



ARRESTED DEVELOPMENT

The Long Term Impact of Israel's Separation
Barrier in the West Bank

October 2012

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Cover Abandoned buildings near the barrier in the town of Bir Nabala, 24 September 2012. **Photo** Anne Paq, activestills.org

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Introduction

This report deals with the Separation Barrier—the largest and costliest infrastructure project Israel has undertaken since the construction of the national water carrier during the 1950s and '60s. In June 2002, when Palestinian attacks against Israeli citizens were at their peak, the Israeli government decided to build the barrier and termed it a temporary security measure intended to protect Israel from terrorist attacks from the West Bank. All the decisions and documents on this subject have emphasized that the barrier does not signify a future political border.

Yet the Separation Barrier was erected primarily within the occupied West Bank, and in a way to function as a border. The barrier's route, determined in part by the location of many of Israel's West Bank settlements, creates the infrastructure for de facto annexation of most of the settlements and settlers. And the barrier, like the settlements, leads to numerous infringements of the human rights of Palestinians, over and above the direct damage inflicted by its construction – including violations of property rights, the right to free movement, the right to an adequate standard of living and the collective right to self-determination.

This report examines the ramifications of the Separation Barrier on nearby Palestinian communities on either side of it, ten years after its construction commenced. The report details and critiques the permit regime instituted by Israel in what is known as the "Seam Zone," West Bank lands on the "Israeli" side of the barrier. The devastating impact of the barrier on the individual and collective rights of Palestinians is demonstrated through four case studies. This report does not address the impact of the Separation Barrier in the Jerusalem area, which will be addressed separately in a future B'Tselem report.

The first section of this report examines the question of whether the Separation Barrier is indeed a temporary security measure, as the Israeli government claims. The second section provides current data about the barrier and its impact. The third section deals with the Seam Zone areas and the permit regime through which Israel places restrictions on Palestinian access to and presence in these areas. The fourth section surveys the long term effects of the barrier on four Palestinian communities: the village of Barta'ah a-Sharqiyah, which is isolated on the Israeli side of the barrier; the village of Jayus, whose lands are also on the Israeli side of the barrier; the city of Qalqilyah, which is entirely encircled by the barrier; and the town of Bir Nabala, which is trapped by the barrier in an enclave. The fifth section surveys the infringements of Palestinians' human rights caused by the Separation Barrier.

Part I:

The Barrier – A Temporary Security Measure?

1. Israeli Government Decisions

In April 2002, following a series of attacks carried out by Palestinians within Israeli territory, the Israeli government's Ministerial Committee on National Security Affairs decided to construct a barrier "to hinder, disrupt, and prevent the penetration of terrorist activity from Judea and Samaria into Israel."¹

Two months later, in June 2002, the government approved the construction of the first phase of the barrier – from Salem in the northwestern West Bank to the settlement of Elkana in the west. This decision, like further government decisions on this subject in subsequent years, described the Separation Barrier as "a temporary security measure for the prevention of terror attacks and [it] does not designate a border, political or otherwise."² Israel's State Attorney even argued before the High Court in February 2004 that it would be possible to dismantle the Separation Barrier "when the sides agree on a border, or when other circumstances come about that would justify doing so."³

Contrary to these explicit declarations, it appears that the considerations addressed by decision-makers when determining the route of the barrier were not solely security-related. An examination of the barrier's route shows that the aim was to encompass as many settlements and settlers as possible, so as to enable their de facto annexation to Israel. A report published by B'Tselem and Bimkom in 2005 demonstrated that in at least 12 cases, the main consideration in determining the route of the Separation Barrier was to accommodate the future expansion plans of settlements, including plans for which the approval process by the Civil Administration's Supreme Planning Council had not even commenced.⁴ In four High Court petitions submitted by Palestinians and human rights organizations – addressing the barrier's route near the settlements of Zufin, Alfei Menashe, Sal'it and Modi'in Illit – the judges reached a similar conclusion and instructed that the route be modified after having clarified

1 Ministerial Committee on National Security Affairs, Decision No. 64/B dated 14 April 2002.

2 Government Resolution No.4783 dated 30 April 2006, available in Hebrew at <http://www.pm.gov.il/PMO/Archive/Decisions/2006/04/des4783.htm> See also Resolution No. 2077 from 23 June 2002 (in which the term "temporary" is not used), Resolution No. 883 of 1 October 2003, Resolution No. 3283 from 20 February 2005. For a broader discussion see B'Tselem, **Under the Guise of Security – Routing the Security Barrier to Enable Israeli Settlement Expansion in the West Bank**, December 2005, pp.9-18, available at: http://www.btselem.org/download/200512_under_the_guise_of_security_eng.pdf

3 State's response in HCJ 639/04, **The Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.** dated 4 February 2004.

4 **Under the Guise of Security – Routing the Security Barrier to Enable Israeli Settlement Expansion in the West Bank**, December 2005, pp. 19-76.

that future expansion plans are not a relevant consideration in determining the barrier's route.⁵

Over the years, prime ministers and other senior Israeli government ministers referred to the barrier as marking the future border of Israel. For example, former Prime Minister Ariel Sharon said that settlement blocks slated to remain in Israel and located to the west of the Separation Barrier would be "part of the State of Israel, territorially connected to Israel."⁶ Former Justice Minister Tzipi Livni said that the Separation Barrier would serve as "the future border of the State of Israel."⁷ And Defense Minister Ehud Barak stated that "when we build a barrier, clearly there are areas beyond the barrier, and it is clear that, under a permanent settlement agreement... these areas beyond the barrier will not be part of the State of Israel."⁸

From a technical standpoint as well, the Separation Barrier was built as a border. For example, the Defense Ministry's tender for construction of the barrier referred to "the technical requirements of the IDF's experiment with a border fence"⁹ – and the same technological system for registration and border inspection that is used at Israel's airports and international border crossings was to be employed at the crossings and gates constructed along the Separation Barrier. For example, at the Rehan crossing, which leads to Barta'ah a-Sharqiyah, the checks conducted resemble those carried out at airports.¹⁰ In a tour conducted by the State Control Committee of the Seam Zone – following a report from the State Comptroller about integrating technology at the Separation Barrier crossings – the head of the Seam Zone Authority, Maj. Gen. (ret.) Netzach Mashiach, said that "the significant component in controlling the information about those who enter and the identity of those entering will be using automated biometric identification systems for border crossings ("Rashbag 2000"). The day when this will happen is not far off."¹¹

5 Regarding the settlement of Alfei Menashe, see HCJ 7957/04, **Zaharan Yunis Muhammad Mara'aba et al. v. Prime Minister of Israel et al.** dated 15 September 2005. On 29 August 2007, the HCJ denied the petition of the Alfei Menashe Local Council opposing changes to the barrier route. HCJ 10309/06 and 10714/06, **Alfei Menashe Local Council and Yassin Yunis Muhammad Mara'aba et al. v. Prime Minister of Israel et al.** Regarding the settlement of Zufin see HCJ 2732/05 **Head of Azzun Municipal Council, Abd a-Latif Hussein et al. v. Government of Israel et al.** dated 15 June 2006. The route of the barrier was changed only after a further petition by HaMoked—Center for the Defence of the Individual pursuant to a contempt of court ruling from 5 October 2009. Regarding the Sal'it settlement, see HCJ 11344/03, 10905/05, 11765/05 and 8109/07, **Faiz Salim et al., Mayor of Jayus et al., Head of Khirbet Jabara Village Council et al. and Local Council of Kochav Yair v. Commander of IDF Forces in Judea and Samaria, Prime Minister et al.** dated 9 September 2009. Regarding the settlement of Modi'in Illit see HCJ 8414/05, **Ahmad Issa Abdallah Yassin, Head of Bil'in Village Council v. Government of Israel et al.** dated 4 September 2007.

6 Aluf Benn and Nir Hasson, "Sharon: The Evacuation Will Begin in Mid-August," **Haaretz**, 10 May 2005 [Hebrew]. See also Aluf Benn, "Prime Minister Warns the Palestinians: What You Can Get Today – You Won't Get Tomorrow," **Haaretz**, 27 November 2003; Shaul Arieli and Michael Sfar, **Tower and Stockade: The Separation Barrier – Security or Avarice?**, Sifrei Aliyat Hagag, Yedioth Aharonoth and Sifrei Hemed, 2008, p.276 [Hebrew].

7 Yuval Yoaz, "Livni: The Separation Barrier – Israel's future border," **Haaretz**, 30 November 2005 [Hebrew].

8 Interview for IDF Army Radio, 4 December 2007 [Hebrew].

9 See details of implementation of the "Seam Zone" plan on the Ministry of Defense's Seam Zone web site [Hebrew]: <http://www.seamzone.mod.gov.il/Pages/Heb/bitzua.htm>

10 Further details of how this crossing is operated can be found in the case studies included in this report.

11 **Minutes of the State Control Committee tour of the Seam Zone—Jerusalem periphery**, Sunday, 11 December 2005, p.21 [Hebrew]. See also **Report of the State Comptroller 56A**, 31 August 2005, pp. 126 and 131-132 [Hebrew]; Appendix C – Data Systems of the Coordinator of Government Activities in the Territories, in **Report of the Committee for Arrangements, Supervision and Enforcement of Employment of Palestinian Workers in Israel**, submitted to the government on 12 May 2011, p.72 [Hebrew].

2. The High Court Rulings

The High Court was asked to rule on more than 150 petitions dealing with the legality of the barrier in general and the legality of certain sections in particular. Most of these petitions were denied after the justices accepted the State's position that the barrier is temporary and that the considerations used in planning the route were solely security-related. The judges ignored declarations by Israeli officials regarding the political purposes of the Separation Barrier as cited by the petitioners.

Two basic rulings written by then-President of the High Court, Justice Aharon Barak – the first issued in June 2004 regarding Beit Sourik, and the second from September 2005 which addressed Alfei Menashe – set the theoretical framework for judgments on this subject.

The Beit Sourik petition concerned a 40-kilometer stretch of the Separation Barrier in a rural area west of Ramallah, where construction work had already begun. Justice Barak delimited the deliberations on the case to two questions: First, the question of Israel's authority to build a barrier within the territory of the West Bank; and second, assuming that such authority exists – whether the route set in the Beit Sourik area is legal.

Justice Barak responded affirmatively to the first question, through clarifying that "a military commander is not authorized to order construction of a Separation Barrier if his grounds are political. The Separation Barrier cannot be for the purpose of 'annexation' by Israel of territories in the area." Yet the judge rejected the petitioners' argument that this was the aim of the barrier – and instead fully accepted the State's argument and ruled that "based on the factual foundation before us, the purpose of constructing the barrier is security-related."¹²

The core of the verdict was devoted to examining the legality of the route in the area addressed in the petition. Justice Barak explained that this question must be decided based on the principle of proportionality, pursuant to which "the liberty of the individual (in our case, the liberty of local residents living under belligerent occupation) may be restricted in order to achieve appropriate goals (in our case, the security of the State and its citizens and the security of the area) so long as the restriction is proportional."¹³ In the case before him, Justice Barak determined that the injury to Palestinians due to the route of the barrier was severe:

The length of the [section of the] Separation Barrier that is the subject of the orders before us is about four kilometers. It harms the lives of thirty-five thousand local residents. Four thousand dunams [4 dunams = 1 acre] of their land are taken away by the route of the barrier itself, and thousands of olive trees growing along the route are being uprooted. The local residents from eight villages are cut off by the barrier from over thirty thousand dunams of their land. Most of this land is cultivated, and includes tens of thousands of olive trees, fruit trees, and various agricultural crops. The permit regime that the army seeks to put in place and which has been applied to many areas, cannot prevent or significantly reduce the extent of the serious harm to local farmers.¹⁴

12 Paragraphs 27-28 of HCJ 2056/04, **Beit Sourik Local Council et al. v. Government of Israel et al.**, 30 June 2004 [Hebrew].

13 Ibid., paragraph 36.

14 Ibid., paragraph 82.

Justice Barak ruled that the balancing of security needs and the harm to the residents was inappropriate – and thus the route in this section is not proportional. As such, Barak ordered the State to revoke six of the eight land expropriation orders addressed in the petition, and to re-examine one additional one.¹⁵ Following the Beit Sourik verdict, Israel's defense establishment reviewed the entire route of the Separation Barrier and made changes in many sections. Thus, for example, it changed the route in the area of Bil'in and Kharbatha Bani Harith, to reduce the amount of the land belonging to these villages that would have been left to the west of the barrier in an attempt to enable building of the Matityahu North neighborhood of the Modi'in Illit settlement.¹⁶

Ten days after the verdict was handed down in the Beit Sourik case, the International Court of Justice (ICJ) in the Hague announced its advisory opinion on the legality of the Separation Barrier and its route. The court held that building the barrier within the West Bank is illegal, inter alia because it harms the human rights of the Palestinians, and since the barrier is intended to contribute to the preserving and annexing of settlements that were built in violation of international humanitarian law.¹⁷

More than a year later, in September 2005, a panel of nine justices of Israel's High Court of Justice (HCJ) rendered a verdict on the route of the Separation Barrier near the Alfei Menashe settlement. The verdict dealt with a section of the barrier that encircled the settlement while imprisoning within an enclave five Palestinian villages – Arab a-Ramadin al-Janubi, Arab Abu Farda, Wadi a-Rasha, a-Daba and Ras a-Tira. This section of the barrier separated the residents of the villages from their land and isolated them from nearby communities and from the rest of the West Bank. Justice Barak again ruled that the barrier was constructed for security-related needs and rejected the opinion of the ICJ that the entire barrier is illegal.

In this ruling, Barak addressed for the first time the authority of the military to take steps intended to protect settlers and ruled that the Separation Barrier is a legal means of attaining that goal, regardless of the legality of the settlements themselves:

The authority to construct a Separation Barrier to protect the lives and the security of the Israeli settlers is derived from the need to protect 'public order and security' (Article 43 of the Hague Convention). It is necessary for the human dignity of every person, no matter who they are. It is meant to protect the life of every person created in the image of God. The life of someone who lives in an area illegally cannot be forfeited. Even someone present in the area in violation of the law does not thereby become someone outside the law.¹⁸

Nevertheless, Justice Barak ruled that the route in this area was not proportional and ordered the State to dismantle this section of the barrier.¹⁹ This was the first time that

15 Ibid., paragraphs 49-81 and 86. For more on the subject of expropriation for military purposes see p. 13 of **Behind the Barrier: Human Rights Violations As a Result of Israel's Separation Barrier**, B'Tselem, English version published April 2003. See also the items on "Legal Aspects" of the "Security Fence" on the Ministry of Defense Seam Zone web site, at <http://www.securityfence.mod.gov.il/Pages/ENG/execution.htm>

16 For more on the barrier route in this area, see **Under the Guise of Security**, pp. 53-64, footnote 4.

17 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Authority (Request for advisory opinion), The International Court of Justice, 9 July 2004, para. 114-142.

18 Paragraph 19 in HCJ 7957/04, **Zaharan Yunis Muhammad Mara'aba et al. v. Prime Minister of Israel et al.** dated 15 September 2009.

19 Ibid., paragraph 114.

the HCJ ruled against a section of the barrier that had already been constructed and ordered the State to re-examine the route.

Although the court maintained its position that the barrier is temporary and that its placement relies solely on security considerations, there were additional cases in which the justices ordered the State to demolish parts of the barrier already built or to change its route:

- In June 2006, four years after construction began on the Separation Barrier, there were deliberations on a petition concerning the barrier's route on the lands of the villages of Azzun and Jayus, near the settlement of Zufin. The court had previously approved the route in that area and accepted the State's argument that it was based on security considerations.²⁰ This time, however, in the wake of information presented by the petitioners, it became clear to the court that the State Attorney's office had misled the court. First of all, the justices realized that the determination of the route was driven not by security considerations, but rather by the desire to build an industrial zone for the Zufin settlement. Secondly, they realized that the assurances by the State Attorney's office that the Palestinian farmers could continue to work their land were not borne out in practice. The court ruled that, "given the temporary nature of the barrier," the planning of its route "need not be based on the desire to include on the 'Israeli' side of the barrier land intended for the expansion of communities, specifically regarding master plans which are not going to be carried out any time soon." The revisions to the barrier's route in this area were not completed until three years after the High Court's verdict.²¹
- In September 2007, the HCJ ordered revisions to the route of the barrier on land belonging to the village of Bil'in. The relocation of the barrier was not carried out until June 2011, nearly four years after the court's ruling.²²
- In September 2009, the HCJ ordered a change to the route of the barrier on the lands of Jayus and Falameya, where a northward expansion of the Zufin settlement was planned.²³ This rerouting was scheduled to begin in mid-2012, three years after the HCJ ruling. As of August 2012, it had yet to begin.
- In September 2009, the HCJ ruled that a rerouting would have to be made to a section of the barrier intended to allow expansion of the Sal'it settlement – a section which isolates the village of Khirbet Jabara on the western side of the barrier.²⁴ The work to dismantle this section is slated for completion at the end of 2012.

20 HCJ 8172/02 and 8532/02, **Ibtisam Muhammad Ibrahim et al. and Rasheed Abd a-Salaam Salameh et al. v. Commander of IDF Forces in the West Bank** dated 14 October 2002.

21 HCJ 2732/05, **Head of Azzun Municipal Council, Abd a-Latif Hussein et al. v. Government of Israel et al.** dated 15 June 2006. The barrier route was changed following a petition by HaMoked-Center for the Defense of the Individual pursuant to a contempt of court ruling by the court dated 5 October 2009.

22 HCJ 8414/05, **Ahmad Issa Abdallah Yassin, Head of Bil'in Village Council et al. vs. Government of Israel et al.** dated 4 September 2007. See also on the B'Tselem web site: **29 June 2011: Even after moving the Separation Barrier, some 1,300 dunams of Bil'in's lands are left to the west of it** available at <http://www.btselem.org/hebrew/topic-page-49>

See also, **By Hook and by Crook – Israeli Settlement Policy in the West Bank**, B'Tselem, July 2010, p. 32.

23 HCJ 11344/03, 10905/05, 11765/05, and 8109/07, **Faiz Salim et al., Mayor of Jayus et al., Head of Khirbet Jabara Local Council et al. and Kochav Yair Local Council v. Commander of IDF Forces in Judea and Samaria, Prime Minister et al.** dated 9 September 2009.

24 HCJ 11344/03, 10905/05, 11765/05, and 8109/07, **Faiz Salim et al., Mayor of Jayus et al., Head of Khirbet Jabara Local Council et al. and Kochav Yair Local Council v. Commander of IDF Forces in Judea and Samaria, Prime Minister et al.** dated 9 September 2009.

Part II: Data

1. The Route of the Separation Barrier

The total length of the Separation Barrier – as approved in the last government decision on the matter in April 2006, and after changes to the route carried out by order of the High Court of Justice – is 708 km. This is twice the length of the Green Line, the 1949 armistice line between Israel and the West Bank, which is 320 km long.²⁵

The barrier's route is long and convoluted, with 85 percent running within the territory of the West Bank, mainly in areas where Israel has established Israeli settlements and industrial zones. In other areas, the route runs mostly along the Green Line – as in the Jenin area in the northern West Bank and in arid areas in the southern and southwestern West Bank.²⁶

To the west of the barrier, on its "Israeli" side, lies 9.4 percent of the territory of the West Bank, including East Jerusalem.²⁷ There are 8 industrial zones and 82 settlements in this area. This figure includes the 12 neighborhoods constructed on West Bank territory that was annexed to the city of Jerusalem, and 18 outposts, which are settlements constructed without official permits from the Israeli government but with the support and assistance of various government ministries.

According to data from the Israeli Central Bureau of Statistics, 428,511 Israelis live in these settlements, comprising 85 percent of the entire settler population. This includes 238,526 settlers living in West Bank settlements, and the remainder living in neighborhoods built by Israel in East Jerusalem.²⁸

2. Construction of the Separation Barrier

The Separation Barrier was built as an obstacle and includes a system of fences ("preventive," "warning," and "delaying"), an anti-vehicle component, patrol roads, a trace path on each side to disclose the footprints of infiltrators, plus warning and

25 Israeli Government Resolution No. 4783 dated 30 April 2006. The text of the decision does not mention the length of the Separation Barrier. The data on the length of the barrier is taken from **The Humanitarian Impact of the West Bank Barrier – July 2012**, United Nations Office for the Coordination of Humanitarian Affairs (OCHA) – occupied Palestinian territory, July 2012, available at: http://www.ochaopt.org/documents/ocha_opt_barrier_factsheet_july_2012_english.pdf

See also: **Barrier Update: Seven Years after the Advisory Opinion of the International Court of Justice on the Barrier: The Impact of the Barrier in the Jerusalem Area**, Office for the Coordination of Humanitarian Affairs (OCHA) – occupied Palestinian territories, United Nations, July 2011, p.3.

