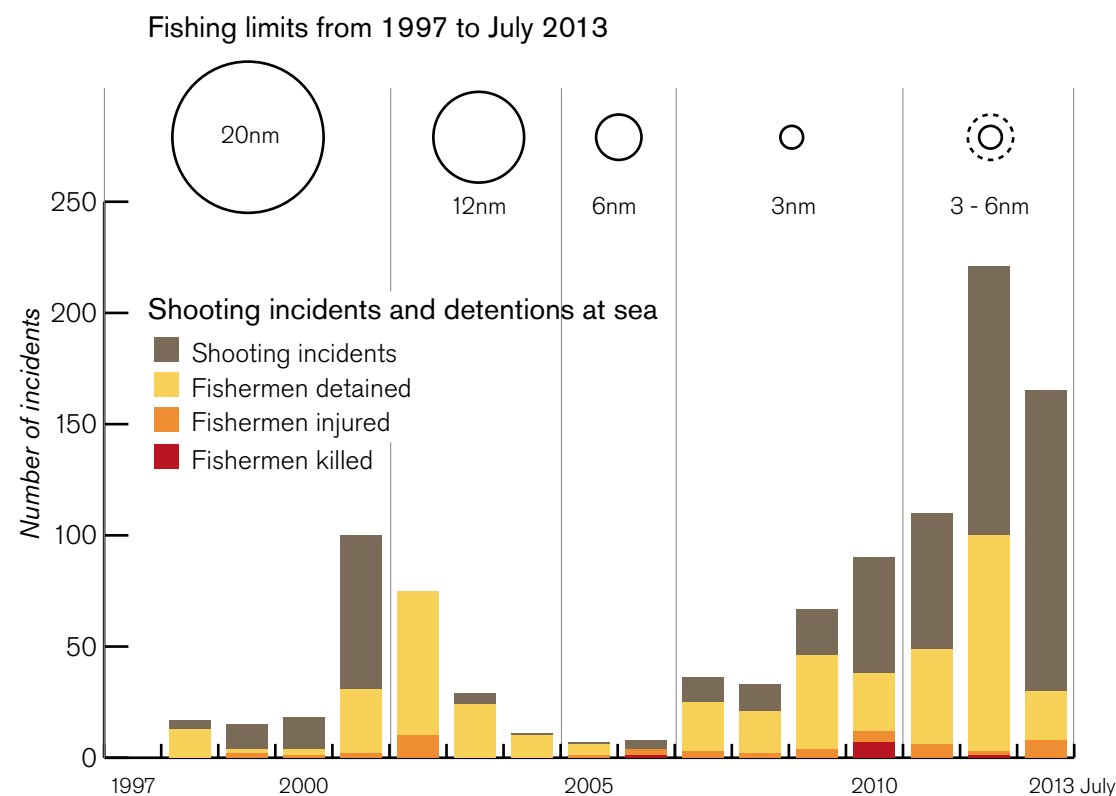
**Table 6: Number of fishermen detained while fishing at sea, per governorate**

	Northern Gaza	Gaza	Middle Area	Khan Younis	Rafah	TOTAL
2000	2	1	0	0	0	3
2001	18	0	0	4	7	29
2002	0	0	0	0	0	0
2003	0	16	0	0	0	16
2004	0	6	4	0	0	10
2005	0	0	5	0	0	5
2006	0	0	0	0	0	0
2007	4	0	0	0	18	22
2008	4	0	0	0	15	19
2009	30	0	0	0	12	42
2010	10	6	3	0	7	26
2011	11	13	2	17	0	41
2012	31	46	0	3	7	87
2013 (May)	6	3	0	0	0	7
<b>TOTAL (at least)</b>	<b>116</b>	<b>91</b>	<b>14</b>	<b>24</b>	<b>66</b>	<b>311</b>

Source: Al Mezan Center for Human Rights



**Figure 9: Graph of shooting incidents and detentions at sea since 1999**



Source: PCHR and Al Mezan Centre for Human Rights

This disruption of fishermen's livelihoods has exposed entire households to extreme poverty and vulnerability. Many are heavily in debt and have sold all items of value including jewellery. As a result of either losing their livelihoods completely or having them severely restricted, at least 95 per cent of Gaza's fishermen are recipients of international aid.<sup>100</sup> For many households, humanitarian assistance is the only thing preventing their displacement. Even for those who might seek to flee, there is nowhere for them to take refuge within Gaza and they are unable to leave the territory. During an official visit to Gaza in July 2013, the UN's humanitarian coordinator, James Rawley, spoke of the link between Israel's imposition of ARA and the impoverishment of the fishing community: "These are ordinary fishermen struggling to make out a living in this traditional Gazan livelihood - they want to be able to provide for their families but the long-term restrictions imposed on access to the sea are driving them deeper into poverty and debt."<sup>101</sup>

Following the November 2012 ceasefire, Israel's enforcement of ARA at sea continued unabated. In the next 12 months, troops opened fire on Palestinian fishermen 147 times, injuring nine and detaining 40. Twenty-five items of fishermen's property, including boats and nets, were damaged, and a further 21 items were confiscated (see table 7).

"We have always had a difficult life, but it was better before. There were no restrictions, and we could fish from Al-Arish in Egypt to Ashkelon. There was plenty of fish. When I was growing up, in my grandfather's house we wouldn't even eat small fish, only the big ones. In 1988, everything began to change. Limits were introduced at sea and we began to be harassed. We would be banned from fishing during sardine season. The routes to markets would be blocked. We could not reach markets in Gaza because of the checkpoints and we could not export. We used to use bigger boats with crews of 25 men, we were capable of much greater capacity. Now we only have small boats and not all fishermen can fish at the same time. Young fishermen use rowing boats and depend on aid to make ends meet."  
-- Fisherman's wife, focus group in Swedish Village, Rafah governorate.

During the brief periods between the end of November 2012 and the end of March 2013 when the fishing limit was extended to 6nm, there was a noticeable increase in catch. The monthly catch with a 6nm limit was more than 45 per cent higher than with a 3nm limit (see table 8).<sup>102</sup> After the extension of the fishing limit to 6nm on 21 May 2013, which was also during the sardine season, the monthly catch was 76 per cent higher than in the same month the previous year, when the limit was 3nm. It was

475 tonnes in May 2013, compared with 269 tonnes in May 2012.<sup>103</sup> It is true to say that some Palestinian fishing practices are environmentally unsound and contribute to the depletion of stocks,<sup>104</sup> but Israel's imposition of ARA remains a key cause of Gaza's shortage of fish.

Marine geography determines that the vast majority of fish are to be found between eight and 12nm from the coast.<sup>105</sup> Sardines also migrate past Gaza beyond the 8nm mark. Despite the improvement in catch when Israel allows fishing up to 6nm, this limit effectively continues to deprive Gaza inhabitants of a vital food source, and its fishermen of the opportunity to fully develop their livelihoods. The potential for improvement given a more generous fishing limit is clear.

**Figure 10: Map of Israeli restrictions at sea from 1995 (the Oslo Accords) until January 2009**



Source: OccupiedPalestine.wordpress.org

"After the gunships is exactly where the fish are. Before the gunships, I cannot even find a kilo of fish. So I take the risk. I go up to the buoy and throw my net past them, then I try to go back. I have to take the risk. The Israeli gunboats then destroy my nets or force me to leave with live ammunition. I was shot at just two days ago."

-- Fisherwoman, focus group in Gaza City.

**Table 7: Incidents in ARA at sea in 12 months following the ceasefire**

	Shooting Incidents	Injured	Killed	Detained	Incidents of Property Confiscation	Incidents of Property Damage
Dec 2012	12	1	0	18	5	1
Jan 2013	14	0	0	3	0	1
Feb 2013	7	3	0	6	2	1
March 2013	16	0	0	0	0	2
April 2013	16	0	0	0	0	1
May 2013	33	1	0	2	3	10
June 2013	8	0	0	2	1	2
July 2013	6	0	0	0	4	5
Aug 2013	8	3	0	3	3	1
Sep 2013	9	1	0	0	0	0
Oct 2013	7	0	0	0	0	0
Nov 2013	11	0	0	6	3	1
<b>TOTAL (at least)</b>	<b>147</b>	<b>9</b>	<b>0</b>	<b>40</b>	<b>21</b>	<b>25</b>

Source: Al Mezan Center for Human Rights

**Table 8: Gaza's monthly catch at 3nm and 6nm during the same season**

	6nm fishing limit Catch in metric tonnes		3nm fishing limit Catch in metric tonnes
Dec 2012	107	Dec 2011	98
Jan 2013	167	Jan 2012	87
Feb 2013	114	Feb 2012	61.5
March 2013	65	March 2012	44
<b>TOTAL</b>	<b>453</b>		<b>290.5</b>

Source: Palestinian Directorate of Fisheries, Ministry of Agriculture, Gaza City

### 3.2.2 Current humanitarian and displacement trends

The following analysis is based on comments made by 71 members of fishing communities in focus group discussions and survey responses. Their primary concerns can be summarised as follows:

#### Access to livelihoods

Despite having security of tenure, insofar as they own their homes or live in houses owned by their spouses or extended family, all fishermen are heavily in debt. The vast majority descend from fishing families that were once socially and financially secure, and fishing was traditionally considered one of the few stable professions in Gaza. In just one generation, however, fishermen have gone from being one of Gaza's most affluent communities to one of its poorest.

One of the most salient consequences of the poverty Palestinian fishermen face is the deterioration of their living conditions. Fishing families in the Gaza City area live in desperate conditions, often unable to afford to buy furniture, meet their young children's needs or repair leaky roofs and broken windows. Most live in the Shati refugee camp, where unemployment among fishermen is particularly high. Their wives said they were willing to participate in cash-for-work schemes, but that they were often overlooked because their husbands were no longer able to afford to register with their union as active. Fishing families in the Swedish Village, a neighbourhood in southern Gaza along the border with Egypt, live in severely overcrowded and rundown quarters that they are unable to afford to repair. There is currently a shortage of housing for about 20 families, meaning that in some cases more than one family share a single room. Residents said that a plan announced by the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in 2002 to refurbish and enlarge the village had not been implemented.

From a displacement point of view, the situation of Palestinian fishermen in Gaza might initially seem inapplicable or irrelevant. For this report, however, the restrictions Israel imposes at sea are considered in tandem with those

on land for several reasons. On a basic level, both Israel's security justifications and the international humanitarian response frequently link ARA on land and at sea. Humanitarian trends, and incidents and escalations in the enforcement of ARA on land and at sea run in parallel, and from a pragmatic perspective it is difficult to separate the policies of access restriction. Any response to internal displacement targeting farmers affected by restrictions on land would also likely include fishing communities. There are clear connections between access to food, health and education for both farming and fishing communities directed affected by ARA.

The cumulative impact of ARA at sea has also been to drive fishermen into extreme debt and force many to leave their traditional livelihoods. Many continue to fish despite ongoing protection threats. For the overwhelming majority, international aid is the only thing preventing their displacement, and they would be left with few coping strategies if it were to be discontinued. With no viable options in terms of moving, fishermen and their families frequently live in unsanitary and overcrowded living conditions, particularly in the refugee camps along the Gaza coast. Women and girls in these communities may be acutely at risk of displacement, and focus group participants said there was frequently no option but to agree to an early marriage for their daughters. The absence of a systematic database for monitoring displacement trends in Gaza means that the number of fishing families already internally displaced is not known, as they may have moved in with relatives or resorted to alternative livelihoods.

From a conceptual perspective, traditional fishing communities in Gaza may be seen as akin to pastoralists, who have a "special dependency on and attachment to their lands".<sup>106</sup> Any general analysis of displacement of Gaza faces an initial challenge in even defining the phenomenon in a context where the majority of the population are already registered UNRWA refugees. There are also patterns of both acute and protracted displacement and the population is physically prevented from leaving the territory. As ODI's report highlights, the general response from international agencies in Gaza is that "internal dis-

placement does not lead to vulnerabilities that are substantially different to those of the general population".<sup>107</sup>

#### *Access to sea after November 2012 ceasefire*

The terms of the November 2012 ceasefire alluded to an easing of the fishing limit, which led many fishermen to take out loans to equip and repair their boats in anticipation of reaching deeper waters and improving their catch. As sardine season approached in April 2013, most bought powerful new lights for their boats to attract more fish towards the surface at night. As the bulk of sardines migrate at around 8nm, and Israel has prevented boats from fishing that far out to sea since 2006, Palestinian fishermen have become increasingly dependent on this technique. Many bought dozens of new lights, each costing around \$100. Given that each boat needs around 100 lights, the cost was split between five to ten families with each family contributing between \$1,000 and \$2,000. The fishing limit, however, was reduced to 3nm before the sardine season began, meaning the fishermen were unable to make good on their investment and found themselves in even greater debt.

#### *Detentions*

The Israeli navy has detained hundreds of Palestinian fishermen in the past decade. Such arbitrary detentions have taken place along the length of Gaza's coast, but the practice is of particular concern to fishermen in the north. Eighty-two per cent of fishermen surveyed in North

"We have used lights to attract the fish for a long time. Now we need more lights because we are so far away from where they pass in the sea. You need about 40 lights for one *hassaka* boat with a motor or a lance. Each light costs about \$100."

– Fisherman, focus group in Swedish Village, Rafah governorate.

Gaza said they or a family member had been detained in the last ten years, the majority of them more than once. Several had been detained since the November 2012 ceasefire. Fishermen based in Gaza City port are the second most likely to be detained. Seventy per cent of all those detained also reported having their boats, motors and nets confiscated.

All those who spoke about their detention said they had been shot at with live ammunition, often causing damage to their boat and its motor. They were then told to strip naked and swim towards the Israeli patrol boats. Some had crossed the fishing limit inadvertently, others deliberately in pursuit of fish. Some said they had not crossed the limit at all, a fact they were able to confirm either via their satellite navigation equipment or based on the positioning of Israel's demarcation buoys. The buoys are weighted to the seabed, but the current has moved some into the permitted fishing area, giving the mistaken impression

#### Case study

***Madline Kullab is 19 years old and lives in the Sudanyeh area of Gaza City with her mother, father and two brothers.***

***Interviewed on 11 May 2013 in Gaza port, Gaza City***

"I learnt to fish with my father when I was six years old. He then became ill and I continued to fish to help out my family. I have brothers but they are younger than me. I have been fishing on my own since I was 13 years old and I have always enjoyed it. I get a sense of release being out at sea. During this sardine season, I caught three kilos a day, or about four boxes. I made about 60 shekels [\$17]. In the past, I used to make 250 shekels [\$70] from the same catch. Egyptian fish are out-pricing our fresh fish.

We also face so many difficulties because of the Israelis. I have lost many nets because of Israeli gunfire. Sometimes I do cross the limit or push my luck without knowing for sure if I am within the limit or not, because I simply need to bring home food. The sea is so crowded now that you have to take risks. Sadly I don't think the situation will get better. I don't see any real difference since the ceasefire. Even though I love to fish, I would like to get a better job because I don't make enough money. I would also not like to marry a fisherman. They don't make enough to keep a family."



that boats have transgressed the limit. In other incidents, boats were visibly within the demarcated area, but were still approached by Israeli patrols. On many occasions, Israeli naval officers have cut their target's fishing nets during the detention process, causing fishermen to lose both their nets and their catch. Once aboard the Israeli patrol boats, the detained fishermen are taken to one of the five or six gunships in the area at any given time, told to change into new clothes and blindfolded. Some said they had been shouted at and punched while blindfolded. None were given a reason for their detention, and those who asked were simply told they had broken Israeli law.

All said they were then taken to the port of Ashdod, where a doctor saw them briefly before they were put in a waiting room. Those who were injured during their detention - two men described being shot, one in the stomach and the other in the leg - were taken to an Israeli hospital before being brought back to the same room. Most said that a plain-clothes Arabic-speaking officer then interrogated them individually in the presence of two other uniformed officers. The fishermen said they thought the plain-clothes interrogators were Israeli intelligence officers, and that judging by their uniforms the others were Israeli army officers. Some said they were interrogated at the Erez crossing rather than in Ashdod.

