



## Update on the Access Restricted Areas in the Gaza Strip

1 January to 30 June 2013

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*This update is issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) as coordinator of the Protection Cluster in the occupied Palestinian territory (oPt). It has been jointly prepared by members of the Protection Cluster Working Group in the Gaza Strip, including Palestinian Centre for Human Rights, Al Mezan Center for Human Rights, Norwegian Refugee Council, UNICEF, OCHA, Gisha, Ma'an Development Centre, EWSH coalition and UNMAS, and also draws upon information from the Food Security Sector.*

*The violence surrounding the conflict in the Gaza Strip has affected scores of civilians in many different areas. This update highlights protection concerns in the Access Restricted Areas in the Gaza Strip.*

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### 1. Background and overview

The Israeli authorities impose a 'buffer zone' or access restricted areas (ARA) in the Gaza Strip, prohibiting Palestinians from accessing or safely accessing large swathes of their land and sea. The restrictions undermine the livelihoods of tens of thousands of Palestinians in Gaza and, through the manner in which they are enforced, put at risk the lives and well-being of those who enter prohibited areas or the vicinity of such areas. Access restrictions are enforced through a range of mechanisms that include the use of live fire and the destruction, damage and confiscation of property.

The ceasefire understanding of 21 November 2012, that ended the Israeli military operation 'Pillar of Defence'/'Pillar of Cloud' and escalation of hostilities in Gaza and southern Israel (November understanding), led to an easing of restrictions in the ARA. At sea, following the November understanding, the Israeli military announced an increase in the accessible fishing zone from 3 nm to 6 nm.<sup>1</sup> However, fishermen were only able to access up to 6 nm from shore for four months of this reporting period, due to tightened restrictions imposed by Israel in response to rocket fire from the Gaza Strip.<sup>2</sup> On land, communications from the Israeli authorities have been inconsistent on whether the prohibited access zone extends 100 or 300 metres from the fence since the November understanding.<sup>3</sup> Protection Cluster monitoring during the reporting period indicates that, in practice, Palestinians have been prohibited from accessing land within 300 metres of the fence, with only a few exceptions. Many Palestinians have, however, been able to routinely access areas up to 300 metres from the fence for the first time in years, as access restrictions have been enforced less frequently beyond 300 metres from the fence.

Despite the slight easing of the access restrictions following the November understanding, the imposition of restrictions continues to impact negatively on the livelihoods of Gazans, and entry into

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<sup>1</sup> See the November 2012 monthly report issued by the Israeli Coordinator for Government Activities in the Territories (COGAT) at: [http://www.cogat.idf.il/Sip\\_Storage/FILES/8/3688.pdf](http://www.cogat.idf.il/Sip_Storage/FILES/8/3688.pdf). The Israeli military also communicated this change to fisherman by moving buoys that previously marked the 3 nm limit to 6 nm.

<sup>2</sup> As discussed below, access restrictions were heightened again to 3 nm for two months during this reporting period, in response to rocket fire by Palestinian armed groups in Gaza towards Israel; the period of heightened restrictions coincided with two of the most important fishing months of the year, according to FAO.

<sup>3</sup> There is currently no publicly available information setting out the Israeli policy on the ARA on land: see the section below on changes in access. Prior to the November understanding, the Israeli authorities stated that Palestinians were prohibited from accessing within 300 metres of the fence. However, in practice the Israeli authorities enforced a 'no-go' zone up to 500 metres from the fence and a 'high risk zone' extending sometimes up to 1,500 metres: see OCHA/WFP, "Between The Fence and a Hard Place", August 2010.

newly accessible areas remains unsafe and precarious. Moreover, the methods used by the Israeli military to enforce the access restrictions have continued to result in killings, injuries, detention and property destruction and damage. At sea, there was a significant increase in shooting incidents, injuries and incidents in which equipment was damaged, destroyed or confiscated compared to 2012; however, there was a decrease in the number of fishermen detained and boats confiscated. On land, there was a marked decrease in killings and injuries compared to 2012.

## 2. Changes in access at sea and on land

The restrictions imposed at sea have changed three times since November 2012. Following the November understanding, the Israeli authorities eased the restrictions from 3 to 6 nm from the shore. However, on 21 March 2013, restrictions were tightened again to prohibit access beyond 3 nm from shore. A joint statement released on 21 March 2013 by the Israeli military and the Israeli Coordinator for Government Activities in the Territories (COGAT) announced that these increased restrictions at sea, along with the closure of the Kerem Shalom crossing, was imposed in response to the firing of rockets from the Gaza Strip towards Israel,<sup>4</sup> for which a Palestinian armed group had claimed responsibility. These restrictions at sea were imposed during the height of the sardine season. However, on 21 May 2013, the restrictions returned to 6 nm.