26 Ibid.

27 The land area of the West Bank is 5,602,951 dunams. See **By Hook and by Crook**, p.11.

28 The data on the settler population in the West Bank is updated through the end of 2010, and through the end of 2009 for the Israeli neighborhoods of East Jerusalem. For details of the data on the settler population in the West Bank, see the B'Tselem web site at <http://www.btselem.org/settlements/statistics>

surveillance systems. The total width of the barrier, including all of these components, ranges between 35 and 100 meters.²⁹ According to the Israeli Ministry of Defense, along 4 percent of the route of the Separation Barrier, it takes the form of an eight-meter-high concrete wall, primarily in urban areas such as East Jerusalem, Qalqilyah and Tulkarm.³⁰

According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), as of July 2012, construction had been completed for 439.7 km of the barrier, comprising 62.1 percent of the overall route. Another 56.6 km of the barrier (8 percent of the route) is currently under construction, and another 211.7 km (29.9 percent of the route) has yet to be built.³¹

To enable construction of the barrier, the Israeli army issued military orders for expropriation of 30,261 dunams of land. Of that area, 88 percent (i.e., 26,622 dunams) are "private lands belonging to Palestinian residents," and 179 dunams (0.6 percent), are lands owned by Israeli citizens. The remainder, amounting to 3,460 dunams (11.4 percent of the land), is land that Israel has declared as "state land" or that was registered as such during the British mandate period.³² In 2004, the army issued ten military orders forbidding any new construction within two hundred meters on either side of the barrier north of Qalqilyah.³³ Between 2004 and 2007, the Civil Administration destroyed over 160 structures located near the route on which the barrier was built.³⁴

According to data from the Civil Administration, 184,868 dunams, or 3.3 percent of the land in the West Bank, are on the "Israeli" side of the already-built portion of the Separation Barrier, in the area between the barrier and the Green Line.³⁵

The sections of the Separation Barrier that have not yet been built will encompass the settlement blocks deep within the West Bank – "fingers" reaching far into the West Bank which contain the settlements of Kedumim, Ariel, Ma'ale Adumim and Gush Etzion. The army has already taken over the land intended for construction of the Separation Barrier in these areas, and for sections of the barrier already built to the east and south of Ariel – although the construction of the Kedumim and Ma'ale Adumim "fingers" are frozen, evidently due to the opposition of the U.S. government.³⁶ In 2007, the Defense Ministry stopped building the barrier in the Gush Etzion area following the submission of seven petitions to the High Court regarding the expropriation orders issued by the military in that area for the purpose of building the barrier. At a hearing in May 2011, the State Attorney's Office told the court that completion of the barrier in that area is "no longer a top priority for the defense establishment, given the budgetary limitations."

29 **Beit Sourik Village Council et al. v. Government of Israel et al.**, para. 7. See footnote 12.

30 "Seam Zone" web site <http://www.securityfence.mod.gov.il/Pages/Heb/mivne.htm> [Hebrew]

31 **The Humanitarian Impact of the West Bank Barrier – July 2012** (see footnote 25), available at: http://www.ochaopt.org/documents/ocha_opt_barrier_factsheet_july_2012_english.pdf

32 Letter from 2nd Lt. Amos Wagner, Civil Administration Public Inquiries Officer, to Attorney Limor Yehuda of ACRI, dated 4 April 2011. For more about "state lands," see the B'Tselem report on **Land Grab: Israel's Settlement Policy in the West Bank**, May 2002, pp. 47-64, **By Hook and by Crook**, pp. 22-29, see footnote 22, and **Under the Guise of Legality: Declarations on State Land in the West Bank**, March 2012.

33 Military orders prohibiting construction (Seam Barrier) based on Order Regarding Supervision of Construction (Judea and Samaria) (no.393), 1970.

34 See B'Tselem web site: **6 April 2008: Demolition of Houses near the Separation Barrier, Far'un Village, Tulkarm District**, at: http://www.btselem.org/separation_barrier/20080406_farun_house_demolitions

35 Letter from 2nd Lt. Amos Wagner, Civil Administration Public Inquiries Officer, to Attorney Limor Yehuda of ACRI, dated 4 April 2011.

36 **Tower and Stockade**, pp. 211 and 375 [Hebrew]. See footnote 6.

Yet, in October 2011, the State Attorney announced that the defense establishment was considering resuming work on construction of the barrier in the last quarter of 2012, in the segments to the east and south of the barrier already built in this area. The court dismissed the petitions, while granting the petitioners the option of petitioning the High Court again if the State resumes its work in the area.³⁷

In response to a petition submitted against the barrier route in the Ma'ale Adumim area, the State notified the Court in April 2009 that it had decided to freeze construction of the barrier in this area. The State explained that "for the present, given the budgetary limitations and due to other security needs, construction of the fence on this route is not a high priority for the respondents in terms of completing the Security Barrier throughout the Judea and Samaria region."³⁸

Israel's Finance Ministry data indicates that the cost of construction and maintenance of the Separation Barrier through the end of 2010 reached 9.49 billion shekels (some US\$2.5 billion). This includes the operation of 32 crossing points, and the creation of 14 alternative roads to facilitate movement for the local Palestinian population (known as "fabric of life" roads). The cost of future construction and maintenance of the barrier through the end of 2013 was projected at another 1.35 billion shekels, reaching a total of 10.84 billion shekels (some US\$2.85 billion according to the October 2012 exchange rate of NIS3.8=US\$1).³⁹

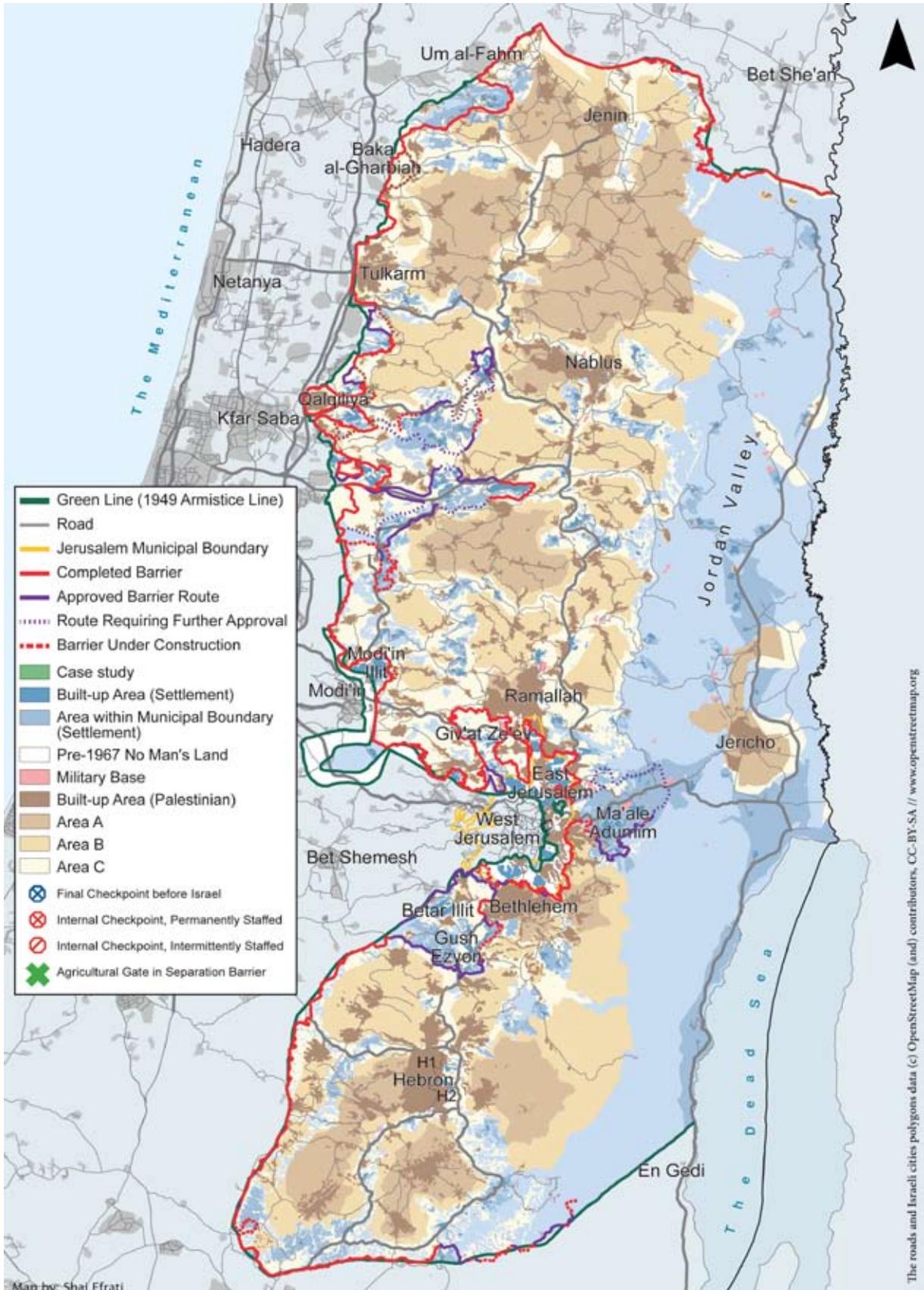
37 For changes in the State's position, see paragraphs 2 and 4 of HCJ 11779/05, 85/06, 423/06, 2268/06, 3179/06, 3839/06, **Jaba'a Village Council et al., Mahmoud Muhammad Rashid Takatka et al., Beit Umar Municipality et al., Nahalin Village Council et al., Gush Etzion Regional Council et al., Muhammad Ahmed Ibrahim 'Adi et al. and Gush Etzion Regional Council et al. v. Military Commander in the West Bank et al. and Government of Israel et al.** dated 18 December 2011 [Hebrew].

38 HCJ 9919/05 and 2001/06, **Suhara a-Sharqiyah Village Council et al. and Abu Dis Council et al. v. Minister of Defense et al.**, paragraph 2 [Hebrew] dated 11 August 2009.

39 **Ministry of Defense Draft Budget for 2011-2012**, unclassified security matters, pp. 69-70 [Hebrew]. Report for 2010 under the Freedom of Information Act, Division of Organization, Control and Administration, Ministry of Defense, p. 164 [Hebrew]. The construction cost for one kilometer of the barrier fence amounts to NIS 12 million and the construction cost for one kilometer of the barrier wall amounts to NIS 16 million. See Shaul Arieli, "A Wall of Folly: the 'war' the IDF is waging via the 'Seam Zone,'" January 2010 [Hebrew]; English translation dated 5 September 2010, retrieved from Shaul Arieli's web site at: <http://www.shaularieli.com/77951/The-Separation-Barrier-1-1-1>

Maps and Photographs

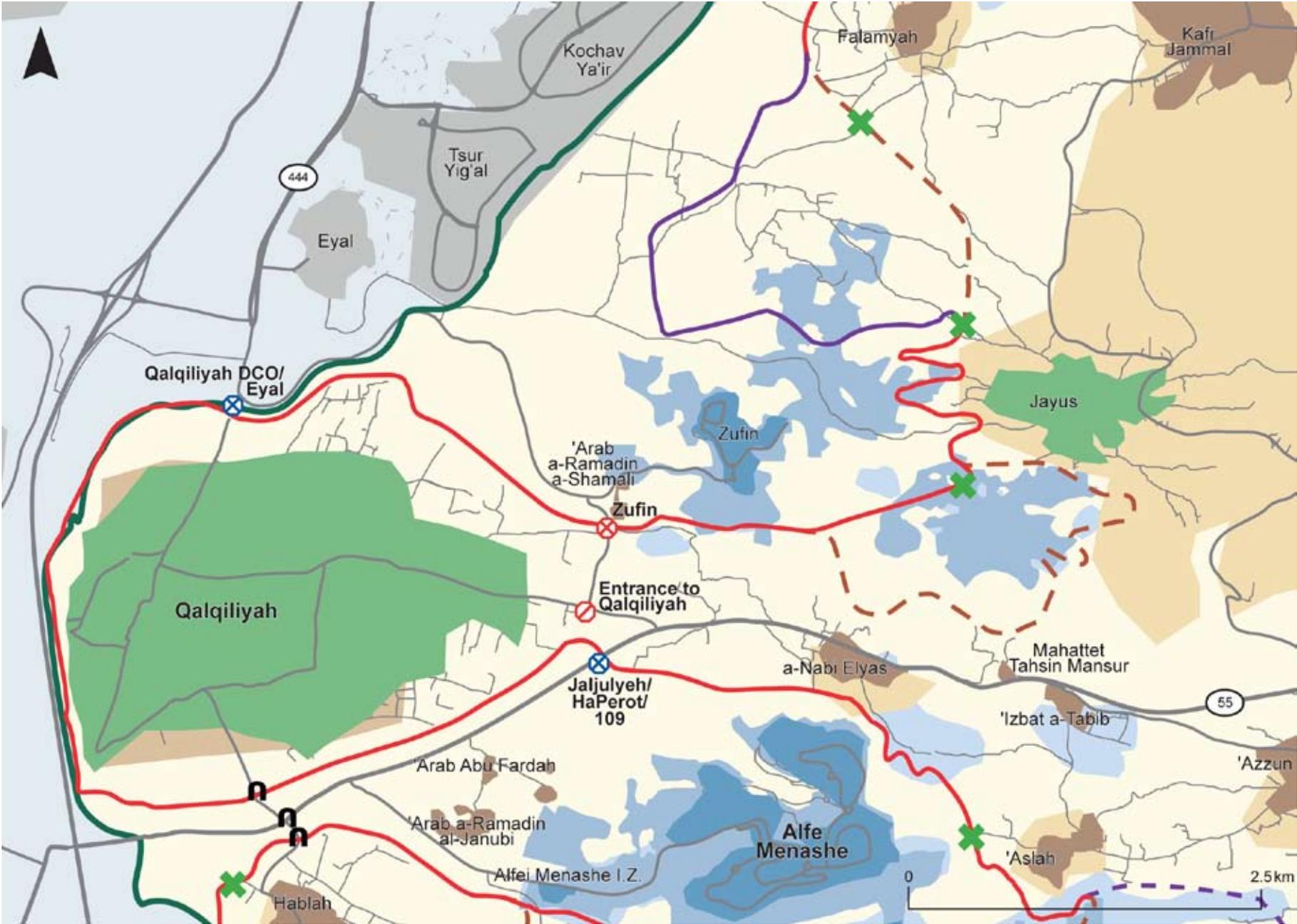
Map 1 The Route of the Separation Barrier



Map 2 Barta'ah a-Sharqiyah, Jenin District



Map 3 Qalqiliyah and Jayus, Qalqiliyah District



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Map 4 Bir Nabala, Ramallah District



Arrested Development: The Long Term Impact of Israel's Separation Barrier in the West Bank



Abandoned buildings located near the Separation Barrier in the town of Bir Nabala, 24 September 2012. **Photo** Anne Paq, activestills.org.



Closed shops in the town of Bir Nabala, 24 September 2012. **Photo** Anne Paq, activestills.org.



Abandoned house near the Separation Barrier in the town of Bir Nabala, 24 September 2012. **Photo** Anne Paq, activestills.org.



Palestinians wait at a checkpoint at the entrance to the Barta'ah-Rehan enclave, 20 February 2010. **Photo** Ruti Tuval, MACHSOMWATCH

Arrested Development: The Long Term Impact of Israel's Separation Barrier in the West Bank



A soldier checks Palestinian farmers at the Jayus village agricultural gate, 24 September 2012. **Photo** Oren Ziv, activestills.org.



Palestinians cross at an agricultural gate at Jayus, 24 September 2012. **Photo** Oren Ziv, activestills.org.



Abandoned area near the barrier in Qalqiliyah, where the military forbid construction, 24 September 2012. **Photo** Oren Ziv, activestills.org.



Closed shops in Qalqiliyah, 24 September 2012.
Photo Oren Ziv, activestills.org.

Part III:

The “Seam Zone” and the Permit Regime

1. The Seam Zone

The army has declared 74 percent of the areas on the “Israeli” side of the Separation Barrier (between the barrier and the Green Line) as a “Seam Zone.” These areas – an enclave around Barta’ah a-Sharqiyah in the northwest West Bank, areas north and south of Tulkarm, north and south of Qalqiliyah and small areas west of Hebron – were declared “closed military zones.” A permit regime was imposed there according to which Palestinians may be present only if they have received authorization from the Israeli Civil Administration.⁴⁰

The enclave of Bir Nabala, all of which is on the “Israeli” side of the barrier, was not declared a Seam Zone area and entry or presence for Palestinians does not require a permit. Likewise the village of a-Nabi Samuel, the Halayla neighborhood of the village of al-Jib (in the “finger” of the Givat Ze’ev settlement) and the KHALLET a-Nu’man neighborhood in southeastern Jerusalem (within the city’s municipal boundaries) were not included in the Seam Zone, although their residents are subject to similar requirements. The presence of Palestinian residents in the area does not require a permit, but the entry of residents into these communities is conditioned on verification of their identity via lists kept at the gates in the barrier. Likewise, every visit of family members or entry of workers depends on prior coordination with Israel’s District Coordination and Liaison Office (DCL).

HaMoked-Center for Defence of the Individual and the Association for Civil Rights in Israel (ACRI) petitioned the High Court against the declaration of the Seam Zone and against establishment of the permit regime. In its response, the State argued that the Seam Zone is intended to prevent “terrorist organizations from sending terrorists to cross the barrier from the direction of the Palestinian communities in that area, who could very quickly reach population centers within Israel to carry out

40 Declaration of closure of area no. S/2/03 (Seam Zone) (Judea and Samaria), 2003 dated 2 October 2003. For the text of the declaration, see: <http://www.hamoked.org.il/items/3190.pdf> [Hebrew].

General permit for entry to the Seam Zone and being present there, 2003 dated 2 October 2003. For text see: <http://www.hamoked.org.il/items/3600.pdf> [Hebrew].

Orders concerning a permit for a permanent resident of the Seam Zone, 2003 dated 7 October 2003, Orders concerning entry permits to the Seam Zone and being present there, 2003 dated 7 October 2003, and Orders concerning Seam Zone crossings, 2003 dated 7 October 2003 [Hebrew].

Collected Permanent Seam Zone Orders, 2011, Civil Administration, November 2011 [Hebrew]: <http://www.hamoked.org.il/files/2011/114311.pdf>

bombing attacks.”⁴¹ The State clarified that there is a need to create “a geographic security space that will enable combat forces to pursue terrorists in Judea and Samaria, before the latter penetrate Israel and disappear into hiding places.” The State added that the Seam Zone is also intended to “minimize the friction between the [Palestinian and Israeli] populations.”⁴² Seven years after submission of these petitions, they were rejected by the Court, which ruled that declaration of the Seam Zone areas is a byproduct of the purpose of the Separation Barrier, “which requires finding a legal framework applicable to the Seam Zone areas and affording the military command the ability to effectively control and supervise those entering these areas, from which there is free and open crossing into Israel. In the absence of such a framework, there is a concern that the purpose of the Security Barrier will not be achieved.”⁴³ The court added that the declaration of the Seam Zone area is required for “clear security purposes, complementing the original purpose of the Security Barrier itself.”⁴⁴

Stages of the declaration of the Seam Zone: The declaration of Seam Zone areas was carried out in several stages, corresponding to the progress of the construction of the Separation Barrier. In May 2004, the first phase was announced: Seam Zone Area A (“aleph”), from the village of Salem in the northwestern West Bank in a southwesterly direction as far as Route 5, the “Trans-Samaria” highway, near the Elkana settlement; and Area B (“bet”), from the village of Salem eastward to the Tirza stream in the northern part of the Jordan Valley. During the second phase, in January 2009, the Seam Zone area was expanded to include Area C (“gimel”), from Elkana southward to the Ofer Prison Camp, and northwestward to Jerusalem (not including the Bir Nabala enclave) and Area D (“dalet”), which includes part of the Dahiyat al-Bareed neighborhood in East Jerusalem and the southwestern part of Gush Etzion as far as the settlement of Mezadot Yehuda in the southern West Bank and Holed Mountain in the southern Judean desert.⁴⁵ In 2010, following changes the State made in the route of the barrier, three villages were removed from the Seam Zone; these villages are: Ras a-Tira, a-Diba and Wadi a-Rasha, all part of the Alfei Menashe settlement enclave.