During their interrogation, the fishermen were first told facts about their lives and their families, then shown aerial photographs of locations in Gaza and asked questions about them. All said they answered the questions to the best of their ability, and that they were then offered money to become informants. None said they had accepted the offer, despite their financial needs. After interrogation, the fishermen were taken to the Erez crossing and allowed to return to Gaza on foot. All said they were in Israeli custody for between 12 and 24 hours. None of the fishermen interviewed were ever lawfully arrested or charged with a specific criminal offence.

In recent years, Hamas officials have also interrogated fishermen on their return from the Erez crossing. The fishermen said they spoke openly about their time in Israeli custody. All said that their experience had been traumatic, particularly those injured, and that it had made them consider leaving their trade. Many have not returned to sea since. Those who have returned said they now fish out of sheer necessity, without the pleasure they once took from practicing their vocation.

#### ***Access to food, health and education***

The most pressing concern for all fishing families was access to food. All said they could no longer afford to eat meat or fish every day as they had in the past, but did so only once a week, usually on Fridays. This marks a radical deterioration in the nutritional value of their household's

diet, and serves as another indication of fishing families' increased vulnerability to the risks of displacement. Even those who still manage to make a living from the sea are unable to eat fish regularly, because they are forced to sell what little they catch.

Increasing poverty means that most fishing families are unable to put their children through higher education. Many fishermen's sons follow their fathers into the trade, but their daughters are generally unemployed and unable to afford university. Accessing higher education for girls before they are married has long been a priority for the fishing community. Without it, they feel their marriage options are compromised. Several focus group participants said, however, that organising early marriages for their daughters was increasingly their only option, essentially displacing the women from their homes and depriving them of opportunities in terms of their education. Women of marrying age, meantime, no longer favour fishermen or their sons as potential partners, given their inability to provide for a family as a result of Israel's restrictions on their means of livelihood.

"We don't agree with early marriage but we have no space. We married our daughter at 19 years of age to a man who is not a fisherman. We would have preferred for her to go to university first but it would have taken us a long time to afford it and we don't have the space in the meantime."

– *Fisherman's wife, focus group in Swedish Village, Rafah governorate.*

"You see, Israelis have no fishing expertise, there is no culture of fishing. In 1968, we would go to Israel everyday by car, my six sons and I, and return with about 5,000 shekels [\$1,400] between us, every day. We would sell our fish in Israel. In 1988, they began to check the cars at the Erez checkpoint and crossing became more difficult and time-consuming. In 1991, we were effectively blacklisted. We would be stopped at the checkpoint and sent back every time. I can no longer make 5,000 shekels in Gazan waters. Because of the limit and the high number of fishermen, we have divided the area, allocated just 100 square metres for each *hassaka* boat."

– *Fisherman, focus group in Jabalya Nazlah, North Gaza governorate.*

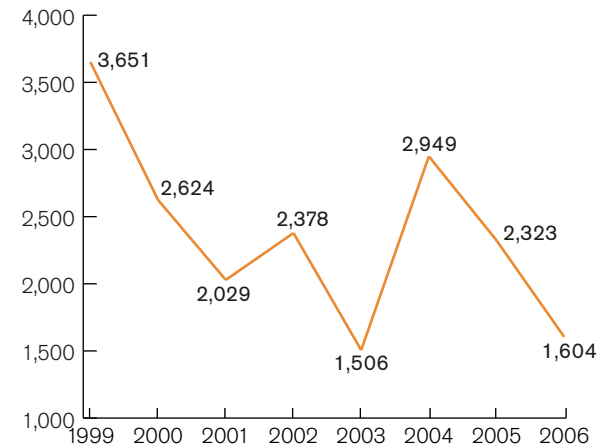


Fishing families in the south do not have easy access to services such as schools and hospitals. The Swedish Village was surrounded by Israeli settlements for more than 20 years, and despite their removal in 2005 the nearest schools and medical clinic are still 3km away. The nearest hospital is in the town of Khan Younis, which is a 20 shekel (\$5.70) taxi ride away.

### 3.2.3 Implications for Palestinian food sector

Both the size and diversity of Palestinian fishermen's catch has decreased dramatically as a result of ARA at sea. Their annual catch dropped by 2,000 tonnes between 1999, before restrictions were put in place, and 2006,<sup>108</sup> after which restrictions effectively rendering the most abundant fishing grounds off-limits. By the end of 2012, Gaza's yearly loss in catch was still at the same level of about 2,000 metric tonnes per year.<sup>109</sup> Together with previous yearly losses of the same amount, Gaza has lost about 14,000 tonnes in fish catch since 2006. If losses since the second intifada, a period when Israel prevented any access to the sea for up to six months at a time, are taken into account (see figure 11), then the total loss in catch as a result of Israeli restrictions at sea from 2000 until the end of 2012 is around 22,100 tonnes.

**Figure 11. Graph of annual catch from 1999 to 2006, in metric tonnes**



Source: Directorate of Fisheries, Palestinian Ministry of Agriculture,

According to the Palestinian Ministry of Agriculture, Gaza suffers from a shortage in terms of the nutritional content of the food available in its local markets. As a result, the ministry has allowed Egyptian fish to be smuggled in, either through tunnels or by sea. Palestinian fishing boats cross into Egyptian waters, collect fish from Egyptian traders and return. This is done under the full watch of the Egyptian and Israeli navies patrolling the border.<sup>110</sup>

## 4 Legal analysis

### 4.1 Applicable law

#### 4.1.1 International humanitarian law (IHL)

Israel is a party to the Fourth Geneva Convention of 1949,<sup>111</sup> which it ratified on 6 July 1951 without reservations. Israel's contention that the convention does not apply to Palestinian territory has been rejected by the other high contracting parties to the convention, the International Court of Justice (ICJ) and the UN.<sup>112</sup> Although Israel is not a party to the Hague Conventions of 1899 and 1907, ICJ has authoritatively stated that they have become part of customary law and as such are binding on all states.<sup>113</sup>

Despite the removal of Israeli settlements and military installations in 2005, Israel continues to Gaza's borders, airspace, territorial waters and population registry.<sup>114</sup> Israel asserts that its disengagement ended its obligations under the law of occupation, but ICRC recently stated that in its view it was "beyond doubt" that the Fourth Geneva Convention applied to all occupied Palestinian territory – Gaza, the West Bank and East Jerusalem.<sup>115</sup>

As such, Israel remains the occupying power in Gaza. It is responsible under the conventions mentioned above for acts over which it has "effective control",<sup>116</sup> and its designation of Gaza as a "hostile territory" in September 2007 is not valid under international law.<sup>117</sup> The UN Security Council and Human Rights Council confirmed as much in resolutions in 2009.<sup>118</sup> The Oslo Accords set out the legal basis for Israel's control of Gaza's population registry and its engagement in bilateral negotiations with the Palestinians. A basic premise of the accords is that occupied Palestinian territory should be seen as a single entity, and as such, separate legal regimes cannot be applied in Gaza and the West Bank.

ICTY jurisprudence<sup>119</sup> has endorsed a test to establish the level of authority, and thereby control, that an occupying power has over a particular area. The test includes an examination of whether the occupying power has "the capacity to send troops within a reasonable time" and make its authority felt, and whether it has "issued and enforced directions to the civilian population".<sup>120</sup> In light of the leaflets Israel has issued detailing access restrictions for Palestinians on land and at sea, and its regular incursions to carry out arrests and land levelling – which take place on average around seven times a month (see table 9 below) – there is no doubt Israel has "effective control" over the unilaterally imposed ARA and is legally

responsible as the occupying power for the lives of people affected by its security measures.

Israel is authorised to implement security measures under IHL as long as it does so with due regard for the wellbeing of the occupied population. Article 27 of the Fourth Geneva Convention holds that parties to a conflict can "take such measures of control and security in regard to protected persons as may be necessary as a result of the war" but that those protected "shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof".<sup>121</sup>

Israel's use of lethal force is also governed under IHL by the principles of distinction, proportionality and military necessity. These principles have been enshrined in various IHL instruments, including the 1977 Additional Protocol to the Fourth Geneva Convention (Protocol I) under Article 48, Article 51(5)(b) and Article 52(2).<sup>122</sup> Israel is not a signatory to the additional protocol of 1977, but its provisions are considered to reflect customary international law and are thereby binding on all states.<sup>123</sup> In order to fulfil its obligation to protect civilians, Israel must distinguish between combatants and civilians at all times, and when in doubt, the person in question must be presumed a civilian.<sup>124</sup> Steps must be taken to ensure that the civilian population is protected against forced displacement and that displacement only takes place when it is a military necessity. Even if Israel's enforcement of ARA were justified on security grounds, alternative and non-lethal methods exist which would better protect civilians and prevent unnecessary displacement.

#### 4.1.2 International human rights law (IHRL)

Israel is a party to numerous international human rights treaties,<sup>125</sup> including the International Covenant on Civil and Political Rights (ICCPR)<sup>126</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which it ratified on 3 October 1991.<sup>127</sup>

As an occupying power, Israel is responsible for securing, protecting and progressively realising the human rights of the occupied population. These human rights are set out in international legal treaties and conventions that Israel has also ratified. ICJ affirmed the complementary nature of IHL and IHRL in its 2004 Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.<sup>128</sup> The court stated that "the protection offered by human rights conventions does not cease in case of armed conflict, save through

the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights".<sup>129</sup> Taking its cue from a previous advisory opinion,<sup>130</sup> the court also affirmed that given the context of armed conflict, the *lex specialis* would be IHL.<sup>131</sup>

ICJ has also stated that Israel is bound by the provisions of ICESCR in its role as an occupying power, including "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to the Palestinian authorities".<sup>132</sup>

#### **4.1.3 UN Guiding Principles on Internal Displacement**

The UN Guiding Principles on Internal Displacement (Guiding Principles) provide further guidance on Israel's obligations in relation to ARA on land and at sea, and its duties to prevent forced displacement. Though not legally binding, the Guiding Principles draw upon the existing frameworks of IHRL, IHL and refugee law, and set out the rights of IDPs. Their stated objective is for government and non-government entities to adopt policies on internal displacement in line with them. The Guiding Principles are to be read as consistent with IHRL and IHL and without prejudice to individual liability under international criminal law.

The Guiding Principles provide the following definition as guidance:

*[I]nternally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not cross an internationally recognized State border.*<sup>133</sup>

Like all IDPs, Palestinians forcibly displaced as a consequence of Israel's imposition and enforcement of ARA are considered displaced until such time as return or resettlement is possible. Nearly all land immediately bordering the fence has been levelled and remains inaccessible, and few if any farmers have been able to regain access.

Under the Guiding Principles, forced displacement during armed conflict is prohibited "unless the security of the civilians involved or imperative military reasons so demand".<sup>134</sup> Displacement as a form of collective punishment is also prohibited.<sup>135</sup> Even when displacement may be unavoidable, all possible alternatives must be explored and efforts taken to minimise its scale and impact.<sup>136</sup> Special measures should be taken to avoid the

displacement of "pastoralists and other groups with a special dependency on and attachment to their lands".<sup>137</sup>

Obligations to protect IDPs during displacement are also set out. These include protection against "[d]irect or indiscriminate attacks or other acts of violence", "[a]ttacks against their camps or settlements"<sup>138</sup> and arbitrary arrest or detention.<sup>139</sup> IDPs must be guaranteed their right to freedom of movement, including the right to leave or move to another part of their country,<sup>140</sup> and they must have access to essential food, potable water, basic shelter, medical services and education.<sup>141</sup> IDPs' property must be protected against direct or indiscriminate attack and destruction as a form of collective punishment.<sup>142</sup>

Those subjected to forced displacement are entitled to effective remedy, including through independent judicial review. IDPs must be given "full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation".<sup>143</sup> Palestinians, however, are denied such remedy and information by barriers in accessing the Israeli court system from Gaza. This is discussed more fully in section 4.4.1.

#### **4.1.4 International criminal law**

International criminal law (ICL) is designed to prohibit atrocities such as genocide, war crimes, crimes against humanity and most recently wars of aggression.<sup>144</sup> ICL's roots lie in the international tribunals set up after the Second World War to try perpetrators of war crimes and crimes against humanity.<sup>145</sup> In 1993, the UN Security Council established a similar tribunal, ICTY,<sup>146</sup> and the International Law Commission (ILC) began preparatory work for the establishment of a permanent International Criminal Court (ICC) to deal with international crimes in the context of conflict. In 1998, 160 states debated ICC's establishment at a diplomatic conference in Rome, and on 17 July 1998 the UN General Assembly adopted the Rome Statute by a vote of 120 to 7, with 21 abstentions. The statute came into force on 1 July 2002 and ICC issued its first arrest warrants in 2005.

Israel is not a party to ICC, but it is bound by the terms of the Fourth Geneva Convention, which ascribe individual criminal responsibility for grave breaches of IHL. These breaches are defined in Article 147 of the convention and include wilful killing; torture or inhuman treatment, including biological experiments; wilfully causing great suffering or serious injury to body or health; and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.<sup>147</sup>

## 4.2 Analysis of Israel's enforcement of ARA on land

Israel's legal responsibility for violations of IHL, IHRL and ICL can only be determined by a court based on evidence presented to it of specific incidents. The facts and data presented in this report, however, point to worrying trends in Israeli practices that are worthy of closer examination.

### 4.2.1 Conduct of hostilities under IHL

#### *Military necessity*

Customary international law limits Israel's use of force as it pertains to civilian objects to situations of military necessity or, in other words, to fulfil a clear military objective. Article 52(2) of the 1977 additional protocol holds that attacks against civilian objects be strictly limited to military objectives whose nature, location, purpose or use make an effective contribution to military action, and whose total or partial destruction offers a definite military advantage.<sup>148</sup> "Objects" include civilian property and public infrastructure. Any military advantage gained by the destruction meted out near the fence is unclear, and Israel has not proffered a military justification for its practices. It argues that they are necessary to target Qassam rocket launchers, which is a legitimate military objective, but it is hard to see how such an objective is furthered by the wholesale destruction of agricultural land, wells, roads and other equipment.

Even if Israel were to invoke self-defence under Article 51 of the UN Charter<sup>149</sup> as the basis for its implementation and enforcement of ARA, it would still have to abide by the principles of distinction, proportionality and military necessity when using lethal force. The displacement and damage that farming communities in ARA have suffered is arguably incommensurate with the threat that Israel purports to curb. Access restrictions on land have led to the annual loss of an estimated 75,000 tonnes of agricultural produce, valued at \$50.2 million.<sup>150</sup> High levels of debt caused by loss of earnings, the destruction of their property and health care costs - often incurred as a result of injury by Israeli gunfire - are pushing farmers in ARA quickly and deeply into poverty, and leaving them at risk of displacement. The number of rockets fired from ARA, meanwhile, has reportedly dropped in recent years during periods of relative calm.<sup>151</sup> During the last hostilities, four per cent of rockets fired from Gaza hit built-up areas in Israel, killing four civilians.<sup>152</sup>

#### *Distinction*

Records from OCHA, PCHR and Al Mezan show that between 2000 and 2006, thousands of civilians in occupied territory were killed as a result of Israel's use of live ammunition. Data from Al Mezan reveals that between 2009 and 30 November 2013, 54 civilians were killed and

490 injured by the use of lethal force to enforce ARA on land (see table 4). Israel has also levelled tens of thousands of dunams of farmland near the fence. Between 2005 and 2010, 24,413 dunams or 24.4 square kilometres of cultivated Palestinian land up to 1.5km from the fence was razed, rendering around 35 per cent of Gaza's agricultural land unproductive (see chapter 2).<sup>153</sup>

Under Article 48 of the 1977 additional protocol, which reflects customary international law, Israel should distinguish at all times between the civilian population and combatants, and between civilian objects and military objectives.<sup>154</sup> As shown by the figures above and two of the case studies outlined in this report - that of an unarmed farmer who was shot in the chest while on his land, and that of a farmer whose property was destroyed in land levelling operations - Israeli soldiers have not always made such distinctions when enforcing ARA on land.

