



Palestinian Centre for Human Rights

Israeli policies severely affecting sources of livelihood in the Gaza Strip

Report presented to the UN Special Rapporteur on Extreme Poverty and Human Rights and the UN Special Rapporteur on the Right to Food

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Introduction

This report is presented to the UN Special Rapporteur on Extreme Poverty and Human Rights and the UN Special Rapporteur on the Right to Food, as a follow up on the Special Rapporteurs' request for further information.

On 4 February 2012, PCHR submitted an individual complaint to the UN Special Rapporteur on Extreme Poverty and Human Rights on behalf of Ramadan Abdel Bari (51).

On 15 October 2012, PCHR submitted an individual complaint to the UN Special Rapporteur on the Right to Food on behalf of Youssef Abu Mghasib (40).

In this follow-up report, PCHR wishes to provide the UN Special Rapporteurs with an overview of the situation facing farmers, fishermen, factory workers, and their dependents in the Gaza Strip. Besides presenting individual cases this report outlines how the different industries, which are the main sources of livelihood in Gaza, are affected by the unlawfully imposed travel and import restrictions, the ban on exports, and military unwarranted attacks carried out against civilians and their property. It is noted that these violations under international law take place in the context of many of other rights violations, including, but not limited to, an exclusion zone in the sea and Israel's closure of the Gaza Strip.

The closure, which constitutes a form of collective punishment of the civilians population, and is a violation of Article 33 of the Fourth Geneva Convention, can be regarded as a form of economic warfare waged against the civilians in Gaza. The closure has led to a protracted humanitarian crisis, which is partially compensated by international humanitarian aid. While the closure and unlawful military attacks continue, the Israeli legal system fails to hold accountable perpetrators of these international law violations. The failure of the Israeli legal system is outlined in the last chapter of this report.

PCHR believes that the situation in Palestine, as outlined in this follow-up report, is particularly relevant to the mandate of both Special Rapporteurs, and wishes to highlight a number of issues that require attention.

The information provided herein is based on PCHR's documentation of human rights violations in the Gaza Strip, as well as the free legal assistance PCHR's Legal Unit has provided to Palestinian civilians since the Centre's establishment in 1995.

PCHR wishes to express its willingness to cooperate with the Special Rapporteurs, and to provide any further information as required.

No safe access to sources of livelihood

Fishing industry: no waters to fish

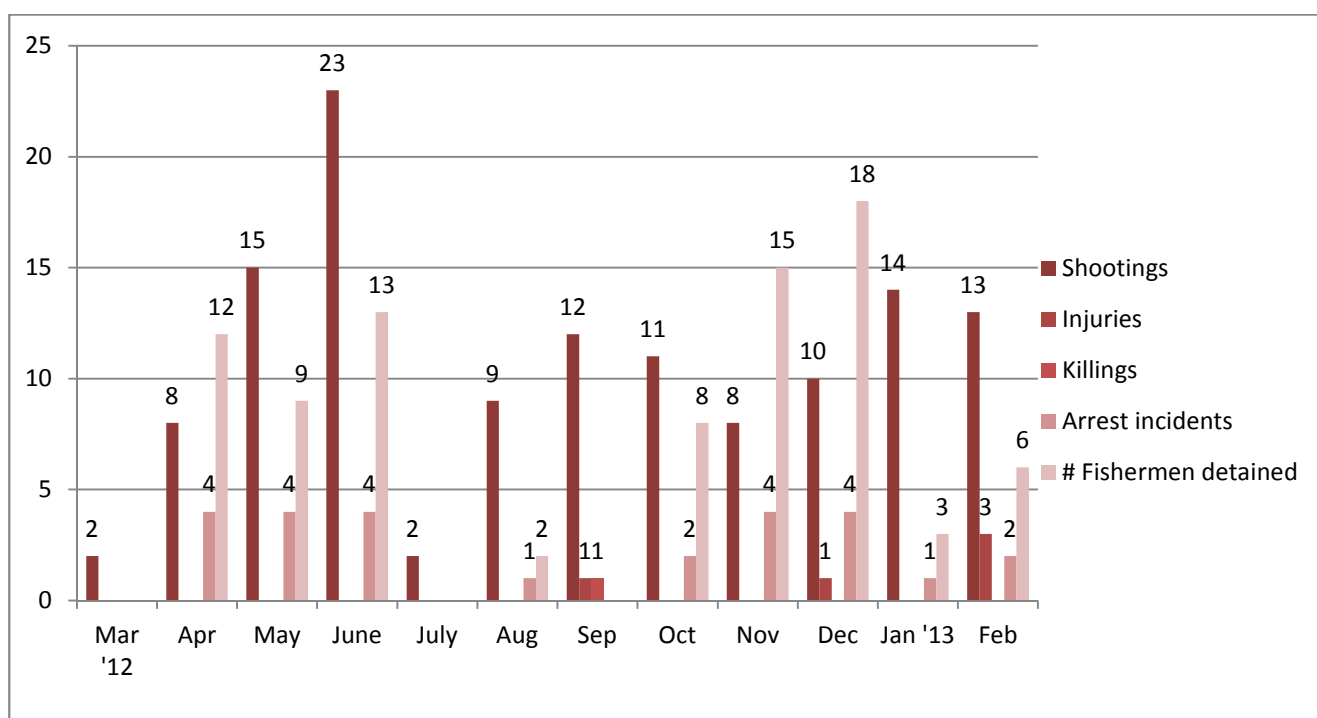
As the Occupying Power, Israel controls the Palestinian territorial waters off the coast of the Gaza Strip. In recent decades, it has increasingly and unilaterally limited the freedom of movement of Palestinian fishermen in their fishing waters, with a detrimental impact on the fishing industry. From December 2008 until November 2012, the Israeli navy imposed a **fishing limit** of 3 nautical miles off the coast. This limit was enforced through **attacks** with live ammunition, unlawful arrests, and other methods of intimidation, leading to injuries to fishermen, and damage and destruction of fishing boats and equipment. It should also be noted that Israeli naval attacks against Palestinian fishermen have often taken and continue to take place within the proclaimed fishing limit.

As part of the ceasefire that ended Israel's military offensive on the Gaza Strip in November 2012, and under the agreement that was concluded between Israel and Palestinian armed groups, fishermen were to be permitted to sail up to 6 nautical miles. However, since 21 March 2013, the Israeli forces have repeatedly re-reduced the fishing area allowed for Palestinian fishermen from 6 to 3 nautical miles.

