

ATTN:

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Introduction

The following submission is written jointly by Al Mezan Centre for Human Rights and Al-Haq Law in the Service of Man (Al Haq), both of which are Palestinian human rights organizations with consultative status with the UN Economic and Social Council. This brief is intended to provide input into the upcoming joint report of the UN Special Rapporteur on the Right to Food and the UN Special Rapporteur on Human Rights and Hazardous Substances and Wastes to the Human Rights Council in March 2017.

In accordance with the theme of the Special Rapporteurs' upcoming report on the human rights implications of pesticides, this submission highlights an ongoing case brought forward by Palestinian farmers living in the Gaza Strip whose farm land, food and livelihoods have been affected by aerial spraying of undisclosed chemicals by Israeli aircraft. Recognizing that the rights violations related to this incident cannot be viewed in isolation, but rather as among many systematically imposed forms of collective punishment¹ on the Palestinian people living under the closure and blockade in Gaza, this submission briefly outlines the applicable legal framework as well as relevant details about the situation of communities in Gaza who are reliant on the land and sea for their livelihoods. It concludes with a set of recommendations from Al Mezan and Al-Haq for the Special Rapporteurs to take into consideration.

Palestinian Farmers Report Aerial Spraying of Unknown Herbicides/Pesticides and Seek Damages

In May 2015, a group of farmers submitted 10 complaints to Al Mezan Center for Human Rights (Al Mezan) concerning crop-spraying by Israeli forces in the border area in the east of Khan Younis, particularly Al Zanna and Abasan Al Jadeda, in the Gaza Strip. The complaints comprised information that Israeli aircraft had sprayed agricultural crops in eastern Khan Younis with chemical herbicides/pesticides from 11-13 October 2014.

¹ As recognized by official UN statements, including for example by the Commissioner-General of the UN Relief and Works Agency for Palestine Refugees in the Near East, Mr. Pierre Krähenbühl in an online press release dated April 2014 <<http://www.un.org/apps/news/story.asp?NewsID=47604#.WBNIPCTbnuo>>.

The total affected land area according to the ten complaints amounts to 81,300 square meters, with the farmers' immediate losses estimated at ILS 55,919 (approximately USD 14,532), plus ILS 71,487 (approximately USD 18,577) in water costs required for irrigation and replanting of the destroyed fields. The total affected population is 200 persons: the farmers, their families, and the lessors who are leasing farmers the land.

Power of attorney was granted to Al Mezan, whereupon the Centre built legal files of the documents and information concerning each farmer's case that can be used to seek compensation for the affected farmers from the Israeli authorities.

Adalah–The Legal Center for Arab Minority Rights in Israel and Gisha–Legal Center for Freedom of Movement in partnership with Al Mezan submitted a [letter](#) on 27 June 2016 seeking damages from the State of Israel on behalf of one Palestinian farmer in the Gaza Strip whose crops and land were damaged by herbicide/pesticide spraying conducted with Israeli aircraft, based on a decision of the Israeli Defense Ministry.

In the letter, which was sent to Israeli Defense Minister Avigdor Lieberman, Attorney General Avichai Mandelblit, and Chief Military Advocate General Sharon Afek, Adalah and Gisha demand an investigation and just compensation to Khan Yunis-resident Ibrahim Abu Ta'aymeh for damages suffered.

The letter stated that from 11-13 October 2014, Israeli aircraft, in violation of international humanitarian law (IHL) and international human rights law (IHRL), sprayed unknown herbicides/pesticides on lands inside the Gaza Strip. Israel officially designates the areas within 300 meters from the border fence as a “buffer zone” in which access is severely restricted. The “high risk” zone, where live fire is used to enforce movement restrictions, extends up to 1,500 meters from the fence.² In the incident in question, however, the herbicides/pesticides reached a one-acre agricultural plot farmed by Abu Ta'aymeh located inside the Gaza Strip approximately 700 meters from the buffer zone.

Abu Ta'aymeh has been growing spinach on this plot, leased from Awad Muhammad Ahmad Asfour, for the past 12 years and the produce provides the sole source of income for the Abu Ta'aymeh family.