The State Attorney’s office announced that in the Gush Etzion area, where construction of the barrier is frozen for the time being, there is no intention of declaring a Seam Zone area. The State Attorney explained that some 19,000 Palestinians live in this area, more than 2.5 times as many as live in the Seam Zone areas declared thus far, and hence “application of the permit regime in this area would be difficult or impossible, from the standpoint both of the residents and of the security establishment.” As such,

41 Paragraph 4 in the State’s writ of response in the petition to HCJ 9961/03 and 639/04, **HaMoked-Center for the Defence of the Individual v. Government of Israel et al. and Association of Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.** by the State Attorney dated 13 November 2006 [Hebrew].

42 Paragraph 19 of Response to petition by the State Attorney, HJ 639/04, **Association of Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria, et al.**, dated 4 February 2004 [Hebrew].

43 Paragraph 13 of HCJ ruling 9961/03 and 639/04, **HaMoked-Center for the Defence of the Individual v. Government of Israel et al. and Association of Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.**, 5 April 2011 [Hebrew].

44 *Ibid.*, paragraph 16.

45 Details of the stages of the declaration appear in paragraphs 6-14 of HCJ 9961/03 and 639/04, **HaMoked-Center for the Defence of the Individual v. Government of Israel et al. and Association of Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.**, 5 April 2011 [Hebrew]. See also Orders concerning security instructions (Judea and Samaria) (no.378), 1970, Declaration of closure of an area S/01/09, S/02/09, S/03/09, S/04/09, S/06/09, and S/07/09, all dated 5 January 2009, signed by Commander of the West Bank Gen. Gadi Shamni [Hebrew]. <http://www.law.idf.il/487-he/Patzar.aspx?PageNum=15>

instead of creating a Seam Zone area, a barrier will be built on the northern side of this area, a "security road" will be paved in combination with "other operational means" on the western side, and security checks will be conducted for each Palestinian seeking to enter.⁴⁶

Land area within the Seam Zone: According to the State's data, the declared area of the Seam Zone is 137,936.6 dunams, comprising 2.46 percent of the West Bank and 74 percent of all the lands located on the "Israeli" side of the Separation Barrier. Of that area, 93,401 dunams (67.7 percent) are private Palestinian land, 43,808 dunams (31.8 percent) are "state lands"⁴⁷ and 727.6 additional dunams (0.05 percent) are "in the process of being acquired" by Israelis.⁴⁸ The Civil Administration did not deduct from these figures the lands of the three villages removed from the Seam Zone in 2010.

According to the information provided by the State to the High Court, completion of the Separation Barrier along the route that encompasses the settlements of Ariel, Kedumim and Ma'aleh Adumim will result in the Seam Zone being 2.4 times as large as its current size.⁴⁹ This area will include 325,000 dunams, comprising 5.8 percent of the land in the West Bank.

There is no reliable data concerning the extent of agricultural land within the Seam Zone or who owns it. That is because most of the land in these areas is not registered in the tabu (the land registry), and the only existing records are purchase tax documents from the period of Jordanian rule.⁵⁰

Number of Palestinians living in the Seam Zone: There is no precise data concerning the number of Palestinians living in the Seam Zone, although OCHA estimates that the figure is approximately 7,500 people.⁵¹ Following is a list of the Palestinian communities in the Seam Zone:

- In the Barta'ah enclave: Barta'ah a-Sharqiyah, Um a-Rihan, Dhaher al-Malih, Khirbet Abdallah al-Yunis, Khirbet a-Sheikh Yunis, Khirbet a-Sheikh Sa'eed, Khirbet al-Muntaer al-Gharbiyah and Khirbet al-Muntaer a-Sharqiyah.
- In the Tulkarm area: Khirbet Jabara (slated to be removed from the Seam Zone at the end of 2012).
- In the Qalqiliyah area: The Bedouin communities of Arab a-Ramadin a-Shemali, Arab Abu Farda and Arab a-Ramadin al-Janubi.

46 Paragraphs 103-104 in the writ of response by the State to the petition of **Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.** See footnote 41.

47 **Collected Permanent Seam Zone Orders, 2011**, p.6. [Hebrew] See footnote 40.

48 Paragraph 18 of the Amended corrected announcement by the State to the petition of **HaMoked-Center for the Defence of the Individual v. Government of Israel et al. and Association of Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.** in HCJ 9961/03 and 639/04 dated 30 July 2009.

49 Paragraph 29 of the writ of response by the State in the petition of **Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.** See footnote 41. According to the State's calculations, the Seam Zone will encompass 5.9 percent of the West Bank. B'Tselem's calculation is based on 5,602,951 dunams as the area of the West Bank. See **By Hook and by Crook**, p.11. See footnote 32.

50 For more on the subject of land registration in the West Bank see **Under the Guise of Legality**, pp.31-34. See footnote 32.

51 **The Humanitarian Impact of the West Bank Barrier – July 2012**, See footnote 25. According to the Civil Administration's **Collected Permanent Seam Zone Orders, 2011**, some 7,390 Palestinians live in the Seam Zone "permanently," p.6 [Hebrew], see footnote 40.

- In the Jerusalem area: Some of the neighborhoods of Dakhit al-Barid in East Jerusalem.
- In the Hebron area: Khirbet Qussa.
- There are also isolated houses in the villages of Nizlat`Issa (north of Baka a-Sharqiyah) and Shuweika (north of Tulkarm).⁵²

Crossings and gates in the Seam Zone: Along the length of the barrier, the army has set up six “fabric of life” crossings, which also serve as the last point for checking people before entry into Israel.⁵³ These crossings are open daily, for between 12 and 24 hours, and people and goods cross through them from the West Bank into the Seam Zone and from there into Israel – and in the opposite direction, from the Seam Zone into other parts of the West Bank. In East Jerusalem the crossings and gates are operated by the Israeli Police or the Military Police. In other parts of the West Bank, they are operated by soldiers or Border Police officers. Operation of the Barta’ah (Rehan) crossing was transferred to the Ministry of Defense’s Crossings Authority, and is currently handled by a private company.

Furthermore, the army set up 66 gates to enable Palestinians to cross into and out of the Seam Zone, on the condition that they have a permit and following a security check. There are three main categories of gates:

- 12 agricultural day gates, opened two to three times a day, generally for periods of a quarter of an hour to an hour and a half. Palestinian farmers are required to finish their day’s work before the gates close. Any farmer with a permit may cross the barrier to reach his lands via one particular gate.
- 10 agricultural weekly and seasonal gates, which are open for one to three days a week to enable access to olive groves.
- 44 seasonal gates, opened only during the olive harvesting season, generally between September and November, and on rare occasion during the plowing season.

There are also a few operational gates along the route of the barrier that serve the security forces exclusively.⁵⁴

52 See **Barrier Update: Seven years after the Advisory Opinion of the International Court of Justice on the Barrier: The Impact of the Barrier in the Jerusalem area**, p.3. See footnote 26. The data published here by the Civil Administration still include the communities removed from the Seam Zone in 2010. See the Civil Administration’s **Collected Permanent Seam Zone Orders, 2011**, p.6. [Hebrew], See footnote 40.

53 The “fabric of life” crossings are: Rehan (in the Barta’ah enclave), Efrayim (south of Tulkarm), Ni’ilin, Maccabim, Bitunya and Tarqumiyah. In East Jerusalem there are another four crossings serving as checkpoints at the entrance to the jurisdictional area of Jerusalem after the annexation of territories from the West Bank: Qalandia, Shu’afat refugee camp, Ras Abu Sbitan (Zeitim crossing) and the Bethlehem checkpoint. See the map of crossings on the COGAT web site at <http://www.cogat.idf.il/1039-en/IDFG.aspx>.

54 **Barrier Update: Seven years after the Advisory Opinion of the International Court of Justice on the Barrier: The Impact of the Barrier in the Jerusalem area**, pp.9-14. See footnote 26. The list of crossings is updated as of June 2011.

2. The Permit Regime

The “permit regime” is a system of orders and instructions issued by the military for the purpose of imposing control on who enters and who is present in Seam Zone areas. The military formulated a list of the reasons for which Palestinians may request a permit from the Civil Administration to enter the Seam Zone. The permits are time restricted – from between one day to two years. In the language of the military order, other “types of people” – Israelis, Jews without Israeli citizenship (those “entitled to immigrate to Israel under the Law of Return”) and foreigners (tourists, but not Palestinian residents of the West Bank with dual citizenship) – are permitted to enter the Seam Zone freely, without the need for a permit.⁵⁵

In its response to court petitions submitted on this issue, the State Attorney explained the need for the permit regime and clarified why individual security checks on people entering the Seam Zone are not sufficient:

A security check on the body is insufficient to prevent the entry of a terrorist to the Seam Zone and from there into Israeli territory, when a weapon or explosive can be transferred to him in the Seam Zone or in Israel, for example by throwing it over the barrier, or sneaking it through using other routes... **There is a rational and direct connection** between closing off the Seam Zone area and establishing a permit regime, and security needs. Limiting entry into the Seam Zone only to those with a real, personal connection to the area, and also conditioning entry on receiving a permit (which is conditioned on an individual security check) reduces the possibility that a terrorist will cross the Security Barrier and go from there into Israel or into communities near the border of Judea and Samaria to carry out a terror attack.⁵⁶

Official sources acknowledge that the permit regime harms the ability of Palestinians to carry on with their regular lives. On the Ministry of Defense web site for the Seam Zone, it says that the Coordinator of Government Activities in the Territories (COGAT) is aware of the need to enable Palestinians living in the Seam Zone to preserve their “connections in terms of employment, agriculture, trade, education, health, and family ties to the Judea and Samaria area on the one hand, and enable the Palestinian Authority and the residents of Judea and Samaria to provide services and maintain contact with residents of the ‘Seam Zone’ on the other hand.” Likewise the site emphasizes that the crossings in the Separation Barrier are intended “to preserve smooth movement between the villages and cities and assure access to municipal, sanitation, and social services between the villages and the district’s urban hub... the program is based on the principles of human dignity, and to provide a high level of service together with a

55 Declaration of closure of area no. S/2/03 (Seam Zone) (Judea and Samaria), 2003 dated 2 October 2003. See footnote 40.

General permit for entry to the Seam Zone and being present there, 2003 dated 2 October 2003. See footnote 40.

Orders concerning a permit to a permanent resident of a closed area, 2003 dated 7 October 2003. Orders concerning entry permits to the Seam Zone and being present there, 2003 dated 7 October 2003 and orders concerning Seam Zone crossings, 2003 dated 7 October 2003.

See also **Collected Permanent Seam Zone Orders, 2011**, Civil Administration, 2011, page 7 [Hebrew]. See footnote 40.

56 Emphasis in the original. Paragraphs 72 and 79 of the writ of response by the State 639/04 and 9961/03 dated 13 November 2006 [Hebrew]. See footnote 41.

reliable, efficient, and high level of checking. The basic rationale is to aid the economy of the Palestinian Authority and stabilize it.”⁵⁷

According to the State Attorney, the defense establishment works to “continually improve the quality of service at the crossings, the agricultural gates, and movement into the Seam Zone.” More than 60 million shekels (some US\$16 million) was invested in infrastructure for the crossings and gates, including “sophisticated means of checking that enable better security-related identification as well as much shorter waiting times;” “a roof over waiting areas” for the agricultural gates; and “at more than 10 gates, sophisticated checking structures were added that enable better checking with shorter wait times in an air-conditioned, covered building.” In addition, the investment also included “logistical items – benches, awnings, air conditioners, televisions, chemical toilets, and water fountains,” as well as the integration of 22 Arabic-speaking officers and non-commissioned officers” to enable better service provision and assistance in solving problems.⁵⁸

Concerning the hours during which the gates are open, the State clarified that these are set “after balancing between security needs and the needs of the local population in each area respectively, with coordination insofar as possible with residents of the specific villages.” The State explained that at “first light,” the soldiers carry out “actions to open the axis along the Security Barrier” so as make sure that “no terrorists infiltrated” and that no explosives were laid – and hence the gates cannot be opened before 6:30 AM. Regarding the gates’ closing time, the State noted that due to “operational considerations concerning the personal security of the soldiers carrying out the reconnaissance, there is a need to finish the gate-closing process about an hour before sunset, because at the agricultural gates it is not possible to safely perform a security check on the Palestinian residents during the night, and impossible to be sure that someone approaching the gate during the night is not a terrorist who endangers the [military] force.” The State argued that “the harm done to the Palestinian residents is proportional under the circumstances, and that this harm is necessary for crucial security reasons.”⁵⁹

The High Court accepted the State’s position as it was presented. The justices acknowledged that the permit regime “makes things extremely difficult for the Palestinian residents and severely damages their rights” and makes it difficult “to conduct a normal lifestyle for residents of the Seam Zone and their brothers who live in the rest of the surrounding area.” Nonetheless, the justices ruled that, with a few changes, the permit regime is legal and meets the test of proportionality.⁶⁰

57 See “Fabric of life” on the Seam Zone web site of the Ministry of Defense, at <http://www.seamzone.mod.gov.il/Pages/Heb/mirkam.htm> [Hebrew].

58 Writ of response by the State in HCJ 9961/03 and 639/04 dated 13 November 2006, paragraphs 43-46 [Hebrew]. See footnote 41.

59 Ibid., paragraphs 50-52.

60 Paragraphs 32-42 and 46 in HCJ ruling 9961/03 and 639/03 **HaMoked-Center for the Defence of the Individual v. Government of Israel et al.**, and **Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.** dated 5 April 2011 [Hebrew].

Types of Permits

Permanent residents of the Seam Zone: A permanent resident of the Seam Zone is anyone whom the Israeli authorities recognize as having the "center of his life" in the area prior to the declaration of the area as a Seam Zone. These residents are given "permanent resident" certificates in the form of magnetic, smart ID cards, together with written permits, that are valid for two years.⁶¹

The standing orders for the Seam Zone stipulate that in order to receive a "permanent resident" ID, Palestinians must present a long list of documents to the Civil Administration, including an affidavit from the local council affirming their residency status; a record of their property in the land registry (tabu) or ownership documents or a rental agreement valid for a period of at least two years; proof of water, electricity, and local tax payments; and school records for their children.

Palestinians seeking to move to the Seam Zone to live must provide an explanation of their reasons to the Civil Administration. If they want to move into a new house, they must prove that the house was built legally. Palestinians who marry Seam Zone residents must sign a document according to which they commit that the "center of their lives" will be in the Seam Zone for at least two years from the time their request is submitted; otherwise they will only be granted permits allowing temporary stays in the Seam Zone.

Following a High Court ruling in April 2011 recommending an expansion of the list of acceptable reasons for moving into the Seam Zone, the Civil Administration added one new item: moving into the home of relatives. In addition, the Civil Administration allows Palestinians seeking to move into the Seam Zone to list a "reason" that does not appear in the standing orders.⁶²

A Palestinian who has a permanent resident ID may only enter the Seam Zone through one specified gate in the Separation Barrier. In April 2011, the High Court ordered the State to permit permanent residents of the Seam Zone to use any crossing or gate near their homes, but thus far the Civil Administration has not issued a standing order that would allow this.⁶³

Year-round and seasonal farmers: In February 2004 – before the Seam Zone was declared – the State Attorney notified the High Court that Palestinian farmers would be allowed free entry to the Seam Zone areas "at crossings open 24 hours a day, 7 days a week, should they wish to enter or leave the Seam Zone area in order to work their lands."⁶⁴ Yet, contrary to its declarations, the State subsequently announced conditions for issuing permits to farmers and limited them in time.

The standing orders for the Seam Zone define farmers as those who have "an ownership connection" to land in the Seam Zone area, on condition that this land is intended

61 **Collected Permanent Seam Zone Orders, 2011**, p.12 [Hebrew]. See footnote 40.

62 Amended collected Seam Zone orders on the MAG corps web site, 27 November 2011, Ibid. pp. 12-19 [Hebrew]. Paragraph 36 of HCJ ruling in 9961/03 and 639/04, dated 5 April 2011. See footnote 60. [Hebrew]. Ibid.

63 Paragraph 36 in HCJ ruling 9961/03 and 639/04 dated 5 April 2011 Hebrew]. See footnote 60.

64 Paragraph 36 of writ of response by the State Attorney HCJ ruling 639/04 **Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.** dated 5 April 2011 [Hebrew]. See footnote 42.

for agricultural cultivation.⁶⁵ The orders distinguish between “permanent” farmers and “seasonal” farmers. Permits for “permanent” farmers to work their lands are issued only on condition that they prove a “substantive connection” to the agricultural land in the Seam Zone area by providing tabu (land registry) registration papers or documentation of payment of purchase tax (“malia”) from the Jordanian period, proving that the land “is intended for agricultural cultivation” and with details as to the type of agricultural cultivation requested. These permits are good for a period of two years. Permits for “temporary” farmers are given for six months only. They are given to farmers who have not yet proven their “ownership connection” to the land, mainly heirs or people who bought land but have not yet finished ownership registration in the tabu. The permits are given only for cultivating land designated as agricultural. These temporary permits are given for only one period of time, unless the farmers present “special reasons” for extending them.⁶⁶

Merchants: Permits for commercial activity in the Seam Zone are given only to registered small businesses whose proprietors hold a “currently valid license” and can present a record of their billing and tax payments – and whose entry to the Seam Zone is required “for the reasonable functioning of the business.”⁶⁷

Employment in the Seam Zone: Permits to work for a business or in agriculture in the Seam Zone are conditioned on the employer himself having a permit to enter or be in the Seam Zone and the business must be licensed. Work permits for agriculture are issued in accordance with charts kept by the Civil Administration’s agricultural officer, which determines the number of permits to be given based on the type of cultivation of the land, the size of the plot, and the season of the year.⁶⁸

“Individual needs”: This refers to events such as weddings, funerals, visits to relatives, births, illnesses, professional conferences, social events or presence in the area during the period of examination of the eligibility for a permanent residence ID. Receiving such a permit is conditioned on presentation of relevant documentation, for example a death certificate or a wedding invitation.⁶⁹ The High Court has directed the Civil Administration “to demonstrate flexibility in issuing these permits” which comprise “a key component in the ability of Seam Zone residents to preserve community and social ties with their families and friends living in the area.”⁷⁰ Yet as of the time of publication of this report, the Civil Administration had not published in its standing orders for the Seam Zone areas any additional reasons or criteria to facilitate the issuance of these permits.

Permits for educators: These permits are issued for the duration of the academic year only, and must be renewed annually. They are contingent on presentation of a letter from the local council verifying the request and the presentation of a currently valid employment contract with the educational institution where the individual is employed.⁷¹

65 **Collected Permanent Seam Zone Orders, 2011**, p. 26 [Hebrew]. See footnote 40.

66 Meeting with the head of the Crossings Division of the Civil Administration, Lt. Col. Amos Zoaretz, and Consulting Officer from the Population Registry, 1st Lt. Omer Knobler, 17 July 2012.

67 **Collected Permanent Seam Zone Orders, 2011**, p.30 [Hebrew]. See footnote 40.

68 *Ibid.*, pp.34-35. See footnote 40.

69 *Ibid.*, p.38. See footnote 40.

70 Paragraph 36 of HCJ ruling in 9961/03 And 639/04 dated 5 April 2011 [Hebrew]. See footnote 60.

71 **Collected Permanent Seam Zone Orders, 2011**, p.40 [Hebrew]. See footnote 40.