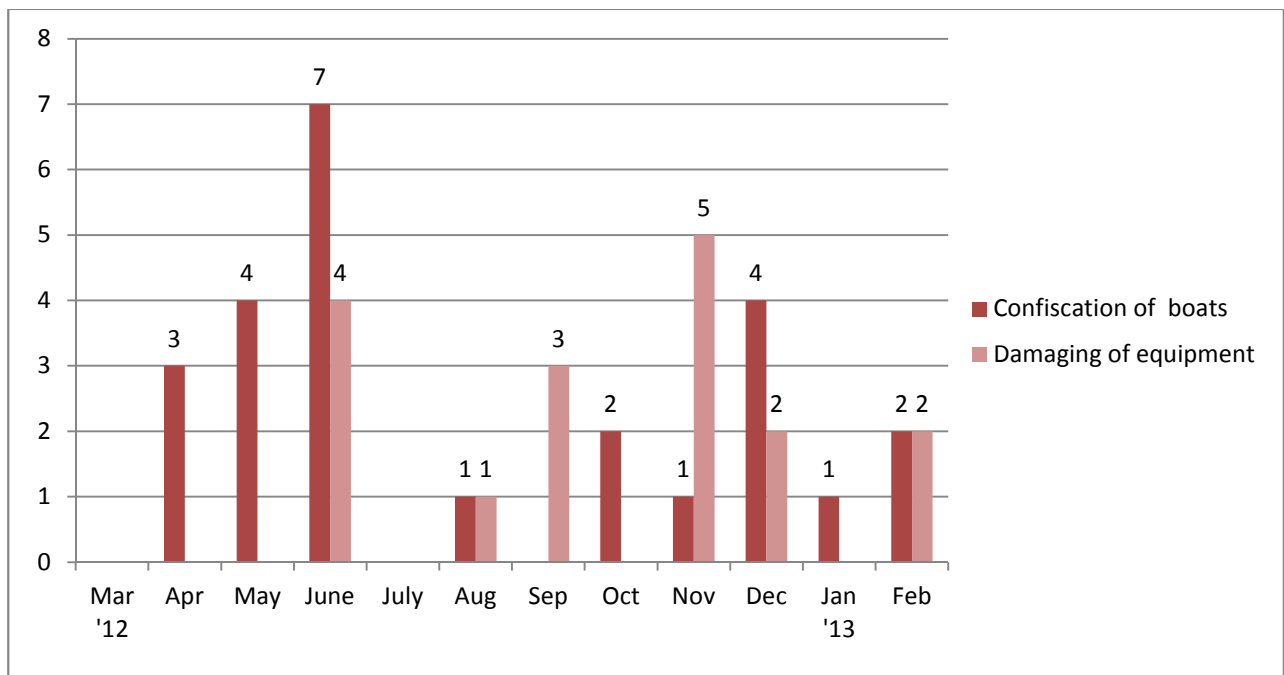
Attacks against fishermen

The fishermen in Gaza face continuous risk of military attacks by accessing their source of livelihood; the sea waters off the Gaza shore. These attacks are directed again both the fishermen themselves and their private property.

Israeli naval attacks against Palestinian fishermen in the Gaza Sea



Israeli naval attacks against fishermen's property in the Gaza Sea



During the Israeli forces' offensive on the Gaza Strip, they directly targeted the fishing sector, which inflicted extensive losses on it, including the destruction of fishing ports, boats, nets, and other fishing equipment. According to PCHR's documentation, the total number of attacks against the fishing industry (fishermen, fishing ports, infrastructure, equipment, etcetera) amounted to 78. As a result of these attacks, the fishing sector suffered from massive losses and destruction, which included nearly 80 boats, dozens of engines, and fishing equipment. Most of the Israeli attacks against the fishing sector were focused in Khan Younis, in the south of the Gaza Strip, and the Central Gaza Strip.

Impact on the fishing community in the Gaza Strip

Due to the attacks at sea, the fishing limits, and a **ban on exports**, the number of working fishermen has fallen from 10,000 in 1999 to 3,200 today, dramatically affecting the livelihoods of 39,000 dependents. The 3,200 fishermen who are still working provide for the livelihood of 19,200 dependents. Furthermore, 85% of all attacks targeting fishermen since the November ceasefire have taken place within 3 nautical miles off the Gaza coast.

Agricultural sector: no land to farm

The razing of farming land is part of a larger pattern of attacks carried out by the Israeli forces positioned on the border between the Gaza Strip and Israel. Israeli authorities have unilaterally and illegally established a so-called 'buffer zone' along the border, which officially extends 300 metres into the Gaza Strip. However, in reality, the 'buffer zone' can extend up to 1,500 metres from the fence, and is enforced with lethal force.

Attacks against farmers

In 2012, the Israeli forces positioned along the border carried out 96 shootings; 55 shellings; and 67 incursions. As a result of these activities 32 Palestinians died; 188 were injured; and 53 Palestinians were detained. Moreover, there were 15 incidents involving destruction of civilian properties, including 14 civilian homes. The Israeli forces also razed 77 dunums of land in the bufferzone during this period.

Violations of international law

Israel's attacks against Palestinian fishermen and farmers in the Gaza Strip, who do not pose any threat to the security of the Israeli naval forces, constitute a flagrant violation of international humanitarian and human rights law.

The direct targeting of a civilian object constitutes a war crime, as codified in Article 8(2)(b)(ii) of the Rome Statute of the International Criminal Court. Similarly, under Article 53 of the Fourth Geneva Convention, the destruction of private property is prohibited unless rendered absolutely necessary by military operations.

The fishing exclusion zone and the 'buffer zone' on land, maintained through arbitrary arrests and attacks, constitute a measure of collective punishment, which is prohibited under Article 33 of the Fourth Geneva Convention. The right to work, including in just and favourable conditions, is provided for under Article 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Moreover, denying farmers and fishermen access to their primary source of food and livelihood for many, the Israeli authorities have taken away their ability to feed and sustain themselves. This is a violation of their right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions, as codified under Article 11 of the ICESCR and Article 24(2)(c) of the Convention on the Rights of the Child.

CASE 1 Attacked at sea



Victim: Khaled Ibrahim Abdel Mo'ti al Habeel (47)

Profession: Fisherman

Date and place of birth: 26 October 1965, Gaza City

Civil status: Married. He lives in Gaza City together with his wife, their 9 children, and his ill, elderly mother.

I. Information regarding the incidents

On 31 August 2009, Khaled al Habeel's trawler was destroyed when it was shelled by an Israeli gunboat stationed opposite el-Waha Tourist Resort, in the west of Beit Lahiya in the northern Gaza Strip. Then, on 29 November 2011, al Habeel's son was arrested and his new fishing boat was confiscated by Israeli naval forces approximately 3 nautical miles off the coast of Khan Yunis, in the southern Gaza Strip.

Al Habeel recalls his memories of the incident on **31 August 2009**: "We left for the sea early, around 06:00. We went out on the trawler that belongs to me and my brothers. After a while we returned to the beach with our first catch of that day." Together with his son Mohammed Khaled al Habeel (23), brother Hassen al Habeel (38), nephew Mohammed Omer al Habeel (27), and colleague Ahmed al Araisha (22), he then offloaded the catch so that the boat could sail out for a second time.

With an empty trawler, al Habeel's sons, Mohammed Khaled (23) and Adham Khaled al Habeel (25), set sail again, together with their cousin Ahmed Majid al Habeel (26) and colleague Mohammed al Hissi (26).

While al Habeel was sitting down with other men in the fishermen's association, he heard the sound of shooting at sea. Al Habeel recalls: "I tried ringing my sons but they didn't pick up. I knew cousins of my sons were on other fishing boats in the area. I called them and they told me that my sons and the boat were safe. We could hear heavy shooting from the shore. Then there was a huge explosion and we saw fire. The next moment, my nephew called and said my boat had been shelled. All fishermen took their boats from the port and started sailing towards the burning boat. It had been bombed by an Israeli navy vessel. I quickly joined on my neighbours' small fishing boat."



Khaled al Habeel's burning trawler being towed into the Gaza fishing port, 31 August 2009

Al Habeel feared for the lives of his sons: "In that moment, all I could think about were my sons. I found Mohammed in the water, swimming. Adham was still on the boat and trying to put out the fire. We took both of them on our neighbour's boat. The soldiers were shooting and bullets flew over my head."