The tightened restrictions imposed in response to indiscriminate rocket fire by a Palestinian armed group were directed at and had a punitive effect on the civilian population, including fishermen and their families, rather than those responsible for firing the rockets. These measures formed part of the ongoing punitive measures imposed on the civilian population of Gaza in the context of the blockade, in clear violation of the prohibition on collective penalties under international humanitarian law.<sup>5</sup>

On land, the position of the Israeli authorities regarding the scope of the imposed access restrictions is unclear. Since November 2012, Israel has communicated inconsistent messages on the distance from the fence within which it prohibits Palestinian access. The Israeli military has informed the Israeli human rights NGO, Gisha, that Palestinians are prohibited from accessing the area within 300 metres of the fence, while COGAT has informed the humanitarian community on several occasions that farmers can access up to 100 metres from the fence on foot. Monitoring undertaken by the Protection Cluster indicates that, in almost all areas across the Gaza Strip, access to land has increased since the November understanding. While the Israeli authorities continue to prohibit access up to 300 metres from the fence in most areas, the access restrictions are not being enforced as far or frequently beyond the 300 metre mark as prior to November 2012. In many areas, farmers reported that they are able to access land up to 300 or 400 metres from the fence that they had been prohibited from accessing for many years.<sup>6</sup>

Despite this slight easing of restrictions, the increased access to sea and land since November 2012 remains limited and precarious. Fishermen in Gaza are still denied access to the most profitable fishing areas that start at 8 nm from shore.<sup>7</sup> Farmers and fishermen have expressed concern about the fragility of increased access, and fear that further restrictions may be imposed at any time and that they will be

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<sup>4</sup> The joint statement is available at: <http://www.idf.il/1153-18596-en/Dover.aspx>.

<sup>5</sup> Article 33 of the Fourth Geneva Convention states that no protected person can be punished for an offence he or she has not personally committed, and prohibits collective penalties.

<sup>6</sup> See Protection Cluster Analytical Update, "Monitoring of access to land in the 'buffer zone' following the 21 November 2012 understanding", May 2013: [http://www.globalprotectioncluster.org/\\_assets/files/field\\_protection\\_clusters/Occupied\\_Palestinian/files/oPt\\_PC\\_Analytical\\_Update\\_Access\\_Land\\_in\\_ARA\\_05.2013\\_EN2013.pdf](http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Occupied_Palestinian/files/oPt_PC_Analytical_Update_Access_Land_in_ARA_05.2013_EN2013.pdf).

<sup>7</sup> Information from FAO and the Fishermen Syndicate of Gaza.

the ones penalized by the Israeli authorities for any escalation in rocket fire from the Gaza Strip. Many have been unable or unwilling to invest financially in order to make best use of increased access, knowing that this access may be limited at any time and their investments may be lost. Most farmers, for example, have planted low-yielding rain-fed crops in their land close to the Israel fence as it involved the least financial investment, as well as physical risk.

### 3. Incidents at sea

During the reporting period, the methods of enforcement of access restrictions at sea by the Israeli military continued to put at risk the lives, liberty and security of fishermen, and result in property destruction and damage. In comparison to the last reporting period, shooting incidents have more than doubled, incidents involving injuries have been recorded (compared to none in 2012), and the number of incidents in which equipment was damaged, destroyed or confiscated has increased 6-fold. The numbers of fishermen detained and boats confiscated to date in 2013 have decreased significantly from 2012, and the number of boats damaged or destroyed was comparable to the last reporting period.

95 shooting incidents at sea were recorded in this reporting period. Five fishermen were injured in the ARA at sea, one of them seriously. 13 fishermen were detained during the reporting period; all were released within 24 hours. 8 incidents were reported in which fishermen's boats were damaged, and 12 incidents in which equipment, including nets, were damaged, destroyed or confiscated. The confiscation of nets, for which there is no discernible security justification, has a particularly negative impact as it deprives fishermen of their catch and the nets are expensive to replace. 3 fishing boats were confiscated during the reporting period. Fishermen reported, on numerous occasions, a return to an old pattern of the Israeli naval forces pouring water into fishing boats using water hoses, damaging engines.