Permits for employees of the Palestinian Authority, international organizations, and infrastructure contractors: These are issued for periods of up to one year, contingent on presentation of documentation confirming the applicant's connection to the Palestinian Authority, international organizations, or infrastructure contractors.⁷²

Permits for medical personnel: Issued to Palestinian Health Ministry employees "for work requiring entry to the Seam Zone, such as research or administration of inoculations," staff members of private clinics in "permanent buildings" in the Seam Zone, or ambulance drivers recognized as such by the District Coordination and Liaison (DCL) offices. The permits are issued for a period of one year only.⁷³

Permits for minors: Entry to and exit from the Seam Zone for minors does not require presentation of a permit, but requires an accompanying adult with a permit on which the minor's name appears (excluding schoolchildren, as described below). Despite a military order from September 2011 extending the age for minors to 18, in the official collected orders for the Seam Zone from November 2011, minors are still defined as individuals under the age of 16.⁷⁴

Permits for schoolchildren: These permits are given to schoolchildren from the "Palestinian side" of the Separation Barrier who attend schools in the Seam Zone, or schoolchildren who live in the Seam Zone and attend school elsewhere in the West Bank. The permits are issued on condition that the children attend a "recognized educational institution," that there is no alternative educational institution in the area that would make the crossing unnecessary, and only with documentation of registration at the educational institution.⁷⁵

Passage for vehicles: Permits for the passage of private, commercial or agricultural vehicles belonging to permanent residents at the "fabric of life" crossings and barrier gates are issued upon presentation of a valid insurance certificate, a valid vehicle registration (annual test), and a document proving ownership of the vehicle.⁷⁶ Crossing with a vehicle, and driving it in the Seam Zone, are permitted to the owner of the permit or a first-degree relative, on condition that the vehicle is also listed on that relative's own ID. Crossing in private vehicles is limited to "fabric of life" crossings, and in exceptional cases is also permitted through the agricultural gates in the Separation Barrier. Crossing for commercial vehicles is restricted to the transit of goods at the "fabric of life" crossings. Access for agricultural vehicles is restricted solely to the agricultural gates, on condition of a special permit allowing entry to agricultural lands.

The State Attorney has justified these restrictions by arguing that they are "completely basic and reasonable requirements" that are "intended to maintain the security of drivers, passengers, and pedestrians."⁷⁷ The limitation on the number of vehicles permitted entry to the Seam Zone was justified by "a well-grounded concern that vehicles would serve the terror organizations" and because the agricultural gates are not equipped with the

72 Ibid., pp.42-46.

73 Ibid., p.48.

74 Ibid., p.51. Order no. 1676 regarding security instructions (amendment no. 10) (Judea and Samaria), 2011, signed by Central Division Commander Gen. Avi Mizrahi, dated 27 September 2011 [Hebrew].

75 **Collected Permanent Seam Zone Orders, 2011**, p.51 [Hebrew]. See footnote 40.

76 Ibid., pp.53-54.

77 Paragraph 134 of the writ of response by the State in HCJ 9961/03 and 639/04 dated 13 November 2006 [Hebrew]. See footnote 41.

required “technological means” to check them.⁷⁸ The limitation on entry of commercial vehicles, including trucks, was explained by the “very real concern” that they would aid in “smuggling terrorists, explosives, and various weapons into Israel.”⁷⁹

Permits for “vehicles for humanitarian evacuation”: These permits are given to ambulances authorized by the Palestinian Ministries of Health and Transportation and are contingent on their registration with the District Coordination and Liaison (DCL) offices and on possession of valid permits by the staff. One-time crossing for these vehicles is conditioned on “humanitarian need.”⁸⁰

Any deviation from the conditions specified for any of the types of permits detailed above – such as noncompliance with the permitted hours or purpose, a new decision by the authorities that there is a “security impediment” or “criminal impediment,” or that the person has “perpetrated” any criminal or security violation in the Seam Zone or in Israel – is liable to lead to the confiscation or termination of the permit.

The head of the Israeli Coordination and Liaison Directorate is authorized to decide on an “administrative” confiscation of a permit for thirty days if he is persuaded that “improper use” was made of the permit or that any violation was committed using it. The permit holder can appeal to have this decision reviewed by a hearings committee of the Civil Administration. That committee is authorized to return the permit to its holder or to validate the confiscation, as well as to decide that no permit shall be granted to the individual for a period of one year.⁸¹

3. A Critique of the Permit Regime

By definition, the permit regime limits the possibilities for residents of the West Bank to be in the Seam Zone or to cross freely from one side of the barrier to the other. The permit regime obliges Palestinians wishing to enter and stay in these areas to adjust their plans to the framework of reasons deemed legal by the Civil Administration. Residents must make their plans at least a month ahead of time – because permit requests must be submitted a month in advance – and confine themselves to certain dates and certain hours of the day. Since every permit must be approved by the Israeli authorities – who keep their criteria ambiguous and do not reveal the considerations that affect their decisions – the permit system ensures a life of permanent uncertainty for Palestinians living in or near the Seam Zone, whether they are farmers wishing to cultivate their lands in the area or other Palestinians wishing to enter or leave the area for any reason. The direct impact of the permit regime is a reduction in the farming on Seam Zone land, fewer employment options, and a chilling effect on the potential for any meaningful economic activity.

As of the writing of this report, more than eight years after the inception of the permit regime, the Civil Administration has not bothered to translate into Arabic the orders that have been issued relating to the Seam Zone, which describe the types of permits

78 Section 39 in the response to petition by the State Attorney in HCJ 639/04 dated 4 February 2004 [Hebrew]. See footnote 42.

79 Paragraph 135 in the writ of response by the State in HCJ 9961/03 and 639/04 dated 13 November 2006 [Hebrew]. See footnote 41.

80 **Collected Permanent Seam Zone Orders, 2011**, p.53-54 [Hebrew]. See footnote 40.

81 *Ibid.*, pp.56-59. See footnote 40. Authority to confiscate a permit is vested in the head of COGAT, the head of the Operations Branch GHQ and the deputy chief of the Civil Administration.

and the conditions for approving them – and has even refused to commit itself to a date by which it intends to do so.⁸²

The Harm to Farmers

In 2006, the Civil Administration estimated that there were some 11,000 farmers with “a connection to” agricultural lands in the Seam Zone areas.⁸³ Despite this appraisal, far fewer have received “permanent farming” certificates – which despite the term “permanent” are actually good for only two years:

- In 2005, there were 8,444 such certificates issued, comprising 86 percent of the total requests (9,777). That same year, an additional 188 “permanent farming” certificates were issued for periods of one month to a year.
- In 2006, there were 1,285 certificates issued, comprising 88 percent of the number requested (1,468). That same year, 120 additional “permanent farming” certificates were issued for periods of three months to a year. (No certificates were issued that year for a period of one month.)
- In 2007, there were 923 certificates issued (B’Tselem did not receive data on the number of requests). That year, 314 additional “permanent farming” certificates were issued for periods of one month to a year.
- In 2008, there were 481 certificates issued (B’Tselem did not receive data on the number of requests). That year, an additional 196 “permanent farming” certificates were issued for periods of one month to a year.
- In 2009, the year the Seam Zone area was expanded, 713 certificates were issued, comprising 33 percent of the total requests (2,172). That year, 508 additional “permanent farming” certificates were issued for periods of one month to a year.
- In 2010, there were 1,200 certificates issued, comprising 49 percent of the requests (2,446 in all). That year, 529 additional “permanent farming” certificates were issued for periods of one month to a year.⁸⁴

Beginning in 2011, the Civil Administration stopped publishing data on the periods of time for which certificates are granted. The available data indicate that in 2011, there were 2,672 certificates issued, comprising 64.6 percent of the total number requested (4,133) and that, in the first half of 2012, there were 1,683 certificates issued, comprising 70.5 percent of the total number requested (2,387).⁸⁵

Based on this same data, from January 2008 through the end of June 2012, most of the permits granted to Palestinian farmers in the Seam Zone areas were temporary. Some

82 Letter from Attorney Debbie Gild-Hayo of the Association for Civil Rights in Israel to Lt. Col. Samir Amer, head of the crossings department in the Civil Administration, dated 17 October 2011.

83 Section 16 of the write of response by the State in HCJ 9961/03 and 639/04 dated 13 November 2006. See footnote 41.

84 The permit chart in force for the years 2007-2009 by year, numerical data, was attached to an updated notification by the State in HCJ 9961/03 and 639/04 **HaMoked-Center for the Defence of the Individual v. Government of Israel et al. and Association of Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.** dated 30 July 2009. Letter from deputy director Amos Wagner, Civil Administration public inquiries officer, to Attorney Limor Yehuda from the Association of Civil Rights in Israel dated 4 April 2011. Letter from deputy director Amos Wagner, Civil Administration public inquiries officer to Noam Price of B’Tselem dated 27 June 2011.

85 Letter to the public inquiries officer in the bureau of Civil Administration chief 1st Lt. Bar Akuka, dated 8 July 2012.

permits were issued for various periods up to a year to farmers defined as “temporary,” and other certificates were issued under the framework of permits for employment in Seam Zone areas.

Continuity between one permit and the next was not always preserved, even when the applications were submitted by the date specified by the Civil Administration. Lack of continuity between successive permits prevents farmers from being able to plan for the next year and exploit the advantages of intensive, year-round agriculture.⁸⁶ It also creates a negative incentive for investing in profitable crops – which demand daily cultivation year-round, for several successive years, like fruit trees or greenhouse vegetables – due to the fear of losing the entire investment. Testimony gathered by B’Tselem in Jayus reveals that the restrictions led farmers to abandon high profit crops, mainly fruits and vegetables, in favor of crops that do not require daily cultivation and require relatively less investment, such as grains and olive trees. The number of greenhouses on the “Israeli” side of the Separation Barrier in the Qalqilyah and Tulkarm districts dropped 40 percent following construction of the barrier: from 247 greenhouses in 2003 to 149 in 2010.⁸⁷

Those in charge of the permit regime also ignored the accepted pattern of agricultural cultivation in the rural areas within the Seam Zone. Before construction of the Separation Barrier, entire extended families, from grandparents down to great-grandchildren, would work together to cultivate farmlands. Yet the Civil Administration standing orders allow issuance of permits only to landowners – generally the adult or the elderly heads of families – and their children, even when these farmers request permits for other family members who are younger and more physically able to work.

The permits for additional family members or for additional farm workers, issued as “employment permits,” are given pursuant to charts prepared by the Civil Administration headquarters officer for agriculture. These charts define the number of permits to be issued according to the type of cultivation, the size of the plot of land, and the season of the year.⁸⁸ The Civil Administration does not publish the charts, so the farmers do not know how many permits they are entitled to receive. Moreover, it is unclear on what basis these charts were developed, and by their nature they do not take into account the individual needs of every farmer or the changing agricultural conditions from year to year.⁸⁹ The head of the Palestinian liaison office in Qalqilyah, Muhannad Shawar, told B’Tselem that in dozens of instances the Civil Administration had refused to issue permits to farmers on the grounds that they had “enough permits for the land.”⁹⁰ This sort of judgment is not mentioned in the standing orders for the Seam Zone as a reason to deny a permit, and even contradicts orders stating that, to get a permit, only proof of an “ownership connection” to the land is required.

Further damage is caused by restricting access to the land to the opening hours for

86 Intensive agriculture is intended to achieve high yields per unit of land, through large investment in production inputs – water, labor and machinery – throughout the entire year.

87 **The Humanitarian Impact of the Separation Barrier in the West Bank, July 2012**, see footnote 25. Based on findings from the doctoral dissertation of Béatrice Métaireau at the Ecole Polytechnique Federale de Lausanne, who investigated the changes in land use in the closed area in the northern West Bank.

88 **Collected Seam Zone standing orders 2011**, p.34 [Hebrew]. See footnote 40.

89 B’Tselem asked the Civil Administration for these charts but received no reply. Letter to the public inquiries officer in the bureau of Civil Administration chief 1st Lt. Bar Akuka, dated 8 July 2012.

90 Meeting with the head of the Palestinian liaison office in Qalqilyah, Mohammed Shawar, on 1 July 2012.

the agricultural gates in the barrier – hours that were set to suit the needs and the convenience of the security forces, not the needs of the farmers. This limitation prevents farmers and shepherds from being able to rapidly transport their fresh produce – fruits, vegetables and milk – to nearby markets. The schedule of gate openings delays the marketing of the agricultural produce, which damages its value and sometimes results in its total loss. Moreover, this limitation requires the farmers to work during the hottest hours of the day, instead of during the early morning or late afternoon hours that are more comfortable for work in the summertime. The limitation also prevents people who have a day job elsewhere from working their land during the evening hours.

The Civil Administration also limits the number of agricultural vehicles allowed to move around in the Seam Zone. In Jayus, for example, the Civil Administration issued only three permits for agricultural vehicles. Consequently, the farmers must take their tools on foot or using donkeys as far as the agricultural gates, and from there to their land – a distance of several kilometers. This restriction causes further delays in gathering fresh produce and transporting it to Palestinian markets, and increases damage to its quality and its economic value. The head of the crossings department of the Civil Administration told B'Tselem that the situation with permits for vehicles is indeed “inadequate” and will be redefined in the standing orders for the Seam Zone to be issued later in 2012.⁹¹

Harm to the Residents

The Civil Administration conditions the issuance of permits to permanent Seam Zone residents on their presentation of documents proving that this area is their “center of life.” The High Court has approved the “center of life” approach as “a reasonable means” of proving entitlement to permanent resident certificates.⁹² Yet the Seam Zone orders do not define “center of life” and they ignore the impact of the Separation Barrier, which requires tens of thousands of Palestinians to conduct their lives between several “centers” – their homes, agricultural land, places of employment, educational and medical institutions, and their extended families – and sometimes even to leave the area temporarily, for example to study or to work in one of the cities of the West Bank.

Data concerning “permanent resident” certificates show that permits for extended periods of up to two years are issued only to some of the Seam Zone residents who are recognized as such by the Civil Administration. The remaining “permanent” residents receive permits for shorter periods and are required to reapply over and over at the DCL to extend their permits. According to this data:

- In 2006, there were 418 “permanent resident” certificates issued for a period of two years, comprising 70 percent of the applications (597 in all). That same year, another 1,276 certificates for “permanent residents” were issued for periods of one month to a year.
- In 2007, there were 4,318 certificates issued for “permanent residents” (B'Tselem did not receive information on the number of applications overall). That year,

91 Meeting with the head of the Civil Administration crossings department, Amos Zoaretz, on 17 July 2012.

92 Section 32 in HCJ rulings in 9961/03 and 639/04, dated 5 April 2011. See footnote 60.

another 624 "permanent resident" certificates were issued for periods of one month to a year.

- In 2008, there were 1,014 certificates issued for "permanent residents" (B'Tselem did not receive the figure for applications overall). That year, another 606 "permanent resident" certificates were issued for periods of one month to a year.
- In 2009, the year in which the Seam Zone area was expanded, 3,128 certificates were issued for "permanent residents," comprising 72 percent of the total applications (4,354). That year, another 596 "permanent resident" certificates were issued for periods of one month to a year.
- In 2010 there were 1,004 "permanent resident" certificates issued, comprising 28 percent of the applications (3,511 in all). That year, another 1,830 "permanent resident" certificates were issued for periods of between one month and a year.⁹³

In 2011 there were 7,783 "permanent resident" certificates issued, comprising 98.5 percent of the requests (7,895 in all) and in the first half of 2012, there were 1,413 "permanent resident" certificates issued, comprising 94 percent of the applications. During this period the Civil Administration did not break down the data by the time periods for the permits.⁹⁴

The Bureaucratic Burden

Every application for a permit involves supplying many documents and repeatedly contacting the Civil Administration offices. The fact that the various types of permits for the Seam Zone are granted for a limited time of a few days or a few months creates a significant bureaucratic burden for Palestinians and forces them to spend a great deal of time and money to obtain the permits.

In February 2004, at the inception of the permit regime, the State Attorney declared that the permits were temporary and that their purpose was to reduce the "phenomenon of forged [Palestinian] identity cards," the certificates used to allow residents entry to the Seam Zone.⁹⁵ In another announcement in November 2006, the State Attorney offered a new argument, claiming that the Civil Administration is abandoning the "very liberal policy of granting permits" due to "a real fear" that permit holders "will exploit these permits for the purpose of entering Israel without permission, and not to work the land in the Seam Zone."⁹⁶ Likewise the chief of the Civil Administration crossings department, Lt. Col. Amos Zoaretz, told B'Tselem that in his estimation "the Seam Zone permits are being exploited; 70 percent of permit holders continue westward past the Green Line."⁹⁷ The State Attorney and the chief of the crossings department provided no evidence for their claims.

93 The permit chart in force for the years 2007-2009 by year, numerical data, was attached to an updated notification by the State in HCJ 9961/03 and 639/04 dated 30 July 2009. See footnote 48. Letter from deputy director Amos Wagner, Civil Administration public inquiries officer, to Atty Limor Yehuda from the Association of Civil Rights in Israel dated 4 April 2011. Letter from deputy director Amos Wagner, Civil Administration public inquiries officer to Noam Price of B'Tselem dated 27 June 2011.

94 Letter from the public inquiries officer in the office of the chief of the Civil Administration, 1st Lt. Bar Akuka, to B'Tselem dated 8 July 2012.

95 Paragraph 34 of the State Attorney's response to the petition in HCJ 639/04 dated 4 February 2004. See footnote 42.

96 Paragraph 119 of the State Attorney's response to the petition in HCJ 9961/03 and 639/04 dated 13 November 2006. See footnote 41.

97 Meeting with the Chief of the Crossings Department of the Civil Administration, Lt. Co. Amos Zoaretz, on 17 July 2012.

In November 2006, the State Attorney notified the High Court that the chief of the Civil Administration had instructed that "farmers growing seasonal crops will be issued permits for a period of two years." As of the end of 2010, this instruction had not been implemented, and most of the agricultural permits were granted for shorter periods.⁹⁸ Lt. Col. Zoaretz told B'Tselem that his policy was to issue permits for "the maximum possible period of time."⁹⁹ The Civil Administration's data for 2011 and the first half of 2012 is not broken down by time periods and hence it cannot be examined to see whether the trend has changed.

The language of the standing Seam Zone orders is vague and leaves significant room for employing "common sense" as described by the chief of the Civil Administration. Thus, for example, granting a permit to the owner of a business in the Seam Zone is conditioned on the permit being necessary for "the reasonable functioning of the business" – although the term "reasonable functioning" is not defined. The situation is similar with respect to the quantities of food for personal consumption that may be brought into the Seam Zone areas.

The Civil Administration's demand that permanent residents and farmers prove their ownership "connection" to the land presents them with a draconian impediment. The State Attorney has admitted to the High Court that most of the denials of permit applications for farmers "arise due to non-proof of a connection to agricultural lands."¹⁰⁰ The procedure for registering land is very complicated, lengthy, and expensive because, with respect to much of the land in the Seam Zone, as with other areas of the West Bank, a land registration process was never undertaken.

In 1968, Israel froze the arrangements for land registration in the West Bank – a process begun by the British mandatory government and continued by the Jordanian regime. The registration conducted prior to this time did not cover about 70 percent of the lands of the West Bank, including most of the Seam Zone land. Today, Israel places the burden and cost of land registration on the Palestinians. Since the land registration arrangements were frozen in 1968, discrepancies have arisen between old registrations in the Palestinian land registration ledgers – which relate to landowners most of whom are no longer alive, or to a de facto division of their lands among their heirs – and the registration by the Civil Administration. Amending the registration, including matching the registration in the records of the Palestinian DCO and its Israeli counterpart, takes a long time and considerable effort. Moreover, today there are many heirs to the land who do not live in the West Bank. Thus, requests from some of the landowners to register the land are liable to be rejected. Lt. Col. Zoaretz told B'Tselem that he is aware of this difficulty and therefore they issue permits to farmers as temporary employment permits.¹⁰¹ However, as previously noted, this is an inadequate solution that fails to meet farmers' needs.

Another impediment to receiving permits is the Civil Administration's demand to present papers documenting that buildings were legally constructed. Such documentation must

98 Paragraph 131 of the writ of response by the State in HCJ 9961/03 and 639/04 dated 13 November 2006. See footnote 41.

99 Meeting with chief of the crossings department, Civil Administration, Lt. Col. Amos Zoaretz, on 17 July 2012.

100 Paragraph 33 in the writ of response by the State in HCJ 9961/03 and 639/04 dated 13 November 2006. See footnote 141.