All men who were onboard al Habeel's shelled trawler were able to reach the shore safely, with the help of other fishermen. However, Adham sustained minor burns on his arms and legs when trying to put out the fire.

Al Habeel's wife, Najwa Fouad al Habeel (44), noticed a great change in their son Adham following the attack: "He was completely traumatized by the attack. He was quiet and he was struggling psychologically in the months after the attack."

The destruction of the boat has caused great economic and psychological hardship for the al Habeel family and others who depended on the boat for income. "We were able to recover the engine, crane, and part of the fishing nets from the boat," says al Habeel. "The body of the boat was completely destroyed. It was 20 by 6 metres. The damage amounted to 80,000

USD". Al Habeel had inherited the boat from his late father who had bought it 17 years earlier.

Fishing with the trawler was the main source of income for dozens of people. Al Habeel explains: "We are four brothers and all rely on the income generated by the work on the boat. Altogether, we are taking care of 41 children. Two of my sons work with us on the boat. They have kids too, as do the eight other fishermen who work with us on the boat."

In the period immediately after the attack, the family lived off aid and charity. "It was Ramadan time, so we received a lot of support from the community. I eventually was able to borrow money to get a new boat, but getting it ready for the sea is an immense investment: work needs to be done on the motor, frame, iron works, and you need to spend money on things like gas and ice. I was not able to pay for all the costs and am still 40,000 USD in debt with many people," say al Habeel.

After managing to get a new boat, al Habeel was attacked again on **29 November 2011**. At around 10:30, approximately 3 nautical miles off the coast of Khan Yunis, in the southern Gaza Strip, 3 Israeli gunboats and 2 smaller vessels approached a group of 6 trawlers, including the trawler belonging to Abu Habeel. His son and other workers were onboard. The navy ordered 3 of the 6 trawlers to leave the area. Soldiers then began shooting rubber bullets randomly towards the 3 remaining trawlers, injuring the left hand of Nihad Rajab Hissi (30), a captain of one of the boats. The Israeli navy arrested 12 fishermen, including Abu Habeel's son, Adham. Two of the trawlers and the fishing equipment onboard were confiscated. One man was left onboard the third trawler and permitted to return to Gaza. The 12 other fishermen were taken, handcuffed and blindfolded, to Ashdod Port. In detention, they were interrogated separately before they were released at Erez checkpoint at around 02:00 the following morning. "When my son and the others were sent back to Gaza, one of the Israeli officials who had held them said, "Now you're going back to the big prison". Our boat was eventually returned to us on 4 January, after we had been without it for 2 months. Several parts and pieces of equipment had been taken from the boat, amounting to a loss of between 2,000 and \$3,000 USD," says al Habeel.

There is little capacity in the community for people to support one other in times of financial hardship. Al Habeel shares his observation: "It has become impossible for people to lend each other money. They are no longer able to do so, and it is becoming more difficult for fishermen to get back on their feet after an attack because of this. The closure is destroying the fishing industry and makes everyone's life difficult. The navy shoots at fishermen every day, fishermen are arrested, and boats are destroyed and confiscated. We have become completely aid-dependent. My house is being repaired with foreign aid money because I cannot afford to pay for it myself."

He continues: "Before the attacks, our situation was much better and, in general, life was much better before the closure started and they closed off the sea. We are not like fishermen in another country; we cannot go out to our sea and fish freely. This is a form of economic warfare on the fishermen. The fishing area is not large enough and has become overfished. Especially in the last couple of months, the catch has been very poor. There are no fish. We have 20 nautical miles of sea water but we cannot access it."

II. Information related to the perpetrators

The Israeli Minister of Interior, Minister of Defence, and the Israeli Naval Forces are responsible for implementing the unlawful policy of closure on the Gaza Strip, including the limiting of freedom of movement in Palestinian territorial waters.

III. Legal action undertaken by the victim

On 12 October 2009, the Palestinian Centre for Human Rights (PCHR), in its capacity as the legal representative of al Habeel, submitted a written notification stating the intent to file a civil complaint to the Compensations Officer of the Ministry of Defense.

On 30 August 2011, PCHR filed the civil complaint on behalf of al Habeel in the Israeli civil court. In order to do so, PCHR, on behalf of the victim, was required by the court to pay court guarantees to the amount of 13,000 NIS.¹

On 2 November 2009, PCHR, also in the capacity of legal representative, submitted a criminal complaint to the Military Attorney General (MAG) for Operational Affairs, Southern Command, requesting a criminal investigation into the incident in which al Habeel's boat was attacked. In the same complaint, PCHR requested a response from the MAG within 45 days of the filing of the complaint.

Although PCHR sent reminder letters to both the Ministry of Defense and the MAG on 29 March 2011, to date no response has been received regarding either of the complaints.

Additionally, PCHR has made two legal interventions following incidents in which al Habeel's boat was confiscated. In both instances, after respectively one and two months of follow-up, the boat was eventually returned to Gaza. As a precondition for the boat's return, al Habeel had to sign a form stating that he would not violate any military order, or enter into a restricted area at sea, and that he would not file a complaint in the event that his boat was confiscated by the army.²

Al Habeel does not think that the complaints he filed will lead to a positive result: "We don't expect anything from our legal case, despite PCHR's work and follow-up on the file. What can we possibly expect from the Israeli authorities?"

¹ This amount is equivalent to more than \$3,600.

² The signing of this statement is a precondition known to be imposed on all fishermen who seek the return of their confiscated boats.

CASE 2 No land safe to farm



Victim: Youssef Ahmed Mohammed Abu Mghasib (41)

Profession: Farmer

Date and place of birth: 1 December 1971, Deir al Balah

Civil status: Married. He lives Wadi al Salqa, east of Deir al Balah (northern Gaza Strip) together with his wife, their 9 children, and his sister.

I. Information regarding the incident

On 12 and 17 June 2012, Israeli army bulldozers and tanks conducted incursions into the eastern side of Deir al Balah, in the central Gaza Strip, razing 43 dunums of farmland. Consequently, Youssef Abu Mghasib lost 10 dunums of crops and an irrigation network.

Youssef Abu Mghasib (41) owns 10 dunums of farmland in eastern Deir al Balah, in the central part of the Gaza Strip, just over 300 metres from the Gaza-Israeli border and beyond Israel's unilaterally and illegally imposed 'buffer zone'. Here, he grows olives and an assortment of fruits and vegetables to support his family. Abu Mghasib lives with his wife, 9 children, mother and sister in a home approximately 500 metres north-east of their farm and is the sole breadwinner for the family.



Youssef Ahmed Mohammed Abu Mghasib (41) next to his home in Deir al Balah

At around **08:30 on 12 June 2012**, approximately 8 Israeli army bulldozers and 4 or 5 tanks entered the farmlands east of Deir al Balah, central Gaza Strip, through 'Kissufim gate' in the border fence, east of the town. The army vehicles moved nearly 700 metres into the central Gaza Strip and fired several incendiary bombs, which burned a number of wheat fields.

The bulldozers and tanks destroyed 43 dunums of agricultural land, including 10 dunums belonging to Youssef Abu Mghasib, whose land was cultivated with olive trees, vegetables and fruit plants. His water irrigation network was also completely destroyed during the incident. Abu Mghasib recalls: "I was watering plants on my farm when I heard the sound of the bulldozers and tanks. I could also hear heavy shooting. I was really scared that something would happen to me, so I ran home."

