



مركز الميزان لحقوق الإنسان
AL MEZAN CENTER FOR HUMAN RIGHTS



Adalah The Legal Center for Arab Minority Rights in Israel
عدالة المركز القانوني لحقوق الاقلية العربية في اسرائيل
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Gisha - Legal Center for Freedom of Movement
ג'ישה - מרכז לשמירה על הזכות לנוע (ע"ר)
مسلك - مركز للدفاع عن حرية الحركة

May 17, 2020

To
Mr. Sharon Afek
Military Advocate General
By Fax: 03-5694526

To
Adv. Avichai Mandelblit
Attorney General
By Fax: 02-6467001

Dear Sirs,

Re: Demand to cease navy's violent conduct against Gaza Strip fishermen and open immediate investigation into violent incidents in the fishing zone

We hereby write to you with an **urgent** request to order the cessation of the navy's violent conduct towards Gaza Strip fishermen and open an investigation into the incidents, which have reportedly increased amid the spread of coronavirus and during peak fishing season. Use of force by the navy at this time prevents fishermen from freely engaging in their livelihoods, puts their lives at risk, and causes irreversible damage to their boats and equipment, as detailed below:

The maritime closure and restrictions imposed by Israel on the fishing zone

1. Fishermen in the Gaza Strip have been suffering for years from restrictions imposed as part of the ongoing closure on Gaza and the Israeli military's control at sea. Reports of violent conduct by the navy are received daily: Fishermen suffer physical harm including injury and in some cases death, as well as irreparable damage to fishing boats and equipment, all while engaging in fishing for the purpose of making a living and providing for their families.
2. These days too, Israel continues to impose a maritime closure on the Gaza Strip, clearly constituting collective punishment. As part of the closure, Israel changes the demarcation of the fishing zone unexpectedly and arbitrarily, and uses violent enforcement measures, including potentially lethal force, against anyone who approaches these boundaries, even if they are unarmed civilians. Over the course of 2019, Israel changed the permitted fishing zone on 19 different occasions, completely banning access to sea on four of the occasions.
3. Israel's conduct causes severe harm to the fishermen and creates uncertainty, both in terms of the sea space they can access without risking their lives and property, and in terms of their ability to make a living and supply fish to the local market.
4. At this time, as the coronavirus spreads, there is growing fear that Gaza will experience an economic and humanitarian crisis worse than ever before, and that local food production will be harmed to the extent that would undermine food security in the Strip. Additionally, sardine season has commenced, one of the most profitable fishing seasons of the year. On

this backdrop, the uptick in violent measures employed against fishermen, as detailed below, further deepens the infringement on their ability to make a living, provide for their families and supply fish to the local market.

5. More importantly, above all else, the violent conduct by the Israeli navy puts the lives, bodily integrity and property of the fishermen at risk, and as such, severely violates their fundamental rights.

Reports on violent actions by the navy against fishermen in Gaza's fishing zone

6. Over the years, Gaza-based Al Mezan Center for Human Rights has collected numerous testimonies about the violent measures used by the navy against fishermen, including unrestrained use of live fire, submerging or near submerging of boats, abuse and degrading treatment of fishermen by demanding they undress and jump into the water, as well as boat seizures and destruction of equipment found on board.
7. According to a report published by Al Mezan in Gaza, in the first four months of 2020, 105 incidents in which the Israeli navy fired at fishing boats inside Gaza's fishing zone were recorded. Six fishermen were injured in these incidents and seven were arrested, including a minor; seven boats sustained heavy damage, large quantities of fishing equipment were destroyed, and one boat was seized.
8. The Gaza Fishermen's Association reports that the recent period, since the coronavirus pandemic began spreading, has seen an increase in the frequency of incidents in which the Israeli navy fires at fishermen. For instance, on April 21, 2020, two shooting incidents were reported: In the morning hours, the navy fired rubber bullets at a fishing boat, hitting a fisherman in the head and damaging a boat engine. In the late evening, boats came under heavy fire at sea. According to Al Mezan's records, 38 incidents of navy fire at fishermen and their boats took place in April 2020, reflecting a 70 percent increase in incidents involving the use of live fire compared to the monthly average from January to March this year. As a result of these incidents, four fishermen were injured and three boats sustained severe damage, as did the equipment on board at the time.

The importance of the fishing sector to Gaza's economy and food supply of its residents

9. Gaza's fishing sector is a crucial source of income and food for local residents. There are about 3,700 registered fishermen for whom fishing is the sole source of livelihood. The livelihoods of approximately 18,250 people more also rely on fishing, many of them working in auxiliary services, such as building and maintaining boats and fishing equipment. Notably, employment figures have dropped sharply due to the closure imposed by Israel and the frequent limitations on access to the fishing zone, which have left many unable to earn a living.
10. As a result of the severe restrictions Israel imposes on Gaza's sea space, and the manner in which it enforces these restrictions, Gaza's fishermen are among its poorest residents and rely on humanitarian aid to survive.

Use of open fire regulations and fishermen harassment

11. The army's response to Gisha's Freedom of Information application regarding the sea space, dated December 15, 2019, stated that there are open-fire regulations for use in the sea space opposite the Strip. Contrary to Gisha's request, these regulations were not provided in the army's response on the grounds that they are classified. However, the response did note that:

“As part of these regulations and directives, it has been established that **the use of force for the purpose of enforcing the security restrictions** will be only as a last resort, carried out gradually and only to the smallest extent required **to stop the breach of restrictions or to seize the vessel**. We note further that prior to the use of force, the regulations require that a warning specific to the vessel in breach of security restrictions be given and a demand be issued to end the breach.” (*Paragraph 9 of the response to the Freedom of Information application, unofficial translation by Gisha*).