#### *Proportionality*

Under Article 27 of the Fourth Geneva Convention, Israel can only implement security measures with due regard for the wellbeing of the population. This includes consideration of possible displacement and measures to mitigate or minimise any that might take place. Given that bullets often travel further than their intended targets, farmers have been displaced and left unable to tend to their land as far as 1.5km from the fence. Farmers clearly need to access their land, and Israel's enforcement of ARA as a security measure directly harms their wellbeing and livelihoods. Its use of live ammunition to prevent civilians from coming within 300m of the fence is disproportionate and inconsistent with customary international law. Under Article 51(5)(b) of the 1977 additional protocol, attacks are considered indiscriminate when they can be expected to cause incidental loss of civilian life, injury to civilians or damage to civilian objects on a scale out of proportion with the concrete and direct military advantage envisaged.<sup>155</sup>

### 4.2.2 Law enforcement under IHL

As the occupying power in Gaza, Israel has a number of administrative responsibilities, most notably to ensure public order and safety while respecting the laws of the occupied territory.<sup>156</sup> Despite the frequency with which rockets are fired towards Israel, and Israel's enforcement of ARA in response, the number of deaths on both sides and the degree of destruction caused on a daily basis are relatively low in comparison with periods of hostilities such as Operation Pillar of Defense. The interplay between IHL and IHRL provides that in times of relative calm, the latter might be expected to direct the actions of an occupying power,<sup>157</sup> with the length of the occupation and the degree to which the occupying power exerts authority and control determining whether human rights standards are applicable.<sup>158</sup> Given that Israel has

occupied Palestinian territory for 45 years and exerts authority and control over ARA outside periods of military operations, Israeli conduct should meet the standards required by human rights law. As such, Israel's use of force in imposing ARA in Gaza should be examined under a law enforcement paradigm.<sup>159</sup>

Under such a paradigm, Israeli military personnel are required to minimise their use of lethal force and adopt non-lethal means to implement their measures whenever possible.<sup>160</sup> The principles governing the use of force in the context of law enforcement are set out in the 1979 UN General Assembly Resolution on the Code of Conduct for Law Enforcement Officials,<sup>161</sup> and the Basic Principles on the Use of Firearms by Law Enforcement Officials<sup>162</sup> adopted in 1990 by the UN Congress on the Prevention of Crime and the Treatment of Offenders. Both texts specifically include the actions of military and security forces in contexts where violence takes place, but which fall short of an armed conflict.<sup>163</sup> They also limit the lawful use of firearms to cases when the person firing faces an imminent threat of death or injury.<sup>164</sup> In 2006, the UN's special rapporteur on extrajudicial, summary and arbitrary execution found that this particular aspect of both texts reflected binding law.<sup>165</sup>

The facts available suggest that hundreds of farmers were unarmed when they were shot at and injured, and as such the threat they posed either to Israeli soldiers on the fence or to the Israeli civilian population is unclear. The Israeli military is also known to have technology that gives soldiers a high-definition view of people and objects in ARA,<sup>166</sup> enabling them to clearly identify any activity that takes place near the fence. Israeli forces should be able to distinguish to a much greater degree between people engaged in farming practices and those who might be trying to help launch a rocket or approach the fence with a weapon. Militants are also known to flee quickly after launching a rocket, meaning that a per-

son's sustained presence most likely indicates they are a farmer rather than someone posing a threat. Even in response to criminal investigations, however, Israeli authorities do not provide justification for the killing or injury of unarmed civilians.

The fact that the Israeli military regularly uses non-lethal means of law enforcement elsewhere calls its use of live ammunition in ARA further into question. That it is able to make arrests during its incursions into ARA also highlights its capacity to use non-lethal methods. Incursions take place on average seven times a month, and since 2006, there have been at least 209 arrests and/or detentions, with the number increasing in times of calm (see table 10 below). Around 50 per cent of all arrests in the last six years took place during 2010 and 2011, outside periods of intense hostilities such as Operations Cast Lead and Pillar of Defense.

**Table 10: Number of Israeli army incursions into the ARA on land over the past two years**

	Incursions
Dec 2011 – Jan 2012	13
Feb 2012 – March 2012	5
April 2012 – May 2012	20
June 2012 – July 2012	15
Aug 2012 – Sept 2012	8
Oct 2012 – Nov 2012	13
Dec 2012 – Jan 2013	15
Feb 2013 – March 2013	10
Average per month	6.8

Source: Ganso Bi-Weekly Reports

**Table 9: The use of force and IHL principles in different paradigms**

Legal principles	Conduct of hostilities	Law enforcement
Necessity	Use of force only permitted to fulfil a clear military objective. If directed at civilian objects, their nature, location, purpose or use must contribute to effective military action and their total or partial destruction must offer a definite military advantage.	Use of force is permissible only when absolutely necessary for the protection of human life.
Distinction	Each use of force must distinguish between civilians and combatants and between civilian objects and military targets.	Use of force must be avoided as much as possible.
Proportionality	Incidental harm to civilians permitted if not excessive in relation to concrete and direct military advantage.	Harm inflicted must be kept to an absolute minimum.



**Table 11: Number of Palestinians detained through incursions into the ARA**

	Palestinians detained
2006	5
2007	93
2008	-
2009	20
2010	32
2011	41
2012	15
May 2013	3
<b>TOTAL</b>	<b>209</b>

Source: PCHR and Al Mezan Centre for Human Rights

"In 2006, Israeli soldiers took over my house and used it as a military post. They bulldozed the land around it and destroyed its interior. The land used to feed and provide for 30 people as it belongs to the wider family. The soldiers occupied the house for 18 days and the cost of repairing it was 8,000 shekels [\$2,250]. We received no help with these costs."  
 -- Female farmer, focus group in Beit Lahiya, North Gaza governorate.

By multiplying the average number of incursions per month, it can be estimated that around 80 took place during 2012 as a whole. This represents about half the number of shooting incidents for the same year. The implication is that although Israeli forces are capable of using non-lethal means of law enforcement in ARA, they only do so around half as often as they use lethal force.

The regular and indiscriminate use of lethal force also violates the principles of proportionality, distinction and necessity, irrespective of the context in which such acts take place. Israel's lack of transparency about its rules of engagement makes it impossible to establish with certainty whether soldiers' use of lethal force is authorised or not, but some level of case-by-case analysis is still possible based on other evidence available.

#### **4.2.3 ICL and the reckless or intentional use of lethal force against civilians**

IHRL requires that officials conducting law enforcement operations prioritise non-lethal means and gradually increase forcefulness until, only when absolutely necessary, is lethal force deployed. Measures must also be put in place to ensure that military policies and procedures do not cause displacement. If displacement is deemed

to be unavoidable, efforts must be taken to minimise its impact and compensation should be guaranteed. Israeli soldiers' immediate use of live ammunition against unarmed farmers when they do not appear to pose an immediate or direct threat calls into question the wilfulness of their actions in causing death or serious injury, or at least whether they constitute reckless disregard for human life. The use of lethal force outside situations of absolute necessity, such as when the person firing reasonably fears for his life or fears injury, could amount to a disproportionate response and may constitute unlawful or excessive use of force.<sup>167</sup> It also raises questions of intent, given that a soldier firing live ammunition towards civilians in ARA is likely to be aware that their actions could lead to injury or death.<sup>168</sup>

Under national human rights laws, recklessness is generally considered a mental state that constitutes *mens rea*, or a guilty mind, with regard to a particular crime. A person can be found so reckless in their disregard for the consequences of their actions and whether they would violate someone else's rights that they are considered to have had a guilty mind.

Article 147 of the Fourth Geneva Convention criminalises the wilful killing of protected persons and the wilful infliction of great suffering or serious injury upon them.<sup>169</sup> ICTY has interpreted a reckless disregard for human life as sufficient *mens rea* for a violation of Article 147,<sup>170</sup> which amounts to a grave breach of the convention. In the case of Mahmoud Sami Naim, Israeli soldiers shot at an unarmed Palestinian civilian around 300m from the fence and hit him in the chest. It is impossible fully assess criminal liability without more information about Israel's rules of engagement and the factual context, but a soldier who intended to inflict injury by shooting at chest-level at a distance 300m in circumstances that made it possible to identify the victim as a civilian may have breached Article 147.

ICTY also clarified that serious harm is not limited to permanent and irremediable injuries, but includes those that result in a long-term disadvantage to the victim's ability to lead a normal life.<sup>171</sup> Although injured farmers have not suffered the kinds of long-term effects specifically mentioned in the ICTY judgment, there are cases in which their injuries have rendered them unable to work as before. More than half of those injured by Israeli gunfire while in their fields in southern Gaza said they could no longer work as farmers as a result. In such cases, the long-term consequences of their injuries can be considered to be "beyond temporary unhappiness, embarrassment or humiliation".<sup>172</sup>

### 4.3 Analysis of Israel's enforcement of ARA at sea

#### 4.3.1 International law and the use of lethal force against civilians

As discussed above, Israel's overall accountability for the wellbeing of Gaza's population falls within the scope of IHL, with some of its functions as an occupying power requiring it to meet human rights standards. According to Israel, Gaza fishermen pose a threat in terms of weapons smuggling and the potential use of marine grenades, but no such cases have been reported since at least 2005. Israel's use of lethal force against fishermen whilst enforcing ARA at sea requires that it meet basic guidelines and principles under the law enforcement paradigm. These include refraining from the use of lethal force unless the person firing is in danger of being killed or injured. There is no evidence to suggest that fishermen have posed such a threat, particularly given that the vast majority of arrests over the past ten years (see table 5) have not led to any charges being brought. No charges whatsoever have been filed since 2006.<sup>173</sup>

Insofar as the use of lethal force puts an individual's life at risk, it also violates their right to life irrespective of whether it results in death or injury.<sup>174</sup> Under ICCPR Article 6, Israel is responsible for the protection of Palestinians' right to

life in occupied Gaza and as such must refrain from putting their lives at risk through the excessive and potentially unlawful use of lethal force while enforcing ARA.

#### 4.3.2 Violations under IHRL

On 3 October 1991, Israel ratified ICESCR without reservations. State parties are committed to recognise the social, economic and cultural rights of people subject to their jurisdiction, and as the occupying power Israel is responsible for respecting and progressively realising these rights in Gaza.

Under ICESCR Article 11, these include the right to adequate food and the right to an adequate standard of living.<sup>175</sup> Article 11(2) stipulates that people should not have to endure hunger, and that the state must take measures to improve methods of food production, conservation and distribution in such a way as to achieve the most efficient use of natural resources.<sup>176</sup>

Many displaced fishermen and farmers and those at risk of displacement expressed concern about their rights to food, work and an adequate standard of living.

#### *Right to an adequate standard of living*

As a result either of losing their livelihoods completely or having them severely restricted, at least 95 per cent

### Case study

**Musaad Baker is fisherman from Beach Camp in Gaza City  
Interviewed on 7 May 2013 at the UNRWA school in Beach Camp**



"On 17 December 2012, I set out to sea with other fishermen. There were about 15 of us altogether, two or three in each boat. We were in small *hassaka* boats. I didn't see any of the buoys on the water that day, but at around gam an Israeli gunship approached us. We tried to move away from it but I was slower than the others because I was trying to hold on to my fish. The others had dropped their nets. As I was getting away an Israeli dinghy chased me and naval officers shot at my boat.

They shot me in the abdomen. Then they boarded my boat and towed me to Ashkelon. From there I was transferred to a vehicle and taken to Barzilai hospital. They removed the bullet from my stomach and kept me overnight. The next day, police escorted me to the Erez crossing where I was given a wheelchair and taken to a room. A man in plain clothes introduced himself as

Ali and asked me questions about my family. I was shown satellite images of Gaza and asked questions about Hamas during the November 2012 war. The interrogation lasted for about an hour. During that time, I was in a lot of pain and I was offered painkillers.

But after the interrogation, I was told to walk unaided out of the checkpoint and along the 1km fenced walkway into Gaza. By the time I arrived at the PA checkpoint [known as Khamsa-Khamsa], my wound had opened and I was bleeding. They got me an ambulance. It's been five months and I'm only just beginning to feel strong enough to fish again, but the Israelis have still not returned my boat."

of Gaza's fishermen are recipients of international aid.<sup>177</sup> One of the most salient consequences of the poverty Palestinian fishermen face is the deterioration of their living conditions. The focus group surveys revealed that many fishing families live in desperate conditions, often unable to afford to buy furniture, meet their young children's needs or repair leaky roofs and broken windows. The surveys also revealed that some farmers' living conditions had deteriorated, particularly those with smallholdings near the fence who have lost their income.

"I feel suffocated. Some people here even divorce because of poverty."  
-- Fisherman's wife, focus group in Swedish Village, Rafah governorate.

Evidence collected for this report shows the severely detrimental effect of Israel's enforcement of ARA, and its blockade of Gaza, on the living conditions of the territory's fishermen and many of its smallholders. These communities are particularly vulnerable to displacement and often remain in unsafe and unsanitary living conditions because they have no alternative.

#### **Right to food**

With up to 85 per cent of Palestinian waters and 35 per cent of Gaza's agricultural land effectively off limits for the past six years, fishermen and farmers have been displaced and deprived of some of their primary sources of food. All members of both communities who participated in the focus groups for this report said they have suffered a sharp decline in the quality and quantity of food they consume. This increases their vulnerabilities and heightens the risk of displacement and other protection concerns.

The imposition and enforcement of ARA and the resulting decline in Gaza's agricultural and fishing sectors has also affected the availability of adequate food for the population as a whole.<sup>178</sup> During the brief periods between the end of November 2012 and end of March 2013 when the fishing limit was extended from 3nm to 6nm, the monthly catch increased by more than 45 per cent. Despite Palestinian fishing practices that contribute to the depletion of stocks,<sup>179</sup> and two wars that damaged Gaza's agricultural infrastructure, Israel's measures in ARA remain a key cause of Gaza's food shortages. On 3 July 2013, the UN's humanitarian coordinator for occupied Palestinian territory, James Rawley, published a press release in which he stated that 57 per cent of people in Gaza are unable to afford to buy enough food.<sup>180</sup>

"We live under high levels of stress all the time. We worry about our children's future. We are unable to afford to send them to university, but we see that higher education as more important now than ever before. We worry about what we will eat, whether we will be able to afford to buy food to cook."  
-- Fisherman's wife, focus group in Swedish Village, Rafah governorate.

In its general comment no. 12, the UN Committee on Economic, Social and Cultural Rights defines the obligations that states have to fulfil to implement the right to adequate food at the national level.<sup>181</sup> They are as follows:

*The obligation to respect existing access to adequate food requires States parties not to take any measures that result in preventing such access;*

*The obligation to protect requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food;*

*The obligation to fulfill (facilitate) means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security;*

*Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfill (provide) that right directly. This obligation also applies for persons who are victims of natural or other disasters.*

For the UN'S special rapporteur on the right to food,<sup>182</sup> a state's obligations go even further, to guarantee regular, permanent and unrestricted access to food, either directly or by means of financial purchases, and to ensure that the food be of adequate quantity, sufficient quality and in keeping with the cultural traditions of those who consume it.<sup>183</sup> By this definition, Israel's imposition of ARA amounts to a breach of the right to food of Palestinians in Gaza.

#### **Right to work**

As noted by the UN'S then-undersecretary general for humanitarian affairs and emergency relief coordinator, Jan Egeland, in his foreword to the Guiding Principles, IDPs are forced to abandon "their homes and livelihoods".<sup>184</sup> This impact is particularly notable among farmers and fishermen living or working in ARA. The severe restrictions in access to agricultural land and fishing grounds imposed have also prevented sustainable growth and

perpetuated high levels of unemployment in Gaza.<sup>185</sup> Israel's enforcement of ARA at sea not only deprives fishermen of food but also of their livelihood. Detentions and the confiscation and destruction of their property have prevented thousands from exercising their right to work.<sup>186</sup> There were around 10,000 registered fishermen in Gaza in 2000. Today there are just 3,500, a drop of 65 per cent in just over a decade.<sup>187</sup> Of those still registered, only around 1,200 make a living from fishing.<sup>188</sup>

"Once, being married to a fisherman meant that you didn't need to worry about money. I do not come from a fishing family, but I married a fisherman and my family was fine about it as they believed I would have a good life. Now, we cannot even buy clothes properly, only once a year at Eid."  
– *Fisherman's wife, focus group in Jabalya Nazlah, North Gaza governorate.*

Around 70 per cent of all focus group participants from farming communities said either they or a family member had been injured while working the land in the last ten years. The majority of those who reported injuries were in southern Gaza, and of them more than half said they were unable to return to farming as a result and were forced to abandon their traditional livelihood. In the town of Beit Hanoun in northern Gaza, 85 per cent of residents are farmers, but only seven per cent of those interviewed said they were able to access their land in 2012 because of Israel's use of live ammunition in ARA.<sup>189</sup>

The right to work is enshrined in ICESCR Articles 6 and 7 and includes the right to work in just, favourable, healthy and safe conditions.<sup>190</sup> As this report shows, Israeli practices in ARA severely hamper the ability of fishermen and farmers to do so.<sup>191</sup>

#### **4.3.3 Arbitrary detention and requisition of services from an occupied population under IHL**

Israel's arbitrary detention of fishermen is of particular concern. Data gathered for this report shows that such detentions have been frequent and inconsistent with human rights standards in terms of due process. On 3 October 1991, Israel ratified ICCPR, and in doing so committed to recognising the right of people under its jurisdiction not to be subjected to arbitrary arrest or detention, and to be informed promptly of any charges brought against them. Focus group participants said their detention and subsequent interrogation had been particularly traumatic.