According to PCHR's investigation, Israeli forces moved back to the border fence at approximately 16:15 on the same day, leaving irrigation networks, agricultural pools and lands which had been planted with olives, palms, grapes, vegetables, wheat and corn in ruins.



Youssef Abu Mghasib looking towards the east of Deir al Balah at his destroyed farm lands

In a second incident, at around **05:00 on 17 June 2012**, approximately 12 Israeli army bulldozers and 4 or 5 tanks entered the farmlands east of Deir al Balah, central Gaza Strip, through Bab al Nimr ('Tiger Gate') in the border fence, east of the town. The bulldozers conducted levelling operations, flattening what was left of the farmlands which had been previously destroyed on 12 June 2012, including the land of Youssef Abu Mghasib. The Israeli army vehicles exited through Bal al Nimr at around 14:00 on the same day.

The value of Abu Mghasib's destroyed land and equipment is estimated to be 20,000 USD. The bulldozing of the land has plunged the Abu Mghasib family into financial and emotional turmoil: "I felt completely destroyed when they bulldozed my farm. I had been cultivating that land since 2001, when my father died and left it to me. It was destroyed in the Second Intifada, but I had worked very hard to plant new olive trees and put in an irrigation system. [...] I used to feed my family from that land and sell the extra produce in the market. I currently have no other source of income and no other occupation. When the opportunity arises, I work on other people's farms to make a few shekels. Life has just been hard since 12 June. I had taken out a loan before the land was destroyed to rebuild the farm. Now, I have no way of paying back this loan. My neighbours gave me a bale of wheat because we have nothing to eat, but it will not feed us forever. It pains me that I cannot even afford to buy my children school bags."

He continues: "I am struggling to find food and to clothe my family. It is a lot of pressure and I have a lot of anger and sadness inside me. I just think about providing for my family all day. [...] I have nowhere else to go and I know that, even if I plant again, Israel will come and take it away. Every day is worse than the one before. What is there left to hope for?"

Abu Mghasib expresses fear of being shot while farming on his land. In his experience, it is especially dangerous to move within the area up to 500 metres from the border fence: "There is no safety here. The risk of shooting is especially high when Israeli army vehicles move

along the border. We never really know when there will be shooting. Sometimes it happens suddenly, for no reason, while we are farming.”

Abu Mghasib has planted a small amount of zucchini seedlings on part of his land. He still owes the agricultural store the money for the seedlings and hopes to pay off this debt when he is able to harvest some of the zucchini. He has consciously chosen not to replant trees on his land: “I can’t plant trees anymore. There is a high risk that the army will come to destroy them because they don’t want anything to block their view.”

II. Information related to the perpetrators

In both instances, the perpetrators are believed to be members of the Israeli Defence Forces (IDF) Southern Command, which is positioned on the armistice line, between the Gaza Strip and Israel, to the east of Deir al-Balah. PCHR is unable to further specify the rank and functions of the individuals involved in the destruction of Abu Mghasib’s farming land.

III. Legal action undertaken by the victim

No complaint was filed by the Abu Mghasib family. Their stated reason is that complaints submitted to the Israeli legal system are not fairly considered due to structural impunity. The Abu Mghasib family does not believe that filing a civil or criminal complaint will yield any result.

To date, no one has been held accountable for the attacks against and destruction of farming land, agricultural establishments, and houses in the extended ‘buffer zone’ by Israel’s forces.

Despite numerous civil and criminal complaints filed by PCHR on behalf of victims of Israel’s attacks in the border areas, repeated calls for accountability, and strong international criticism, Israel continues to illegally enforce the ‘buffer zone’ in violation of international human rights law.

Banned from exporting

In June 2007, following the Hamas takeover in the Gaza Strip, Israel imposed an absolute closure on the territory, declaring it a “hostile entity”. Since that time, the 1.7 million individuals living in the Gaza Strip have been cut off from the outside world.

As part of this closure, Israel has imposed a total ban on the exports of the Gaza Strip’s products, destroying the economic sector and generating dependency. Only limited quantities of two goods, flowers and strawberries, were allowed to be sporadically exported thanks to specific international mediation.³ 95% of the 3,900 industrial establishments in the Gaza Strip have closed or suspended their work due to the restrictions placed on the import of raw materials and as a result of the inability to export their products. The remaining 5% work at 20-50% of their capacity. The decimation of Gaza’s industry has resulted in the loss of between 100,000-120,000 jobs. After the military offensive of December 2008-January 2009, only 1,878 individuals, of 65,000 employed prior to the current closure, continue to be employed in the industrial sector in Gaza.⁴

Before the imposition of the total closure in 2007, the Gaza Strip produced almost 400,000 tons of agricultural products annually, one third of which was intended for export. As a direct result of no longer being able to export their products to markets in the West Bank, Israel and Europe, farmers in Gaza Strip have reported a 40% decrease in income. In 2008 alone, they lost an estimate US\$6.8 million.⁵

Violations of international law

The closure of the Gaza Strip, implemented by Israel as a form of ‘economic warfare,’⁶ constitutes collective punishment, and is explicitly prohibited under Article 33 of the Fourth Geneva Convention. The closure regime also violates a number of provisions of international law, including, for example, the obligation under Article 43 of the Hague Regulations to maintain the material conditions under which the occupied population lives. Given, inter alia, the resulting poverty in the Gaza Strip and the foreign aid needed to support the population, it is clear that Israel’s policy also violates its obligation under international human rights law to ensure the progressive realisation of economic, social and cultural rights in the Gaza Strip.

³ See also PCHR’s Closure Reports, available at www.pchrgaza.org

⁴ “Illegal closure of the Gaza Strip: collective punishment of the civilian population”, PCHR, 2010, page 7-8.

⁵ Idem, page 92.

⁶ Al-Bassiouni v. The Prime Minister, HCJ 9132/07 (not published), 30 January 2008, from the State’s response from 1 November 2007, para. 44.

CASE 3 Cut off from the market



Victim: Hatem Khdeir

Profession: Farmer

Date and place of birth: 1 December 1971, Deir al Balah

Civil status: Married. Hatem Khdeir (41) lives in Beit Lahiya (northern Gaza Strip) together with his wife, their 9 children (6 boys and 3 girls), and his parents.

I. Information regarding the incident

Following nearly two decades of increasing movement restrictions imposed on people and goods travelling into or out of the Gaza Strip, Israel declared the Gaza Strip a 'hostile entity' in June 2007, after which an illegal policy of closure was put in place. Already existing movement restrictions became near absolute, barring exports from and severely limiting imports to Gaza. Farmers became unable to export their produce, causing them great financial hardship. Hatem Khdeir, a farmer in Beit Lahiya, in the northern Gaza Strip, is one of many working in the agricultural sector who have become impoverished during years of closure.

"Under the closure, we face many difficulties," says Hatem Khdeir.

He recalls how export restrictions were gradually imposed by Israel on farmers in the Gaza Strip: "Until 2002, we were able to export. But since then, only very small amounts of our products, mainly strawberries and flowers, have been permitted by Israel to be exported,

even though the strawberry production alone amounts to 180,000 tonnes per year. In **2006**, we exported bell peppers, tomatoes, and peppers to the Netherlands.”

In 2007, Khdeir and a number of his colleagues became accredited to farm under the GAP scheme, an internationally recognized standard of farming. Khdeir says: “We were taught how to meet the GAP criteria. Being GAP-accredited means we are, in theory, allowed to access the markets of Europe and Israel.”

