



Palestinian Centre for Human Rights

Israel's Arbitrary Detention of Fishermen in the Gaza Sea

Memorandum presented to the UN Working Group on Arbitrary Detention

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Introduction

1. This memorandum is presented to the UN Working Group on Arbitrary Detention.
2. PCHR believes that the situation in the occupied Palestinian territory (oPt), as outlined in this memorandum, is particularly relevant to the Working Group's mandate, and wishes to highlight a number of issues that require attention.
3. This submission will address the unlawful arrest and subsequent arbitrary detention of fishermen in the Gaza Sea. However, 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 severe restrictions on exports. In this first submission, PCHR wishes to provide the Working Group with an overview of the situation facing fishermen in the Gaza Sea. At a later date, PCHR will supplement this information for the Working Group by providing an update on the situation, updated statistics, and individual complaints, if appropriate.
4. The information provided herein is based on PCHR's documentation of human rights violations in the Gaza Strip, as well as its long-standing and free-of-charge legal assistance to Palestinian civilians. PCHR wishes to express its willingness to cooperate with the Working Group, and to provide any further information as required.

Arbitrary Detention of Fishermen in the Gaza Sea

5. PCHR's documentation and analysis of incidents in the Gaza Sea show that the Israeli Naval Forces frequently unlawfully arrest and detain Palestinian fishermen who are at work in the area. For the purposes of this memorandum, PCHR has applied the Working Group's own analysis of arbitrary detention; the Working Group determined that detention is deemed arbitrary, as per Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR), when the preceding arrest is carried out without the subject of arrest being "informed, at the time of arrest, of the reasons for his arrest" or being "promptly informed of any charges against him," in accordance with paragraph 2 of the same Article.¹ By applying this analysis, PCHR concludes that Israel is arbitrarily detaining fishermen in the Gaza Sea.
6. From the beginning of 2011 until the end of June 2012, PCHR has recorded 23 incidents of unlawful arrests resulting in the arbitrary detention of 78 fishermen.
7. Prior to being arbitrarily detained, the fishermen are intercepted and unlawfully arrested while working in the Gaza Sea. Based on PCHR's documentation it becomes evident, at the time of their arrest, these fishermen pose no threat to national security, which otherwise could justify their arrest and detention. This violates Article 9 of the ICCPR, which Israel has ratified and is obligated to apply to the Gaza Strip.²

¹Working Group on Arbitrary Detention, "Civil and Political Rights, including the Question of Torture and Detention" (E/CN.4/2001/14).

²ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, paras. 106-113. The ICJ determined that Israel is obligated to apply all human rights instruments, of which it is a party, to the occupied Palestinian territories, which includes the Gaza Strip and the Gaza Sea.

8. Further, the arrests themselves often involve the use of live fire, water cannon, and attempts to topple boats, which goes beyond the necessary action needed to stop fishermen. The Israeli Naval Forces approach the fishing boats, in some instances while shooting at or around them. Soldiers order the fishermen to undress, jump into the water, and swim towards the navy's boat. These actions frequently violate customary international humanitarian law provisions relating to the prohibition on the direct targeting of civilians under Article 51 of Additional Protocol I and the direct targeting of civilian objects under Article 53 of the Fourth Geneva Convention.



Figure 1: A fishing boat with bullet holes which have been patched with fiberglass.

9. Once on board the navy's ship, fishermen are handcuffed and blindfolded, after which they are taken to the Ashdod port in Israel, where they are detained and interrogated. In general, the detained fishermen are not informed of the reason for their arrest and detention, nor are they informed of charges against them, in direct violation of Article 9 of the ICCPR.
10. Interrogations by the Israeli counter-intelligence and internal security service, also known as Shin Bet, usually focus around places and persons in the Gaza Strip, especially those connected to Hamas, including civil services such as the naval police. These interrogations do not relate to the actions of the fishermen, in particular any actions that may justify the arrest and detention of the fishermen. In most cases, the fishermen are released within 24 hours of their arrest, without being charged. The fact that fishermen are not told why they are detained, not questioned about actions that may justify their arrest and detention, and are released without charge further supports the position that Israel's arrest of fishermen in the Gaza Sea is unlawful, and amounts to arbitrary detention.
11. Additionally, fishermen are not usually informed of their right to legal assistance, thus interrogations take place without the presence of legal counsel. This is a violation of Principle 17 of the Principles for the Protection of All Persons under Any Form of Detention.
12. Children,³ who are among these fishermen, are also subjected to unlawful arrest and subsequent arbitrary detention. According to PCHR's documentation, nine children were arrested while fishing in the Gaza Sea from the beginning of 2011 until end June 2012. The Israeli authorities do not inform the parents or other relatives of the arrest and detention of these children. Only