Since 2000, at least 414 fishermen have been detained. Nearly 70 per cent of the detentions have taken place since 2009, the vast majority of them in northern Gaza. This corroborates the fact that Israeli restrictions became

more stringent after January 2009. Eighty-two per cent of the participants from fishing communities who took part in the focus group sessions in northern Gaza said they or a family member had been detained in the last ten years. Fishermen based in Gaza City port were the second most frequently detained group. Seventy per cent of all those detained also reported having their boats, motors and nets confiscated.

The process of detention involves fishermen being shot at with live ammunition, often causing damage to their boat and its motor, and then being asked to strip naked and swim to Israeli dinghies. From there they are taken to the port of Ashdod, where most are interrogated. Others are interrogated at the Erez crossing. During their one-to-one interrogation, they are shown aerial photographs of places in Gaza and asked questions about them. They are also often asked questions about members of the Hamas-affiliated civil services such as naval police officers. The fishermen interviewed for this report said that after answering several questions, they were offered money to become informants for the Israeli security services. This may amount to a breach of Article 51 of the Fourth Geneva Convention, which prohibits the requisition of services from an occupied population. They were all subsequently released without charge.

ICCPR Article 9 states that no one shall be subjected to arbitrary arrest or detention and that those arrested must be informed promptly of any charges brought against them.<sup>192</sup> Israel has, however, used of its right of derogation under Article 4 of the convention<sup>193</sup> and derogated from the obligations set out in Article 9.<sup>194</sup> This permits some digression from international standards of due process in light of security concerns, but it is important to note that no charges were pressed against any of the fishermen who took part in the focus group sessions, security-related or otherwise. There have only been a handful of fishermen charged with security-related offences, the last reported case being in 2006 when 53 were detained and four charged.<sup>195</sup>

Some aspects of the fishermen's treatment during detention fall outside the scope of ICCPR Article 9. These include harassment, humiliation and coercion into becoming an informant. ICCPR Article 10(1) requires that those detained be treated with dignity and respect.<sup>196</sup> Former Israeli naval officers have testified that fishermen are humiliated and harassed during detention (see Annexe 1). Letters from the navy's legal advisor to fishermen whose boats and equipment have been confiscated, in most cases in the process of detention, confirm that they are pressured into foregoing their right to compensation for the unlawful destruction of their property in exchange for having it returned, damaged or otherwise (see Annexe 2). The rapid impoverishment of Palestinian fishermen as a direct result of Israeli measures - namely their loss of

## Case study

***Mahmoud Musa Saadallah is 25 years old and married with a two-year-old daughter. His wife is expecting their second child. He lives with his extended family, where he is one of three breadwinners in a household of 17 people.***

***Interviewed on 11 May 2013 at his home in Jabalia Al-Nazla, North Gaza governorate***

"I have been a fisherman for seven years. I started when I was 18 years old. I come from a long line of fishermen who have been fishing for decades in the Saddayeh area in northern Gaza. I can't afford my own boat yet, so I pay for the use of one each time I go out to sea. There are usually two or four of us in each boat. I fish everyday from 6am to 2pm, or from 1am to 8am. My father is ill, so I have to work a lot to help out in the household. On a typical day I usually catch two kilos of fish, which earns me 40 shekels [\$11], I then pay 10 shekels [\$2.80] to the owner of the boat.

On 19 February 2013, I left the house at 6am to fish with my cousin, Mohammad Khalil Saadallah. We were 500m from the Israeli border and 2.5nm from the coast. We could not fish any further away from the border because the sea was crowded with boats. In this part of Gaza, we are all in rowing boats and our capacity is limited. We reach a maximum of 5nm from the coast and never catch more than a few tonnes of fish.

At about 9am, we saw an Israeli gunship coming towards us. When the ship was about 400m away, two small rubber dinghies left the ship and approached us. When they were about 20m away, a soldier in one of the boats shot at our engine. We were then told to strip and swim to one of the dinghies. While we were in the water, shots were fired around us. Once I got into the boat ... we were taken to the gunship. The other dinghy was behind us, towing our rowing boat. Once I got onto the gunship, I was given black sweatsuit trousers to wear, my hands were tied with plastic cuffs and I was blindfolded with a white cloth.



We reached the port of Ashdod in about half an hour and a soldier removed my blindfold and changed my handcuffs to metal ones that gave me more arm movement. I saw a group of large cargo containers and was taken into one of them. There were no names or signs on the containers, but the room I was taken to seemed to be a clinic and a man wearing a military-like uniform gave me a basic medical check-up. He took my blood pressure and offered me headache pills and water. I was then taken to a building and told to wait in a bare room.  
(Continued on next page)



earnings and accumulation of debt to cover the cost of repairing or replacing boats and equipment - combined with its practice of offering payment in return for the provision of services to its security forces, amounts to coercive pressure.

Article 51 of the Fourth Geneva Convention prohibits an occupying power from compelling protected persons to serve its armed forces.<sup>197</sup> ICRC has elaborated further on the obligation set out in paragraph 1 of Article 51, stating that prohibition encompasses all forms of pressure aimed at securing voluntary enlistment, and that the purpose of the Article is to protect the occupied population from actions offensive to their patriotic feelings.<sup>198</sup>

## 4.4 Accountability

### *Third-state responsibility*

Common Article 1 of the Geneva Conventions requires high contracting parties to adopt all measures necessary to respect the conventions within their jurisdiction, and also to ensure respect for them amongst all other high contracting parties.<sup>199</sup> ICRC commentary on Article 1 states that its prominence at the beginning of each of the conventions gives it increased importance. As such, and in view of the fact that its provisions for the prosecution of violations and accountability for them have been strengthened considerably in recent years, it is clear that Article 1 has been deliberately invested with imperative force.<sup>200</sup>

Article 146 of the Fourth Geneva Convention requires that signatories undertake to enact legislation putting

### Case study (continued)

The men standing outside the room wore different uniforms to the naval officers. They had green uniforms, but they did not speak to me. About an hour later, at around 11am, I was given some food to eat. Two hours after that, two men wearing black uniforms took me from the building to a military jeep. The driver of the jeep was a large white-skinned man who wore military stripes on his shoulders. He did not speak to me. I was not told whether I had been arrested or where I was being taken. Mohammad was also in the jeep with me and appeared to have had the same treatment as me, but we did not speak to each other.

About half an hour later we arrived at the Erez crossing. Two plain-clothes officers carrying machine guns and wearing pistols under their belts met us, and escorted us to a room with two chairs. Our handcuffs were removed. Mohammad was then taken by the same officers and returned about an hour later. The same officers then took me to an interrogation room about 20m away. In the room, I saw some chairs, a table, a computer, two soldiers in military uniform – one of whom was female – and one interrogator. The interrogator was a tall, overweight white man with blue eyes and black hair. He was in plain clothes, spoke fluent Arabic and went by the name of Abu Jamil.

He told me to sit down and offered me something to drink. I sat but refused the drink. I was asked to confirm my name and give the names of my parents, wife and child. I was then shown an aerial photograph of my street on the computer screen and told to confirm where I lived. I refused. I was then asked to point out on the screen where other people lived. The officer gave me names of well-known Hamas members, but I did not answer. The officer then left the room and returned after an hour. He listed the names of all my brothers and asked me to give each of their ages. After that, the same plain-clothes officers who had taken me there escorted me out of the room. They took me to a metal door that opened into a fenced corridor and told me to walk by myself. I was in Gaza.

After walking about a kilometre through the fenced corridor I reached the PA office known locally as Kham-sa-Khamsa. I was told to provide my identification card. I explained that I was a fisherman who had been detained and that my ID was in the boat along with my clothes. I then walked to another administrative bureau known as Arba-Arba, where I was asked the same question and then asked for the details of my interrogation. I told them the truth. About three days later, I was told to visit the Hamas internal security office and I asked questions about my interrogation.

I didn't work for a month after the detention because I was too scared to go back to sea. Being fired at in the water was the worst moment of my life."

into effect penal sanctions against people who committed, or are ordered to commit, any grave breaches of the convention.<sup>201</sup> As such, all grave breaches of IHL should be included in each state party's national legislation, so that people can be tried for alleged violations in the national courts of third states. In 2001, ILC drafted articles on states' legal obligations in terms of IHL. They were adopted by ILC's 53rd session<sup>202</sup> and submitted to the UN General Assembly, which endorsed them on 12 December 2001.<sup>203</sup> Article 41 of ILC's Draft Articles on the Responsibility of States for Internationally Wrongful Acts, demands that states cooperate to bring any serious breach of peremptory norms of international law to an end through lawful means, and that they do not render aid or assistance in a manner that maintains the illegal situation.<sup>204</sup> Primary responsibility for a wrongful act lies with the infringing state, which is required to cease, provide reparations for, and guarantee non-repetition of it.<sup>205</sup> Article 48 emphasises the point that third party states may demand the cessation and non-repetition of a wrongful act when the infringing state fails to honour its international obligations.<sup>206</sup> Third party states may also demand reparations for a wrongful act on behalf of the injured state.<sup>207</sup>

The legality of Israel's imposition of ARA relies on Article 27 of the Fourth Geneva Convention, which permits control and security measures necessary as a result of war.<sup>208</sup> The same article, however, demands that protected persons be afforded protection from acts of violence and treated humanely at all times, including during the implementation of such security measures.<sup>209</sup> ICRC's commentary on Article 27 emphasises the inviolable character of the obligation to protect civilians, the basis upon which the entire convention rests, and that all other provisions must be considered in relation to it.<sup>210</sup> Even if Israel's imposition of security-related access restrictions in Gaza were legal as a security measure, its enforcement of ARA is always subject to the principle that the fundamental rights of the occupied population must be protected, including its right to physical integrity and the prohibition of acts impairing individual life or health.<sup>211</sup>

Israel's use of lethal force as a first enforcement measure against farmers and fishermen in its enforcement of ARA is unlawful in its failure to abide by the principles of proportionality and distinction. Given the egregious nature of these violations, and the fact that they breach customary international law of war, third states bear responsibility for ensuring that Israel ceases and guarantees the cessation of such practices.

Israel also has responsibility to respect the rights of Palestinians under occupation by virtue of its ratification of human rights treaties, breaches of which may be accounted for by third party states. ICJ's 2004 advisory opinion

established a much broader legal foundation for Israel's and other states' obligations, based not only on the Fourth Geneva Convention, but also on a range of human rights treaties and customary international law.<sup>212</sup> The advisory opinion specifically refers to Israel's obligations to respect Palestinian freedom of movement and protect the rights enshrined in ICESCR, including those to work, health, education and an adequate standard of living.<sup>213</sup> Although ICJ advisory opinions have no technical force, states cannot ignore the fundamental and binding rules of international law that the court has underlined.<sup>214</sup> The advisory opinion is also the most relevant legal guidance from the most authoritative international legal tribunal on the way the general rules of state responsibility should be applied in the context of Israel/Palestine.

#### **4.4.1 Access to Israeli courts from Gaza**

PCHR, which is based in Gaza, has monitored, investigated and documented violations of international law committed by Israeli and Palestinian authorities in occupied Palestinian territory since 1995. PCHR's experience of Israeli judicial mechanisms in both criminal and civil cases suggests they are marred by structural flaws and a failure to conduct proper investigations.<sup>215</sup> This is illustrated by the outcome of 490 criminal complaints PCHR submitted to the Israeli military advocate general (MAG) on behalf of 1,046 Palestinian victims in the aftermath of Operation Cast Lead. Over a period of four years, PCHR received 44 responses, amounting to just nine per cent of its complaints being considered.<sup>216</sup> Only two resulted in the perpetrator being prosecuted.<sup>217</sup> Outside periods of war, PCHR has filed 3,122 complaints with MAG, of which only 0.1 per cent resulted in a full investigation.<sup>218</sup>

The director of PCHR's legal aid unit recalls only four indictments that resulted in criminal prosecutions:<sup>219</sup>

*"The only cases I can think of where a full investigation resulted in the prosecution of the perpetrator involve some form of immoral action on the part of the Israelis. The only thing that matters is the reputation of the soldier, not the death or injury or house demolition of a Palestinian. And even in those cases we have to do the investigation ourselves and prove pretty much beyond reasonable doubt that a violation took place. For example, in one of the Cast Lead cases, a soldier had stolen a Palestinian credit card and used it in a Tel Aviv restaurant. We were able to prove this by contacting the bank and obtaining proof of the spending through the statements. As the Palestinian was clearly not in Tel Aviv at the time the Israeli army occupied his house, they had to accept the evidence and finally did their job."*

Article 146 of the Fourth Geneva Convention obliges all states to search for people alleged to have committed, or been ordered to be commit, grave breaches of IHL, and to bring such people before their courts for a proper trial.<sup>220</sup> This obligation has been identified as a norm of customary international law.<sup>221</sup> Israel's failure to fully investigate cases in which soldiers have violated IHL, such as the unlawful use of lethal force in ARA, is a violation of the convention, and third party states may use legal measures to pressure Israel into respecting it (see section 4.4 above).

Any investigation into suspected violations committed during armed conflict must be independent, impartial and capable of leading to the identification and prosecution of those responsible.<sup>222</sup> The second report of Israel's Turkel Commission, published in 2013 on Israel's mechanisms for investigating complaints related to the laws of war, recommended that MAG open investigations whenever there is reasonable suspicion of criminal activity, including cases where further information is required to make such determination.<sup>223</sup> The report also recommended the establishment of a new department to deal with complaints submitted to MAG, including the conduct of investigations in Arabic.<sup>224</sup> The UN Committee of Independent Experts, established by the Human Rights Council to follow up on the findings of the Goldstone Report, also reached similar conclusions. Its second report in March 2011 concluded that both Israel and the local authorities in Gaza had failed to conduct investigations that were prompt, effective, independent and which conformed with IHL. The committee also found that Israel had failed to investigate all alleged violations and that the investigations it did conduct failed to consider the role high-level officials played.<sup>225</sup>

PCHR has also filed 222 civil cases since 1999, of which only 13 resulted in compensation being paid and 38 are still under consideration.<sup>226</sup> All 13 cases were settled out of court but sanctioned by it as negotiations were based on evidence it had been presented.<sup>227</sup> PCHR has filed 13 civil cases relating to Israel's enforcement of ARA, seven of which have been dismissed and six of which are pending.<sup>228</sup> Cases under consideration have suffered further setbacks recently, as a result of developments that also significantly restrict channels for accountability at the national level. In November 2012, the Knesset's constitution, law, and justice committee reviewed Amendment No. 8 to the Civil Wrongs (Liability of State) Law.<sup>229</sup> The bill exempts the state from unlawful acts carried out during a "combat action", which is defined as any operation carried out by Israeli forces irrespective of military objective and necessity. The bill applies retrospectively to incidents that took place from 2000 in the West Bank and from 2005 in Gaza. In December 2012 an Israeli court ruled that power of attorney documents will only be considered valid if

Israeli diplomats have stamped them. As permits to enter Israel are not granted on grounds of legal representation, Gaza-based victims rely on the provision of power of attorney to lawyers based in Israel in order to access the Israeli courts. Given the severe travel restrictions Gaza's inhabitants face and Israel's volatile relationship with Egypt, it is nearly impossible for them to meet these new criteria.<sup>230</sup> In effect, Gaza's closure prevents claimants and witnesses from physically accessing the courts.<sup>231</sup> Israeli law also stipulates that once all the above criteria have been met, claimants must pay a non-returnable "court guarantee" of around \$8,000 in order to have their case reviewed. If the case is lost, the state retains the guarantee to offset its legal costs.<sup>232</sup>

Current judicial structures, laws and procedures constitute insurmountable obstacles to Gaza's residents accessing justice. A poignant example of this came in April 2013, when MAG closed all 79 complaints filed on behalf of victims of Operation Pillar of Defense. As PCHR concludes in a March 2013 report, Israeli authorities are unwilling to investigate allegations that Israeli forces have violated international law, and its legal mechanisms are incapable of doing so. The report also says that this has established a culture of impunity.<sup>233</sup>

# 5

## Conclusion

The current humanitarian emergency in the Gaza Strip can only be properly understood as a protracted crisis in which the cumulative effect of more than 45 years of occupation, 25 years of movement restrictions, land dispossession, the excessive use of force, six years of collective punishment and two wars has left the population's resources in ruins. Gaza's fishing and farming communities are particularly vulnerable, because their livelihoods depend on access to resources that Israel has systematically destroyed or rendered off-limits, stretching their coping mechanisms to breaking point.