At the beginning of each year, GAP tells the agricultural agencies what they can export in the following harvesting season. “We then divide the total amount amongst ourselves so that we share in the export,” says Khdeir.

Despite anticipated export to and via Israel, farmers in Gaza face serious issues every year once harvest season comes. Khdeir explains: “In **2008**, only 5 tonnes were allowed to be exported by all Gaza farmers together, a meagre average of 100 kilos per farmer. In **2011** we were only able to export 10 out of the 160 tonnes produced for export. **Last year**, 260 farmers in Gaza, including myself, were told we would be allowed to export in 2013, as we met the requirements in terms of quality of our produce. We were promised we could – in total - export 1,200 tonnes following the 2013 harvest. We all planted our fields and worked hard to deliver good products. However, only 80 tonnes were allowed to be exported. I planted 20 tonnes and was allowed to export 20 kilos only. The harvest and exports season normally lasts for approximately 4 months. This year, Israel blocked our exports after one week of harvesting and exporting.”

The limited imports under the Israeli closure pose additional challenges to the work of farmers in Gaza. “There is a shortage of many goods, including fuel, electricity, and fertiliser. We cannot bring the supplies that we need into Gaza. We get some supplies that have been smuggled in through the tunnels from Egypt, but that is not enough. The fertiliser and seeds that come into Gaza from Israel are of very bad quality, so we don’t use them. The fertiliser we use on our lands is brought in via the tunnels but it is much more expensive than it would be if it came from regular import. The shortages in fuel, fertiliser, and plastic covers, cause a loss of approximately 60% in production” says Khdeir.

In recent years, Khdeir has put himself into increasing debt each year, in the hope that he would be able to export. Khdeir explains: “It costs 12,000 NIS, around 3,000 USD, to plant a dunum of strawberries. What we cannot export, we have to sell in the local market, for less than 1,000 USD. I am forced to sell my strawberries for almost nothing, pushing me further and further into debt. This year I decided not to plant strawberries. It is too expensive. In addition, I owe 60,000 NIS, as much as 16,000 USD, to agricultural associations who form the contacting party between farmers in Gaza and the export companies in Israel. They provide us with agricultural supplies needed for production. Following the harvest and export season, we have to pay for what they gave us. I used to plant 80 dunums of land each year. Now I limit myself to 20 dunums.”

From **14 to 21 November 2012**, Israel carried out a military offensive in the Gaza Strip. Due to ongoing attacks, farmers were unable to tend their lands, leading to additional losses for the agricultural sector. Khdeir says: “We were not able to come here to water the plants and

remove the plastic covers when it was needed. Half of our crop was ruined as a result, including tomatoes, cucumbers, carrots, potatoes, cabbage, watermelon, and garlic."

Khdeir rents the land that he farms, which is located approximately 700 metres away from the northern Gaza border with Israel. "I cannot afford the rent of the land but luckily the owner is lenient. I depend on humanitarian aid, mostly food assistance. Some associations come and bring us farming equipment, even though that is not what we are in need of; we need the borders to be opened. We want to work and be independent."

Khdeir is surrounded by other farmers, some of them relatives, who are facing similar problems due to the Israeli-imposed closure. "I am taking care of 12 people; my wife, our 9 children and both my mother and my father. Others who work in the lands here also have many people who depend on them for income. Their story is the same as mine."



Among the crops they work on (standing l-r): Akram Abu Ghousa (37), father of 7 children, Hatem Khdeir (41), father of 9 children, and (sitting l-r): Hatem Abu Halima (28), father of 5 children, and Mohammed Khdeir (30), father of 6 children.

Even though he is strongly attached to Gaza and the land, he and four other farmers have decided to look for a better life elsewhere: "By June, we want to have left Gaza. We are going to travel to Algeria and farm there. We know many Palestinians from Gaza who have already moved there and are farming successfully, with support from the Algerian government. First, the five of us will travel alone. Once we have created a stable life in Algeria, we will bring our families over. We are going there because we want better lives for our children. Migration is the only option. I can't farm and there is no alternative work either," says Khdeir.



View towards the north from Khdeir's farm lands in Beit Lahiya

Besides obstacles related to the viability of their farming, Khdeir and his colleagues also face violence from Israeli forces who are positioned at the border fence between Israel and Gaza. Khdeir says: "We are not safe in our lands. Farmers are shot while tending to their land every year. There are holes in our plastic covers and the nylon shelters from the bullets and tank shell shrapnel. Some days, we have crawl to get out of this place. We can be shot at any given moment, as has happened to many farmers in the past."

II. Information related to the perpetrators

The Israeli military continues to implement the closure of the Gaza Strip, in violation of international law.

The perpetrators of attacks against Hatem Khteir's lands are believed to be members of the Israeli Forces (IDF) Southern Command, which is positioned on the armistice line, between the Gaza Strip and Israel. PCHR is unable to further specify the rank and



Bullet and shrapnel holes in the cover of the sitting area in Khdeir's farmland are evidence of previous attacks by Israeli forces located on the border north of Beit Lahiya

functions of the individuals involved in attacks on Khteir's land.

III. Legal action undertaken by the victim

Khdeir did not file a legal complaint with the Israeli authorities regarding the ban on exports. He believes his case will not be duly considered: "Who can we complain to? If there is no justice for our people who have been killed, then how would we be able to claim our rights?"

Large-scale destruction of production facilities

The Gaza Strip is one of most densely populated areas in the world. However, in its military operations targeting sites in the Gaza Strip, Israeli forces often violate the principles of distinction and proportionality, leading to civilian losses of life and property. PCHR has documented many cases in which production facilities were directly targeted, or partially or completely destroyed as a result of Israeli military attacks.

During ‘Operation Cast Lead’ the targeting of production facilities was especially apparent. The UN Fact Finding Mission on the Gaza Conflict⁷, led by Justice Richard Goldstone, concluded that: “The attacks on industrial facilities, food production and water infrastructure investigated by the Mission are part of a broader pattern of destruction, which includes the destruction of the only cement-packaging plant in Gaza (the Atta Abu Jubbah plant), the Abu Eida factories for ready-mix concrete, further chicken farms and the al-Wadiyah Group’s food and drinks factories. The facts ascertained by the Mission indicate that there was a deliberate and systematic policy on the part of the Israeli armed forces to target industrial sites and water installations.”⁸

As the Occupying Power of the Gaza Strip, Israel is compelled to observe its obligations under the international human rights treaties and covenants it has signed and ratified. By carrying out attacks like these in densely populated areas in the Gaza Strip and causing the destruction of civilian homes, Israel violates the right to adequate housing, under Article 11(1) of the International Covenant on Economic, Social and Cultural Rights.

Moreover, under international humanitarian law, as per Article 53 of the Fourth Geneva Convention 1949, any destruction by the Occupying Power [in this case, Israel] of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations. Additionally, Article 147 of the Fourth Geneva Convention says that such extensive destruction of property protected by the Convention which cannot be justified by military necessity is a grave breach of international humanitarian law. Article 8(2)(b)(iv) of the Rome Statute of the International Criminal Court states that intentionally launching an attack in the knowledge that such an attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated is a war crime.

⁷ The UN Fact Finding Mission on the Gaza Conflict was appointed by the UN Human Rights Council with the mandate “to investigate all violations of international human rights law and humanitarian law” committed in the context of the military operations in Gaza during the period from 27 December 2008 and 18 January 2009 “whether before, during or after”, A/HRC/12/48 of 25 September 2009.