101 Meeting with Civil Administration crossings department chief Lt. Col. Amos Zoaretz, 17 July 2012.

be presented, for example, by someone wishing to change his place of residence to the Seam Zone and who seeks a permanent resident certificate. Medical teams are also required to prove that they work in legally constructed buildings. Yet Israel's planning policy in Area C of the West Bank makes it extremely difficult for Palestinians to get building permits, so that in most cases this demand eliminates from the start any possibility that an application will be approved. Thus, for example, in the village of Dhaher al-Malih in the Barta'ah a-Sharqiyah enclave and in the Bedouin communities of Arab a-Ramadin al-Junubi or Arab Abu Farda east of Qalqilyah, the Civil Administration has not prepared any master plans. Hence, by definition, any construction in these communities will be deemed illegal by the Civil Administration. The master plan that the Civil Administration prepared for Barta'ah a-Sharqiyah in 1995, before the village was transferred to the control of the Palestinian Authority under the Oslo Agreements, was intended first and foremost to limit construction in the village, and even at the time it was drafted, it did not include all the buildings that already existed in the village.¹⁰² The Civil Administration does not offer any way for residents to build legally in these communities. The Civil Administration told B'Tselem that "illegal building will not be permitted" and that the Civil Administration "is working on permanent settling" of Bedouin communities.¹⁰³

Unfair Proceedings

The Israeli Civil Administration's Hearings Committee, which includes the chief of the DCO and another more junior officer from the Civil Administration staff, makes the decisions regarding whether to approve a request for a permit. This committee does not allow applicants to appear before it prior to its decision, but only to appeal the decision once made. The applicants have no right to representation by an attorney, although the latter are permitted to be present when the committee meets. In "exceptional cases only," when the applicant or the person already denied a permit "is incapable of speaking adequately" on their own behalf (e.g., a developmentally or emotionally disabled person), a lawyer may represent them.¹⁰⁴

Until November 2011, when the verdict was handed down by the High Court regarding the permit regime, the standing orders for the Seam Zone included no dates by which permit applications had to be handled. In the updated orders from November 2011, the following time periods were set: one month for addressing a new permit application; two weeks for renewing a permit still in force; appealing a decision of the hearings committee would take place within a month from the date of the submission of the appeal, and the committee would be required to render a decision within two weeks. When an applicant's permit application has been denied, he or she can petition

102 For more information, see **The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C**, Bimkom, June 2008, especially pp. 142-145.

103 Meeting with the Civil Administration crossings department chief Lt. Col. Amos Zoaretz, on 17 July 2012. Concerning the "permanent placement" plan for Bedouin Communities in Area C of the West Bank, see the B'Tselem web site, from 10 October 2011: "Civil Administration plans to expel tens of thousands of Bedouins from Area C" at: http://www.btselem.org/settlements/20111010_forced_eviction_of_bedouins

104 **Collected Permanent Seam Zone Orders, 2011**, pp. 9-11 [Hebrew]. See footnote 40.

the hearings committee again after a period of six months.¹⁰⁵ Lt. Col. Zoaretz stated to B'Tselem that in urgent humanitarian cases, Palestinians can go to the service desks at the DCO or call the Civil Administration humanitarian hot line to request a permit.¹⁰⁶

The Civil Administration has the authority to refuse to issue permits, or to invalidate existing permits, on the grounds of a "security impediment" or a "criminal impediment," as is also the case regarding other permits unrelated to the Seam Zone.¹⁰⁷ The State Attorney confirmed in its correspondence with the HCJ that indeed persons "with a security history" with respect to whom there is "an increased security risk" are prevented from entering the Seam Zone, but did not describe the details of such risk.¹⁰⁸

Lt. Col. Zoaretz told B'Tselem that the "impediment" itself does not constitute a reason to refuse approval for a permit and in cases with an "impediment," the application is forwarded to "security sources" for further examination. In any case, the hearings committee will inform the permit applicant of the reason for the impediment, within the limitations of security considerations, and the applicant can then submit an appeal to the head of the DCO. And in fact, permits are granted that state there is an "impediment" regarding the permit holder.¹⁰⁹

The Seam Zone orders, however, do not define what these "impediments" may be, the duration of their effect, and how they may be removed. They enable the authorities to decide not to grant a permit to the applicant, while the applicant has no way of knowing the grounds for denial of a permit and is unable to address the claims made against him or her.

105 **Ibid.** pp. 10, 20. See also amended collected Seam Zone orders on the IDF MAG web site, 27 November 2011 <http://www.law.idf.il/163-4906-he/Patzar.aspx> [Hebrew] and HCJ ruling 9961/03 and 639/04 dated 5 April 2011, paragraphs 39 and 47, See footnote 60.

106 Meeting with Civil Administration crossings department chief Lt. Col. Amos Zoaretz, on 17 July 2011.

107 **Collected Permanent Seam Zone Orders, 2011**, p. 14 [Hebrew], see footnote 40. For example, regarding an application for a new permanent resident permit.

108 Paragraph 40 in the response to petition by the State Attorney in HCJ 639/04 dated 4 February 2004. See footnote 42.

109 Meeting with Civil Administration's crossings department chief Lt. Col. Amos Zoaretz, and with an advisory officer from the population registry, 1st Lt. Omer Knobler, on 17 July 2012. Lt. Col. Zoaretz added that at the Civil Administration they are considering establishing a district appeal committee to review decisions of the hearings committee.

Part IV:

Case Studies

The impact of the Separation Barrier on the lives of Palestinians cannot be understood in isolation from the cumulative impact of a long series of measures adopted by Israel in the West Bank since its occupation in 1967, reducing and restricting the possibilities for Palestinians' economic development. Among these measures are the seizing thousands of dunams of land in order to establish settlements;¹¹⁰ reducing the land areas that Palestinians may enter or use by designating large swathes of the West Bank as belonging to the settlement municipalities;¹¹¹ restricting Palestinians' movement throughout the West Bank;¹¹² and limiting the opportunities afforded to Palestinians to build and to expand existing communities, by means of a discriminatory planning system.¹¹³

Ten years after construction of the Separation Barrier commenced, its long-term ramifications on the ground are conspicuous. The spatial division created by the barrier between different communities, and between communities and their land, erodes their ability to survive and thwarts any possibility of sustainable development. In some places, this split has reduced the Palestinian presence in the territory on the "Israeli" side of the barrier or in localities encircled by the barrier, like Qalqilyah and Bir Nabala. Construction of the barrier has also eroded commercial ties created over the years between Palestinian communities near the Green Line and Israeli citizens.

Palestinians have lost the opportunity to make profitable use of their own land, which is the principal economic resource left to them. The restrictions imposed by the Israeli authorities on access to the Seam Zone prevent any possibility of substantial economic investment there by the Palestinian private business sector: investment to develop intensive agriculture incorporating technological innovation, investment in trade, or construction of production facilities or of residential projects.

Fully 10.2 percent of the cultivated farmland of the West Bank, with a combined agricultural production value of \$38 million annually – about eight percent of the total Palestinian agricultural production¹¹⁴ – is isolated on the "Israeli" side of the barrier. Restricted access prevents these lands from being fully utilized.

The cases below demonstrate the ramifications of the establishment of the Separation Barrier on four of the largest communities affected: The village of Barta'ah a-Sharqiyah, isolated on the "Israeli" side of the barrier; the village of Jayus, severed by the barrier

110 More on this in **Land Grab – Israel's Settlement Policy in the West Bank**, B'Tselem, May 2002; **By Hook and by Crook**, see footnote 22; and **Under the Guise of Legality**, see footnote 32.

111 The municipal areas of the settlements are nine times larger than the built up areas of those settlements. See **By Hook and by Crook**, p.11. See footnote 22. For more, see **Dispossession and Exploitation: Israel's Policy in the Jordan Valley and Northern Dead Sea**, B'Tselem, May 2011 and **Thirsty for a Solution: The Water Shortage in the Occupied Territories and its Solution in the Final Status Agreement**, B'Tselem, July 2000, pp.40-67.

112 For more, see **Ground to a Halt: Denial of Palestinians' Freedom of Movement in the West Bank**, B'Tselem, August 2007.

113 For more, see **The Prohibited Zone**, see footnote 102.

114 **The Economic Effects of Restricted Access to Land in the West Bank**, World Bank, October 2008, p.16.

from most of its farmlands; the city of Qalqilyah, surrounded on all sides by the barrier; and the town of Bir Nabala, trapped in an enclave encircled by the barrier.

There is no comparative statistical data examining key variables in the lives of these communities before and after the building of the barrier – for example, data on the volume of agricultural output, the extent of building, employment by industry, rate of unemployment, poverty rates, or statistics on emigration. Thus, most of the information presented in this chapter is based on a variety of data gathered by Palestinian authorities and on dozens of testimonies collected by B'Tselem from the residents of these communities. The long term impact of the Separation Barrier is different in each locality, but the picture that emerges from all of these sites testifies to the damage inflicted on the economic resilience of them all.

Barta'ah a-Sharqiyah, in the Jenin Area

Very few Israeli settlements were built in the Jenin area because land ownership was regularized in a process of tabu registration during the period of the British mandate, making it difficult for Israel to designate land to be used for settlements.¹¹⁵ Thus, the Separation Barrier running through this area is nearly always very close to the Green Line. The conspicuous exception is the area of Barta'ah a-Sharqiyah, where in 2003 the barrier's construction was completed at a distance of up to 4.9 km from the Green Line. This exception was intended to enable a significant expansion of the settlement of Rehan, to the west and south, based on plans not yet approved at the time.¹¹⁶

The route of the barrier in this vicinity encloses an area of some 32,000 dunams, including the village of Barta'ah a-Sharqiyah and seven smaller villages.¹¹⁷ According to data from the Palestinian Central Bureau of Statistics, in 2011 there were 5,348 Palestinians living in the area, 4,575 of whom resided in Barta'ah a-Sharqiyah. The barrier's route cut off the village of Barta'ah a-Sharqiyah from its district urban hub of Jenin and from the villages of Ya'bad to the east and Qaffin to the south. These communities supplied Barta'ah a-Sharqiyah residents with food and other goods and with educational and health services. In October 2003, the military instituted a permit regime in this area.

In the area surrounded by the barrier there are also three small Israeli settlements – Hinnanit (which includes the outpost of Tel Menashe), Shaqed, and Rehan – as well as the Shahak industrial zone, a joint project of the Samaria regional council in the West Bank, and the Katzir-Harish local council, which is inside Israel. According to data from Israel's Central Bureau of Statistics, as of 2010 there were 1,651 people living in these settlements.

Along the Separation Barrier around the Barta'ah enclave, the security establishment placed two "fabric of life" crossings. One is an agricultural gate, next to the village of Turah a-Sharqiyah, intended for the use of farmers whose land was isolated on the "Israeli" side of the barrier and for schoolchildren who cross there to get to their school

115 For more, see **By Hook and by Crook**, p.30, see footnote 22, and the section on land registration in **Under the Guise of Legality**, pp.31-34, see footnote 32.

116 **Under the Guise of Security**, pp. 65-67, see footnote 4.

117 The seven villages are: Um a-Rihan, Dhaher al-Malih, Khirbet 'Abdallah al-Yunis, Khirbet a-Sheikh Yunis, Khirbet a-Sheikh Sa'eed, Khirbet al-Muntar al-Gharbiyah and Khirbet al-Muntar a-Sharqiyah.

on the "Palestinian" side of the barrier. The second crossing, which is the primary one, was installed along the road from Jenin to Barta'ah a-Sharqiyah and enables the movement of people and transport of goods. In May 2007, the crossing was privatized and transferred to the authority of a civilian security company.

The process of checking people and private vehicles passing through the Rehan crossing is lengthy; at peak hours – in the morning and afternoon – it can take about an hour. Anyone wishing to enter or leave the enclave area – including chronically ill patients, people needing emergency medical attention outside the enclave, patients after surgery, pregnant women, people who are disabled, and children – must undergo extensive security checks that include several different stages along a route of some 200 meters. First, people are separated from all their belongings, which are checked separately using imaging equipment. Then people are submitted to a check of their body in which they must stand with their hands up and their legs spread within an imaging machine that circles around the body. Testimonies collected by B'Tselem indicate that due to the requirement of being subjected to this machine testing, some women prefer not to leave their village, fearing an infringement of their modesty. In some cases, those passing through the checkpoint are also required to undergo a body check while partially naked in a separate, closed room. Only after this series of checks is their entitlement to cross the checkpoint examined using a biometric (fingerprint) test, plus a check of their permit and some ID documents. Residents of the enclave gave testimony to B'Tselem describing how, nearly every day, at different times, the security guards open only one line for people both entering and leaving the enclave, which further delays passage. Vehicle checks are also lengthy. All belongings in the vehicle are removed and it is then taken for testing in a separate area.

In Barta'ah a-Sharqiyah there is one primary care clinic, which is open four days a week. The clinic has no equipment for laboratory testing, ultrasound for pregnant women or treatment for chronically ill patients, who must travel to hospitals in other areas of the West Bank.¹¹⁸ The local council employs a clerk on a rotational basis to coordinate urgent night passage for patients when the crossing is closed. Due to the uncertainty, however, pregnant women living in the village still prefer to leave a month before their due date to stay someplace near Jenin, to make sure they will be able to reach a hospital as needed.¹¹⁹ The local council secretary told B'Tselem that the current average wait for passage for a patient during the night, even after receiving an authorization from the Israeli DCO (District Coordination Office), is about twenty minutes.¹²⁰

The Civil Administration also restricts the quantity of food that Barta'ah a-Sharqiyah residents are permitted to transport at the Rehan crossing. Replying to a B'Tselem query on this topic, the head of the Civil Administration crossings department, Lt. Col. Amos Zoaretz, stated that the Civil Administration limits the quantity of goods to prevent "the entry of goods intended for Israel. We understand that the Seam Zone is a platform for

118 Testimony of the chief of the Bureau of Health in Jenin, Dr. Saleh Tawfiq Saleh Zakarneh. Testimony taken by Atef Abu a-Rub on 27 May 2012.

119 Meeting with the head of the local council, Ghassan Nayef Kabha with B'Tselem researcher Atef Abd a-Rub on 13 September 2011. See also **Five years after the International Court of Justice advisory opinion – A summary of the humanitarian impact of the barrier**, Office for Coordination of Humanitarian Affairs – OCHA – occupied Palestinian territories, United Nations, July 2009, p.19.

120 Meeting with Barta'ah a-Sharqiyah local council secretary Ahmad Kabha on 7 March 2012.

export.”¹²¹ The village council secretary told B’Tselem that the Civil Administration has not published an orderly list informing the residents of the quantities of food they are permitted to transport for their personal consumption, and the specific quantities are left to the judgment of the personnel doing the checks at the crossing. Generally, each resident is permitted to carry only up to three kilograms of food and two cartons of eggs. In addition, residents are prohibited from bringing fresh meat into the village.¹²²

The restrictions at the checkpoint also apply to the transport of goods. Only 42 small trucks – up to 4 tons – have received permits to bring goods into Barta’ah a-Sharqiyah, including food, electric appliances, and clothing. These trucks may enter the village only once a day through the Rehan crossing, between 5:00 AM and 12:00 noon. The goods brought in on these trucks must be organized on pallets with a width and height of no more than 150 cm, so that they fit the imaging machine at the crossing. This limitation enables most of the trucks to deliver only one pallet a day, regardless of their larger capacity.¹²³

Every crossing with goods, whether arranged through the Barta’ah a-Sharqiyah village council or by merchants with permits for this purpose from the Civil Administration, requires prior authorization from the Israeli DCL (District Civil Liaison office), at least 24 hours before entry. According to testimony from the local council secretary, who is responsible for coordinating the transfer of goods through the crossing, the DCL generally authorizes a quantity lower than what the residents ask to bring in.¹²⁴

The limitations on entry of goods to Barta’ah a-Sharqiyah increase the cost of their transport and make goods in the village, including basic foodstuffs, several times more expensive than the average prices in Jenin. For example, according to testimony collected by B’Tselem from residents of the village in the summer of 2012, the price per kilogram of tomatoes in Jenin was NIS 1 to 1.5 and in Barta’ah a-Sharqiyah it was NIS 5. A package of ten pita breads cost NIS 5 in Jenin, but in Barta’ah a-Sharqiyah it cost NIS 9. In Jenin one can buy six or seven chickens for a hundred shekels, depending on their weight, whereas in Barta’ah a-Sharqiyah, only two or three. The higher cost of products lowers the purchasing power of the residents.

The Civil Administration also places limitations on building in the village, including infrastructure and development work. Until 2012, contractors were required to bring their construction materials for public building projects in Palestinian trucks as far as the Jalame checkpoint, and from there transfer them to Israeli trucks that brought them into Barta’ah a-Sharqiyah, via Barta’ah al-Gharbiyah, which is in Israel. This route significantly increased the cost of transport.

At the beginning of 2012, the Civil Administration began permitting contractors to bring construction materials to Barta’ah a-Sharqiyah via the Rehan crossing. However, the transport-related procedures for construction materials imposed by the

121 Meeting with Civil Administration crossings department head Lt. Col. Amos Zoaretz on 17 July 2012.

122 Meeting with Barta’ah a-Sharqiyah local council secretary Ahmad Kabha, 7 March 2012.

123 Meeting with Barta’ah a-Sharqiyah local council secretary Ahmad Kabha, 7 March 2012. See also testimony of the village council head Ghassan Nayef Kabha. Testimony taken by Atef Abu a-Rub on 13 September 2011, and meeting with him on 16 July 2012. **Between Fences: The Enclaves Created by the Separation Barrier**, Bimkom, October 2006 available at: http://eng.bimkom.org/_uploads/4GderotEng.pdf (abstract only). See also **Five years after the International Court of Justice advisory opinion – A summary of the humanitarian impact of the barrier**, p.19, see footnote 119.

124 Meeting with Barta’ah a-Sharqiyah village council secretary Ahmad Kabha on 7 March 2012.

Civil Administration have raised the cost of infrastructure development and routine infrastructure maintenance in the village. Contractors wishing to cross must coordinate in advance with the Civil Administration and receive permits for themselves, for their vehicles, and for the construction materials. Once these are in hand, the vehicles must report at the crossing when it opens at 5:00 AM and undergo further checks. The head of the local council believes that these procedures raise contractors' bids for any project and extend the duration of project implementation.¹²⁵

The Civil Administration continues to forbid the transfer of building materials from the West Bank to private building projects in Barta'ah a-Sharqiyah and the residents have to buy these materials within Israel. The Civil Administration also forbids the villagers from bringing in spare car parts from the West Bank to garages in the village and the garage owners must buy spare parts from Israeli importers.

The principal of the boys' high school in Barta'ah a-Sharqiyah, Razi Kabha, told B'Tselem that the barrier influences the educational system too, and that the village "is losing an entire generation of schoolchildren." He says that the families today put earning a living at the top of their priorities, and so during the last year there were 40 student dropouts among the 210 schoolchildren who began the academic year. The academic level of the students who remain in school has also been affected. Before the barrier, there was an average success rate of 60 to 70 percent on the tawjihi (the matriculation examination), with a 100 percent rate on the science section of the exam. This past year, the average success rate dropped to only 40 percent. Teachers from elsewhere in the West Bank refuse to teach at the village schools because of the lengthy security checks at the crossing, so that today there is only one teacher from outside and the local council has had to rely on teachers who reside in the village, some of them inexperienced. The supervision by the Palestinian Ministry of Education of the village schools is occasional rather than ongoing as it used to be before the building of the barrier.¹²⁶

Due to the village's location next to Barta'ah al-Gharbiyah which is on the Israeli side of the Green Line, and the free passage between these two parts of the village, Barta'ah a-Sharqiyah's economy has been less damaged than in other communities adjacent to the Separation Barrier. Since the establishment of the barrier, the marketplace alongside the Green Line in Barta'ah al-Gharbiyah has expanded considerably. Some 1,100 businesses and auto garages now operate there, offering a wide variety of goods and inexpensive services. The secretary of the village council, Ahmad Kabha, says that 80 percent of the council's budget comes from local taxes collected from merchants in the market, most of whom are residents of other areas of the West Bank and come daily to the businesses in the market. The village residents who own land in this area rent it out for storage and for shops at an average price of about 15,000 Jordanian dinars a year.¹²⁷ Some of the merchants use these buildings to house Palestinian workers from the West Bank who work in Israel.¹²⁸

125 Meeting with local council head Ghassan Nayef Kabha by B'Tselem researcher Atef Abd a-Rub on 13 September 2011.

126 Meeting with the boys High School principal Razi Kabha, on 16 July 2012. Testimony of the Director of Education and Culture for the Jenin District, Palestinian Ministry of Education, Sallam a-Taher. Testimony taken by Atef Abu a-Rub on 19 June 2012.