The primary drivers of displacement in Gaza are linked to the occupation, blockade and the conflict more generally. There is no consistent definition of ARA and access remains under Israel's unilateral control. Despite official Israeli military statements that restrictions on land are set at 300m from the fence, in practice civilians have been targeted and killed well beyond that limit. The implementation of ARA has resulted in large-scale land levelling

and the displacement of farming communities. Those still living and/or working in ARA face regular protection threats, specific vulnerabilities and displacement risks.

The international humanitarian community has monitored the destruction of property and human rights violations in ARA, but it has not systematically tracked displacement there. There is no reliable information on the number of families and communities forced to leave, nor any understanding of how many may have resettled or suffered secondary displacement. No one involved in responding to internal displacement in Gaza has a specific policy on the issue, and humanitarian organisations generally support IDPs under other existing programmes. UN OCHA manages a database that allows the impact of displacement in the West Bank to be systematically monitored, but no such mechanism exists for Gaza. The difficulties researchers and aid workers face in gaining safe access to the communities affected also hampers monitoring efforts.



A fisherman and his family, now living in poor housing conditions.

That said, it is highly important that displacement is understood in the unique context of Gaza. The majority of its population are registered refugees living in protracted displacement, and who have faced additional waves of acute displacement as a result of Israeli military operations. Leaving the territory is all but impossible.

Under the Oslo Accords, both sides agreed to a security zone stretching 100m from the fence, while recognising that the fence did not represent Gaza's future borders. They also agreed that Palestinian territorial waters should extend 20nm from Gaza's coast. In practice, however, Israel enforces restricted access up to 1.5km from the fence and ranging from 3nm and 6nm at sea.

This report concludes that Israel is still the occupying power in Gaza and is legally responsible for acts over which it exerts effective control. Its security measures are authorised under the law of occupation, but they must be implemented with due regard for the wellbeing of the occupied population. Israel's implementation of ARA has, however, left Gaza's fishing and farming communities in deep and ever worsening poverty. Israel has also publicly acknowledged that it has imposed restrictions at sea in response to rockets fired from Gaza, acts for which fishermen bear no responsibility. As such, the imposition of ARA at sea amounts to an act of collective punishment, as does its overall policy of severe border restrictions.

Given that Gaza is an occupied territory, IHL is the *lex specialis*. Israel's use of force must abide by the principles of distinction and proportionality, and its soldiers should always distinguish between civilians and legitimate targets before using live ammunition. Israel is also in breach of its responsibilities as an occupying power when it destroys farmers' land and irrigation equipment and damages fishermen's boats, engines and nets. The destruction of property is prohibited under international law unless it is deemed a military necessity and proportionate to the threat posed. As such, the levelling of more than 24 square kilometres of land in ARA between 2005 and 2010 could conceivably amount to grave breach of the Fourth Geneva Convention.

Israel's use of live ammunition in enforcing ARA before it has exhausted all non-lethal means of engagement is a violation of IHRL and standards of practice. It is even more concerning given Israel's evident capacity for non-lethal law enforcement in Gaza, as highlighted by its frequent incursions into ARA to make arrests and level land. These take place on average around seven times a month.

Israel's prolonged occupation, combined with its control of Gaza's borders, territorial waters and airspace make it clear that its human rights obligations in Gaza are substantial. Its implementation of ARA raises concerns about the economic and social rights of farmers and fishermen, particularly their right to food and to work in just and favourable conditions.

The UN's humanitarian coordinator for occupied Palestinian territory, James Rawley, visited Gaza in July 2013. During his visit he met farmers and fishermen and learned about the cumulative impact of Israel's restrictions, some of which have been in place for more than a decade. He also released a press statement during his visit in which he made specific reference to ARA. Rawley, who is also the UN's deputy special coordinator for the Middle East peace process, said: "While there has been some improvement in access to land and sea areas following the 21 November 2012 ceasefire agreement, only a full lifting of restrictions on access, as well as on exports and transfers of produce, will enable recovery of the fishing and agricultural sectors and the livelihoods of those who depend upon them."<sup>234</sup>



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## Annexes

### Testimonies from Israeli Naval Officer to Breaking the Silence

**Testimony catalog number: 869709**

[<http://www.breakingthesilence.org.il/testimonies/database/869709>]

Rank: First Sergeant

Unit: Navy

Area: Gaza strip

Period: 2007 – 2010

About routine. First of all, g16 is the unit that wastes the most ammunition in the Israel Defense Forces. You're actually maintaining the maritime closure in Ashdod. There's an area where Gazans aren't allowed to fish, and fishing is the biggest source of livelihood in Gaza. They have a pretty limited area for fishing, 24 miles [from the shore], and that's where they always fish, all day. **There are simply no fish left from some point on, so the fishermen keep trying to cross the lines and you have to keep them away** for security reasons. Every time someone gets close to the line, the orders are: Shoot in the air, shoot close – at a certain range you hear tac-tac-tac, it sounds like a cap gun going off. You also see it falling in the water. **You shoot in a row in front of the fishing boat, and from that point on you “escalate the use of means,” according to what you’ve been given permission to do.** As a soldier, it wears you down, trying to communicate with the people on the fishing boats. Try shouting to someone at sea – he won't hear you if you're more than 200 meters away. And you only get as close as 200 meters away from him after a long time and a huge headache.

*How do you call the northern and southern lines of the Gaza Strip – the line between Egypt and Israel and the one between Gaza and Israel?*

The southern one is M and the northern is K.

*How wide is this strip of sea?*

Two miles each. There's an area you're not allowed to enter, and beyond that there's an area they're allowed to cross at night, and an area where they're allowed to be in during the day.

*Were there cases where the use of means “escalated”?*

Yes. There are trawlers and boats, which are two different ways of fishing. Trawlers are a bit bigger. They lower nets, drag them along and catch a very large amount of fish. It takes a long time to reach extreme escalation, but [when you do], it means reaching a point where you're shooting at the vessel itself. You shoot holes in the vessel. There are very precise instructions on how to talk to them and order them to leave the area where you're shooting. [If] anyone gets close to that area, it's obvious that you hold your fire immediately. It can get dangerous, and in most cases, before that happens, you'll be given an okay to shoot at the nets. **You shoot at the cables holding the nets.** As soon as you shoot at their nets, they very quickly get the point and turn around. Once you're talking to their pockets and they realize that you're not just messing with them, they turn around and go back. It's very rare for you to actually manage to take down a net. As soon as they see you shooting, they stop the vessel and sail backwards. Then the cables have more slack and you can't shoot, because you'll hit the vessel itself. I mean, we know each other really well, it's really funny. I think the day will come when we'll be sitting with some fisherman in Gaza and laughing about it. You shoot at the nets if a trawler suddenly shows up in Israeli waters, even an Egyptian one. That means that it has crossed the 12 miles that are part of Israeli waters and is approaching Israel. **It's still very far from the shore, it's not really a threat to us,** but he could theoretically go around you and drop something off, so you have to make him go back. Fishing boats usually use lamps – they're little fishing boats with hooks attached to them and gas lamps. The idea is that on a very dark night, the fish are attracted to the bright light. Often, they leave them there while the fisherman goes off to bring more vessels, and they simply drift into Israeli waters, beyond the line. In such cases, you shoot in the air, close to the vessel. They usually come in crazy numbers, 500-1,000 boats. The nickname for them is “second city”. If you pass among them – and on dark nights, in the good days, they would reach up to 6 miles – you'd be sailing between Gaza and those fishing boats and they wouldn't see you, because all your lights were out. You're sailing along and you have a 'city' on your right and a 'city' on your left, all lit up. **“Escalation” means shooting at the lamps.** You get there and shoot at the lamps, you miss a lamp, the boat comes along, collects them and moves them to somewhere else. You always shoot with an M16 rifle, so as not to hit the vessel.

*From what range?*

**You shoot when you “escalate.” Up to 50 meters away, 50-100 meters away. Sometimes, you blow up the gas tank as well, either by mistake or following an unspoken order.** Soldiers sometimes take it upon themselves to blow up the gas tank. It happened to me. I don't know whether the commander ordered it, because I was inside the vessel, but they blew up the gas tank. It made that little boat go up in flames. We set it on fire and then we put it out. At some point, the fisherman came and saw his lamp burning, and we both worked together to put it out.

*Was this ordered by the commander or was it the soldier's own initiative?*

It's usually the problematic soldiers. In my time, at least, there was this feeling that you had to “prevent such things.” I mean, it did happen. **In the navy, you joke about it: “Yes, I blew up the gas tank.”** I wouldn't be surprised if there are commanders who order [soldiers to shoot] at the gas tank. It depends a lot on the young commanders, **the ones who try harder to connect with the crew and tell them to mess around a bit...** In the end, when something like that happens, it really tidies up your activity that night. Okay, you burn one, but [if you don't,] you're woken up and sent into battle positions, and you can end up manning them for 8 hours, in order to deal with something like that (a suspect vessel). So, sometimes, I can imagine a commander taking it upon himself and saying: “Okay, shoot at...”

*Was an inquiry held?*

Yes, after every such case.

*And was anyone punished?*

I don't think so. I don't know if there was a reprimand, but I'd say that... **there's no punishment given for that kind of stuff.**

*Did you have instances when nets were torn?*

Very rarely. **“Escalation” means that the commander is allowed to use his discretion and proceed until shooting close to the boat, and anything beyond that requires getting permission from shore. The permission is usually: First shoot in the air, then shoot close.** At night, you have a Xenon, a strong light that you flash at him at the beginning. That's your way of telling him: I see you, get moving. **If he doesn't start moving away, you open fire.**

*How close to the boat?*

It's never [measured] in meters. You have to be able to see that he can see it. You're not going to make it too close, because he won't see that either. You have to give him a nice honk right in front of the boat's bow. It's about 100-200 meters away from him. **In one case, fire was opened at the boat itself, and the soldier missed and hit a guy's leg. That was a huge mistake** and he got very severely reprimanded for it. That's just not supposed to happen. From that moment on, shooting like that was only done by older soldiers. They didn't let new ones do it.

*What happened to the person who was shot?*

I think there was another person on board who pulled him out of the water.

**Testimony catalog number: 43423**

[<http://www.breakingthesilence.org.il/testimonies/database/43423>]

Rank: First Sergeant

Unit: Navy

Area: Gaza strip

Period: 2008 – 2009

When Operation Cast Lead began, I was on standard weekend security duty. When you're at sea, there always have to be people on duty at the bridge. We're sitting there and suddenly we see [shells] falling and smoke billowing on the shore. We hear booms. At first, we immediately alerted everyone and started moving the vessel. We didn't know where it was coming from, what was going on.

*You weren't warned?*

Not in advance. We moved away from shore and saw what was happening. Ten minutes later, we get some kind of message that something has started against Gaza, that it's a coordinated air force operation and that for the time being, we carry on as usual. From the moment we reached the shore, there were all kinds of changes. On the first night [that the ground forces] entered Gaza, we simply escorted the forces. Actually, our job was to back them up and be on the lookout from the sea, to make sure no one was lying in ambush. The first ones to enter from the shore side were dogs and paratroopers. At some point, the D9 bulldozers arrived and started driving along the beach. You see him driving on and on and on, and suddenly you see a huge red burst and then you hear: "I hit a surprise [explosive charge]," and he keeps on driving. It was all air force strikes and a very slow [ground] entry. We took part in all kinds of operations. I can tell you that I spent most of the time waiting for night operations.

*When you say operations, what does that mean?*

It means that if anything happens near the beach, we're there as backup, especially in order to keep an eye on the infantry guys. I can tell you that to me, as an onlooker, it looked like wherever someone stepped, an air force bomb had already fallen there. Very specific areas were bombed, all kinds of areas where they said: "This and that building, at this and that time – bomb it." As far as I know, the houses that were bombed were always abandoned. It was about demolishing the building.

*Did you do shore shelling with the Typhoon (25-mm cannon)?*

Yes. The specific targets were mostly places that were reportedly frequented by Hamas guys. We had to demolish the houses when they weren't there, so they wouldn't be able to take shelter there again. I think there was one mosque, but it was mostly houses in specific areas. Just coming and heavily shelling the place for a few moments

as a show of force. At some point we were told, any person you see, any living thing that you see at night in the Gaza Strip – is a target. **Several cows were killed, because they were mistaken for terrorists.** Most of the shooting was at night. I don't remember daytime entries, it was too dangerous. From the moment they went in, everything heated up. I recall the feeling, sailing out there, everything living that you see on shore is a target. You look and check, and usually you see that it's abandoned animals. **If there's any suspicion that it's a person walking there and you identify that it's a person, the orders were to shoot.**

*What did you shell the buildings with?*

25-mm explosive. The moment the bullet hits, it explodes, and that has a nice "meaning". You don't need to take down the building. You have to make it a place that people know is marked.

*You spray it once in a while?*

Yes. **There are targets randomly marked on the shore and you are told to go ahead at random times.** I think that most of the targets were set before the operation. There were moments during certain operations when **my company commander would direct some plane to some building and say: "As far as I'm concerned, that room is implicated, take it down".**

בלמ"ס

צה"ל	ההגנה	צבא
צה"ל	דובר	חטיבת
ציבור	קשרי	ענף
הציבור	פניות	מדור
0302-5757		טל':
0302-3971		פקס:
התשע"ג	בא"ר	יא'
2013	באפריל	21



לכבוד

אמיר רותם, ארגון גישה

א.ג.נ,

**הנדון: מענה לפנייתך**

1. בהמשך לפנייתכם ולבירור נוסף שנערך בעקבותיה, נבקש להבהיר כי מטעמים ביטחוניים ונוכח כוונות של ארגוני טרור לבצע פיגועים כנגד אזרחי מדינת ישראל וחיילי צה"ל, נאסר על תושבי רצועת עזה להתקרב למרחק הקרוב מ-300 מטר לגדר הביטחונית. 2. עדכונים בדבר איסור זה מועברים באמצעות כרוזים המוטלים בשטח אחת לתקופה ובאמצעות עדכונים נוספים הנעשים על-ידי גורמי קישור ותיאום. 3. עם זאת, בכפוף להערכת מצב ביטחונית ובתיאום מול גורמי מתפ"ש, מתאפשרת כניסה רגלית של חקלאים לשם עיבוד אזורים חקלאיים מסוימים במרחב זה. 4. חיילי צה"ל פועלים למניעת כניסה בלתי-מורשית של תושבי הרצועה למרחב, תוך אזהרת אלו הנכנסים לשטח, באופנים שונים. אופן ביצוע האזהרות והאמצעים הננקטים מעוגנים בהוראות הפתיחה באש, אשר אותן לא נוכל לפרט, מטעמים מובנים. 5. באשר לאמצעים הננקטים לזיהוי גורמים עוינים המתקרבים לגדר, להבדיל מחקלאים, יצוין כי מדובר בעניין בעל היבטים מבצעיים שעליהם לא ניתן לפרט. 6. נשמח לעמוד לרשותך בעתיד.