⁸ Report of the UN Fact Finding Mission on the Gaza Conflict, A/HRC/12/48, par. 54.

CASE 4 Destruction of livestock



Victim: Hamdan Hamdi Ibrahim al Sawafiri

Profession: Poultry farmer

Date and place of birth: 15 October 1951, Gaza

Civil status: Married. He has 11 children; 8 daughters and 3 sons. He lives in Zeitoun area, southern Gaza, together with his wife and 9 of their children. They live in his brother's house, since their house was destroyed during 'Operation Cast Lead'.

I. Information regarding the incident

From 27 December 2008 until 18 January 2009, Israel carried out a large-scale military offensive against the Gaza Strip, codenamed 'Operation Cast Lead', in which 1,419 Palestinians were killed, 1,167 (82.2%) of whom were civilians. During the offensive, a ground invasion was carried out in the Zeitoun neighbourhood in southern Gaza. Dozens of homes and other civilian structures, including the poultry farm and home of Hamdan al Sawafiri, were completely destroyed.

"I remember it was **Saturday 3 January 2009**. The army was in the area and the Samouni family in our street had been attacked. Many people were killed. Then, the International Committee of the Red Cross came and made sure we left the area. Everyone feared for his life," recalls al Sawafiri.



Hamdan Hamdi Ibrahim al Sawafiri (61) points at the destroyed materials that remain of his poultry farm

“Me and my family moved to my brother’s house in the Burham area of Zeitoun. We stayed there until the war ended on 18 January. Immediately after that we went back to our house, but all we found was rubble. The entire area had been bombed and bulldozed. Everything was flattened, including my 11,000 chickens. They had been squashed by bulldozers. We had to dig a big hole in the ground and bury the chickens in there, to prevent diseases.”

To date, al Sawafiri and his family are living with his brother. “We live by the grace of God. We are still waiting for a new house. Other people have rebuilt part of the poultry farm on our land and I work for them. The little money I get from that work, I use to pay our debts.”

Many people lost their source of income when the poultry farm was destroyed. “I used to have a few guys working on the farm. Eight others took care of the transport and selling of the eggs.” All in all, this provided income for around 70-80 people.

Al Sawafiri is unable to rebuild his life without the income of the farm. He says: “Life is very difficult and I am in a lot of debt. The electricity company comes here every month. I owe them 20,000 NIS. My costs are divided between paying off debts and paying daily living costs. We survive because people let me extend my loans.”

“My son studies law at Al Azhar University. I went to the university and gave them papers that show we had lost everything during the war. Then they granted my son a grant to study in the university. I only pay a small amount of money for his classes.”



The place where Hamdan Sawafiri's house once stood, now overgrown with weeds

Al Sawafiri longs to return to the time before the war. "We used to have a good life and did not worry about money. I used to have an automated farm with cages for the chickens. We bred chickens, and had a large egg production. The farm consisted of three parts and each part of the farm cost around 100,000 Jordanian Dinars (JD) to build. I don't have money to rebuild that. One chicken costs 30 NIS."

The UN Fact Finding Mission concluded that: "The systematic destruction along with the large numbers of killings of civilians suggest premeditation and a high level of planning."⁹ Furthermore, it found that: "the destruction of the land and farms in the area was not justified by the pursuit of any military objective. The Israeli armed forces that arrived took control of the area within a matter of hours. They remained there until 18 January. The destruction of the land was not necessary to move the tanks or equipment or gain any particular visual advantage. (...) The destruction of the farms appears to have been wanton and not militarily necessary. Not only were the coops with the chickens destroyed, but all of the plant and machinery of the farms as well. From the facts ascertained by it, the Mission finds that the Sawafeary chicken farms, the 31,000 chickens and the plant and material necessary for the business were systematically and deliberately destroyed, and that this constituted a deliberate act of wanton destruction not justified by any military necessity."¹⁰

II. Information related to the perpetrators

The Legal Unit did not have any specific information related to the perpetrators. They have filed the complaint against the Israeli Defence Forces.

⁹ Report of the UN Fact Finding Mission on the Gaza Conflict, A/HRC/12/48, par. 956

¹⁰ Idem, par. 957-960.

III. Legal action undertaken by the victim

On 15 July 2009, PCHR, in its capacity as the legal representative of al Sawafiri, submitted a written notification, stating the intent to file a civil complaint, to the Compensations Officer of the Ministry of Defense.

On 3 March 2009, PCHR, in the same capacity of legal representative, submitted a criminal complaint to the Military Attorney General (MAG) for Operational Affairs, Southern Command, requesting a criminal investigation into the incident in which al Sawafiri's chicken farm and home were destroyed. In the same complaint, PCHR requested a response from the MAG within 45 days of the filing of the complaint.

Although reminder letters were sent to both the Ministry of Defense and the MAG, to date no response has been received regarding either of the complaints.

Al Sawafiri does not hold out hope for a positive outcome to his complaint in the Israeli legal system: "It has been four years and we still are not seeing any justice. I don't expect anything from it in the Israeli system. Our last hope comes from our trust in God."

The UN Fact Finding Mission "addressed questions to the Government of Israel with regard to the military advantage pursued in attacking Mr. Sawafeary's chicken farms, but received no reply."¹¹

¹¹ Report of the UN Fact Finding Mission on the Gaza Conflict, A/HRC/12/48, par. 942.

CASE 5 Targeting of factories



Victim: Mohammed Hashem Rabbah al Hatou (24)

Profession: Factory owner (plastic water tanks)

Date and place of birth: 18 June 1988, Gaza City

Civil status: Married. Together with his wife and their 3 children (2 boys and 1 girl), he lives near the factory in the Tuffah neighbourhood, Gaza City.

I. Information regarding the incident

On 9 February 2011, shortly after midnight, an Israel F16 dropped a missile on a factory in Gaza City's Tuffah neighbourhood. The factory, owned by Mohammed al Hatou, was completely destroyed, and neighbouring buildings were damaged.

"I woke up one morning and decided I wanted to set up a factory," says Mohammed al Hatou as he outlines how he started a factory that produces plastic water tanks.

He continues: "I worked very hard and saved money for years in order to get this factory established. I saved money to buy the raw materials that are needed for the production of plastic water tanks. I started building the factory itself from February 2010 onwards."

In early February 2011, the factory was nearly ready to start production: "The construction of the factory had just been completed and the factory was almost ready to start operating. Everything was there; the production machines, offices, high walls. The factory was only one month away from operating."

Then, on **9 February 2011**, an Israeli F16 fired a missile at the factory building, destroying it. Al Hatou remembers: “When I saw the destruction of my factory, I cried like a little boy. I put all I had into it, exhausted myself. After the attack, I found parts and pieces of the factory everywhere. Everything was broken, including the machinery, the forklift, a car, and the mould for the tanks. Two ovens had been thrown through the air by the blast and fallen on the premises of a nearby school. Neighbouring buildings were damaged, including a warehouse of the Ministry of Health, and a house.”

Al Hatou had put immense investments into the factory and, until now, is struggling to deal with the financial losses: “I invested 250,000 USD in establishing this factory. That is an enormous amount of money, especially in Gaza. It was all gone in one single blast. I had to use all the savings that were intended for buying raw materials on making repairs to the factory. The machinery in the factory was rented, so when that was destroyed, I ended up having to pay for the rent as well as their total cost.”