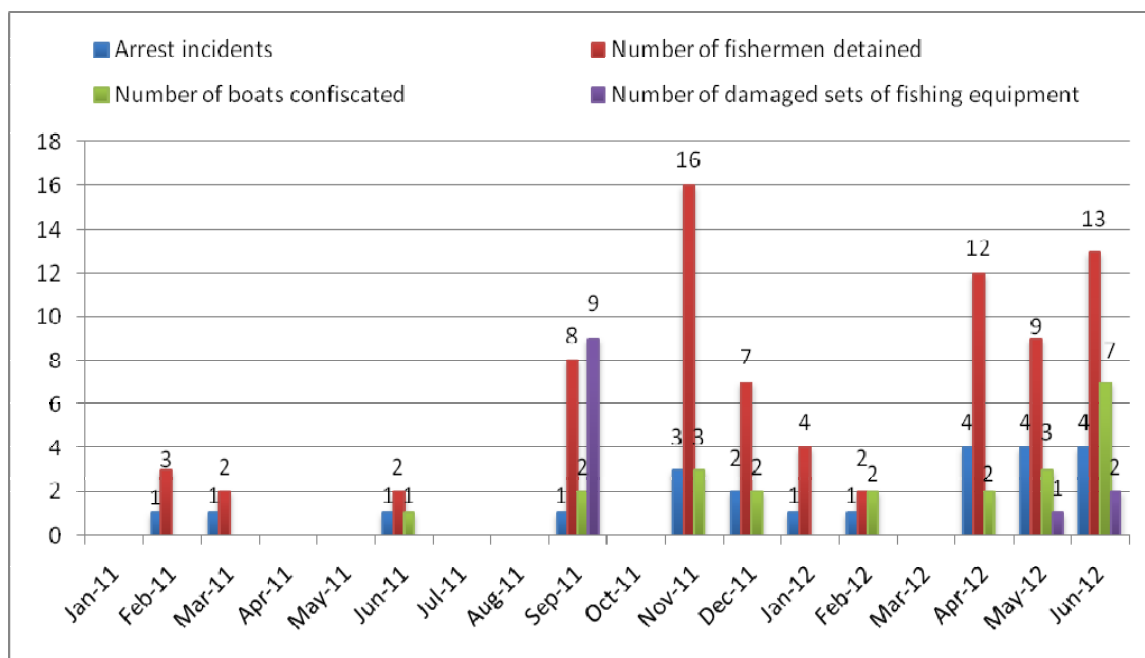
³As defined in Article 1 of the Convention on the Rights of the Child.

when a child is detained for a prolonged period are relatives contacted by Israel's authorities. Additionally, children are interrogated without the presence of either a relative or a lawyer. By arbitrarily detaining minors and neglecting to contact parents, guardians or lawyers, Israel denies these child fishermen the special protections codified in Article 37 of the Convention of the Rights of the Child and Principle 16 of the Body of Principles for the Protection of All Persons under Any Form of Detention, which demand that children shall not be unlawfully deprived of their liberty.

13. In addition to their unlawful arrest and subsequent arbitrary detention, other violations are committed against fishermen by Israel's forces in the Gaza Sea. In the process of arrest, fishing boats and equipment are often confiscated and, in some cases, damaged or destroyed. In all cases, fishing boats and equipment remain confiscated after the release of their owner, usually kept inside the port of Ashdod in Israel.

14. The following chart sets out the number of incidents of unlawful arrest and subsequent arbitrary detention of fishermen in the Gaza Sea, as well as the number of boats confiscated and damaged fishing equipment. Please note that multiple fishermen are often arrested in a single incident.

Table 1: Unlawful Arrest and Subsequent Arbitrary Detention of Fishermen in the Gaza Sea



15. As can be seen in the above table, the incidents of unlawful arrest and subsequent arbitrary detention of fishermen has been increasing since the beginning of the year. There have already been more arrest incidents in the first six months of 2012 (40) than occurred during all of 2011 (38).

16. In addition to the data presented above, PCHR wishes to provide the Working Group with the narrative of one fisherman's experience, to illustrate the issue outlined in this memorandum.

Fadel Abuwarda (30) and No'man Ibrahim Ahmed al-Seksek (19), along with 4 others, were fishing approximately 1,700 meters from the Gaza Strip shore on 20 June 2012 when they were arbitrarily detained, transferred to Israel, and questioned. They were released the following day. PCHR chose to present this particular narrative to the Working Group because it is a recent case that demonstrates the typical abusive treatment provided by Israel to fishermen who are unlawfully arrested and subsequently arbitrarily detained in the Gaza Sea.

We had just thrown our nets in the water when we saw an Israeli gunboat speeding towards us. Each time we made attempts to pull the nets in, they fired at our boat. The soldiers ordered us to remove our clothes and jump into the water. We were crying and trying to talk to them. We begged and cried, but they would not listen to anything we had to say. We were all blindfolded. They tied our hands and feet and forced us to sit on the floor. We were all in our underwear and sat on something that felt like a leather surface. It was very uncomfortable. It was very humiliating for all of us. They removed our blindfolds and we saw many soldiers waiting for us in Ashdod. I kept wondering why there were so many of them. We had not done anything wrong. We were detained in a cell and questioned separately for 30-60 minutes each. They gave us each a bit of water and bread and we slept a bit. In the morning, they blindfolded us again and handcuffed us, then drove us to the Erez checkpoint and released us there. They did not tell us anything about our boats and fishing nets, or where we could find them.