בברכה,

מדור	פניות	הציבור
ענף	קשרי	ציבור
דובר		צה"ל

בלמ"ס

דובר צה"ל - בכל מקום ובכל זמן | גם באינטרנט: [www.idf.il](http://www.idf.il)



## Scan of letter from Navy Legal Advisor (translation)

[IDF Spokesperson logo]

Unclassified

Israel Defense Force  
IDF Spokesperson  
Public Liaison Branch  
Public Intake Department  
Tel: 0302-5757  
Fax: 0302-3971  
f  
11 Iyar 5773  
21 April 2013

To  
Amir Rotem, Gisha

Dear Sir/Madam;

### Re: Response to your letter

1. Following your letter and a further inquiry in relation thereto, we wish to clarify that due to security reasons and in light of intentions by terrorist organizations to commit terror attacks against citizens of Israel and IDF soldiers, residents of the Gaza Strip are prohibited from getting within 300 meters of the security fence.
2. Updates with respect to this prohibition are provided through fliers which are dropped on the ground periodically and through other updates given by liaison and coordination officials.
3. However, subject to security situation evaluations and with coordination vis-à-vis COGAT officials, pedestrian access by farmers to certain agricultural areas within this zone is made possible.
4. IDF soldiers take action to prevent unauthorized entry by Gaza residents into the zone by warning those entering in various ways. The manner in which warnings are given and the measures used are provided for in the open-fire regulations, which we are unable to specify for obvious reasons.
5. With respect to the measures used to identify hostile individuals approaching the fence, as opposed to farmers, we note that this is an issue that has operational aspects which cannot be specified.
6. We are happy to be at your service in the future.

Sincerely,  
Public Intake Department  
Public Liaison Branch  
IDF Spokesperson

**IDF Spokesperson** - Always Everywhere

| also online: [www.idf.il](http://www.idf.il)

# Notes

1. The Convention for the Safeguarding of Intangible Cultural Heritage was adopted by the UNESCO General Conference on 17 October 2003, and entered into force in 2006. As of April 2012, 143 states had ratified it. On 14 March 2013, UNESCO's Palestine office published an internal paper entitled *Palestinian National Archives of Intangible Folk Heritage*. The report considered Palestinians' traditions in terms of collecting, cultivating and preparing food to be part of their cultural heritage. Farming methods in Gaza did not necessarily meet the criteria the report focused on, but its fishing methods did. This was confirmed by the report's lead researcher, Rashad Al Madani, during his interview on 13 May 2013.
2. According to UNRWA, a Palestine refugee is any person whose "normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict".
3. International Crisis Group (ICG), *Inside Gaza: The Challenge of Clans and Families*, Middle East Report No. 71, 20 December 2007, p.1.
4. See OCHA, *Fragmented Lives: Humanitarian Outlook 2012*, May 2013.
5. The current boundaries of the Gaza Strip are also inconsistent with its original sub-district territory under the British Mandate, accounting for just 27 per cent of the original territory. See S. Roy, *The Gaza Strip: The Political Economy of De-Development* (Washington DC: Institute for Palestine Studies, 1995).
6. The Egyptian-Israeli General Armistice Agreement, signed on 24 February 1949. Available at Yale Law School, Avalon Project: [http://avalon.law.yale.edu/20th\\_century/armo1.asp](http://avalon.law.yale.edu/20th_century/armo1.asp) (last accessed on 18 September 2013).
7. Shehadeh, Raja, *Occupier's Law, Israel and the West Bank* (Washington DC: Institute for Palestine Studies, 1985), p.70.
8. Greg Myre, "Gaza Gets Ready for a Harvest of Produce and Promise", *New York Times*, 28 November 2005. Available at: [http://www.nytimes.com/2005/11/28/international/middleeast/28gaza.html?\\_r=0](http://www.nytimes.com/2005/11/28/international/middleeast/28gaza.html?_r=0) (last accessed on 18 September 2013).
9. PCHR, annual reports, 1997 to 2005. There were also cases of violence carried out by Israeli settlers against Palestinians that were rarely investigated by the army, and when they were the penalty was disproportionately low for the harm afflicted.
10. The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed in Washington in 1995, available at <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement%20-%20annex%20i.aspx> (last accessed on 18 September 2013).
11. Exploration by British Gas under the auspices of a joint Israeli-Palestinian agreement signed in November 1999, found two gas fields - Gaza-Marine 1 and Gaza-Marine 2 - at about 30km off Gaza's coast. Another two gas fields - Noa North and Noa South - were found at about 25km, along the current Gaza-Israel boundary. It is unclear whether extraction has begun on any of the fields.
12. *Supra*, note 11.
13. Israeli-Palestinian Interim Agreement, 1995, Annex I, Article VI, Section 1, paragraph (a). The official Palestinian negotiating position was confirmed by a Negotiation Support Unit official on 3 June 2013.
14. Israeli-Palestinian Interim Agreement, 1995, Annex I, Article VI, Section 2, paragraph (a): "There will be a security perimeter along the Delimiting Line inside the Gaza Strip as delineated on attached map No. 2 by a broken green line (hereinafter "the Security Perimeter")."
15. Israeli-Palestinian Interim Agreement, 1995, Annex I, Article VI, Section 2, paragraphs (b) and (c): "In accordance with the provisions of this Agreement, the Palestinian Police will be responsible for security in the Security Perimeter," and "The Palestinian Police will enforce special security measures aimed at preventing infiltrations across the Delimiting Line or the introduction into the Security Perimeter of any arms, ammunition or related equipment, except for the arms, ammunitions or equipment of the Palestinian Police, authorized through the relevant DCO."
16. Israeli-Palestinian Interim Agreement, 1995, Annex I, Article XII, Section 3, paragraphs (a) and (b).
17. Israeli-Palestinian Interim Agreement, 1995, Annex I, Article XIV, Section 1.
18. Israeli-Palestinian Interim Agreement, 1995, Annex I, Article XIV, Section 4.
19. Israeli-Palestinian Interim Agreement, 1995, Annex I, Article XIV, Section 1, paragraph (a), sub-paragraph 2(ii): "Fishing boats will not exit Zone L into the open sea and may have engines of up to a limit of 25 HP for outboard motors and up to a maximum speed of 18 knots for inboard motors. Four months after the signing of this Agreement the Maritime Coordination and Cooperation Center (hereinafter "the MC"), as referred to in paragraph 3 below, will consider raising the limit for outboard motors up to 40 hp. in accordance with the types of the boats. The boats will neither carry weapons nor ammunition nor will they fish with the use of explosives."
20. Israeli-Palestinian Interim Agreement, *Ibid*.
21. Adalah and Al Mezan, *Israeli Navy Releases Boats Confiscated from Gaza Fishermen without Equipment and Large Motors; Fishermen Refuse to take Boats*, press statement, 4 August 2011. Paragraph 2 states that "the military prosecutor also informed Adalah that any outboard motors over 25 horsepower on the boats had been dismantled and would not be returned to their owners, on the pretext that there was a legal prohibition against the export of such engines to Gaza." Available at <http://electronicintifada.net/blogs/maureen-clare-murphy/gaza-fishermen-refuse-return-confiscated-ships-stripped-motors-equipment> (last accessed on 18 September 2013).
22. There is no official date to mark the end of the second intifada, but the last major offensive in Gaza before the withdrawal of troops and settlements in 2005 took place in September and October 2004, when the Israeli army invaded the towns of Beit Hanoun, Beit Lahya and Jabalia, killing 133 people and levelling thousands of dunams of land (one dunam is roughly 1,000 square metres).
23. PCHR annual report, 2004, pp.7-8: "[T]he total area of land razed by IOF to date since the beginning of the current Intifada is 31,494 dunams. Land leveling in 2004 was mainly focused in the North Gaza Strip town of Beit Hanoun (56 per cent of the total area of land razed in the Gaza Strip). Agricultural land in the Gaza Strip, approximately 156,720 dunams according to the Palestinian Ministry of Agriculture, has been reduced by approximately 20 per cent since the Intifada began," and "Since 2000, the IOF have destroyed 2,699 houses completely and 2,186 houses partially in the Gaza Strip rendering thousands of Palestinians homeless. The number of houses demolished in 2004 constitutes 43per cent of the total number of houses demolished;" and p.17: "The number of Palestinians killed by IOF and settlers since the beginning of current Intifada has increased to 3,214, including 618 children. In addition, thousands of Palestinians, including 8,545 in the Gaza Strip."
24. Al Mezan documentation, available at <http://www.mezan.org/en/> and PCHR annual reports, *supra*. Data was collated and cross-referenced.
25. Research for this report found that 50 per cent of all farmers who completed the surveys had had their land destroyed more than once in the last ten years, particularly those living in the northern and southern areas of Gaza.

26. United Nations Mission Report of Ms Catherine Bertini, Personal Humanitarian Envoy of the Secretary-General, 11-19 August 2002, paragraph 23: "Another measure taken by Israel was the announced extension of the fishing zone off Gaza to 12 miles which still must be effectively implemented." This is the only publicly available reference to what has become commonly referred to as the Bertini Agreement. Available at: [http://domino.un.org/bertini\\_rpt.htm](http://domino.un.org/bertini_rpt.htm) (last accessed on 18 September 2013). The agreement's limit of 12nm is in line with the internationally accepted limit for territorial waters. See United Nations Convention on the Law of the Sea, 1982, Section II, Article 3.
27. PCHR annual reports, 2000 to 2005.
28. For details of the number of rockets fired into Israel, see Israel Security Agency website (<http://www.shabak.gov.il>). According to ISF sources, 401 rockets were fired towards Israel in 2005, the highest number by far since the beginning of the second intifada and up until that point. By contrast, militant groups fired 1,722 rockets in 2006. The vast majority of rockets fired both during and outside periods of war fall in open areas. During Operation Pillar of Defense from 14 to 21 November 2012, less than four per cent landed in built-up areas in Israel and ten per cent fell within Gaza itself. The attacks killed four Israeli civilians and wounded 38, and apparently killed two Palestinians when they fell short of their intended targets. See OCHA, *Fragmented Lives: Humanitarian Overview 2012*, p.6, Human Rights Watch (HRW) "Gaza: Palestinian Rockets Unlawfully Targeted Israeli Civilians," available at <http://www.hrw.org/news/2012/12/24/gaza-palestinian-rockets-unlawfully-targeted-israeli-civilians>, and B'Tselem's statistics at <http://www.btselem.org/statistics/fatalities/after-cast-lead/by-date-of-event/israel/israeli-civilians-killed-by-palestinians>.
29. Israel, the EU and the US imposed a crippling financial blockade on PA immediately after the results of the 25 January 2006 elections were announced.
30. Israel responded by detaining dozens of Hamas council members, mayors and ministers. See UNHRC, *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, 15 September 2009, p.28: "Following the capture by Palestinian armed groups of Israeli soldier Gilad Shalit in June 2006, the Israeli army arrested some 65 members of the PLC, Mayors and Ministers, mostly Hamas members." According to the Palestinian Prisoner Support and Human Rights Association (ADDAMEER) about half of the detained PLC members were released by 2009. On 18 October 2011, Shalit was released in a Palestinian-Israeli prisoner swap brokered by Hamas and by November 2012, all Palestinian PLC members had also been released. See ADDAMEER statistics at <http://www.addameer.org/etemplate.php?id=339> (last accessed on 18 September 2013).
31. Gisha, *Gaza Closure Defined: Collective Punishment*, position paper, 2008, available at <http://www.gisha.org/userfiles/File/publications/GazaClosureDefinedEng.pdf> (last accessed on 18 September 2013).
32. Israel has justified its restrictions on humanitarian supplies and materials on the grounds of "dual use", namely that the materials could be appropriated by armed groups and used to make homemade weapons to attack Israel. Evidence suggests, however, that Israeli restrictions did not meet their purpose, but in fact had the opposite effect. By intensifying Gaza's dependency on the tunnel economy, not only were materials for homemade weapons as well as more sophisticated weaponry available on the market, but Hamas was also provided with regular income through tax revenues. The only sector that Israel could be sure was not benefiting from its restrictions was the humanitarian sector.
33. ICRC news release, "Closure: Not Another Year!", 14 June 2010. Available at <http://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm> (last accessed on 18 September 2013).
34. OCHA, *Consolidated Appeal: Occupied Palestinian Territories*, 2013, p.24.
35. NRC, *An Overview of the Housing Sector in the Gaza Strip*, March 2013, p.15. There were also 13 Israeli deaths, three of whom were civilians and four of whom were soldiers killed by friendly fire. See UNHRC, *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, 15 September 2009, pp.10 and 22.
36. OCHA, *Access Restricted Areas in the Gaza Strip*, fact sheet, July 2013.
37. UNHRC, *Report of the United Nations Fact Finding Mission on the Gaza Conflict*, 15 September 2009, p.15.
38. Throughout Operation Cast Lead, the Israeli army used 155mm artillery shells containing white phosphorous that spread over a 125m radius from the blast point. Their use over populated areas has been condemned by the UN, which says the long-term impact is of grave concern. On 22 January 2010, UN diplomats announced that Israel had paid out \$10.5 million in an *ex-gratia* payment for white phosphorous damage to schools, warehouses and other property including UNRWA facilities during Cast Lead. See Shlomo Shamir, "Israel pays 10.5 million dollars for damage to UN Gaza premises; Payment covers damage caused during Israel's offensive last winter against Hamas in Gaza Strip," *Haaretz*, 22 January 2010, available at <http://www.haaretz.com/news/israel-pays-10-5-million-dollars-for-damage-to-un-gaza-premises-1.261937> (last accessed on 18 September 2013).
39. See Chapter II.
40. See Chapters II and III.
41. See leaflets in Chapters II and III.
42. OCHA, *Between the Fence and a Hard Place: The Humanitarian Impact of Israeli-Imposed Restrictions on Access to Land and Sea in the Gaza Strip*, August 2010.
43. OHCHR, *Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council Resolutions S-9/1 and S-12/1*, 6 March 2013.
44. Assessment conducted by UNRWA, UNDP and human rights organisations for the Shelter Sector, available at <http://www.sheltergaza.org> (last accessed on 18 September 2013).
45. "Al Mezan Issues Statistical Report on Israeli Aggression Code-Named 'Pillar of Defense,' *Al Mezan news brief*, 5 March 2013, available at [http://mezan.org/en/details.php?id=16494&dd-name=reports&id\\_dept=14&p=center](http://mezan.org/en/details.php?id=16494&dd-name=reports&id_dept=14&p=center) (last accessed on 18 September 2013).
46. OCHA, *Fragmented Lives: Humanitarian Overview 2012*, May 2013, p.68.
47. OCHA, *Humanitarian Monitor*, monthly report, May 2013.
48. OCHA, *Fragmented Lives: Humanitarian Overview 2012*, May 2013, pp.4-5. Access to the sea was limited to 3nm between the end of Operation Cast Lead and the end of Operation Pillar of Defense. Since then, it has fluctuated between 3nm and 6nm, and is currently set at 6nm.
49. OCHA, *Ibid*.
50. Following the Gaza flotilla incident in May 2010, Israel eased its closure policy to allow certain humanitarian projects to be approved through direct coordination with PA.
51. OCHA, *Fragmented Lives: Humanitarian Overview 2012*, May 2013, pp.49-50.
52. OCHA, *Between a Fence and a Hard Place: The Humanitarian Impact of Israeli-Imposed Restrictions on Access to Land and Sea in the Gaza Strip*, August 2010, p.33.
53. OCHA, *Ibid*, p.58.
54. OCHA, *Fact Sheet: Access Restricted Areas (ARA) in the Gaza Strip*, July 2013.
55. ODI, *Sanctuary in the city? Urban displacement and vulnerability in the Gaza Strip*, December 2012, p.2.
56. ODI, *Ibid*, p.2.
57. HRW, *Razing Rafah: Mass Home Demolitions in the Gaza Strip*,