Due to the closure imposed on the Gaza Strip, al Hatou faces obstacles in importing the necessary supplies. He explains: “I import raw materials for a very high price from Saudi Arabia, and bring it in via Jordan and Israel. If we were able to bring materials in from the West Bank, we would get leeway in making payments. The West Bank suppliers would wait for the money, until we could to pay. If there was no closure, the import of raw materials would be cheaper.”



Mohammed al Hatou walks past some remnants of his factory

By six months after the attack, some repairs had been made to the factory: “By July 2011, we had rebuilt half of the factory and started part of our work,” says al Hatou. “Even though we have done a lot of reconstruction work on it, the factory still looks a lot different than before. It used to have a roof over the entire surface. That is gone, and only part of the factory is

covered, exposing us to the sun. It is very hard to work in extreme heat, under bright sunshine.”

Due to al Hatou’s financial problems, he is not able to operate the factory at full capacity, which has negative consequences for all those who work there: “Before the bombing, we planned that the factory would operate on a daily basis. Now the work is intermittent, depending on how much raw materials I can buy. The factory is in operation approximately one week per month. At the moment, we are making losses on the production.”

Al Hatou continues: “The workers are suffering financially because we are not able to operate the factory at full capacity. They all have children to take care of. We have between 7 and 8 people working in the factory when it is operating, including 2 of my brothers. Additionally, 2 guys work with us as drivers.”

In addition to his work in the factory, al Hatou has taken up other work to supplement his family income: “The factory does not provide enough income for the people who work in it. I cannot provide for my family with an income from this factory, so I have other work too, such as trade in iron and aluminium.”



Remnants of Mohammed al Hatou’s factory, including a forklift

Al Hatou’s strong desire to make the factory succeed motivates him to persevere in his attempts to get the factory up to full production: “I do not want to close down the factory, especially after having built up a reputation, and a network of customers. I don’t want it to go to waste. We have to produce.”



Water tanks produced in al Hatou's factory

II. Information related to the perpetrators

The airstrike that destroyed Mohammed Hashem Rabbah al Hatou's factory was carried out by members of the Israeli Air Force. PCHR is unable to further specify the ranks and functions of the individuals involved in this specific attack.

III. Legal action undertaken by the victim

On 20 March 2011, PCHR, in its capacity as the legal representative of al Hatou, submitted a written notification, stating the intent to file a civil complaint, to the Compensations Officer of the Ministry of Defense.

On 28 March 2011, PCHR received a response from the Ministry of Defense, stating that the office would look into the case, and that PCHR would be informed of the outcome of the inquiry.

PCHR sent a reminder letter regarding the civil complaint on 7 July 2011. However, to date, no response regarding the complaint has been received.

On 4 April 2011, PCHR, also in the capacity of legal representative, submitted a criminal complaint to the Military Attorney General (MAG) for Operational Affairs, Southern Command, requesting a criminal investigation into the incident in which al Hatou's factory was destroyed. In the same complaint, PCHR requested a response from the MAG within 45 days of the filing of the complaint.

On 5 May 2011, PCHR received a response from the MAG, stating that he had received the criminal complaint, that the case would be looked into, and that PCHR would be informed of the outcome of the inquiry. Then, on 31 October 2012, the MAG sent PCHR a communication stating that he had dismissed the complaint noting that no violations of international humanitarian law or open fire regulations had been committed.

Al Hatou has little hope of being compensated for the destruction of his factory: "Filing a complaint through PCHR was something that was worth trying. But I don't have any hope that I will be compensated and am not waiting for the money. When Israel loses international support, my claim might be successful."

CASE 6 Destruction of home and livelihood



Victim: Mahmoud Nimee al Bahtiti

Profession: Garage owner

Date and place of birth: 1 February 1950, Gaza City

Civil status: Married. Together with his wife, their 7 children, and 18 other relatives, he lives in the Tuffah neighbourhood, above his garage shop.

I. Information regarding the incident

On 14 November 2012, the Israeli army launched a military offensive, codenamed 'Operation Pillar of Defence', on the Gaza Strip. This operation lasted for 8 days and concluded with a ceasefire agreement on 21 November 2012. During the offensive, Israeli Air Forces carried out around 1,350 airstrikes, resulting in the damage and destruction of numerous civilian buildings and properties. On 16 November 2012, at 05:30 and 21:30, Israeli F16s bombed the Civil Department of the Ministry of Interior in the Tel al Hawa neighbourhood in Gaza City. During these airstrikes, the garage shop of Mahmoud al Bahtiti was destroyed, while his home was severely damaged.

The building of the Civil Department of the Ministry of Interior is located in a densely-populated residential area in Gaza, close to many homes, 2 schools, and a hospital. The attacks on 16 November, especially the second one, caused immense damage and destruction to the surrounding civilian properties including civilian homes.

Mahmoud Nimee al Bahtiti's 2-storey building, which is located just over 5 metres away from the Ministry of Interior's building, was severely damaged in these Israeli airstrikes. Al Bahtiti lives in the building with 26 relatives, and has a family-owned automobile workshop

on the ground floor. The entire building was extensively damaged in the attack. Part of the al Bahtiti family has had to seek shelter elsewhere due to the extensive damage caused to their home.

In the first attack, **at around 05:30 on 16 November 2012**, an Israeli airstrike hit the Ministry Building in the Tel al Hawa neighbourhood in southern Gaza City, as a result of which al Bahtiti's building sustained minor damages. Al Bahtiti did not receive any warnings prior to the attack.

He recalls: "During the first attack, we were all sleeping in the house as it was very early in the morning. When the attack happened, the windows of our house broke from the impact and, as they shattered, pieces of glass fell on some of the children. Because of this, they sustained minor injuries like cuts and bruises. Immediately after the first attack, the Civil Defence team arrived. They were busy trying to control the fire that had erupted in the Ministry Building when the electricity generator in the building burst into flames. The fire was not put out for a long time. After the first attack, my family took shelter with our relatives and friends in other parts of the city. We split up into small groups, as it was impossible for us to find a place where all of us could stay. Some of my sons went to their in-laws' houses with their wives and children."



The destroyed building belonging to Mahmoud al Bahtiti



The view from the first floor of Mahmoud al Bahtiti's home, looking at a damaged UN school

At **around 21:30**, another Israeli airstrike hit the Ministry Building. The impact of this second attack severely damaged the al Bahtiti residence as well as their automobile workshop on the ground floor. Al Bahtiti was the only person still present in the building that evening. He gives the following account of the event: "The second attack was far more severe than the first one and it badly damaged my house and workshop. During the second attack, I was awake on the second floor of the building. The attack caused a fire in the house. Debris from the Ministry Building and my home fell everywhere. I took cover in a corner of the room and saw windows, doors, and bricks from the walls fall around me." Just like in the first attack, al Bahtiti did not receive any warnings prior to this attack.

II. Information related to the perpetrators

In both instances, the attacks were perpetrated by members of the Israeli Air Force, which carried approximately 1,350 airstrikes across the Gaza Strip during the 8-day offensive.

PCHR is unable to further specify the ranks and functions of the individuals involved in the destruction of Mahmoud Nimee al Bahtiti's property.

III. Legal action undertaken by the victim

Al Bahtiti has not filed any complaint with the Israeli authorities or taken recourse to legal action for the incidents on 16 November 2012. He expresses that he lost all faith in the ineffective legal mechanisms, given prior experiences he has had with such procedures.