127 As of August 2012, the Jordanian dinar was equivalent to NIS 5.66. The average dinar to NIS exchange rate between January and August 2012 was 5.42.

128 Meeting with Barta'ah a-Sharqiyah village council head Ahmad Kabha on 7 March 2012. See "Barta'ah: One Village, Two Planning Worlds," in **The Prohibited Zone**, pp.142-145, see footnote 102. See also Tali Heruti-Sover, "Looking to buy things 30% cheaper? Try across the Green Line," **The Marker** [Hebrew], 29 January 2012.

The possibilities for development in the village are limited. In the interim accords signed between Israel and the Palestine Liberation Organization in 1995, some of the built-up area of the village, which even then had exhausted most of its building potential, was classified as Area B, where the Palestinian Authority grants building permits. The area to the north and south of this area was classified as Area C, where the Israeli Civil Administration grants building permits. That year, the Civil Administration prepared a master plan for the village that greatly limited construction. It also left out some of the existing buildings, which consequently became “illegal.” According to the local council’s maps, some thirty percent of the buildings in the village today are in Area C, all of them under threat of demolition since they were built without permits. According to the local council’s data, the Civil Administration issued seventy stop-work and demolition orders for buildings already built and inhabited in Area C.

The Qalqiliyah Area

The route of the Separation Barrier in the area around Qalqiliyah is intended to create contiguity between Israel and the “finger” of settlements near Kedumim. The route – including the part already built and the portion planned to be built in the future – dissects the district, makes access difficult between villages and the district urban hub at Qalqiliyah, and separates the communities in the area from their farmland.

The land in the Qalqiliyah district is considered among the most fertile land in the West Bank. The percentage of its land under current cultivation is the second highest of all West Bank districts, at 33.3 percent,¹²⁹ comprising 55,236 dunams. Before the barrier was built, the percentage of cultivated land in the district was even higher, at 46 percent, behind only the Tulkarm and Jenin districts.¹³⁰

Lack of access to agricultural lands, the severe restrictions on movement during the second intifada beginning in 2000, and restrictions on accessing places of employment inside Israel significantly impacted the economic situation of the area.¹³¹ For example, in 2009, the unemployment rate in the Qalqiliyah district was 23.4 percent – the highest in the West Bank, compared with an average of 17.8 percent in the West Bank as a whole. In 2010, unemployment in Qalqiliyah dropped to 19.8 percent as compared with an average of 17.2 percent in the West Bank overall.¹³²

129 In the Tulkarm sub-district north of Qalqiliyah, the rate of cultivated agricultural land is 45%. **Press Conference on the Preliminary Findings on the Agriculture Census 2010**, Palestinian National Authority, Palestinian Central Bureau of Statistics and Palestinian Ministry of Agriculture, April 2011, p.31.

130 In the Tulkarm district the rate of cultivated land was 59% and in the Jenin district the rate of cultivated land was 50%. **Behind The Barrier: Human Rights Violations As a Result of Israel's Separation Barrier, April 2003**, B'Tselem, position paper, March 2003, pp .14-15.

131 The prohibition on entry of Israelis to Qalqiliyah is still in effect but is not currently enforced. Since 2009, the entry of Arab citizens of Israel to Qalqiliyah is permitted. For more on restrictions on movement see **Ground to a Halt**, pp.59, 60, 87, see footnote 112.

132 **Press Release on Labor Force Survey 2009 and Press Release on Labor Force Survey 2010**, Palestinian Central Bureau of Statistics.

1. The Village of Jayus

The village of Jayus is located northeast of Qalqilyah. According to the Palestinian Central Bureau of Statistics, 3,173 persons lived in the village in 2011. The built-up area of the village is in Area B, but most of its agricultural land is in Area C, which is under full Israel control. Jayus is the Palestinian village with the greatest amount of farmland in the Seam Zone. Some three kilometers west of the village – three km east of the Green Line – the settlement of Zufin was established in 1989, partly on Jayus lands that Israel declared as “state lands.” According to the Israeli Central Bureau of Statistics, as of the end of 2010, Zufin had a population of 1,251.

The economy of Jayus is based on intensive agriculture including fruit orchards, olive groves, hothouses with vegetables, grain fields, and raising sheep and goats. Before construction of the barrier, some 90 percent of the adults in the village worked in agriculture, generating an agricultural output of approximately 9,000 tons annually. Most of that was sold in Palestinian markets and the remainder to Israeli merchants.¹³³

In September 2002, the residents of Jayus petitioned Israel’s High Court against the seizure of their lands for the construction of the barrier, but the justices rejected their petition.¹³⁴ In August 2003, construction of the barrier was completed in the area, along the originally-planned route. To enable the construction, the military issued confiscation orders for approximately 550 dunams of agricultural land belonging to the village and uprooted approximately 4,000 trees.¹³⁵ The building of the barrier left 9,229 dunams of land, comprising about 70 percent of the agricultural land of the village, isolated on the western side of the barrier. This area was declared part of the Seam Zone, and contained some 25,000 olive, citrus, plum, apple, and guava trees as well as vegetable and grain fields and about one hundred hothouses for growing vegetables. The land also contained six wells providing water for agriculture and for the villagers’ household needs. Some of these wells were shared with Falamyia, a village north of Jayus.

In March 2005, the High Court deliberated on another petition against the route of the barrier in this area, submitted by residents of Azzun and a-Nabi Elyas, south of Jayus. During the hearing it became clear to the justices that the State had misled the court concerning the considerations underlying the location of the barrier route, and that the route was not, in fact, based on security considerations. Instead, the route had been set so as to encompass territory intended for the future expansion of the Zufin settlement – with a new neighborhood to be built on land belonging to Jayus, north of the built area of the settlement, and an industrial zone east of the built area, on lands of both Azzun and Jayus.¹³⁶ When these facts became clear, the High Court instructed the State to move the barrier westward so that 1,790 dunams would be returned to the “Palestinian” side, including the land the State had intended for the eastward expansion of the settlement – 579 dunams belonging to Jayus and the remainder to Azzun and a-Nabi Elyas. It took until 2009, more than three years after this verdict was handed down, and after the petitioners had submitted a motion for a contempt of court citation,

133 Meeting with local council head Muhammad Taher Hassan Jaber on 9 August 2011.

134 HCJ 8172/02 & 8532/02, **Ibtisam Muhammad Ibrahim et al. and Rashid a-Salaam Salamah et al. v. IDF Commander in the West Bank.**

135 **Five years after the International Court of Justice advisory opinion**, p.39, see footnote 119.

136 For more, see **Under the Guise of Security**, pp. 19-32, see footnote 4.

for the military to move the route of the barrier.¹³⁷ After the adjustment, 7,650 dunams of Jayus land remained on the "Israeli" side of the Separation Barrier, comprising 63 percent of Jayus' agricultural land.

In May 2006, during adjudication of another petition by the Jayus village council, the State promised to move the route of the barrier to the northwest of the village, which was intended to enable northward expansion of the Zufin settlement, in such a way that there would be another 2,488 dunams on the "Palestinian" side of the barrier, some of that being land cultivated by residents of Falamyia.¹³⁸ The military notified the Jayus village council that the work on altering the route would begin in mid-2012, nearly three years after the HCJ decision, without giving any reason for the delay in implementing the verdict.¹³⁹ As of August 2012, the work had yet to begin. Moving the Separation Barrier to its new location will damage another approximately 280 dunams of agricultural lands belonging to residents of Jayus and Falamyia that will be seized for the benefit of the new barrier route.¹⁴⁰

Since the barrier was erected, the area's farmers have been able to reach their lands only through three gates designated as agricultural gates:

- The southern gate, about 600 meters south of the built-up area of the village and also used by farmers from Azzun. The gate is opened three times a day, for fifteen minutes each time.
- The western gate, some 400 meters from the built-up area of the village. The gate is open three times a day, for an hour each time.
- The northern gate, about two km from the built-up area of the village and also used by the residents of Falamyia. This gate is open continuously from 6:00 AM until 5:00 PM.

Since the implementation of the permit regime, the number of Jayus residents entitled to receive permits to work their lands on the "Israeli" side of the barrier has been relatively low compared with the number of people employed in agriculture before the barrier, and the rejection rate for permit applications is high. According to data from the Jayus village council concerning permit applications made through its offices, in 2007 there were 278 agricultural permits granted, comprising 32 percent of the applications. In 2008, 292 permits were granted, comprising 44 percent of the applications, and in 2009 121 permits were granted, comprising 41 percent of the applications. In 2010, the Jayus village council refused to submit applications via the Palestinian DCL, so it has no data for that year. In 2011, permits were granted to 306 farmers, comprising 61 percent of those requesting permits, and in the first half of 2012, there were 276 permits granted for agriculture, comprising 84 percent of applications.¹⁴¹

137 HCJ ruling 2732/05, **Azzun City Council et al. v. State of Israel et al.**, 15 June 2006. HCJ ruling 2732/05 – 5 October 2009.

138 Paragraph 14 in HCJ verdict 11344/05, 10905/05, 11765/05 and 8109/07, **Faiz Salem et al., head of Jayus City Council et al., head of Khirbet Jabara Village Council et al., and Kochav Yair Local Council v. IDF Commander in Judea and Samaria et al.**, 9 September 2009.

139 Letter from Maj. Kemal Zaher a-Din, head of infrastructure and Seam Zone in the Civil Administration, to Attorney Maskit Bendel at the Association for Civil Rights in Israel, dated 8 August 2011.

140 Paragraph 14 of HCJ verdict 11344/03, 10905/05, 11765/05 and 8109/07, see footnote 138. See also Shaul Arieli, "The cost of avarice," [Hebrew], **Haaretz**, 20 July 2011.

141 The data was collected from the village council records. Meeting with village council head Muhammad Taher Hassan Jaber on 3 July 2012. Recorded by 'Abd al-Karim Sa'adi.

The low percentage of permits granted, and the lack of continuity from year to year, limit the ability of the farmers to work their land. Jayus farmers have accordingly decreased their reliance on cash crops – hothouse fruits and vegetables – which demand continuous daily cultivation over a period of years. The opening hours of the gates permit ten hours of labor during daylight, but this creates difficulties for hothouse cultivation, which requires watering in the evening in order to minimize evaporation.¹⁴²

The residents also uprooted about 2,000 dunams of fruit orchards, from the total of 3,500 dunams they cultivated before the building of the barrier, mainly guava and citrus trees. Instead the village's farmers are now growing wheat, and lemon and olive trees, which require less work and do not need daily attention – but these also yield less income.¹⁴³ The head of the village council estimated that the village's agricultural produce had dropped to about 4,000 tons, less than half what it was before the barrier was built.¹⁴⁴

The head of the council, Muhammad Jaber, told B'Tselem:

Before the barrier was built, I grew seven dunams of vegetables, plus guava and oranges on three more dunams. I had a dunam of hothouses with cucumbers and tomatoes, all irrigated, and another 26 dunams of wheat, barley, and cereal grains. I worked with the whole family in agriculture and our financial situation was excellent. We earned about NIS 40,000 a year from the crops, enough for the whole family without needing additional sources of income.

Since the construction of the barrier, we have had trouble reaching the land and working it, especially after the agricultural gates were put in and the permits issued to farmers. At first we had permits, through the middle of 2004, but then one of my sons was arrested and put in prison for three and a half years. Then the permits for the entire family were cancelled. In 2009, I again received a permit and in June 2011 two of my sons also were granted permits. My other eight children are still refused permits.

As a result, I could not get to the orange grove or the guava orchard to irrigate and spray them, and they dried up. I moved the hothouse closer to the village, east of the barrier. Now I have gone back to work, but the frequency is different. I planted new guava, orange, and avocado saplings. My crops today are mainly wheat and barley. I did not plant vegetables because I do not have permits for enough workers."¹⁴⁵

Limitations on the number of vehicles permitted to cross the barrier create difficulties in transporting fresh agricultural produce to the Palestinian market, which reduces the price. Farmer Majd Khaled told B'Tselem:

I have land west of the barrier, a plot of 12 dunams, where there were 240 plum and orange trees, 120 lemon and clementine trees, and another 50 mature olive

142 Conversation with local council head Muhammad Taher Hassan Jaber on 28 May 2012. See also "The Jayus test case: Expulsion and "transfer" in **Five years after the International Court of Justice advisory opinion**, p.28; see footnote 119.

143 Conversation with village council head Muhammed Taher Hassan Jaber, on 14 May 2012. Recorded by 'Abd al-Karim Sa'adi. Testimony of Majd Abd a-Rahim Abdallah Khaled. Testimony taken by 'Abd al-Karim Sa'adi on 23 July 2012.

144 Meeting with village council head Muhammad Taher Hassan Jaber on 9 August 2011. See also amended petition for a show-cause order, to HCJ 11343/03 Faiz Salem et al. v. IDF Commander in Judea and Samaria, from 1 March 2006. The Jayus test case: expulsion and "transfer" in **Five years after the International Court of Justice advisory opinion**, p.28, see footnote 119.

145 Testimony of Muhammad Taher Hassan Jaber, head of Jayus local council. Testimony taken by 'Abd al-Karim Sa'adi on 8 August 2011 and on 17 January 2012.

trees. Before construction of the barrier, merchants, including Israeli merchants, would come to my farm and buy the produce directly at good prices, without extra transport or marketing costs. My annual income then was about NIS 30,000 and allowed me to easily cover the family's expenses.

After construction of the barrier, we began to lose some of our profits because of the need to cover the expenditures for transport and marketing and sometimes as a result of produce that spoiled during the transport from the farm to the markets. Instead of getting NIS 30-35 a carton, as we did when we sold the produce on the farm itself, we began receiving a price of four or five shekels a carton. My income now doesn't even cover my expenses for water, planting, and pesticides for weed control. I had to dry out my plum, apple, and clementine trees in order to cut my losses and I planted lemon trees instead, which are more weather-resistant and hold up better in transport to the markets.¹⁴⁶

As of July 2012, only three villagers received permits for trucks to pass through the gates in the barrier. Most farmers get to their lands on foot or by riding on donkeys.

Even those with permits have difficulty working the land they own. One of the largest landowners in the village is Sharif 'Omar (Abu 'Asam), who was an activist against the barrier in the past. He owns a large plot of 177 dunams of land, and needs three workers every day to work his lands. The Civil Administration, however, refuses to allot him permits for the workers.¹⁴⁷

The opening hours of the gates have also had a negative impact on the villagers who raise animals, because their herds graze in pastures on the "Israeli" side of the barrier. The reduced access to pasture land forces them to buy animal feed as a substitute for grazing, but the high cost of feed has made raising the animals a losing proposition. The limited hours during which the gates are open do not permit them to get fresh milk to the markets on the same day it is produced, whether for direct sale or for yogurt and cheese production, and the lack of refrigeration facilities in the pasture area has meant spoiled milk and lost sales. The herd owners also have problems getting veterinary medicines to their herds or bringing a veterinarian to the animals, due to the need for prior coordination with the Civil Administration to obtain permits and the delays in security checks at the gates.

Before construction of the Separation Barrier, eight families in Jayus made a living from animal husbandry. The head of the village council estimated that there were some 9,300 sheep and goats in the village.¹⁴⁸ As of July 2011, only three of the village's residents had received permits for herding on the "Israeli" side of the barrier. The other families stopped raising sheep and goats and the animal count in the village dropped to only about 3,000.¹⁴⁹ Abd al-Halim Baji, age 53, who owns a herd of 140 sheep and raises them with his nine brothers, told B'Tselem:

We rely on dairy products from the herd – cheese and labaneh – and from selling the sheep. Before the barrier was built, every morning my brothers and I would take the

146 Testimony of Majd Abd a-Rahim Abdallah Khaled. Testimony taken by 'Abd al-Karim Sa'adi on 10 August 2011.

147 Conversation with Sharif 'Omar on 4 April 2012. Recorded by 'Abd al-Karim Sa'adi.

148 Paragraph 40 in the petition HCJ 11344/03, **Faiz Salem et al. v. IDF Commander in Judea and Samaria** of 24 December 2003. Conversation with village council head Muhammad Taher Hassan Jaber, on 9 August 2011.

149 The data were conveyed in a conversation with village council head Muhammed Taher Hassan Jaber on 9 August 2011.

sheep out to pasture, west of the village, and return with the herd to the paddock in the village. We did not need animal feed during the day because the sheep were out at pasture.

The regulations for entry and exit through the gates make things very difficult, especially in the morning. The milking of the herd is done in the early morning hours and so the shepherds cannot meet the schedule for when the gate is open. My brothers and I also raise other animals and we have had to set up paddocks for the sheep at the pasture areas after we received the required agricultural permits. Although some of us are married and have small children, we have to remain there at night with the herd, due to fears of theft.

We encounter many problems. We are not allowed to bring animal feed to this area except by prior coordination. And we already have had two births that required the presence of a veterinarian, but he could not get to us through the gates, and as a result, the lambs died.¹⁵⁰

The restrictions on access to the "Israeli" side of the barrier also harmed the water supply to the village. The Civil Administration refused the village council's request from 2002 to install water pipes from the wells remaining on the "Israeli" side of the barrier to pipe water to the village, and even ordered the council to install water meters at these wells to limit the volume of water permitted for pumping. Now the village receives water from a well located near the village of Azzun. The village council head says that the residents prefer not to rely on this water, however, because the well is next to a garbage dump, so they prefer to buy water from the containers trucked in from nearby Falamyia. The trucked-in water in containers is expensive, costing nearly NIS 30 per cubic meter.¹⁵¹

2. The City of Qalqiliyah

In 2003, construction of the barrier around the city of Qalqiliyah was completed. The barrier encircles the city on four sides. To the west, a wall was built along the route of the Green Line, and to the north, east, and south, a circumferential fence was built that is seven kilometers in length. The barrier separates Qalqiliyah from half of its agricultural lands – some 2,500 dunams, where residents grow vegetables, citrus trees and hothouse crops.¹⁵²

Entering or leaving Qalqiliyah to go anywhere else in the West Bank is possible only through one access point that leads to Route 55, which leads to the settlement of Kedumim. Until July 2009, there was an army checkpoint at the entrance to Qalqiliyah where everyone entering or leaving the city was checked. In 2006, the villages south and southeast of Qalqiliyah were connected to the city via a "fabric of life" road with an underpass beneath the Separation Barrier connecting to Route 55, the first such road built along the route of the barrier.

Qalqiliyah's isolation because of the Separation Barrier has blocked any opportunity for significant development, which was constricted even before the barrier was built. In the

150 Testimony of Abd al-Halim Naji Hassan Baji. Testimony taken by 'Abd al-Karim Sa'adi on 10 August 2011.

151 Meeting with village council head Muhammad Taher Hassan Jaber on 9 August 2011.

152 Meeting with head of public relations for the City of Qalqiliyah, Nadel Jalhud on 9 August 2011.

interim accords, the built-up area of the city was designated as Area A. In its southern quadrant, however, there is a narrow strip designated as Area B, and in its northern, eastern and southern sectors there are sections designated Area C. By the middle of the last decade, construction in Qalqiliyah had already exhausted the land allocated for that purpose – only 4,200 dunams.¹⁵³ In addition, the Israeli military forbade any new construction in a two hundred meter wide strip next to the barrier that encircles the city.¹⁵⁴ Most of the current construction in the city consists of adding floors to existing buildings. In recent years, building in the city has also spread into Area C, mainly near the eastern entrance to the city, next to the road linking the city with the villages south of it. This construction is being conducted without building permits and without Israeli agreement to expand the city's boundaries.¹⁵⁵

Demarcation of the city's boundaries, since the interim accords and more so since the building of the Separation Barrier, prevents the Qalqiliyah municipality from moving ahead with a plan it has prepared to expand the city's municipal boundaries to include additional territory, all owned by its residents, and to regularize the construction possibilities in those areas, including in areas in which construction has already been completed.¹⁵⁶

According to UNSCO data, the total area of the plots approved by the city of Qalqiliyah for new construction in the city between November 2010 and November 2011 was the lowest of any West Bank city – 64,895 square meters, amounting to 1.5 percent of all building approved in the other West Bank cities.¹⁵⁷

The impact of the building restrictions is clearly apparent in the data on residential density in the city. According to municipal data, in 2006 the population density per square kilometer in Qalqiliyah was the highest of any West Bank city, 10,645 persons per km², 18 times higher than in the Qalqiliyah district as a whole and even higher than in Gaza City and the Gaza Strip as a whole.¹⁵⁸ The educational system in the city requires classrooms for some 600 additional schoolchildren. Without any possibility of building new classrooms, the average number of students per classroom has reached fifty and the physical space for each student in the city's schools is now at a miniscule level of less than half a meter per student.¹⁵⁹

153 The city relies on a master plan prepared in 1964, during Jordanian rule. Over the years, the Civil Administration has approved an expansion of its boundaries. The last time was in 2000, when the area of the plan was expanded to 4,200 dunams. Since that year, the City has been negotiating with the Civil Administration for authorization for a plan that would expand the area within the municipal boundaries of the city to 7,200 dunams. Conversation with City Engineer Walid Je'di on 16 August 2012.