- October 2004, p.2.
58. Shelter Sector Gaza website, available at <http://sheltergaza.org/> (last accessed 4 December 2013).
  59. Save the Children UK, *Briefing Paper: Forced Displacement in the occupied Palestinian territory*, October 2009, p.10.
  60. ODI, *Sanctuary in the City*, December 2012, p.26.
  61. ODI, *Ibid*, p.27.
  62. ODI, *Ibid*, p.27.
  63. OCHA, *Between a Fence and a Hard Place: The Humanitarian Impact of Israeli-Imposed Restrictions on Access to Land and Sea in the Gaza Strip*, August 2010, p.31.
  64. OCHA, *Ibid*.
  65. OCHA, *Fragmented Lives: Humanitarian Overview 2012*, May 2013, p.64.
  66. OCHA, *Ibid*, p.61. Twelve are government-run schools and one is UNRWA-run.
  67. UNCT, *Education Sector Coordination for Gaza, Vulnerable Schools Matrix*, February 2012.
  68. UNCT *Gaza in 2020: A Livable Place?*, August 2012, p.15.
  69. UNCT, *Ibid*.
  70. OCHA, *Consolidated Appeal: Occupied Palestinian Territories*, p.26.
  71. "UN humanitarian official urges Israel to lift crippling restrictions on Gaza," *UN News Centre*, 3 July 2013, available at: <http://www.un.org/apps/news/story.asp?NewsID=45332&#.UdwcBz7446E> (last accessed on 18 September 2013).
  72. "Gaza Suicides Rise As Living Conditions Deteriorate," *Al Monitor*, 3 July 2013, available at <http://www.al-monitor.com/pulse/originals/2013/07/gaza-suicide-hamas-blockade.html> (last accessed on 18 September 2013).
  73. "Text of Israel-Hamas Cease-Fire Agreement," *Jerusalem Post*, 21 November 2012, available at: <http://www.jpost.com/Defense/Text-of-Israel-Hamas-cease-fire-agreement> (last accessed on 18 September 2013).
  74. COGAT, available at: [http://www.cogat.idf.il/Sip\\_Storage/FILES/8/3688.pdf](http://www.cogat.idf.il/Sip_Storage/FILES/8/3688.pdf) (last accessed on 18 September 2013).
  75. IDF, "Expansion of the Gaza Strip's Designated Fishing Zone," 21 May 2013, available at: <http://www.idf.il/1153-19004-EN/Dover.aspx> (last accessed on 18 September 2013).
  76. ICRC, Rule 103 on Collective Punishments, available at [http://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter32\\_rule103](http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter32_rule103) (last accessed on 18 September 2013).
  77. Al Haq, *Shifting Paradigms: Israel's Enforcement of the Buffer Zone in the Gaza Strip*, 2011, p.7; and Diakonia, *Within Range: An Analysis of the Legality of the Land "Buffer Zone" in the Gaza Strip*, 2011, p.12.
  78. Al Haq, *Ibid*, p.23.
  79. OCHA, *Between the Fence and a Hard Place: The Humanitarian Impact of Israeli-Imposed restrictions on Access to Land and Sea in the Gaza Strip*, August 2010.
  80. PCHR weekly reports, available at: [www.pchrgaza.org](http://www.pchrgaza.org).
  81. Interview with FAO food security analyst, 30 April 2013.
  82. OCHA, *Access Restricted Areas in the Gaza Strip*, fact sheet, July 2013.
  83. Interview with Gisha's director of international relations, Tania Harry, 13 May 2013. Sources Authority in Gaza City reasons they cannot provide this information about this yet, it is 1 May 2013.
  84. Guiding Principles, foreword to the second edition by the under-secretary-general for humanitarian affairs and emergency relief coordinator, Jan Egeland, September 2004 (emphasis added).
  85. "After I graduated from university, I spent a long time looking for work, but to no avail. It dragged on until I started to feel that I was a burden on society. I was living in an endless cycle of psychological anxieties." "Unemployment Drives Graduates in Gaza to Drug Addiction," *Al Monitor*, 13 June 2013, available at: <http://www.al-monitor.com/pulse/originals/2013/06/gaza-students-drugs-tramadol.html> (last accessed on 18 September 2013).
  86. In March 2011 there were nearly 120,000 unemployed university graduates. See Gaza Labour Ministry website at: <http://www.mol.ps/index.php/ingazaat/engazat2011.html> (last accessed on 18 September 2013).
  87. OCHA, *Access Restricted Areas in the Gaza Strip*, fact sheet, July 2013.
  88. FAO and WFP, *Comprehensive Food Security and Vulnerability Analysis WBGS*, January 2009.
  89. FAO and WFP, *Ibid*, p.2.
  90. FAO and WFP, *Ibid*, p.13.
  91. OCHA, *Access Restricted Areas in the Gaza Strip*, fact sheet, July 2013.
  92. OCHA, *Between a Fence and a Hard Place: The Humanitarian Impact of Israeli-Imposed Restrictions on Access to Land and Sea in the Gaza Strip*, August 2010, p.32.
  93. OCHA, *Ibid*, August 2010, p.31.
  94. Al Haq, *Shifting Paradigms: Israel's Enforcement of the Buffer Zone in the Gaza Strip*, 2011, p.24.
  95. COGAT website, available at: [http://www.cogat.idf.il/Sip\\_Storage/FILES/8/3688.pdf](http://www.cogat.idf.il/Sip_Storage/FILES/8/3688.pdf) (last accessed on 18 September 2013).
  96. IDF, "Expansion of the Gaza Strip's Designated Fishing Zone," 21 May 2013, available at: <http://www.idf.il/1153-19004-EN/Dover.aspx> (last accessed on 18 September 2013).
  97. OCHA, *Access Restricted Areas in the Gaza Strip*, fact sheet, July 2013.
  98. Interview with Zakaria Baker, Union of Agricultural Work Committees (UAWC) representative, on 23 April 2013.
  99. PCHR annual report, 2009, p.69. The report also states that about \$8 million of this damage occurred during Operation Cast Lead.
  100. OCHA, *Access Restricted Areas in the Gaza Strip*, fact sheet July 2013.
  101. OCHA, *Restricted Livelihood: Gaza's Fishermen*, case study, July 2013.
  102. Interview with Jihad Salah, head of the fishing directorate, Ministry of Agriculture, on 9 May 2013.
  103. OCHA, *Humanitarian Monitor*, May 2013, p.3.
  104. The use of seabed dragnets by Palestinian fishermen attempting to catch crustaceans has caused damage to the natural environment of fish, including their breeding grounds.
  105. Interview with Jihad Salah, head of fishing directorate, Ministry of Agriculture, on 9 May 2013; also confirmed by FAO food security analyst Ruben Baert during an interview on 30 April 2013.
  106. Guiding Principles, Principle 9.
  107. ODI, *Sanctuary in the City*, December 2012, p.10.
  108. OCHA, *Gaza Fishing: An Industry in Danger*, April 2007, p.1.
  109. OCHA, *Access Restricted Areas in the Gaza Strip*, fact sheet July 2013.
  110. Interview with Jihad Salah, head of fishing directorate, Ministry of Agriculture, on 9 May 2013; also confirmed by FAO food security analyst Ruben Baert during an interview on 30 April 2013.
  111. Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287, which entered into force on 21 October 1950.
  112. ICJ, *Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, paragraphs 91-101.
  113. ICJ, *Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, paragraph 88.
  114. ODI, *Sanctuary in the City*, December 2012, p.9: "Israel's disengagement in 2005 has not altered the view of the international community that Israel is the occupying power of Gaza. UN and international human rights and humanitarian actors argue that Israel's continued control of Gaza, the length of its occupation



- and its ability to quickly regain control of the territory mean that the law of occupation still applies."
115. ICRC, "Challenges to international humanitarian law: Israel's occupation policy," *International Review of the Red Cross*, Volume 94, Number 888, Winter 2012: "While the shape and degree of this military occupation have varied, Israel has continuously maintained effective control over the territories it occupied as a result of the Six Day War in 1967, and over the Palestinian population living there."
  116. UN, *Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident*, September 2011; UN, *Report of the United Nations Fact-Finding Mission on the Gaza Conflict*, Human Rights Council 12th session, 25 September 2009; Gisha: Legal Centre for Freedom of Movement, *Disengaged Occupiers: The Legal Status of Gaza*, position paper, 2007.
  117. Israeli Ministry of Foreign Affairs, "Security Cabinet Declares Gaza Hostile Territory", press release, 19 September 2007, available at: <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm> (last accessed on 18 September 2013). This determination was made following Hamas's 2006 election victory and subsequent takeover of governmental structures in Gaza in June 2007. Hamas remains on the list of terrorist organizations in Israel, the US, and several European countries. It is not, however, on the UN Sanctions Committee.
  118. UN Security Council resolution 1860, UN Doc SC/9567 and Human Rights Council resolution S-9/1, 2009
  119. Although not legally binding, ICTY jurisprudence reflects the current status of legal thinking on international law, particularly IHL and its grave breaches regime which can amount to crimes of war.
  120. ICTY, *Prosecutor v Naletilic et al*, 31 March 2003, paragraph 217. Available at: [http://www.icty.org/x/cases/naletilic\\_martinovic/tjug/en/nal-tj030331-e.pdf](http://www.icty.org/x/cases/naletilic_martinovic/tjug/en/nal-tj030331-e.pdf) (last accessed on 18 September 2013).
  121. Fourth Geneva Convention, 1949, Article 127, available at: <http://www.icrc.org/ihl.nsf/WebART/380-600032?OpenDocument> (last accessed on 18 September 2013). "They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion. However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war."
  122. 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 48: "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives;" Article 51(5) (b): "[A]n attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;" Article 52(2): "Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."
  123. ICRC, *Interpretative Guidance on the Notion of Direct Participation on Hostilities under International Humanitarian Law*, 2009, pp. 17 and 74-76
  124. 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 50, paragraph 1(2): "In case of doubt whether a person is a civilian, that person shall be considered to be a civilian."
  125. Israel also ratified the 1989 Convention on the Rights of the Child on 3 October 1991 without reservations, and the 1966 Convention Against All Forms of Racial Discrimination on 3 January 1979, upon which it made the following declaration: "[Israel] does not consider itself bound by the provisions of Article 22 of the [...] Convention." Article 22 relates to the jurisdiction of ICJ in cases of disputes over the interpretation or application of the convention.
  126. ICCPR, 16 December 1966, entry into force on 23 March 1976. Upon ratification, Israel derogated from the obligations in Article 9 and cited reservations about Article 23: "With reference to Article 23 of the Covenant, and any other provision thereof to which the present reservation may be relevant, matters of personal status are governed in Israel by the religious law of the parties concerned. To the extent that such law is inconsistent with its obligations under the Covenant, Israel reserves the right to apply that law."
  127. ICESCR, 16 December 1966, entry into force on 3 January 1976.
  128. ICJ, *Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004.
  129. ICJ, *Ibid*, summary, p.8, available at: <http://www.icj-cij.org/docket/files/131/1677.pdf> (last accessed on 18 September 2013).
  130. ICJ, *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, 8 July 1996, paragraph 24.
  131. *Supra* note 115.
  132. ICJ, *Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, paragraph 112.
  133. Guiding Principles, Introduction, paragraph 2
  134. *Ibid*, Principle 6(2)(b).
  135. *Ibid*, Principle 6(2)(e).
  136. *Ibid*, Principle 7(1).
  137. *Ibid*, Principle 9.
  138. *Ibid*, Principle 10(2)(a);(d).
  139. *Ibid*, Principle 12(1).
  140. *Ibid*, Principle 15.
  141. *Ibid*, Principle 18.
  142. *Ibid*, Principle 21(2).
  143. *Ibid*, Principle 7(3).
  144. A war of aggression is a crime under the Rome Statute of the International Criminal Court. Its definition and the conditions for the Court's exercise of jurisdiction over this crime were adopted by consensus at the 2010 Kampala Review Conference. The definition of the crime of aggression was included in the Statute via Resolution 6 of the 2010 Review Conference. The amendment will come into force no earlier than 1 January 2017 and upon ratification by the majority of state parties. As of 11 June 2013, seven out of the 122 state parties to the court had ratified or acceded to the amendments on the crime of aggression. The text of the amendment is available at: [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf) (last accessed on 18 September 2013).
  145. Nazi Germany was tried under the Nuremberg Tribunal from 1945 to 1946. The Japanese were tried under the International Military Tribunal for the Far East from 1946 to 1948. The tribunals prosecuted perpetrators of war crimes under the Hague and Geneva Conventions, and created a new category of crimes, that of crimes against humanity.
  146. In response to the mass killings in Rwanda, the UN Security



- Council established the International Criminal Tribunal for Rwanda in 1994.
147. Fourth Geneva Convention, 1949, Article 147, available at: <http://www.icrc.org/ihl/WebART/380-600169> (last accessed on 18 September 2013): "Grave breaches to which the preceding Article [Article 146] relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."
  148. *Supra* note 117.
  149. 1945 Charter of the United Nations, Chapter VII, Article 51: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."
  150. OCHA, *Access Restricted Areas in the Gaza Strip*, fact sheet, July 2013.
  151. B'Tselem, last updated on 17 April 2013, available at [http://www.btselem.org/israeli\\_civilians/qassam\\_missiles#data](http://www.btselem.org/israeli_civilians/qassam_missiles#data) (last accessed on 18 September 2013); Interview with Lani Frerichs, analyst with the Gaza Strip NGO Security Office on 12 May 2013.
  152. OCHA, *Fragmented Lives: Humanitarian Overview 2012*, p.6.
  153. OCHA and WFP, *Between a Fence and a Hard Place*, August 2010, pp.10 and 19. In addition, 305 wells, 197 chicken farms, 377 sheep farms, 996 complete houses, 371 partial houses, three mosques, three schools, and six factories were destroyed during that same period.
  154. *Supra* note 117.
  155. *Supra* note 117.
  156. 1907 Hague Regulations, Article 43: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."
  157. Droege, C, "The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict," *Israel Law Review*, 2007, pp.310 and 347.
  158. Roberts, A, "Prolonged military occupation: the Israeli-occupied territories 1967–1988", *American Journal of International Law*, Vol.84, No.1, 1990, pp.44–103; Lubell, N, "Human rights obligations in military occupation," *International Review of the Red Cross*, Vol.94, No.885, Spring 2012.
  159. Al Haq, *Shifting Paradigms: Israel's Enforcement of the Buffer Zone in the Gaza Strip*, 2011.
  160. Doswald Beck, L, "The Right to Life in Armed Conflict: Does International Humanitarian Law Provide All the Answers?" *International Review of the Red Cross*, 2006, pp.881 and 892.
  161. Code of Conduct for Law Enforcement Officials adopted by the UN General Assembly resolution 34/169 of 17 December 1979, available at: <http://www.un.org/disarmament/convarms/ATTPrepCom/Background%20documents/CodeofConductfor-lawEnfOfficials-E.pdf> (last accessed on 18 September 2013).
  162. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAnd-Firearms.aspx> (last accessed on 18 September 2013).
  163. Code of Conduct for Law Enforcement Officials, Article 1, commentaries (a) and (b): "(a) The 'law enforcement officials' who may use lethal force include all government officials who exercise police powers, including a State's military and security forces, operating in contexts where violence exists, but falls short of the threshold for armed conflict; (b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of law enforcement officials shall be regarded as including officers of such services." Language to similar effect can be found in the Basic Principles on the Use of Firearms by Law Enforcement Officials, Preamble, Footnote 1.
  164. Code of Conduct for Law Enforcement Officials, Article 3; Basic Principles on the Use of Firearms by Law Enforcement Officials, Principle 9. *Supra* notes 141 and 142.
  165. UN, *Report of the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, 5 September 2006, paragraph 35.
  166. "Gaza's Unstable Border," Ynet News, 14 November 2010, available at: <http://www.ynetnews.com/articles/0,7340,L-3983391,00.html> (last accessed on 18 September 2013).
  167. Al Haq, *Shifting Paradigms: Israel's Enforcement of the Buffer Zone in the Gaza Strip*, p.19.
  168. Al Haq (2011) *Ibid*, p.20.
  169. *Supra* note 131.
  170. ICTY, *Prosecutor v Mucic et al*, 16 November 1998, paragraph 439, available at: <http://www.icty.org/x/cases/mucic/tjug/en/cel-tjug81116e.pdf> (last accessed on 18 September 2013). Several parties appealed the judgment and sentencing on grounds of cumulative convictions. On 20 February 2001 the trial chamber upheld the appeal against cumulative convictions for the same acts that gave rise to violations of both grave breaches of the Geneva Conventions and customary laws of war. It dismissed the charges based on customary war, but maintained the substantive legal arguments of the trial judgment. Paragraph 439 reads: "On the basis of this analysis alone, the Trial Chamber is in no doubt that the necessary intent, meaning mens rea, required to establish the crimes of willful killing and murder, as recognized in the Geneva Conventions, is present where there is demonstrated an intention on the part of the accused to kill, or inflict serious injury in reckless disregard of human life."
  171. ICTY, *Prosecutor v Krstic*, 2 August 2001, paragraph 513. Available at: <http://www.icty.org/x/cases/krstic/tjug/en/krstic-tjug010802e.pdf> (last accessed on 18 September 2013). The appeals chamber adopted the trial chamber's findings as to the aggravating factors, handing down its judgment on 19 April 2004. Paragraph 513 reads: "The Trial Chamber finds that serious bodily or mental harm for purposes of Article 4 actus reus is an intentional act or omission causing serious bodily or mental suffering. The gravity of the suffering must be assessed on a case by case basis and with due regard for the particular circumstances. In line with the Akayesu Judgement, the Trial Chamber states that serious harm need not cause permanent and irremediable harm, but it must involve harm that goes beyond temporary unhappiness, embarrassment or humiliation. It must be harm that results in a grave and long-term disadvantage to a person's ability to lead a normal and constructive life. In subscribing to the above case-law, the Chamber holds that inhuman treatment, torture, rape, sexual abuse and deportation are among the acts which may cause serious bodily or mental injury."
  172. ICTY, *Ibid*.
  173. According to a UWAC representative working with fishermen in southern Gaza, there are around five fishermen who have been convicted in the last ten years, and are serving sentences in Israeli prison. At least 429 fishermen have been detained.
  174. ECHR, *Makaratzis v Greece*, 20 December 2004, paragraphs 49 to 55. For a similar conclusion in the context of armed conflict, see ECHR *Makhauri v Russia*, 4 October 2007, paragraph 117.
  175. ICESCR, 1966, Article 11(i) reads, in part: "The States Parties to the