Protection Cluster members received consistent information that almost all of these incidents were reported to have occurred within the permitted fishing zone applicable at the time of the incident.

**Table 1: Comparison of incidents at sea in the current and previous reporting periods**

	<i>Shooting incidents</i>	<i>Fishermen injured</i>	<i>Fishermen detained</i>	<i>Boats damaged or destroyed</i>	<i>Boats confiscated</i>	<i>Equipment damaged, destroyed or confiscated (incidents)</i>
<i>1 Jan – 30 Jun 2013</i>	95	5	13	8	3	12 (affecting 19 fishermen)
<i>1 Jul – 31 Dec 2012</i>	43	0	42	9	7	2 (affecting 3 fishermen)
<i>1 Jan – 30 Jun 2012</i>	64	0	42	1	15	4 (affecting 5 fishermen)

On 23 May 2013, the office of the Legal Advisor for the Israeli Naval Forces responded by letter to an intervention by the Palestinian Centre for Human Rights (PCHR) for the return of 7 boats confiscated from April 2012 to February 2013. The letter states that the fishermen had been in prohibited areas when their boats were confiscated, and that in order to secure the release of the boats, they would need to sign an undertaking that they will not enter restricted areas at sea or allow their boats to be used for this purpose, and renounce the right to file any compensation claim in relation to the seizure of the boat. The letter also requires fishermen to coordinate directly with one of three companies in Israel for

the transportation of the boats from Ashdod to Kerem Shalom crossing: previously, fishermen had only been responsible for covering the costs from Kerem Shalom crossing. Further, the letter states that engines that exceed 25 horsepower will be removed from the boats, as they cannot enter Gaza without a special permit under the Israeli law on security exports; and fishermen will need to apply to the Ministry of Defence for such a permit. In practice, these requirements will make the return of confiscated boats prohibitively costly, particularly if they are returned without their engines.

#### 4. Incidents on land

Killings, injuries and incursions continue to be reported in the ARA on land. Compared to the last reporting period, there was a marked decrease in the number of killings and injuries, and a smaller decrease in the number of recorded shooting incidents. However, the number of incursions increased significantly.

Two men were killed in the ARA on land during the reporting period. One was a demonstrator killed 50 metres from the fence on 11 January 2013; he was not posing any apparent threat to Israeli soldiers that would justify the use of lethal force. The other fatality was a man killed on a farm approximately 1.2 km from the fence on 16 January 2013. Witnesses said that the shot came from the direction of the fence. 58 shooting incidents were recorded, injuring 31 people. 40 incursions were reported, mainly land-levelling operations, and all within 300 metres of the fence. There were no detentions in the ARA on land in this reporting period.

Of the 58 recorded shooting incidents, the majority (31 of 58) occurred within 300 metres of the fence, 6 occurred beyond 300 metres, and the distance was not known in 21 incidents (as no injuries resulted). Of the 6 shooting incidents that occurred beyond 300 metres from the fence, 4 were reported at 400 metres (resulted in the injury of two farmers), 1 was reported at 1,000 metres (resulting in the injury of a two year-old child), and 1 was reported at 1,200 metres (resulting in the killing of a farmer).

**Table 2: Comparison of incidents on land in the current and previous reporting periods**

	<i>Shooting incidents</i>	<i>Persons killed</i>	<i>Persons injured</i>	<i>Incursions</i>
<i>1 Jan – 30 Jun 2013</i>	58	2	31	40
<i>1 Jul – 31 Dec 2012</i>	69	5	105	24
<i>1 Jan – 30 Jun 2012</i>	44	5	82	27

Among those injured, non-farmers/‘outsiders’ to the ARA were at highest risk: the majority of the people injured in this reporting period were visitors who did not live or work regularly in the area. Three farmers and a herder were injured: however, of the three farmers injured, one was a day labourer (and thus an outsider to the area) and another was assisting a non-farmer who was shot. This marks a change from 2012, where most victims were farmers or herders.<sup>8</sup> The 31 people injured were mostly demonstrators, some of whom threw stones at soldiers stationed at the fence. However, they did not pose a threat of death or serious injury that would justify the use of live ammunition. Almost half of the demonstrators injured (7 of 18) were children, who were injured in North Gaza. The injured also

<sup>8</sup> Farmers and herders often reported that they believe the soldiers at the fence recognise them.

included recreational visitors, and people visiting the ARA for livelihood or work related business (such as gravel collectors and a municipal employee) who were posing no threat at the time they were injured.