154 Military order forbidding construction (seam barrier) no. 9/04, relying on Order for supervision of building (no. 393) (Judea and Samaria), 1970, signed by the commander of military forces in the West Bank, General Moshe Kaplinsky, dated 5 September 2004.

155 **The Economic Effects of Restricted Access to Land in the West Bank**, pp.25-26, see footnote 114.

156 Meeting with head of the department of public works, engineer Walid Daud, on 7 September 2011.

157 **Socio-Economic Reports April, August and November 2011**, Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO).

158 A document from the City of Qalqiliyah, "Qalqiliyah inhabitants suffer from overcrowding." The data are current through the first half of 2006. Population density per km² in the Qalqiliyah district was 587 persons, in Gaza City 9,104 persons, and in the Gaza Strip 3,956 persons. See also **Economic Effects of Restricted Land in the West Bank**, p.37, see footnote 114.

159 Summary of meeting with Education Authority engineer Hani Je'di, and Muhammad 'Aweidah, in charge of planning in the Education Authority of the City of Qalqiliyah. Recorded by 'Abd al-Karim Sa'adi on 30 January 2012. The Israeli Ministry of Education standard requires a minimum area of 1.25 meters in a classroom for each student and additional space for the yard.

Exhausting the building potential of new plots is also preventing the municipality from developing new facilities and structures like schools, cultural centers, or a stadium. Qalqiliyah also lacks a waste water treatment plant. Such a plant would need to be built at a distance from the built-up area of the city, and as such, would require that Israel agree that land from Area C be added to the municipality. But Israel refuses to grant such approval. For now, the city pipes its sewage past the Separation Barrier to an Israeli waste water treatment plant in Nir Eliyahu. Israel charged the Palestinian Authority for the cost of the plant's construction and continues to charge for the cost of sewage treatment, although the treated water is used for agriculture inside Israel.¹⁶⁰

In the past, the economy of Qalqiliyah was based on its proximity to Israel. It was a residential community housing thousands of workers with jobs in Israel. In addition, Israeli citizens visited the city to shop and to purchase various services.¹⁶¹ This all changed at the start of the second intifada, with the decrease in employment inside Israel, the introduction of checkpoints, and the blanket prohibition on entry to Qalqiliyah by Israelis. These changes hit the city's economy very hard. The construction of the barrier and the placement of a checkpoint at the city's entrance further exacerbated the situation, leading to the closing of 622 stores, workshops, gas stations, and other businesses, most of them in the industrial area on the western side of the city, near the Green Line. Today, this area is a ghost town.¹⁶² Merchant 'Omar a-Ra'i told B'Tselem about the damage caused to his business with the building of the barrier and the introduction of the checkpoint at the entrance to Qalqiliyah:

Qalqiliyah is close to the Green Line and to a number of Palestinian cities inside Israel. Before the barrier was built, I had four furniture showrooms, two in Qalqiliyah and two on the Jaljulia road and at the eastern entrance to Jaljulia. Some 60 to 70 percent of my customers came from Palestinian cities inside Israel, and the others came from the villages around Qalqiliyah. The average sales volume in all four showrooms was about NIS 15,000 a day. After the barrier was built and the checkpoint placed at the entrance to Qalqiliyah, my income dropped and I couldn't even cover my expenses – employee salaries, electricity, and rental of the showrooms and warehouses. So today I just have one shop in the center of Qalqiliyah and I run it myself. I fired four workers, who have no way to earn a living now. Each of them was making NIS 2,000 a month.

Before the barrier was built, I sold merchandise for Keter, a furniture factory in Um al-Fahm, and other places inside Israel. But because of the barrier, I was unable to get to the distributors and I lost all the merchandise I used to market and that my customers were accustomed to buying.

160 See **Foul Play: Neglect of Wastewater Treatment in the West Bank**, B'Tselem, June 2009, p.26, and "Monitoring the rivers of Judea and Samaria – A situation assessment based on modeling in 2008-09" [Hebrew], Israel Nature and Parks Authority and Ministry of Environmental Protection, December 2010, p.15.

161 The prohibition on the entry of Israelis into Qalqiliyah is still in effect but is currently not enforced. Since 2009, entry to Qalqiliyah has been permitted to Arab citizens of Israel. For more on restrictions on movement, see **Ground to a Halt**, pp.59,60, 87, and see footnote 112.

162 Testimony of Faiz Ahmad Ibrahim Shrim. Testimony taken by 'Abd al-Karim Sa'adi on 9 July 2012. **Statistical monitoring of the Socio-Economic conditions of the Palestinian Society (Second Quarter 2004)**, Palestinian Central Bureau of Statistics, Oct. 2004, p.45.

Now my average daily sales do not exceed NIS 1,000, and the profit is no more than NIS 300 a day. This amount doesn't meet the needs of my family. I had to sell land I bought before the barrier was constructed in order to cover our daily living expenses and keep the one store that I operate.¹⁶³

Most of the residents of Qalqiliyah are refugees entitled to support from the United Nations Relief and Works Agency (UNRWA). In 2007, 89.4 percent of the city's residents, or 34,616 people, were registered as such.¹⁶⁴ According to the agency's data, the number of local residents who needed the health services provided by the agency, mostly for free, rose from 17,542 in 2002, before the barrier was built, to 31,075 in 2011, an increase of 77 percent. The number of those needing assistance from the welfare and social services programs nearly tripled: from 4,855 persons in 2002 to 12,557 in 2011. In addition, in 2011, 1,049 people requested assistance from the agency's job placement program.¹⁶⁵ A 2010 survey conducted by UNRWA's microfinance department among its seven offices in the West Bank found that the rate of inquiries to the branch in Qalqiliyah from people living under the poverty line – defined nationally in Palestine as income of less than NIS 12.29 per day per person – had reached 33 percent, the highest at any of its branches.¹⁶⁶

The director of the private school a-Tarbiyya al-Khaditha, Dr. Yihya Jaber, told B'Tselem that this year he was forced to close the school, which opened in 1997, due to the financial situation of the parents. In 2002, before the barrier was built, there were 390 students in ten classes from first to eighth grade, and another 170 children in the preschool and kindergarten. In 2012, the number of children gradually decreased until there were only six left, even though the school cut tuition in half, from 400 dinars to 200 dinars a year (from US\$560 to US\$280). The preschool and kindergarten are still running, but now have only 90 children registered.¹⁶⁷ There is another private school in Qalqiliyah, Al-Mustaqbal, which has also closed due to the drop in registration.¹⁶⁸

This reality – including Qalqiliyah's isolation following the harsh restrictions on freedom of movement out of the city instituted during the second intifada and its isolation from other parts of the West Bank due to the Separation Barrier – have led to a situation in which the population growth in the city, the fourth largest city in the West Bank (excluding East Jerusalem), lags behind the rate of growth elsewhere in the West Bank. According to data from the Palestinian National Bureau of Statistics, in the first half of 2003 the population of Qalqiliyah stood at 41,616 and by 2011 it had grown by only ten percent, to 45,763 persons. This rate is low as compared with the average annual rate of population growth in

163 Testimony of 'Omar Mahmoud Ahmad a-Ra'i. Testimony taken by 'Abd al-Karim Sa'adi on 24 June 2012.

164 **Palestinian Refugees in the West Bank: Socio-Economic Trends and Long Term Opportunities**, UNRWA, April 2011, p.14.

165 Email from Meg Audette, Field Program Support Officer, West Bank Field Office at UNRWA, to B'Tselem on 3 July 2012. The number of individuals seeking health services includes those from the entire Qalqiliyah district.

166 The survey included 851 applicants from among the total 7,858 applicants who contacted the Microfinance Department. **Utilizing the Palestinian Simple Poverty Scorecard: Baseline Poverty Study of UNRWA Microfinance Clients in the West Bank (February 2011)**, UNRWA Microfinance Department, April 2011, p.10.

167 Testimony of Dr. Yihya Abd a-Rauf 'Othman Jaber. Testimony taken by 'Abd al-Karim Sa'adi on 28 July 2012.

168 Summary of meeting with the engineer for the Education Authority, Hani Je'di, and Muhammad 'Aweidah, in charge of planning in the Education Authority of the City of Qalqiliyah. Recorded by 'Abd al-Karim Sa'adi on 30 January 2012.

the West Bank, which during this time period was 2.55 percent.¹⁶⁹ The director of public relations in the office of the spokesperson for the governor of the Qalqiliyah district, Muhammad Abu Sheikh, estimates that about 10,000 residents of other cities in the West Bank, who were living in Qalqiliyah because of its proximity to places of employment in Israel, abandoned the city due to this new reality¹⁷⁰.

Bir Nabala, Ramallah district

The Separation Barrier in the Ramallah area has created a closed, mostly rural enclave surrounded on all sides by the barrier. This segment of the barrier is 18.3 km long, and its purpose is to enable Israel to retain control of the main roads in the area and allow territorial contiguity between the Givat Ze'ev settlement "finger" and the rest of Israel. Israel has not declared the territory in this enclave to be part of the Seam Zone. In November 2006, a panel of nine justices of Israel's High Court of Justice (HCJ) rejected petitions submitted by residents of Bir Nabala and other localities in the enclave protesting the route of the barrier and determined that, considering the usefulness of the route from a security standpoint, the harm to their rights is proportionate.¹⁷¹

The main roads in this area have been kept for the use of Israel and of the settlers: Route 443, which connects Modi'in and Givat Ze'ev, and the continuation of Route 45, where the Separation Barrier was built along both sides of the road, ending in the Begin Highway, which connects these roads with the city of Jerusalem.¹⁷² Palestinian traffic, banned from these roads, was shunted to "fabric of life" roads, which are built on physically lower elevations than the main roads, or to rural roads, which entail longer routes and are of poorer quality.

Within this enclave created by the barrier is the town of Bir Nabala, and the villages al-Judeirah, al-Jib and Beit Hanina al-Balad. In 2011 these villages had a combined population of 13,214 people. The enclave was connected with the village of Qalandiya, south of Ramallah, by a two-lane, seven kilometer long, "fabric of life" road, which was completed in 2006.

The town of Bir Nabala is the largest Palestinian community trapped within this enclave. Before the barrier was completed, there were 6,090 registered residents in the town, and in addition, according to the estimate of the local council, some 4,000 East Jerusalem residents who lived in rented apartments or apartments they owned in the town, but who continued to use their Jerusalem address as their official residence. According to the data from the Palestinian Central Bureau of Statistics, in 2011, five years after the barrier was built, there were 5,140 residents in Bir Nabala, all of them residents of the West Bank.

169 **Census Final Results in the West Bank (Population and Housing)**, Palestinian Bureau of Statistics, August 2008.

170 Conversation with Muhammad Abu Sheikh, director of public relations in the office of the governor, Qalqiliyah District, on 26 January 2012. The head of the Qalqiliyah City Council estimated in 2003 that between 6,000 to 8,000 residents of the West Bank had left the city since the beginning of the second intifada. See **The Impact of Israel's Separation Barrier on Affected West Bank Communities**, Report of the Mission to the Humanitarian and Emergency Policy Group (HEPG) of the Local Aid Coordination Committee (LALC), May 04, 2003, p.45. See also Amira Hass, "About half the Palestinian families from west of the barrier and about a third from east of it – have been separated from their relatives," **Haaretz**, 1 February 2004 [Hebrew]. See also Shaul Arieli and Michael Sfar, **Tower and stockade**, p.67 [Hebrew], see footnote 6.

171 HCJ 4289/05 **Bir Nabala Local Council et al. v. Government of Israel et al.** dated 26 November 2006.

172 The restrictions the IDF imposed on Palestinian movement on Route 443 after the HCJ decision on the issue – HCJ 2150/07, **Ali Hussein Muhammad Abu Safiya – can't verify spelling – , head of Beit Sira village council et al. v. Minister of Defense et al.**, of 29 December 2009 – prevented them from using this road. See on the B'Tselem web site: "Route 443 – West Bank road for Israelis only," at: http://www.btselem.org/freedom_of_movement/road_443 See also Section 2 of the HCJ verdict 1679/09, **Ministry of Defense Director-General v. Qalandiya Village council et al.**, 30 November 2011.

Since the 1970s, Bir Nabala had functioned as a suburb of East Jerusalem. Its economic growth boomed in the 1990s due to its central location. Prior to construction of the barrier, even during the years when Israel limited Palestinian movement throughout the West Bank, it was possible to travel easily from Bir Nabala to the neighborhoods of East Jerusalem and to Ramallah. By driving on Route 60, one could reach the other West Bank cities, and on Routes 45 and 443, one could reach the cities of central Israel. The town's central location made it a meeting place for Palestinian merchants from the West Bank and Israeli merchants, and enabled businesses and trade in the village to flourish.

For the residents of East Jerusalem, Bir Nabala offered a partial solution to the problem of over-crowding in the city due mainly to Israel's severe restrictions on construction and development in Jerusalem's Palestinian neighborhoods. Bir Nabala offered significant new residential construction including hundreds of apartments intended for Jerusalem residents and even a separate neighborhood for them, at much lower prices than those generally found in Jerusalem. Schools were also built, as well as businesses and banquet halls that served residents of Jerusalem. Some forty teachers from East Jerusalem were employed in the village's schools. The residents of Bir Nabala relied on Jerusalem's institutions of higher education and on the health services they received in the hospitals and clinics of East Jerusalem.

The Separation Barrier isolated Bir Nabala from East Jerusalem and instead created an artificial and exclusive tie between the town and the city of Ramallah, via a new "fabric of life" road. The Separation Barrier almost completely destroyed the ties between business owners in the village and the other cities of the West Bank and Israel, as well as the connections to Bir Nabala previously enjoyed by East Jerusalem residents. The newly engineered link to Ramallah does not meet the needs or suit the capacities of Bir Nabala since the residents of Ramallah do not need housing or the various services that the town can offer.

Before the establishment of the barrier, East Jerusalem residents who lived in Bir Nabala were able to reach the city with a short journey of a few minutes. Now, the trip from the town to East Jerusalem is lengthy and requires travelling on local roads through Qalandiya, northeast of Bir Nabala, and from there south to Jerusalem via the Qalandia checkpoint, where there is a wait of at least an hour during peak times.

This reality has led the East Jerusalemites who were living in Bir Nabala to return to living in Jerusalem, apart from a few poorer residents who cannot afford the higher rents for apartments in the East Jerusalem neighborhoods. The al-Muwahel neighborhood in the eastern part of the town, where about 250 families from East Jerusalem were living before the barrier was built and where there were some thirty light industry workshops, has been emptied of nearly all its residents and today is like a ghost town, with buildings stripped of their windows, toilets and faucets. Despite complaints to the town council by homeowners in the neighborhood, the Palestinian police have no authority to act in this area. B'Tselem interviewed residents of East Jerusalem who had invested hundreds of thousands of dollars in building apartments and other buildings in al-Muwahel when they lived in Bir Nabala, and have now lost their investment.

Hisham Abu Sneinah, a welder from Jerusalem and owner of a business in the al-Muwahel area, told B'Tselem:

In 2000 I rented a welding shop with a West Bank resident in the al-Muwahel neighborhood. We paid 150 dinars a month. We rented the location in that area because it was flourishing from an urban and economic standpoint. Hundreds of buildings in the area – factories, restaurants, wedding halls, and residences – needed metalwork done for them. The amount of work expanded to dimensions I had not foreseen. The shop had a net income of thirty to forty thousand shekels a month and my share was half of that. It provided me with more than enough income to meet the needs of my family of six people, without any shortfall. We employed two other workers and could barely meet the demand from our customers due to the workload.

After the barrier was built and the village was cut off, we had a hard time filling orders from customers in Jerusalem because of the long travel times and the high cost of transport. Most of the businesspeople and residents left the neighborhood and our volume of orders dropped. We couldn't even make a minimal income to cover the basic expenses of the business, or the transportation, or to pay rent.

In 2009, we had to close the shop and we fired the employees. We continued going there periodically to keep an eye on the equipment because we were worried about thefts and burglaries in the area. We accumulated debts for back rent amounting to about fifty-five thousand shekels. I have additional debts of around forty thousand shekels. My partner and I are considering liquidating the business and selling off the equipment, which at one time was worth eighty to a hundred thousand shekels. Now we might be able to sell it for twenty or twenty-five thousand shekels.

I am in more serious financial straits than I've ever experienced. I've gone back to working as a salaried employee and I take whatever odd jobs I can get, which earns me about 2,000 shekels a month. I am barely able to cover my day-to-day expenses."¹⁷³

The main street in Bir Nabala, a-Latrun, was once a bustling thoroughfare. The eastern part of the road connected the town to the Atarot industrial zone and from there to East Jerusalem, and in the other direction the road led to the West Bank. Today, along a-Latrun Street there are dozens of closed businesses, partially finished construction projects and tall buildings with entire floors empty.¹⁷⁴

The mass abandonment of Bir Nabala by East Jerusalem residents also brought about a dramatic drop in the scope of construction in the town. Before construction of the barrier, the town council issued between seventy and a hundred building permits a year for private construction and for new workshops and businesses. Today the council issues fewer than ten building permits a year. The prices of apartments also dropped. Before the barrier, a typical apartment of about 150 m² would sell on average for 26,000 Jordanian dinars (US\$36,400). The average sale price of such an apartment is now only 12,000 dinars. Before the barrier, renting an apartment of that size would cost 200 to 250 dinars a month, on average. Now, the rental price is down to about 40-50 dinars a month.¹⁷⁵

173 Testimony of Hisham 'Omar Abd a-Rahman Abu Sneineh. Testimony taken by Iyad Hadad on 8 July 2012.

174 Testimony of Jamil Ahmad al-Qawasmeh. Testimony taken by Iyad Hadad on 5 July 2012.

175 Meeting with the Bir Nabala council head, Haj Tawfiq a-Nabali, on 22 August 2011.

The head of the town council, Mr. Tawfiq a-Nabali, used to have a large production plant which made floor tiles with international standards certification. The plant had been in business since 1973 and sold its products throughout the West Bank and Israel. The business had 25 workers and its annual volume was estimated by a-Nabali at NIS 9 million. A-Nabali closed the plant in 2008. He says that he invested \$1.5 million in the plant and today he wants to sell it, along with all the equipment, even if he can only get \$100,000 for it. A-Nabali also owns numerous apartments in the village. This is what he told B'Tselem:

Bir Nabala was a commercial and industrial hub in the West Bank. When the second intifada began, Israel put checkpoints at the northern entrance to the town, the only way to Ramallah, tearing apart our connection with the West Bank. Many businesses began hurting and cutting back. Construction of the Separation Barrier at the eastern entrance of the community, the only entrance connecting the Jerusalem and the a-Ram area of the West Bank to our town, set us back in all aspects of our life, economic, commercial, social, and tourist.

Before the barrier was built, I earned 80,000 dinars (US\$1120,000) a year in rental income from real estate. Now I barely earn 10,000 dinars (US\$14). Out of the sixty apartments I own, more than thirty apartments are not rented out because there are no potential tenants. In addition, my business activity dropped by 60 percent. In the past, I had a sales volume of 60,000 shekels a day (US\$15,800), but now it is no more than 10,000 shekels a day, which barely covers the expenses of my own and my sons' families. Even this income doesn't come from Bir Nabala, but from a business I opened in Ramallah that saved us, otherwise we would not have been able to eat or to survive.¹⁷⁶

The flight of the East Jerusalemites also had an impact on the development opportunities for the educational institutions in the village. The principal of the Mughtarabi School, Kemal Khader, told B'Tselem about the effect the barrier has had on the school:

In 2001 and 2002, before the school ended up outside the barrier, we had 400 students. By 2005, the number of students had dropped to 300 and after the barrier was constructed, to 270 students. The students from Jerusalem had to transfer to study in schools in Jerusalem. They used to live in houses and apartments near the school.