- present Covenant recognize the right of everyone to an adequate standard of living for himself and his family [...]"
176. ICESCR, 1966, Article 11, reads: "1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."
  177. OCHA, *Access Restricted Areas in the Gaza Strip*, fact sheet, July 2013.
  178. FAO and WFP, *Comprehensive Food Security and Vulnerability Analysis*, January 2009.
  179. The use of seabed dragnets by Palestinian fishermen attempting to catch crustaceans has caused damage to the natural environment of fish, including their breeding grounds.
  180. "UN humanitarian official urges Israel to lift crippling restrictions on Gaza," UN News Centre, 3 July 2013, available at: <http://www.un.org/apps/news/story.asp?NewsID=45332&#.UdwcBz7446E> (last accessed on 18 September 2013).
  181. Committee on Economic, Social and Cultural Rights, 20th session, 26 April-14 May 1999, general comment No. 12, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/420/12/PDF/G9942012.pdf?OpenElement> (last accessed on 18 September 2013).
  182. Olivier De Schutter has been the UN special rapporteur on the right to food since May 2008.
  183. OHCHR, special rapporteur on the right to food, available at: <http://www.ohchr.org/EN/issues/food/Pages/FoodIndex.aspx> (last accessed on 13 July 2013).
  184. Guiding Principles, foreword, 2nd edition (emphasis added).
  185. OCHA, *Consolidated Appeal: Occupied Palestinian Territories*, 2013, p.26.
  186. PCHR, annual report, 2009, p.69
  187. OCHA, *Access Restricted Areas in the Gaza Strip*, fact sheet, July 2013.
  188. Interview with Zakaria Baker, UAWC representative, on 23 April 2013.
  189. Interview with UAWC representative in Beit Hanoun, 24 April 2013.
  190. ICESCR, 1966, Articles 6 and 7: "Article 6, 1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right. 2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual. Article 7, The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays."
  191. For more details on specific cases involving the right to work and the right to food, see PCHR, "Israeli Policies Severely Affecting Sources of Livelihood in the Gaza Strip," June 2013.
  192. ICCPR, 1966, Article 9: "1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."
  193. ICCPR, 1966, Article 4, provides that "[i]n time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under this Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin."
  194. State of Israel, communication from to the UN Secretary-General on 3 October 1991: "Since its establishment, the State of Israel has been the victim of continuous threats and attacks on its very existence as well as on the life and property of its citizens. These have taken the form of threats of war, of actual armed attacks, and campaigns of terrorism resulting in the murder of and injury to human beings. In view of the above, the State of Emergency which was proclaimed in May 1948 has remained in force ever since. This situation constitutes a public emergency within the meaning of article 4 (1) of the Covenant. The Government of Israel therefore found it necessary, in accordance with the said article 4, to take measures to the extent strictly required by the exigencies of the situation, for the defense of the State and for the protection of life and property, including the exercise of powers of arrest and detention. In so far as any of these measures are inconsistent with article 9 of the Covenant, Israel thereby derogates from its obligations under that provision". Text reprinted in ICJ Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, paragraph 127.
  195. Focus group participants in Swedish Village held on 28 April 2013. Information supported by UAWC representative and Al Mezan.
  196. ICCPR, 1966, Article 10(1): "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."
  197. Fourth Geneva Convention, 1949, Article 51(1): "The Occupying Power may not compel protected persons to serve in its armed

or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted. The Occupying Power may not compel protected persons to work unless they are over eighteen years of age, and then only on work which is necessary either for the needs of the army of occupation, or for the public utility services, or for the feeding, sheltering, clothing, transportation or health of the population of the occupied country. Protected persons may not be compelled to undertake any work which would involve them in the obligation of taking part in military operations. The Occupying Power may not compel protected persons to employ forcible means to ensure the security of the installations where they are performing compulsory labour."

198. ICRC commentary on Article 51, available at: <http://www.icrc.org/ihl.nsf/COM/380-600058?OpenDocument> (last accessed on 18 September 2013). Commentary on paragraph 1 reads, in part: "Paragraph 1 contains a rule of cardinal importance to the population of an occupied territory. The Occupying Power is forbidden to force protected persons to serve in its armed or auxiliary forces. The prohibition is not new, since a basic principle, universally recognized in the law of war, strictly prohibits belligerents from forcing enemy subjects to take up arms against their own country but that principle had often been violated during the two world wars, and it appeared necessary to reaffirm it in the new Convention. When doing so, the Diplomatic Conference specified that it was not only enlistment in the armed and auxiliary forces of the Occupying Power that was forbidden, but also all forms of pressure or propaganda aimed at securing voluntary enlistment. The prohibition is absolute and no derogation from it is permitted. Its object is to protect the inhabitants of the occupied territory from actions offensive to their patriotic feelings or from attempts to undermine their allegiance to their own country."
199. Fourth Geneva Convention, 1949, Article 1: "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."
200. Siordet, Frédéric, "The Geneva Conventions and Civil War," supplement to the *Revue internationale de la Croix-Rouge*, Vol. III, Nos. 8, 9 and 11, Geneva, 1950, p.16. Available at <http://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCO-MART&articleUNID=FD45570C37B1C517C12563CD0051B98B> (last accessed on 18 September 2013).
201. Fourth Geneva Convention, 1949, Article 146, available at: <http://www.icrc.org/applic/ihl/ihl.nsf/gac284404d38ed2bc1256311002afd89/6f966ee4c7d1e72cac12563cd0051c63a> (last accessed on 18 September 2013). Paragraph 1: "The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article." Article 147, paragraph 1: "Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."
202. ILC Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001, available at: [http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/g\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/g_6_2001.pdf) (last accessed on 18 September 2013).
203. UN General Assembly, resolution A/RES/56/83, 12 December 2001.
204. ILC Draft Articles, 2001, Article 41: "1. States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40. 2. No State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation. 3. This article is without prejudice to the other consequences referred to in this part and to such further consequences that a breach to which this chapter applies may entail under international law." Article 40, reads: "1. This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law. 2. A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfill the obligation." Same text adopted by UN General Assembly resolution A/RES/56/83, 12 December 2001, available at [http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/g\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/g_6_2001.pdf) (last accessed on 18 September 2013).
205. ILC Draft Articles, 2001, Articles 30 and 31: "Article 30 on cessation and non-repetition: The State responsible for the internationally wrongful act is under an obligation: (a) to cease that act, if it is continuing; (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require." And "Article 31 on reparation: 1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act. 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State." Same text adopted by UN General Assembly resolution A/RES/56/83, 12 December 2001, available at [http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/g\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/g_6_2001.pdf) (last accessed on 18 September 2013).
206. ILC Draft Articles, 2001, Article 48(1) and (2): "1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if: (a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or (b) the obligation breached is owed to the international community as a whole. 2. Any State entitled to invoke responsibility under paragraph 1 may claim from the responsible State: (a) cessation of the internationally wrongful act, and assurances and guarantees of non-repetition in accordance with article 30; and (b) performance of the obligation of reparation in accordance with the preceding articles, in the interest of the injured State or of the beneficiaries of the obligation breached." Same text adopted by UN General Assembly resolution A/RES/56/83, 12 December 2001, available at [http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/g\\_6\\_2001.pdf](http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/g_6_2001.pdf) (last accessed on 18 September 2013).
207. ILC, *Ibid*.
208. Fourth Geneva Convention, 1949, Article 27: "Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity. [...] The Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war." The 2001 ILC Draft Articles, also permit the consideration of necessity when taking account of state responsibility for internationally wrongful acts. Article 25: "1. Necessity may not be invoked by a State as a ground for precluding the wrongfulness of an act not in conformity with an international obligation of that State unless the act: (a) is the only way for the State to safeguard an essential interest against a grave and imminent peril; and (b) does not seriously impair an essential interest of the State or States towards which the obligation exists, or of the international community as a whole. 2. In any case, necessity may not be invoked by a State as a ground



- for precluding wrongfulness if: (a) the international obligation in question excludes the possibility of invoking necessity; or (b) the State has contributed to the situation of necessity."
209. Fourth Geneva Convention, *Ibid*.
210. ICRC commentary on Article 27: "Article 27, placed at the head of Part III, occupies a key position among the Articles of the Convention. It is the basis of the Convention, proclaiming as it does the principles on which the whole of "Geneva Law" is founded. It proclaims the principle of respect for the human person and the inviolable character of the basic rights of individual men and women.[...] The first three paragraphs of Article 27 reflect the spirit which imbues the whole Convention in regard to the rights of the individual, but the last paragraph of the Article nevertheless makes a reservation concerning military requirements and other matters of imperative national interest, thus balancing the rights and liberties of the individual against those of the community. As has been said, Article 27 is the basis on which the Convention rests, the central point in relation to which all its other provisions must be considered. It was in order to give greater prominence to this essential Article and to underline its fundamental importance that the Diplomatic Conference placed it at the beginning of Part III on the status and treatment of protected persons.[...] The right of respect for the person must be understood in its widest sense: it covers all the rights of the individual, that is, the rights and qualities which are inseparable from the human being by the very fact of his existence and his mental and physical powers; it includes, in particular, the right to physical, moral and intellectual integrity -- an essential attribute of the human person. The right to physical integrity involves the prohibition of acts impairing individual life or health [...]" available at: <http://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleUNID=FFCB180D4E99CB26C12563CD0051BBD9> (last accessed on 18 September 2013).
211. *Supra* note 199.
212. Al Haq, *State Responsibility in Connection with Israel's Illegal Settlement Enterprise in the Occupied Palestinian Territory: An analysis of state responsibility in customary international law and the International Court of Justice Advisory Opinion of 2004, as guided by the International Law Commission Draft Articles on State Responsibility for Internationally Wrongful Acts*, legal memorandum, 16 July 2012.
213. ICJ, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004.
214. Al Haq, *supra* note 200, pp.8-9: "Although there is significant academic debate about whether the ICJ's analysis of the relevant international treaty and customary law rules is 'correct,' the Opinion remains for now the consensus of what the justices on the ICJ perceive the state of the law to be."
215. PCHR, *An Illusion of Justice: A Update of 'Genuinely Unwilling,'* March 2013, pp.7-8: "The MAG serves a twofold function: acting as legal advisor to the military; and enforcing penal laws intended to 'represent the rule of law and the public interest'. The office of the MAG is itself involved in preparing the rules of engagement and providing the legal framework regulating attacks by Israeli forces. International law requires that, should these guidelines violate international humanitarian law, the members of the MAG should be investigated and prosecuted. This illustrates that the MAG cannot be considered independent or impartial, as it is itself involved in the planning of attacks."
216. PCHR, *Ibid*, p.13.
217. PCHR, *Israeli Policies Severely Affecting Sources of Livelihood in the Gaza Strip*, June 2013.
218. Interview with PCHR's legal database coordinator, on 13 May 2013. Of the 3,122 complaints, around 20 per cent were closed after a full investigation. Including cases filed during wartime, PCHR has filed a total of 3,691 complaints since 2000.
219. Fourth Geneva Convention, *Ibid*.
220. Fourth Geneva Convention, 1949, Article 146(1): "The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article."
221. ICRC, Rule 158, Customary IHL, Volume I, available at: [http://www.icrc.org/customary-ihl/eng/docs/v1\\_cha\\_chapter44\\_rule158](http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule158) (last accessed on 18 September 2013).
222. For substantial analysis of Israel's responsibility to investigate violations of international law, see PCHR, *An Illusion of Justice: A Update of 'Genuinely Unwilling,'* March 2013; and PCHR, *Genuinely Unwilling: An Update, The Failure of Israel's Investigative and Judicial System to Comply with the Requirements of International Law*, with particular regard to the Crimes Committed during the Offensive on the Gaza Strip.
223. Turkel Commission, *Second Report: Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law*, 6 February 2013, p.383, available at: <http://www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20web-site.pdf> (last accessed on 18 September 2013).
224. Turkel Commission, *Ibid*, pp.396-397.
225. Report of the Committee of Independent Experts in International Humanitarian and Human Rights Law, 18 March 2011.
226. Interview with PCHR's legal database coordinator, on 13 May 2013.
227. Interview, *Ibid*.
228. Interview, *Ibid*.
229. For more information see HaMoked Position Paper, Memorandum of the Civil Torts Law (Liability of the State) (Amendment No. 8), 2007.
230. PCHR, *Israeli Policies Severely Affecting Sources of Livelihood in the Gaza Strip*, June 2013.
231. HaMoked, for example, reports withdrawing a civil suit concerning a civilian who was shot and killed by Israeli forces as he attempted to provided aid to other injured people in the courtyard of his home. The incident took place in Khan Younis in March 2003. The case was withdrawn because the claimants and witnesses were unable to secure permits to enter Israel and participate in the court proceedings. See HaMoked update, 16 November 2012, available at: <http://www.hamoked.org/Document.aspx?dID=Up-dates1064> (last accessed on 18 September 2013).
232. HaMoked, *Ibid*.
233. PCHR, *An Illusion of Justice: A Update of 'Genuinely Unwilling,'* March 2013, pp.1-2.
234. "UN humanitarian official urges Israel to lift crippling restrictions on Gaza," 3 July 2013, UN News Centre, available at: <http://www.un.org/apps/news/story.asp?NewsID=45332&-UgMF3GT446F> (last accessed on 18 September 2013). Rawley also voiced concern that measures undertaken to enforce access restrictions on land and at sea continue to place Palestinian farmers, fishermen and other civilians at serious physical risk, and that while Israel has legitimate security concerns, any response to them, including limitations on the free movement of people and goods, must comply with international law: "They must be proportionate to a specific threat and must not be punitive in nature." Rawley concluded: "Palestinians in the Gaza Strip have the capacity to develop their communities and to build a sustainable local economy. Only the full lifting of these long-term restrictions will enable them to do so."

# About IDMC

The Internal Displacement Monitoring Centre (IDMC) is a world leader in the monitoring and analysis of the causes, effects and responses to internal displacement. For the millions worldwide forced to flee within their own country as a consequence of conflict, generalised violence, human rights violations, and natural hazards, IDMC advocates for better responses to internally displaced people, while promoting respect for their human rights.

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# About PCHR

The Palestinian Centre for Human Rights (PCHR) is a non-governmental organisation based in Gaza city. PCHR is dedicated to protecting human rights, promoting the rule of law and upholding democratic principles in the occupied Palestinian territory.

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