



Update on the Access Restricted Areas in the Gaza Strip

1 July to 31 December 2013

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, OXFAM, Ma'an Development Centre, Agricultural Development Association (PARC), Union of Agricultural Work Committees, UNICEF, OCHA 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.

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.

During the reporting period (1 July to 31 December 2013), the fishing limit continued to be restricted to 6 nautical miles (nm), denying access to the most productive fishing areas which start at approximately 8 nm from shore.¹ On land, as mentioned in the previous ARA Update (1 January to 30 June 2013),² public information and communications from Israeli authorities regarding access has been inconsistent. In general, Palestinians have been able to routinely access areas up to 300 metres from the fence between Gaza and Israel, although this access remained precarious due to ongoing shooting incidents. The continued prohibited access within 300 metres of the fence resulted in the loss of large parts of arable land.

The imposition of restrictions continued to impact negatively on the livelihoods of Palestinians in Gaza. The methods used by the Israeli military to enforce the access restrictions continued to result in killings, injuries, detention, and property destruction and damage. At sea, during the reporting period, there was a continuing pattern of significant increases in shooting incidents, injuries and incidents in which equipment was damaged, destroyed or confiscated, compared to 2012. However, the number of fishermen detained and boats damaged, destroyed or confiscated remained lower in comparison to 2012. On land, during the reporting period, there was a marked decrease in killings and injuries compared to 2012. It should be noted, however, that about half of all incidents of injuries and two of the three killings that occurred during this reporting period took place during the month of December, marking a dramatic increase in incidents at the end of the reporting period. The number of incursions on land continued to be significantly higher than during 2012.

¹ Information from FAO and the Fishermen Syndicate of Gaza.

² Available at

http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Occupied_Palestinian/files/oPt_PC_ARA_Update_January-June_2013_EN.pdf.

2. Changes in access at sea and on land

During the reporting period, the fishing limit imposed by Israel at sea remained at 6 nm. In addition, in at least one case, the Israeli military enforced a 1 nm "no fishing zone" in southern Gaza, along the border with Egypt, which had not previously been enforced. On 27 November, two fishermen (both below the age of 18) were detained by the Israeli Naval Forces about 700 metres off the new fishing harbour in Rafah, southern Gaza. The reason for the detention, according to what fishermen were informed during their interrogation by Israeli authorities, was that they were fishing within the "no fishing zone" of 1 nm between Gaza and Egypt. A similar "no fishing zone" of 1.5 nm in northern Gaza, between Gaza and Israel, had already been regularly enforced by the Israeli military, and continued to be enforced.

Further, access to fishing areas around Rafah was slightly limited due to tightened security measures imposed by the Egyptian military. In two incidents in August and September 2013, the Egyptian military shot live ammunition at Palestinians fishing close to the border with Egypt, injuring two fishermen, and also assaulted another fisherman. These incidents occurred within Palestinian waters.

On land, the position of the Israeli authorities regarding the scope of the imposed access restrictions remained unclear. In most areas across the Gaza Strip, farmers reported being able to access land up to 300 metres from the fence. However, fairly safe access was only possible during daylight hours (from around 7.00 to 15.00), which limited the working hours of farmers and farm workers, who would otherwise generally commence around 5.30 in the morning. Farmers reported that when they attempted to work outside of the aforementioned hours, warning shots were fired. Further, as mentioned below, six farmers were shot and injured by the Israeli military when working at distances further than 300 metres from the fence. In a few cases, farmers and others have been able to access areas within 300 metres of the fence (in particular north of al Boureij or east of Beit Hanoun and north of Beit Lahia).

Despite the slight easing of restrictions that followed the November 2012 ceasefire understanding,³ the increased access to sea and land remained limited and precarious. Farmers and fishermen continued to express concern about the fragility of increased access. Many were unable or unwilling to invest financially in order to make full use of the increased level of access, knowing that this access could be limited at any time and their investments possibly lost. Most farmers, for example, 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 resulted in property destruction and damage. A high number of shooting incidents continued to occur, at significantly increased levels compared to 2012. Incidents involving injuries also continued: it should be noted that no injuries were reported in 2012. The number of incidents in which equipment was damaged, destroyed or confiscated was slightly reduced in comparison with the previous reporting period,

³ 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, led to an easing of restrictions in the ARA. At sea, the accessible fishing zone increased from 3 nm to 6 nm, and on land, farmers were able to access land that they had not been able to access for years due to the Israeli military not enforcing restrictions as far or as frequently beyond 300 metres from the fence (see Protection Cluster ARA Update, 1 January to 30 June 2013).