**Table 3: Comparison of types of person injured on land in the last reporting period**

	<i>Farmer</i>	<i>Herder</i>	<i>Rubble or gravel collector</i>	<i>Resident</i>	<i>Demonstrator</i>	<i>Recreational visitor<sup>9</sup></i>	<i>Municipal employee</i>	<i>TOTAL</i>
<i>1 Jan – 30 Jun 2013</i>	3	1	3	1	16	6	1	31
<i>1 Jul – 31 Dec 2012</i>	5	1	5	24	67	3	0	105

During the reporting period, one child sustained injuries due to Explosive Remnants of War (ERW) on agricultural land 150 metres from the fence.<sup>10</sup> Farmers and herders in most governorates have voiced concern about the presence of ERWs on land they are newly accessing since the November understanding.<sup>11</sup> While visible explosive hazard items have largely been removed, those remaining below the soil surface continue to pose a protection risk for farmers and others accessing these areas.

## 5. Access to livelihoods and services

As noted above, the tightened restrictions imposed at sea from 21 March to 21 May 2013 coincided with the sardine fishing season, which is a major source of income for fishermen in the Gaza Strip. As a result of these punitive restrictions, fishermen's access to valuable fishing grounds was restricted during 7 weeks of the sardine season. The overall catch for the month of May amounted to 692 tons, which is higher than in 2012 (as fishers were able to fish up to 6 nm in the last 2 weeks of the sardine season in May), but which is significantly lower than the average catch during previous years when they were able to fish at 6 nm.

The use, or risk of use, of live fire against people entering the ARA on land undermines access to services, as well as the ability of humanitarian organisations to provide assistance.

During the reporting period, on 5 January 2013, one municipal worker was shot and injured around 150 metres of the fence north of Beit Hanoun, whilst unloading the municipality garbage truck. It was also reported that in May 2013, a Ministry worker was shot at while undertaking rehabilitation work around 500 metres from the fence in Beit Lahia (North Gaza governorate). Due to the risk of live fire from the Israeli military, many municipal workers are hesitant to enter the area a few hundred metres beyond the 300 metres prohibited access zone to provide services to residents. According to a survey conducted by the EWASH coalition in late 2012, respondents reported instances when municipal sewage trucks could not reach households in the ARA to empty cesspits (on which the majority depend due to lack of connection to the sewage network) due to live fire by the Israeli military.

In January 2013, it was reported that staff from an international NGO and donor agency were visiting Khuza'a area (Khan Younis governorate), at a distance of approximately 500 metres from the fence, when shots were fired in their direction. The team had been visiting the area to prepare an intervention

<sup>9</sup> Such as walkers, picnickers, bird hunters etc.

<sup>10</sup> A total of 10 incidents resulting in 25 ERW casualties (22 of them children) were recorded across the Gaza Strip during the period.

<sup>11</sup> See Protection Cluster Analytical Update of May 2013, above note 6.

to rehabilitate land and create roads serving areas newly accessed by farmers, and the incident resulted in the project being cancelled.<sup>12</sup>

There were no reported incidents of attacks on education or impeded access to education during the reporting period.

## 6. Accountability

Israel has the obligation to investigate deaths and injuries caused by its security forces in the ARA, in line with international standards of independence, impartiality, thoroughness, promptness and effectiveness, and to hold accountable those individuals found responsible. Human rights organisations in Gaza are not aware of any prosecution relating to the killing or injury of Palestinians in the ARA over the past 8 years.

Since 2005, the Palestinian Centre for Human Rights (PCHR) has submitted 128 complaints to the Military Advocate General of the Israeli military (MAG), calling for criminal investigations into killings, injuries and confiscation of boats in the ARA. Not one single criminal investigation has been opened into any of these cases. Responses received from the MAG stated that the cases were closed because the victim had violated the access restrictions, or because the use of force by the Israeli military was within its rules of engagement. During the reporting period, PCHR submitted 6 complaints to the MAG. On 17 June 2013, the MAG responded to a complaint filed on behalf of 4 fisherman in relation to an incident of shooting at a fishing boat without warning, arbitrary arrest and ill-treatment on 10 February 2013: the response stated that warnings were given and there was no breach of the rules of engagement, and the case was closed without a criminal investigation.