Al Bahtiti owned another mechanical workshop on al Basateen Street, in the al Zaytoun neighbourhood, Gaza City. The workshop was destroyed during the 2008-2009 Israeli offensive codenamed 'Operation Cast Lead'. Following that attack, he filed a legal complaint with the relevant Israeli court claiming compensation and restoration of his property, but he has not received any response until now.

Due to his unsuccessful experience with the judicial system, he has not filed any complaints or taken any legal actions with regard to the attacks that happened on 16 November 2012.



The destroyed building of Mahmoud al Bahtiti

No access to justice

Since the beginning of its occupation of the occupied Palestinian territory, Israel has committed widespread and systematic violations of international law, including grave breaches of the Geneva Conventions and crimes against humanity.

Seeking to pursue justice for victims within the Israeli legal system over the past few decades, we have observed how the possibility of achieving accountability for Israeli international law violations has decreased dramatically. Various legislative amendments and judicial decisions have imposed legal and procedural obstacles, which preclude the possibility of effective investigations, and lead to the denial of individual victims' legitimate right to an effective remedy, as well as the loss of considerable investments of time and money.

Israel's criminal investigative and judicial mechanisms: inherently flawed

The following features of the structure illustrate that the mechanisms are being used to provide an illusion of justice, while systematically denying victims access to justice.

Since the beginning of the Second Intifada in 2000, the Military Advocate General (MAG) has pursued a policy of not automatically opening criminal investigations into the killing and injury of Palestinian civilians. Moreover, the State, through the Attorney General, has argued that criminal responsibility will only apply to "intentional" acts.

Also since the beginning of the Second Intifada, operational debriefings have been used as the primary mechanism of analysis with respect to alleged violations committed in the course of military operations in the oPt. These debriefings are procedure intended to analyze an incident from an internal military perspective, so that lessons may be learned and conclusions drawn for the purpose of enhancing the performance of the Israeli military. They fail to meet the international legal requirements associated with effective investigations, do not address any command level policy-based decisions which preceded the attacks, and can unreasonable delay the decision of whether to initiate an investigation.

Conflicting with the independence and impartiality of the military justice system and the principle of the separation of powers, the Military Justice Law confers significant powers on District Chiefs of the Israeli forces, allowing them to intervene in and influence the legal process. District Chiefs are entitled to file an appeal against a judgment handed down in a court of first instance, to consent to a military court's final judgment as a confirming authority and, significantly, to order the quashing of a charge sheet.

The Military Attorney General (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'. His office is involved in preparing the rules of engagement and providing the legal framework regulating attacks by Israeli forces. However, at all stages, the decision to open or close a criminal investigation into possible violations of international law rests with the Military Attorney General (MAG), which severely undermines the impartiality and independence of the entire investigative procedure, and illustrates that the MAG cannot be

considered independent or impartial, as it is itself involved in the planning of attacks. In effect, this system operates as a loop, with the MAG responsible for each strategic decision. The Israeli Attorney General, and ultimately the Supreme Court, may review the decisions of the MAG. However, the Attorney General rarely intervenes in the MAG's decisions, and the Supreme Court justices have time and again demonstrated their hesitance to interfere with the MAG's discretion.

Only in exceptional cases do operational debriefings result in a decision to open a subsequent investigation by the Military Police Criminal Investigation Division (MPCID). Similar to operational debriefings, MPCID investigations focus solely on specific attacks, failing to address any command level policy-based decisions which preceded the attacks. Furthermore, the MPCID has no base in the oPt; investigations routinely do not visit the site of an incident; most investigators do not speak Arabic; and the MPCID does not have a criminal forensic lab at its disposal.

Almost no responses are being received to criminal complaints filed with the Israeli Military Prosecutor. A small number of replies was received, confirming the receipt of the complaint, noting that it will be reviewed, and that the submitting party will be informed of the outcome. A similar small number of responses was received, noting that the complaint is under review. Cases have been closed following the Military Prosecutor's conclusion that no violations of international law had been committed, where all evidence indicates the opposite. Additionally, criminal complaints have been dismissed because the witness would not travel to the Beit Hanoun ('Erez') crossing for an interview with the MPCID. The few indictments and convictions that did result from the criminal complaints filed are in stark contrast with the gravity of the crimes committed.

This previous analysis of the Israeli criminal system is illustrated by, for example, PCHR's experience in cases related to 'Operation Cast Lead', Israel's 27 December 2008 – 18 January 2009 offensive on the Gaza Strip. Of 490 criminal complaints filed, 469 have not received any replies. 19 responses have merely noted receipt of the complaint, without providing follow-up information. Only 2 complaints have resulted in prosecution of the perpetrator. Allegations of war crimes have been completely ignored.

Israel's civil court system: insurmountable obstacles

The procedural requirements and obstacles outlined below illustrate that the Israeli civil system effectively denies the right to remedy of Palestinian victims, who find themselves being financially penalised for having pursued their legitimate right to access to justice by filing civil cases before the courts.

Under Israeli law, requests for compensation have to be filed with the Ministry of Defence's Compensation Officer within 60 days of the incident, and civil cases must be filed with the court within 2 years. In general applications requesting compensation are not replied to by the Ministry. Therefore, the cases are subsequently filed to the court within two years, according to the applicable statute of limitations.

Each individual claimant is required to pay a 'court guarantee' of, on average, \$8,000 before the case will be reviewed by the court. If the case is lost, the guarantees will be retained to offset the State's 'defence costs'.

Due to the closure of the Gaza Strip, PCHR's lawyers cannot represent clients in the Israeli judicial system. Therefore, Israeli lawyers file the cases, but they, in turn, cannot meet with the clients as they are denied access to the Gaza Strip and the clients are not allowed to travel into Israel.

Recently, additional obstacles have been put in place which make it virtually impossible for Palestinian victims to pursue their case through the Israeli civil system:

Following a December 2012 Israeli Court order, a power of attorney can only be considered valid if it bears the signature and stamp of an Israeli diplomat. The closure and travel restrictions make it impossible to comply with this requirement.

Amendment No. 8 to the Israeli Civil Tort Law (Liability of the State), which applies retroactively from the year 2000 onwards and, with respect to the Gaza Strip, from 2005 onwards, exempts the State of Israel of any liability arising from damages caused to a resident of an enemy territory during a "combat action". Furthermore, this amendment widens the scope of a combat action to any operations carried out by Israeli forces, which by their nature, were in response to terrorism, hostilities, or insurrections. Qualification of a military operation as a combat action is dependent upon the overall circumstances, including the goal of the action, the geographic location, and the inherent threat to members of the Israeli forces who are involved in carrying out the action. The Amendment disregards the customary international obligation to provide reparation for violations which occur in the context of combat operations, and leaves aside the vital question of the legality of attacks, and ignores the damages caused to the victims, which can potentially constitute IHL violations.

Apart from a few cases in which victims received compensation (often through an out-of-court settlement), the majority of the cases are dismissed because of the high cost of court guarantees. Other cases are withdrawn by the complainant in order to avoid having to pay prohibitively high defence costs. The remaining cases are unsuccessful as a result of the application of Amendment No. 8, the lack of access to courts, the Statute of Limitation, and the new power of attorney requirements.

Impunity fosters violations

Israel disregards its State duty, under international law, to investigate and prosecute alleged violations of international law, and to make reparations for breaching or violating international legal principles. Palestinian victims are systematically denied the right to an effective judicial remedy. This has led to the development of a culture of impunity, in which Israel is permitted to consistently violate the rule of law without repercussion. While victims of past crimes wait for justice, the lack of accountability continues to give way to future violations.