Figure 2: Fadel Abuwarda (l) and No'man Ibrahim Ahmed al-Seksek (r) standing in front of their fishing equipment storage building.

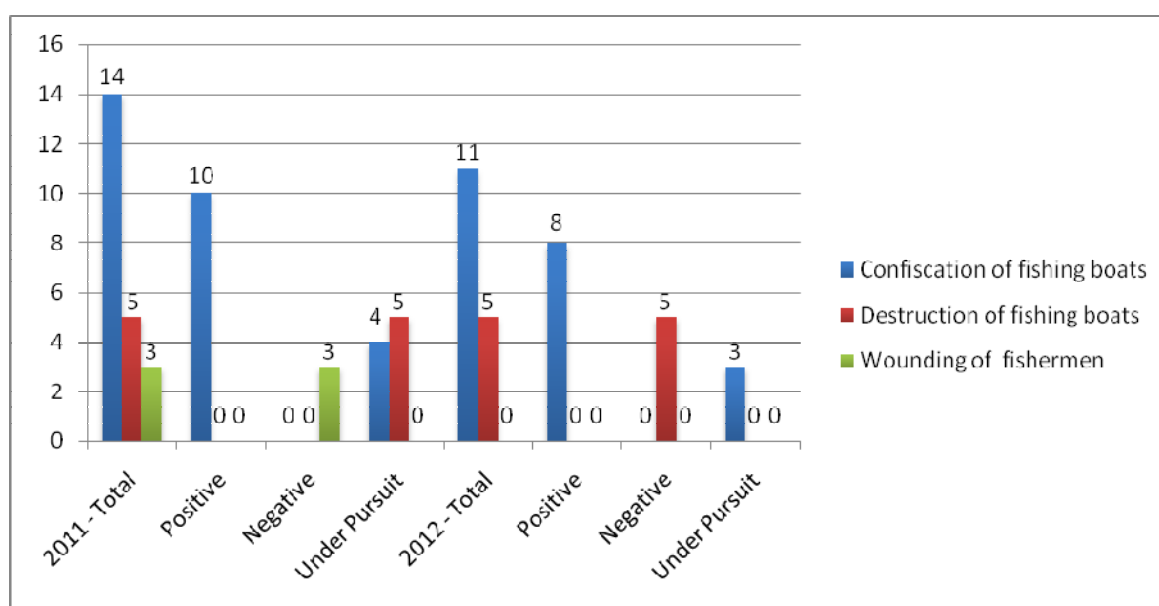
17. This narrative is one of many narratives and statements collected by PCHR on the unlawful arrest and subsequent arbitrary detention of fishermen in violation of international law, in particular Article 9 of the ICCPR.

Conclusion

18. Article 9 of the International Covenant on Civil and Political Rights requires that "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." The unlawful arrest and subsequent arbitrary

detention of fishermen by the Israeli Naval Forces constitutes a violation of this principle of international law as there is no justification for Israel's arrest of these fishermen.

19. Following their arbitrary detention, fishermen are legally entitled to compensation, both for their victimization and for any financial losses, such as the damage or destruction of their boats and equipment.⁴ In an effort to seek accountability, PCHR has pursued a number of pro bono legal cases in the Israeli Military Court on behalf of fishermen arrested by Israel's forces in the Gaza Sea, as can be seen in the below chart.⁵ The normal procedure for these cases begins with the submission of a complaint to the Israeli Military Prosecutor. If the situation is not resolved following the processing of the complaint, then a case is filed in the Israeli Civil Court. Please note that a positive result is considered to be the return of fishing boats and fishing equipment, compensation for the destruction of fishing boats or fishing equipment, or compensation for an injury.



Although many cases regarding the confiscation of fishing boats have concluded with positive results, this chart demonstrates that, at this time, Israel's Naval Forces are not being held fully accountable.

20. PCHR believes that this issue demands the Working Group's further attention, and reaffirms its willingness to cooperate fully in this regard.

Further Information

⁴Article 10(5) of the Covenant of Civil and Political Rights provides that "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

⁵ It should be noted that fishermen are typically released by Israel's authorities within 24 hours of their arrest in the Gaza Sea. In the rare case that a fisherman is kept longer, PCHR monitors their treatment to ensure that no procedural or human rights violations occur. In the event that violations occur, a complaint would be filed. Since January 2011, only one fisherman was kept beyond 24 hours and charged by Israel's authorities. PCHR monitored the situation until the fisherman was charged, at which point the file was handed over to a private attorney. No procedural or human rights violations occurred in this instance; therefore, no complaints have been filed regarding detention since January 2011.

21. PCHR publishes its documentation of Israel's attacks against fishermen in the form of a monthly factsheet titled "Israeli Attacks on Palestinian Fishermen in the Gaza Sea."⁶

For further information, please contact:

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⁶These factsheets can be found on PCHR's website.