The aerial herbicide/pesticide spraying by the Israeli military completely destroyed Abu Ta'aymeh's harvest, caused significant harm to the land itself, and potentially posed a threat to local residents. Abu Ta'aymeh's financial losses are estimated to be at least ILS 11,400 (about USD 2,925). The long-term effects of the spraying on land and water resources, and on health, are unknown and cannot be estimated at the present time.

Relevant Legal Framework

² OCHA, One Year On, May 2015. Accessed online: <<http://gaza.ochaopt.org/2015/05/um-an-naser-opportunities-for-building-back-better-in-the-access-restricted-areas-of-the-gaza-strip/>>.

The Israeli military's aerial spraying of herbicides/pesticides constitutes a violation of both Israeli constitutional and administrative law, as well as of IHL and IHRL.

According to the Fourth Geneva Convention (1949), to which Israel is a High Contracting Party, and additional protocols (1977), which are largely considered customary IHL, parties to a conflict must protect civilians and humanitarian interests during wartime and occupation, must refrain from causing harm or damage to civilian targets such as agricultural lands, and must respect the right of protected civilians to access food. The Israeli military's spraying of herbicides/pesticides on agricultural crops which serve as a basic food source, while also taking into account the ongoing closure of Gaza, constitutes a violation of Article 55 of the Fourth Geneva Convention.

Likewise, Article 43 of The Hague Convention (1907), which is considered to be customary IHL, provides that an occupying power, "shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety."

International law obligates states that violate IHL and IHRL to take a number of steps, including: investigating the incident and prosecuting those found guilty of legal offenses; offering its victims fair and rapid remedy and reparations for damages caused; granting access to details on the methods by which the nature of such reparations are determined; recognition of and apology for damages caused; and assurances that the harmful acts will not reoccur.

Additional Complaints on Behalf of Gaza Landowners and Farmers

The three organizations sent a further seven letters of complaint to the Israeli authorities on 5 July 2016 on behalf of additional Gaza landowners and farmers who also suffered from damages resulting from this same 2014 military herbicides/pesticide spraying incident. Together, the organizations are calling on Israeli authorities to investigate this incident and compensate the landowners and farmers for the damages they have suffered. At the time of writing, the organizations are considering bringing further complaints on behalf of others affected.

The organizations demand that Israel investigate this incident adequately and compensate Abu Ta'aymeh and the other landowners and farmers for the damages they have suffered.

Authorities' Response

On 31 July 2016, the Israeli authorities sent a letter back, which included the following points (informal translation from original Hebrew text):

1. Notification of receiving the complaint;
2. Confirmation that the Israeli military sprays herbicides/pesticides occasionally, for security purposes and according to Israeli law; and
3. These herbicides include "Oxygal"³.
4. No investigation would be opened for lack of unlawful acts.

³ Oxygal is manufactured by the Israeli company Tapazol, containing oxyflurofen, an internationally recognized "Highly Hazardous Pesticide".

5. Cases for compensation should be sought through the Ministry of Defense.

Israel's evident unwillingness to hold itself to account and provide reparations in accordance with customary international law obligations points to a primary objective of ensuring impunity and protection of its forces. The authorities have recognized the Israeli military's involvement in the spraying⁴, referencing one herbicide that is used, but have not acknowledged the human and environmental health implications. The omission serves as a green light for violations of international law to be repeated, without legal repercussions.

Relevant Jurisprudence

In a similar case brought by Adalah, the Israeli Supreme Court delivered a precedent-setting decision in April 2007 prohibiting the Israel Land Administration (ILA) from aerially spraying crops cultivated by Palestinian Bedouin citizens of Israel living in the unrecognized villages in the Naqab (Negev). In the decision, a unanimous three-justice panel ruled that these actions endanger human life and the health of the inhabitants of the unrecognized villages, and that using these measures humiliated and disrespected them. The Supreme Court also ordered the state to pay NIS 20,000 in legal fees. (See HCJ 2887/04, *Saleem Abu Medeghem, et. al. v. Israel Lands Administration, et. al.* (decision delivered 15 April 2007).