although it remained clearly higher than during 2012. The numbers of fishermen detained and boats confiscated during the second half of 2013 continued to decrease, remaining lower than during 2012, and the number of boats damaged or destroyed halved in comparison to the first half of 2013. It should be noted, however, that the fuel crisis had a severe impact on the number of fishermen and the amount of times fishermen were able to go to sea, which might also have contributed to the decrease in incidents. As an example, in November 2013, only 370 out of 3,700 fishermen were able to go to sea.⁴

A total of 72 shooting incidents at sea were recorded in this reporting period. Five fishermen were injured in the ARA at sea. Nine fishermen were detained, and all were released within 24 hours. Four incidents were reported in which fishermen's boats were damaged, and eight incidents in which equipment, including nets, were damaged, destroyed or confiscated. Four fishing boats were confiscated during the reporting period. Almost all of these incidents reportedly occurred within the permitted fishing limits imposed by Israel, according to consistent information received by Protection Cluster members.

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

	<i>Shooting incidents⁵</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 Jul – 31 Dec 2013</i>	72	5	9 (plus 3 swimmers in northern Gaza)	4	4	8 (affecting at least 11 fishermen)
<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)

During the reporting period, the Al Mezan Center for Human Rights (Mezan) submitted two applications to the Israeli Naval Forces, requesting the return of two confiscated boats, while the Palestinian Centre for Human Rights (PCHR) submitted two applications requesting the return of four fishing boats. Responses related to the requests had not been received when this update was finalised.

4. Incidents on land

Killings, injuries and incursions continued to occur in the ARA on land during the reporting period. Compared to the previous reporting period, the number of killings and injuries remained roughly the same, and were lower than during 2012. It is, however, important to note that 14 of 29 incidents of injuries and two of three incidents of killings occurred during the month of December. The number of incursions was the same as during the previous reporting period, but remained significantly higher than in 2012.

Three unarmed Palestinians were killed in the ARA on land during the reporting period. On 30 September 2013, one man was shot and killed while reportedly trying to cross the fence into Israel near Beit Hanoun together with another man, who was arrested by the Israeli military in the same incident. The body was retrieved by an ambulance about 400 metres from the fence. Based on information

⁴ See Protection Cluster Monthly Update, November 2013.

⁵ It should be noted that the number of shooting incidents set out below is not a true reflection of the actual number of shooting incidents that take place in the ARA at sea, as many such incidents are not reported and thus not recorded.

collected, the person killed did not pose any apparent threat to Israeli soldiers that would justify the use of lethal force. On 20 December 2013, a scrap collector was killed near a solid waste dump site in Beit Hanoun, northern Gaza, on open land within 100 metres of the fence. On 24 December 2013, a three year-old girl was killed east of Maghazi camp in the Middle Area during shelling by Israeli tanks, a few hours after an Israeli worker had reportedly been killed by a Palestinian sniper. The two-storey building which was shelled is located in a populated area about 700 metres from the fence.

Of the recorded 29 incidents of injuries, 11 reportedly occurred within 100 metres of the fence, 11 occurred between 100 to 300 metres from the fence, and 7 were reported to have taken place beyond 300 metres from the fence. 40 incursions were reported, mainly land-levelling operations, and all occurred within 300 metres of the fence.

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

	<i>Shooting and shelling incidents⁶</i>	<i>Persons killed</i>	<i>Persons injured</i>	<i>Incursions</i>
<i>1 Jul – 31 Dec 2013</i>	45	3	29 (15 from Jul-Nov, and 14 in Dec)	40
<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 were at highest risk. The majority of those injured in this reporting period were again people who did not live or work in the area. 10 of the 29 people injured were demonstrators, some of whom had thrown stones at soldiers stationed at the fence. However, they did not, according to the information available, pose a threat of death or serious injury that would justify the use of live ammunition. Another three unarmed persons were reportedly trying to cross the fence into Israel when they were injured. The injured also included recreational visitors, and people visiting the ARA for livelihoods who were posing no threat at the time they were injured. Six farmers, twice as many as during the previous reporting period, were injured while working further than 300 metres from the fence.

Table 3: Comparison of types of person injured on land in the current and previous reporting periods

	<i>Farmer</i>	<i>Herder</i>	<i>Rubble or scrap collector</i>	<i>Resident</i>	<i>Municipal employee</i>	<i>Demonstrator or person approaching the fence</i>	<i>Recreational visitor⁷</i>	<i>TOTAL</i>
<i>1 Jul – 31 Dec 2013</i>	6	0	4	4	0	13	2	29
<i>1 Jan – 30 Jun 2013</i>	3	1	3	1	1	16	6	31
<i>1 Jul – 31 Dec 2012</i>	5	1	5	24	0	67	3	105

⁶ It should be noted that the number of shooting incidents is not a true reflection of the actual number of shooting incidents that take place in the ARA on land, as many such incidents are not reported and thus not recorded.

⁷ Such as walkers, picnickers, bird hunters etc.