Israel is also obliged to provide victims with an effective remedy for harm suffered as a result of the actions of its military in the ARA. During the reporting period, PCHR and the Al Mezan Center for Human Rights submitted 8 notifications to the Israeli Ministry of Defence, alleging harm caused to individuals in the ARA as a result of the unlawful behaviour of the Israeli military. Filing such notifications within 60 days of an incident is a pre-requisite to be able to file cases in the Israeli civil court system seeking compensation for harm suffered as a result of actions of the Israeli military. PCHR and Al Mezan currently have 4 cases pending in the Israeli civil court system, seeking compensation for harm sustained in the ARA.

The Israeli legislation that regulates claims for compensation for wrongful acts committed by its agents provides an exemption for actions by the military that occurred during a 'military operation'.<sup>13</sup> Recent amendments to this law have widely expanded the definition of a 'military operation' and permit the court to dismiss such cases at the preliminary stages without the hearing of evidence.<sup>14</sup> Human rights organisations in Gaza are concerned that the court may dismiss pending ARA cases by reference to this exemption, even though they relate to incidents that occurred outside the context of the conduct of

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<sup>12</sup> Information provided by a Palestinian NGO working in the agricultural sector.

<sup>13</sup> *Torts Law (State Liability)*.

<sup>14</sup> A series of procedural requirements also constitute severe barriers preventing Palestinians in general and particularly Palestinians in Gaza from successfully pursuing civil claims against Israeli authorities in the Israeli civil court system. Several cases from Operation Cast Lead were dismissed in recent months either on the basis that the incident occurred during a 'military operation', without evidence being heard to contest the application of this exemption, or because of onerous procedural requirements. See Protection Cluster, "Update on accountability for reported violations of international law by Israel during the escalation of hostilities in Gaza and southern Israel between 14 and 21 November 2012", 21 May 2013, available at: [http://www.globalprotectioncluster.org/\\_assets/files/field\\_protection\\_clusters/Occupied\\_Palestinian/files/oPt\\_PC\\_Update\\_Accountability\\_Reported\\_IL\\_Violations\\_05.2013\\_EN.pdf](http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Occupied_Palestinian/files/oPt_PC_Update_Accountability_Reported_IL_Violations_05.2013_EN.pdf).

hostilities. To date in 2013, the State of Israel has filed a submission in at least one of the pending ARA cases invoking the 'military operation' exemption.<sup>15</sup>

## **7. The way forward**

### ***Lifting the blockade and access restrictions***

As the occupying power in the Gaza Strip, Israel must ensure the protection and well-being of the Palestinian population. The blockade imposed by Israel on the Gaza Strip must be lifted. Any restrictions imposed by Israel to address security concerns must be in conformity with international law. In particular, any restrictions on access to land and sea must be proportional to a specific security threat, and must not have a disproportionate effect on the lives, livelihoods and property of Palestinian civilians.

### ***Right to life and physical integrity***

The Government of Israel must ensure that actions of its security forces in enforcing the ARA are consistent with Israel's obligations under international human rights law. In particular, the use of force and firearms must be proportional and in conformity with international standards: firearms should only be used in extreme circumstances, such as self-defence or defence of others from death or serious injury, and only when all other less serious measures are insufficient.

### ***Accountability***

The Government of Israel must ensure the accountability of the members of its security forces. In particular, it should conduct credible investigations of violations of international law that meet international standards of independence, impartiality, thoroughness, promptness and effectiveness. A criminal investigation should be opened in all cases of killing and serious injury of civilians in the ARA. Victims should also be able to access effective remedies for harm suffered as a result of Israeli actions in the ARA. To this end, the numerous barriers that obstruct Palestinians in general and Gazans in particular from pursuing civil claims in Israeli courts must be removed.

### ***Right to livelihoods, services and assistance***

The Government of Israel should lift restrictions on Palestinian access to the sea and land in Gaza to the fullest extent possible and in line with its obligations under international law, to allow farmers and fishermen safe access to their land and livelihoods, and enhance the enjoyment of their human rights. Actions that appear designed to undermine the livelihoods of Palestinians, such as the confiscation of fishing nets, must cease.

Donors, non-governmental organisations and other stakeholders should consider providing support to Palestinians who are accessing new areas in the ARA on land and at sea.<sup>16</sup>

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<sup>15</sup> Information from the Al Mezan Center for Human Rights. Al Mezan is awaiting the court's decision on whether they can proceed to the merits of the case.

<sup>16</sup> The Protection Cluster is working with others within the humanitarian community to develop guidelines for protection sensitive programming in the ARA on land, in areas accessible since November 2012.