Violations of Farming and Fishing Community Rights to Food and Livelihood under Israel's Closure/Blockade

The destruction of Abu Ta'aymeh's crops - and resulting impacts on the rights to food and an adequate standard of living - was carried out in the context of Israel's 10-year, illegal closure and blockade of the Gaza Strip, which amounts to an occupation from effective control. Israel's closure/blockade maintains a protracted humanitarian crisis and prevents access to fundamental rights and freedoms of the population of two million Palestinians in the Gaza Strip.

The closure/blockade is rooted in the blanket ban on movement of people and severe restriction of goods. Limited exceptions in these categories exclude the entry of scientific and chemical experts relating to herbicides/pesticides, and laboratory equipment, which would enable Palestinians in Gaza to ascertain the full human and environmental health impacts of the chemicals sprayed. To date, the Israeli authorities have not confirmed an exhaustive list of chemicals used. The imposed closure means that Palestinian and/or international teams who could undertake soil and water testing and offer support or suggestions for remediation of areas contaminated by toxic substances and waste (including military remnants) are effectively blocked from even entering Gaza.

Specific Implications of the Imposition of the Buffer Zone on Farmers' Rights to Food and Livelihood

Gaza's farmers are one of the communities bearing the brunt of Israel's policies and practices that maintain the closure/blockade. The Israeli-imposed access restricted areas—also called the buffer

⁴ Prior to the admission in the letter response to Al Ta'aymeh's complaint, an Israeli military spokesperson confirmed to the magazine +972 in December 2015 that, "[t]he aerial spraying of herbicides and germination inhibitors was conducted in the area along the border fence in order to enable optimal and continuous security operations". Accessed online: <<http://972mag.com/gaza-farmers-demand-idf-compensation-for-herbicide-spraying/120545/>>.

zone—have been cleared of farmlands, through incursions and crop-spraying, according to these policies, which has led to the destruction of 35 percent of Gaza’s agricultural lands.⁵ The farmers are also subjected to routine, indiscriminate attacks by the Israeli forces, who according to policy, maintain the restrictions through military force.

Within the context of Israel’s use of live fire and incursions in the access restricted area in 2016, eight Palestinians in Gaza were killed by Israeli forces, including three children, while 194 were injured, including 33 children, according to Al Mezan’s monitoring and documentation. Since the beginning of 2008, 300 Palestinians have been killed, including 53 children, and 2,550 have been injured, including 378 children.

Specific Implications of Electricity Cuts on Farming Communities’ Right to Food

The electricity crisis in the Gaza Strip stipulates approximately eight hours of electricity followed by 12 hours of power cuts and heavily impacts the farmers’ ability to irrigate. The issue is compounded by the lack of fuel available for generators that power the water pumps and has correspondingly severe impacts on community abilities to grow food for their families and to earn an income.

Specific Implications for Communities Reliant on Fishing

The access restricted areas are also comprised of Gaza’s fishing grounds, which are now in large parts inaccessible to the population: where the Oslo Accords promulgated a fishing zone of 20 nautical miles, the permitted zone according to Israeli policy is now six nautical miles. Even within the permitted zone, Gaza’s fishermen are regularly subjected to attacks by Israeli forces using live fire, to arbitrary arrest and detention, and to the destruction and confiscation of fishing boats and equipment. Previously one of the most economically viable sectors in Gaza’s economy, the fishermen are now unable to build resilient livelihoods and are pushed into severe poverty and unemployment from Israel’s closure/blockade policies and practices.

Implications of Full-Scale Military Bombardments on Farming Communities’ Rights to Food and Livelihood

Israel’s frequent bombardments that target civilian and public infrastructure *en masse* in the Gaza Strip have devastating impacts on farmers, whose lands are destroyed and livestock are killed. Unexploded ordinances remain strewn throughout the Gaza Strip. The bombardments target civil and public infrastructure, including sanitation, water and electricity facilities needed to keep farms running and to sustain food security.

The destruction of crops by contaminating the ground through full-scale military bombardments, through daily incursions into the access restricted areas, and through crop-spraying renders the agricultural lands infertile and destroys crops that are relied upon for sustenance and income. The cumulative effect of these practices on Palestinians who live off of the land is the forced displacement of populations and impoverishment.