A copy of the response to the Freedom of Information request dated December 15, 2019, is attached hereto.

12. This response implies that when making decisions on the use of force, the military makes no distinction between unarmed civilians who are at sea for the purpose of fishing or other civilian activities, and other individuals. The military's conduct, as described above, clearly indicates that potentially lethal force is used against fishermen who do not pose a clear and immediate danger to a person's life.
13. A claim of a “breach of restrictions” and the seizure of vessels do not in and of themselves justify the use of force and live fire, which is inherently disproportionate. The use of force, as described, violates law enforcement rules, which constitute the normative framework relevant to fishing activities. The premise for these norms is that the rights to life and bodily integrity are near absolute in the sense that they may not be violated in civilian situations and the violation of which is absolutely prohibited when the person affected does not pose a clear and immediate threat to another person's life.
14. It follows that the military's regulations and protocols, as provided to Gisha in response to the Freedom of Information application, along with the policy of using potentially lethal force against fishermen and the severe, irreversible harm to their property, are illegal and disproportionate. These are drastic open-fire measures that put fishermen and their property in danger, while taking control of their boats and seizing them, though the individuals at question are fishermen who are at sea to earn a living, usually aboard small, flat-board vessels and their actions do not pose a threat to anyone's life, nor do their actions constitute any sort of clear and immediate danger.
15. Needless to mention, providing individual warning to a vessel does not render the regulations proportionate, especially given that according to the accounts of numerous fishermen, the measures used to provide warning cause irreversible bodily harm and property damage. According to fishermen's testimonies, one method frequently used by the navy to provide warning is firing at the engines of fishing boats or using water cannons to flood boats to the point where they are at risk of sinking. These methods cause irreversible

damage to boats and equipment and harm fishermen who pose no danger. Many fishermen attest that the navy uses violent measures even when they are located within the permitted fishing zone.

16. We emphasize that inasmuch as the fishermen do in fact breach the restrictions, such breaches are likely the result of a lack of knowledge and the absence of clear demarcations of the boundaries, which are changed often, occurring as part of natural, ordinary fishing activities. In any case, sailing outside of the fishing zone does not, in itself, pose a security threat that justifies use of force ostensibly intended to enforce security restrictions.
17. An incident that occurred recently, on May 8, 2020 serves as an example. In the morning hours, an incident of navy fire at two fishing boats was reported. According to the report, the navy fired rubber bullets, hitting one fisherman in the head and another in the hand; it fired live ammunition at the engines of the boats, destroying them, and used water cannons to shoot powerful water streams at the boats, injuring one fisherman's ear.
18. In these circumstances, the violation of Gaza fishermen's most basic rights, while using open-fire regulations, is disproportionate, even if we assume that the fishermen in question exceeded the restrictions imposed by Israel on the fishing zone. The military's policy, which permits the use of force and live fire against fishermen in the absence of any immediate threat to human life or any intent on the fishermen's part to breach the security restrictions, fails to meet the tests of proportionality.
19. Moreover, Article 3 of the Hague Convention of 1907, which forms part of customary international law, sets forth a prohibition on harming vessels being used for fishing:

Vessels used exclusively for fishing, along the coast or small boats employed in local trade are exempt from capture, as well as their appliances, rigging, tackle, and cargo.
20. The aim of this article is to ensure that so long as the fishing boats engage in fishing activities and do not take part in hostilities, they must be permitted to engage in their activities without interference. **According to the article, the onus of proving that the vessel was in fact engaged in hostile activity lies with the party making the claim.**
21. Indeed, the Supreme Court recently voiced criticism over the conduct of the Israeli military in matters concerning the seizure of Gaza fishermen's boats, the lack of proper documentation, and the indifference displayed in the military's conduct toward fishermen and their property (HCJ 734/19 Abdel Ma'ati Habil et al. v. Israel Ministry of Defense (Judgment dated November 11, 2019)).
22. Article 27 of the Fourth Geneva Convention of 1949 places on Israel an obligation to respect the persons, honor, family rights, religious convictions and practices and the manners and customs of Gaza's residents. This obligation includes the duty to safeguard the lives of the protected persons as well as their safety and human dignity. More importantly, there is no explicit statutory provision permitting the violation of these fundamental rights by firing and harming fishermen and their property. Moreover, firing in the circumstances of the matter at hand runs counter to the explicit provisions of the Penal

Law with respect to manslaughter or causing bodily harm, all the more so given that in the circumstances at hand, there is no allegation that the fishermen pose an immediate threat to human life.

23. It should be noted that the United Nations Convention on the Law of the Sea, the provisions of which form part of customary international law, grants sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources of the waters superjacent to the seabed, the seabed and its subsoil in the exclusive economic zone (Article 56 of the convention). The exclusive economic zone extends 200 nautical miles from the shore (Article 57 of the convention). This, according to the convention, is the area that Gaza fishermen, inter alia, should be free to use without interference.

Given all the above, we ask that you order the cancellation of directives permitting the use of live fire on and damage to fishermen and their property, that you immediately halt the harassment of fishermen from the Gaza Strip engaging in fishing for their livelihoods, and investigate the violent incidents that occurred, particularly those that occurred in the recent period.

We would be grateful for your prompt attention to this matter.

Sincerely,

Muna Haddad, Adv.

[signed]