During the reporting period, no accident involving Explosive Remnants of War (ERWs) occurred in the ARA. Still, a major concern remained in relation to buried ERWs that could be unearthed by farmers and others while working on the land.

5. Access to livelihoods and services

During the reporting period, the destruction of tunnels, used to smuggle goods including fuel from Egypt to Gaza, resulted in a shortage of affordable fuel. This impacted upon the ability of many fishermen to go out to sea and also led to higher production costs for farmers. According to the fishermen's association and information collected by FAO, fishing activities during several months of the reporting period were notably less than during the same periods in previous years, due to the fuel crisis.⁸

On land, due to continuing insecurity and uncertainty of access as a result of frequent shooting incidents and incursions, farmers were limited in the type of crops they were able or willing to grow. Farmers often opted for wheat or other rain-fed crops that generate limited income for the following reasons: (i) they require less ongoing work (reducing physical risk in accessing cultivated areas), (ii) they require less investment (reducing financial risk if destroyed), (iii) they are less prone to be levelled (as crops growing higher are at greater risk), (iv) they are less affected by infrastructure limitations such as lack of adequate water networks and lack of electricity, and (v) they require less use of equipment (as access with tractors and other equipment is limited). The lack of access to water resources was also reported as a major obstacle to supporting farmers to cultivate agricultural areas near the ARA.

The use, or risk of use, of live fire against people in or near the ARA on land continued to undermine access to services, as well as the ability of humanitarian organisations to provide assistance. According to the Agricultural Development Association (PARC), a number of local organisations were planning or implementing activities targeting areas within or adjacent to the ARA. However, the ongoing use of live fire posed additional barriers and risks for private contractors and owners of tractors engaged by these organisations, who put their physical security and property at risk while working in these areas. In Beit Hanoun, farmers reported that in December 2013, during the rehabilitation of agricultural land, the Israeli military opened live fire towards them twenty times from a watchtower.

During the reporting period, Oxfam conducted a survey with international NGOs (members of AIDA) regarding programming in or near the ARA on land. All seven respondents stated that working in these areas (particularly 300-600 metres from the fence) was important. The majority were already working in areas starting from 500 to 1,000 metres from the fence, but all perceived risk to staff as a main reason preventing more work in these areas, followed by risk to beneficiaries and to investments. In most cases, organisations had not modified their programming following the 21 November 2012 ceasefire agreement, but many were targeting people newly accessing land since November 2012. Most respondents did not consider that supporting programming closer to the fence would increase risk in an unacceptable manner.

There were no reported incidents of attacks on education or impeded access to education during the reporting period. During the reporting period, an assessment undertaken by Ma'an highlighted concerns about safe access to schools in and near the ARA on land. Parents and children raised concerns about the length and safety of travel for students living in the ARA to reach their schools. In

⁸ See Food Security Watch, West Bank and Gaza Strip, State of Palestine, July 2013, September 2013, October 2013.

some cases, parents stopped sending female students to school due to fear of physical insecurity, injury or death. Interviews with students revealed that some children walked up to two kilometres to school in the early morning, with the risk and fear of violent incidents by the Israeli military. Particularly vulnerable areas were the East Al Maghazi Area, especially Abu Saied, Abu Mandil and Abu Shada (located between 100 and 1,000 metres from the fence), where students were obliged to enrol in schools in Al Maghazi city due to the lack of educational and health services in the area; and also East Rafah, in Al Nahda and Sofa areas (located within a strip of 500 metres up to the fence).

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 eight years.

Since 2005, the Palestinian Centre for Human Rights (PCHR) has submitted 143 complaints to the Military Advocate General of the Israeli military (MAG), requesting 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 15 complaints to the MAG, to none of which a response had yet been received.

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 submitted 15 notifications and Mezan submitted four notifications to the Israeli Ministry of Defence, alleging harm caused to individuals in the ARA as a result of unlawful actions of the Israeli military (eight notifications related to fishermen at sea, and 11 notifications related to other individuals). 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 six cases pending in the Israeli civil court system, seeking compensation for harm sustained in the ARA.

The Israeli legislation (*Torts Law (State Liability)*) 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'. Recent amendments to this law have widely expanded the definition of a 'military operation' and give the court the discretion to dismiss such cases at the preliminary stages without the hearing of evidence.⁹ Human rights organisations in Gaza remain 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 hostilities.

⁹ A series of procedural requirements also constitute severe barriers to Palestinians, in particular those living in Gaza, pursuing civil claims against Israeli authorities in the Israeli civil court system. Several cases from Operation Cast Lead were dismissed in 2013, either on the basis that the incident occurred during a 'military operation' and 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.

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 particular those living in Gaza, 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.¹⁰

ENDS

¹⁰ 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.