Al Mezan’s Cases on the Access Restricted Areas

⁵ OCHA, Special Focus, Aug 2010. Accessed online:
<https://www.ochaopt.org/documents/ocha_opt_special_focus_2010_08_19_english.pdf>.

Al Mezan selects some incidents from the access restricted areas as cases for legal action in Israel, despite the serious [obstacles to justice](#) faced by Palestinians in Israeli courts, particularly cases from Gaza. Conscious of these systemic barriers to justice and genuine reparations, the farmers affected by the aerial spraying made the decision to bring their cases forward with Al Mezan as to date, this is the only option available to them for seeking remedy under applicable national jurisdictions. For related jurisprudence on the access restricted areas pursued by Al Mezan please refer to the footnotes here.^{6,7}

Due to restrictive amendments to Israel's tort legislation, particularly the eighth amendment, financial requirements, and inability to physically access the courts and lawyers due to the closure, the Israeli court system and authorities blocks all effective remedy for Palestinian claimants from Gaza. Lack of accountability and access to justice for Palestinians means that the above-described policies and practices perpetrated by Israeli forces in the Gaza Strip, including crop spraying, are allowed, and even encouraged, to continue unabated.

Recommendations

Based on the above documentation connecting the closure/blockade on Gaza, the regular full-scale military bombardments, and the lack of access to effective remedies with violations of Palestinians' basic rights to food, health, livelihood, life, and information on exposure to undisclosed chemical substances, the submitting organizations recommend the UN Special Rapporteurs on the Right to Food and on Human Rights and Hazardous Substances and Wastes:

- i. Address the issues documented herein in upcoming reports to the UN Human Rights Council, highlighting the need for appropriate Israeli authorities to be held accountable for aerial spraying and for legal remedy and reparation to be made available to impacted farmers;
- ii. Call on Israeli authorities to immediately disclose information on:
 - a) All chemicals used during aerial spraying;
 - b) Locations around Gaza and the West Bank where aerial spraying takes place;
 - c) Frequency of spraying;

⁶ Al Mezan is currently pursuing a case in an Israeli civil court that illustrates the arbitrary use of force against Palestinians on their lands near the access restricted areas. A Palestinian child was playing outside of his home on his family's property and was arbitrarily shot by Israeli forces, without provocation and counter to law enforcement principles. The child was paralyzed as a result of the attack. His case is an embodiment of Israel's policies to maintain the closure/blockade through the use of live fire in the access restricted areas. For more information, please refer to Al Mezan's contact details at the bottom of this brief.

⁷⁷ Another case that Al Mezan is pursuing, which is illustrative of how the rights to food and livelihood are directly impacted by the ongoing and systematic attacks on Gaza communities' rights to life and existence, is brought on behalf of Nasser Abu Is'ayid. His home, located in the access restricted area, has been attacked by Israeli forces on three occasions since 2010. As a result of these attacks, his wife was killed, his children injured, his house and lands destroyed, and his livestock were killed. The situation endured by this family has to date been officially justified merely on the basis of "technical errors" by the military and other vague arguments put forward by the Israeli authorities. Due to Israel's restrictive legislation on advancing tort cases, as well as procedural and financial barriers within the judicial mechanisms, achieving justice under these conditions is nearly - if not - impossible to obtain. For more information on this case, please see:

- Case study: <http://mezan.org/en/post/18470>
- Legal factsheet: <http://www.mezan.org/en/uploads/files/18468.pdf>
- Documentary (with En subtitles): <http://mezan.org/en/post/20182>

- d) Whether any health or environmental impact assessments (including assessments of potential spray drift and transboundary implications) have been done in relation to such spraying, and if so, when and where copies will be disclosed;
- iii. Seek opportunities to undertake a visit to Gaza to speak directly with farmers and fishing communities, whose rights to food and livelihood are directly linked to the ongoing violence perpetrated by Israeli forces, and
- iv. Call on Israel to immediately lift the closure/blockade on Gaza, particularly given the devastating impact on the rights to food, livelihood and life, and the corresponding lack of possibilities for there to be any remediation of land contaminated by toxic substances and wastes.

For additional information, clarification or questions, please contact:

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