In the al-Iman preschool and kindergarten affiliated with the school, we had about 300 children aged three to six, 70 percent of them from Jerusalem. After 2006, the number wasn't more than 35 children a year, even though the management of the organization [operating the school] lowered the tuition from 3,000 shekels to 1,500 shekels a year. We used to have 18 teachers in the preschool and kindergarten and now we have only four. Their salaries dropped from 3,000 shekels a month to 1,500 shekels.

Even in 2000, when the school was functioning at its full potential, the tuition barely covered expenditures that included about thirty teachers and staff. Since then, the school's operating costs have come to exceed its income and the school is in a financial crisis. None of the staff has received their salary on time. It is now October [2011], and we still have not received our salaries for June, July, August or September.

176 Testimony of Tawfiq a-Nabali, local council head. Testimony taken by Iyad Hadad on 12 September 2011. Conversation with Tawfiq a-Nabali on 5 April 2012 was recorded by Iyad Hadad.

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There is no room for development or innovation here. We have very old computers that we are unable to replace. The school yard needs renovation but we have no resources to do that. Plans to develop a laboratory, a digital library, and a computer lab are sitting in a drawer. The suffering created by the barrier affects us on all levels. The school suffers, the students suffer, the teachers suffer and the principal suffers, too.¹⁷⁷

177 Testimony of Kemal Khader, principal of the Mughtarabi School in Bir Nabala. Testimony taken by Iyad Hadad on 19 September 2011.

Part V: Violations of Palestinians' Human Rights due to the Separation Barrier

The building of the Separation Barrier within the territory of the West Bank violates many provisions of international law that Israel has committed itself to honor. This section of the report reviews the ways in which construction of the barrier has infringed on the human rights of Palestinians.

In addition to the human rights violations involved, the route of the barrier – 85 percent of which runs through the territory of the West Bank – creates territorial contiguity between dozens of settlements and Israel's own territory. As detailed in previous B'Tselem reports – **Land Grab** and **By Hook and by Crook** – international humanitarian law forbids the establishment of settlements in occupied territory.¹⁷⁸ Israel cannot legally use the Separation Barrier to annex additional territory or to expand the scope of its settlements. It is prohibited from routing the barrier to advance these objectives. This chapter will also present an overview of international law provisions on this issue.

1. International Human Rights Law

The construction of the Separation Barrier has led to infringements of a long series of human rights of the Palestinian residents of the West Bank as anchored in international covenants that Israel has signed and is committed to upholding. Israel's claim that these agreements do not apply to its actions in the occupied territories has been repeatedly rejected by the professional bodies charged with implementing those agreements, by leading jurists, and by the International Court of Justice (ICJ) in The Hague (in its July 2004 opinion) – all have found that these treaties do apply to any area in which a state has control, with no connection to the question of sovereignty.¹⁷⁹

178 See B'Tselem's reports *Land Grab: Israel's Settlement Policy in the West Bank* (2002) pp. 37-44, see footnote 110, and *By Hook and by Crook: Israeli Settlement Policy in the West Bank* (2010), pp. 37-48, see footnote 22.

179 **Concluding Observations of the Committee on Economic, Social and Cultural Rights – Israel. 23/05/2003**, Economic and Social Council, E/C.12/1/Add.90, 23.5.03. **Concluding observations of the Committee on Economic, Social and Cultural Rights – Israel**, Committee on Economic, Social and Cultural Rights, E/C.12/1/Add.69, 31.8.01. **Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, Concluding observations: Israel**, Committee on the Rights of the Child, 4.3.10. **Consideration of reports submitted by States parties under article 40 of the Covenant, International Covenant on Civil and Political Rights**, CCPR/C/ISR/CO/3, 3 September 2010. See also "Concluding Comments" published by the two committees after deliberations on the reports submitted to them by Israel: **Committee on Economic, Social and Cultural Rights, 19th session 1998, E/C.12/1add 27; Committee on Human Rights, 63rd session, 1998, CCPR/C/79/Add 93**. See **articles 86-101 of the Ruling of the International Court of Justice on the Question of the Legality of the Separation Barrier**, <http://www.icj-cij.org/docket/files/131/1671.pdf?PHPSESSID=265ab2ca6395936e289222561a24ff28> and see also, on the B'Tselem web site: http://www.btselem.org/hebrew/separation_barrier/international_court_decision.asp [Hebrew].

Infringements of Freedom of Movement and Related Rights

Article 12 of the International Covenant on Civil and Political Rights states that everyone has a right to freedom of movement within their own country: the right “to move around and choose their place of residence freely.”¹⁸⁰ This right is important in that it is crucial for normal daily living and for enjoying a broad range of other rights anchored in international law including the right to work, the right to health, the right to education, and the right to a family life.

The Separation Barrier narrows and restricts the possibilities of access for Palestinians to extensive areas of the West Bank.

Under the permit regime in the Seam Zone – which has been declared a closed military zone – entry to areas of the West Bank located on the “Israeli” side of the Separation Barrier is contingent on a “justified reason” to enter as defined by a short and limited list. It also requires the granting of a temporary, individual permit, and a lengthy security check at the barrier crossings. In addition, limitations on the areas where Palestinians are permitted to be, and on the length of time they are permitted to remain west of the barrier, in effect render the Seam Zone off limits to most Palestinians in the West Bank. Few permits are issued, and only a limited number of these are long-term permits (known as “permanent” permits, even though they must be renewed every two years). These restrictions thwart any chance for a normal routine of life for the Palestinian communities affected by the Separation Barrier, and leave the residents of these communities in a state of permanent uncertainty, dependent on decisions of the Israeli authorities.

Israel’s attempts to reduce the barrier’s damage to freedom of movement by construction of “fabric of life” roads have been only partially effective. In some cases, it has even imposed an additional burden on Palestinians by forcing them to use longer routes that require more travel time and are more expensive. In other cases, the roads Israel has built have cut off longstanding connections between neighboring communities while forcing artificial new connections between other communities.

The infringement to freedom of movement has also interfered with other rights:

- The right to health: Health services in the Seam Zone are very basic and limited. Restrictions on movement reduce Palestinians’ access to health centers in other places in the West Bank and their ability to rapidly reach a medical team when someone in the Seam Zone areas needs immediate medical treatment.
- The right to a family life: Less contact between communities, and the hardships of traveling from one community to another, harm people’s ability to continue to lead a normal, orderly family life. Another damaging factor is the need to plan well in advance in order to obtain permits, even for routine family visits among immediate family members.
- The right to education: The construction of the barrier and the imposition of the permit regime create hardships for those who need to cross the barrier to access

180 See the wording of the covenant on the B’Tselem web site at: http://www.btselem.org/hebrew/international_law/covenant_on_civil_and_political_rights

educational institutions, which include all residents of the Seam Zone pursuing post-secondary studies. Further damage is done by the restrictions on entry for educational staff to the Seam Zone and the enclaves surrounded by the barrier.

The Right to Own Property

This right to own property is grounded in article 17 of the International Declaration of Human Rights, which holds that everyone has the right to own property and prohibits arbitrary infringements of this right. Protection of property is also grounded in international humanitarian law, inter alia in articles 46 and 52 of the Hague Conventions and in article 53 of the Fourth Geneva Convention. Israeli law has recognized this right in article 3 of the Basic Law: Human Freedom and Dignity, which provides that "a person's right to own property shall not be harmed."¹⁸¹

Israel constructed most of the Separation Barrier on private Palestinian land, damaging a great deal of cultivated farmland. The scope of the agricultural land encompassed by construction of the barrier was increased by Israel's attempts – some of them invalidated by High Court rulings – to include on the "Israeli" side of the barrier many areas intended for expansion of the settlements. Beyond the direct damage to property rights due to these encroachments on privately owned land, Palestinian landowners in most of the communities affected by the barrier saw the value of their land continually decline as a result of the numerous restrictions that comprise an essential part of the permit regime. These restrictions lead to broad cumulative damage to the ability of the Palestinian landowners to make appropriate and optimal use of their property, whether the property involved is agricultural, residential, or commercial.

The Right to a Livelihood and to an Adequate Standard of Living

Article 6 of the International Covenant on Economic, Cultural and Social Rights anchors the right of every person "to work, including the right of every person to obtain the possibility of earning a living in the work he freely chooses or receives." Article 11 of the Covenant anchors the right of every person "to an adequate standard of living for himself and his family, including reasonable food, clothing and shelter and to continuous improvement in his living conditions."¹⁸² The long range impact of the construction of the Separation Barrier damages several aspects of these rights:

Narrowed options for employment: The permit regime continuously reduces the ability of many Palestinian landowners to cultivate their farmland, and makes it hard for others to engage in agricultural or other work in the Seam Zone areas.

Restrictions on construction and development: The Separation Barrier limits the possibilities for construction and development in dozens of Palestinian communities.

181 See the text of the Universal Declaration of Human Rights on the B'Tselem web site at: http://www.btselem.org/international_law/universal_declaration

See the text of the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907: <http://www.btselem.org/topic-page/convention-iv-respecting-laws-and-customs-war-land> and the text of the Geneva Convention on the Protection of Civilians in Wartime (Fourth Geneva Convention): <http://www.icrc.org/ihl.nsf/full/380>.

182 See the text of the Convention on the B'Tselem web site at: <http://www2.ohchr.org/english/law/cescr.htm>

Placement of the barrier quite close to the built-up areas of many Palestinian localities and the restrictions on construction imposed by the Israeli military for areas near the barrier reduce the options for these localities to grow and expand in accordance with their needs. Throughout the West Bank, Israel engages in discriminatory use of planning and allows almost no construction in the Palestinian localities remaining in Area C.¹⁸³ The permit regime imposes additional restrictions on every Palestinian seeking to build any structure in the Seam Zone, and requires that land be formally registered – a complicated and expensive process. Furthermore, the permit regime significantly reduces the possibility of making economically-appropriate and productive use of agricultural land in the area, which is among the most fertile areas in the entire West Bank.

Preventing access to water sources: The permit regime limits the ability of Palestinians to use the water sources on the “Israeli” side of the barrier (most of the agricultural wells – 20 of them – also supply drinking water). Moreover, one of the Israeli drilling sites for water in the West Bank is located next to the Sal’it settlement – south of Tulkarm, in an area surrounded by the Separation Barrier – even though the laws relating to occupation prohibit Israel from exploiting the natural resources of the occupied territory.¹⁸⁴

The Right to Equality

The right to equality is one of the most central elements in the defense of human rights and is anchored, inter alia, in article 2 of the Universal Declaration of Human Rights and article 2 of the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. Under these conventions, every person has rights and freedoms without discrimination, including discrimination based on considerations of national origin or the political status of his country, “whether the country is independent, or under a trusteeship, whether it is self-governing or whether its sovereignty is limited by some other limitation.”¹⁸⁵

Israeli policy in the Seam Zone has created a legal system that institutionalizes systematic discrimination against Palestinians. Their right to live on their own land or to work their land in the Seam Zone area is restricted and conditioned on obtaining temporary permits – while no such restriction applies to the rights of Israeli citizens and of Jews privileged by Israel’s Law of Return (granting automatic Israeli citizenship for Jewish immigrants).

The Israeli settlers in the Seam Zone are subject to Israel’s system of civil law, based on the norms, values, and rights accorded to citizens of a democratic country, including a long series of protections of their rights. By contrast, the Palestinian residents of the same area live under a regime of occupation and are subject to a system of military law that systematically violates their rights, including their right to due process.

Granting differential rights to civilians living in the same area based on their national affiliation is a very clear violation of the right to equality.

183 For more, see the report by Bimkom, “The Prohibited Zone,” see footnote 102.

184 Letter from Danny Sofer, Central Region Director, Mekorot-National Water Company, to Attorney Nasrat Dakwar of ACRI, dated 15 November 2009. For more on the prohibition in international law against exploiting the natural resources of an occupied territory, see **Dispossession and Exploitation: Israel’s Policy in the Jordan Valley and the Northern Dead Sea**, pp.49-50. See footnote 111.

185 Article 2 of the Universal Declaration of Human Rights.

The Right to Self-Determination

The first article in both the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights states that:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources In no case may a people be deprived of its own means of subsistence.

The official declared position of the Israeli government, as well as that of the Palestinian Authority and most of the international community, recognizes that the appropriate framework for the realization of the right to self-determination of the Palestinian people is an independent Palestinian state in the West Bank and Gaza Strip, alongside the State of Israel.¹⁸⁶

The route of the Separation Barrier, where it is built or planned, truncates and chops up Palestinian space with "fingers" extending deep into the West Bank that eliminate the possibility of a sustainable Palestinian state with territorial contiguity. The route of the Separation Barrier planned to encompass the area of Ma'ale Adumim to the east of Jerusalem is liable in and of itself to thwart any realistic chance of establishing a Palestinian state. This route threatens to divide the West Bank into two separate areas and cut off East Jerusalem from the rest of the West Bank.¹⁸⁷ As a result of all this – as stated also in the opinion of the ICJ – the Separation Barrier serves to prevent Palestinians' realization of their right to self-determination.

2. The Prohibition on Establishing Settlements in Occupied Territory

The route of the Separation Barrier encompasses a large number of Israeli settlements with the aim of creating territorial contiguity between them and Israeli territory. The ICJ also concluded that the Separation Barrier is intended to aid the settlement enterprise.

Establishing settlements in the West Bank violates two key covenants in international humanitarian law that set forth the rules of conduct during wartime and occupation: the Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex, from 1907, and the Fourth Geneva Convention on the protection of civilians during wartime, of 1949.

The Hague Regulations

One of the basic principles of international humanitarian law is that of the temporary nature of a military occupation. According to Article 43, which is central in the Hague Regulations and has a kind of constitutional status, an occupying state is not the

¹⁸⁶ See the text dealing with the Road Map in **By Hook and by Crook**, pp. 15-16. See footnote 22.

¹⁸⁷ See B'Tselem, **The Hidden Agenda: The Establishment and Expansion Plans of Ma'ale Adumim and Their Human Rights Ramifications**, December 2009.

sovereign but a trustee temporarily acting with the authority of the occupied regime. In utilizing this authority, the occupying state must preserve the status quo existing in the occupied territory prior to the occupation, unless there is an absolute impediment preventing it, with the purpose of defending the protected population under occupation as defined in article 4 of the Fourth Geneva Convention. This interpretation of Article 43 has been recognized by Israel's High Court of Justice which viewed it as "a general overarching instruction" regarding the manner in which the military commander in occupied territory should carry out his obligations and exercise his authority.¹⁸⁸

Article 55 of the Hague regulations places the occupying state in the position of an administrator: by nature and substance, it has a limited administrative role, to act as a trustee to protect the assets of the occupied territory. The HCJ adopted this interpretation and stated that "the military commander is not authorized to consider the national, economic or social interests of his own state, to the extent that they have no implications for its security interests in the area or for the interests of the local population. Even the needs of the military refer to its military needs and not national security needs in the broader sense. Territory held in a belligerent occupation is not a field that is open for economic or other exploitation."¹⁸⁹

The Fourth Geneva Convention

Article 49 of the Fourth Geneva Convention is intended, inter alia, to protect the demographic status quo in the occupied territory. The article states that "the occupying power shall not expel nor move parts of its civilian population to the territory occupied by it." The article is meant to defend the local population from settlement of their country by another population. This article also prohibits government policy permitting, or encouraging, the transfer of citizens of the occupying state into the occupied territory – such as the policy of the government of Israel.¹⁹⁰ A 2004 opinion by the ICJ concerning the Separation Barrier held that the Israeli settlements are illegal under the Fourth Geneva Convention.¹⁹¹

188 Paragraph 16 in the ruling HCJ 393/82, **Jam'iat Iscan Al-Ma'almoun Al-Tha'auniya Al-Mahduda Al-Mauliya v. IDF Commander in Judea and Samaria** of 28 December 1983, in English at http://hamoked.org/items/160_eng.pdf

189 Paragraph 13 in the ruling HCJ 393/82, see footnote 187. For the interpretation of articles 43 and 55 see also the expert opinions submitted in HCJ 2164/09, **Yesh Din – Volunteers for Human Rights v. Commander of IDF Forces in the West Bank et al.** (26 December 2011). The expert opinion is signed by Dr. Guy Harpaz, Prof. Yuval Shany, Prof. Eyal Benvenisti, Dr. Amichai Cohen, Dr. Yael Ronen, Prof. Barak Medina and Prof. Orna Ben-Naftali, January 2012 and is available in English in an executive summary at: <http://www.yesh-din.org/userfiles/file/summary.pdf> or in full at: <http://yesh-din.org/userfiles/file/%D7%97%D7%95%D7%95%D7%AA%20%D7%93%D7%A2%D7%AA/QuarriesExpertOpinionEnglish.pdf>

190 See more at B'Tselem, **By Hook and by Crook**, pp. 37-48. See footnote 22.

191 See Opinion of the International Court of Justice on the B'Tselem web site, at: http://www.btselem.org/separation_barrier/international_court_decision

Conclusions

The Separation Barrier is one more in a long series of measures imposed by successive Israeli governments since Israel's occupation of the West Bank in 1967 that seriously constrict the possibilities for spatial and economic development for the Palestinians who live there. These actions, first and foremost among them the establishment of the Israeli settlements, were taken in blatant violation of international law and while ignoring Israeli's basic obligation to protect the welfare of the local population – the Palestinians – in accordance with international human rights law and rulings by Israel's own High Court of Justice.

The official justification for building the Separation Barrier along an invasive route within the territory of the West Bank was always that it was a temporary security measure. However, at the same time, Prime Ministers Ariel Sharon and Ehud Barak both said that the Separation Barrier stabilizes the future border of Israel, and the defense establishment already relates to it as a border. The greed for land to expand the settlements disguised itself as security needs: it was greed, not security, that dictated a barrier route that took over and destroyed broad expanses of Palestinian farmland.

Palestinian property was seized to build the barrier, and landowners' access to much larger tracts of land on the "Israeli" side of the barrier was restricted. The barrier, on the route on which it is now built, breaks up Palestinian urban and agricultural contiguity and severs communal ties established over many generations; meanwhile, it forcibly imposes an arbitrary spatial order suited to the boundaries of the Israel settlements and the convenience of the security forces, with very little consideration for the needs of the affected Palestinian communities.

Even now, just a few short years since completion of nearly two-thirds of the Separation Barrier, Palestinian agricultural and economic activity has decreased in areas once considered stable, and the ability of Palestinian communities to support themselves has been severely eroded. For example, prices for products and services in Barta'ah a-Sharqiyah increased significantly following the imposition of stricter security checks on people and goods at the Rehan crossing at the entrance to the village. In Jayus, the paltry number of permits issued to farmers – and only temporary permits, at that – have led to lower agricultural output for the village and a transition from competitive cash crops to less lucrative agriculture that does not require daily, ongoing cultivation. The barrier's encirclement of the city of Qalqilyah prevents it from developing as an urban and commercial center, and the isolation of Bir Nabala from East Jerusalem has caused a mass exodus from the town, abandonment of residential neighborhoods, and economic paralysis. The Separation Barrier is liable to continue to adversely affect the Palestinian presence in areas on the "Israeli" side of the route and facilitate the de facto annexation of those areas to Israel.

The Israeli security establishment has imposed a rigid regime of entry and residence permits in areas declared part of the "Seam Zone." From the standpoint of the Seam Zone permit regime, all Palestinians wishing to cross the barrier are labeled, in advance

and without distinction, as potential terrorists. Thus the system infringes on Palestinians' rights to freedom of movement, and hence also on their right to work, education, medical care, a family life, a livelihood and a normal quality of life. Furthermore, the collective right of Palestinians to self-determination is liable to be nullified, in that the barrier route approved by the Israeli government dissects the territory of the West Bank. The settlement "finger" in the Ma'ale Adumim area, if and when the barrier is built there as planned, would end territorial contiguity between the northern and southern Palestinian areas and cut off East Jerusalem from the rest of the West Bank.

In its rulings, Israel's High Court has ignored the issue of the illegality of the settlements, which have primarily dictated the convoluted route of the barrier. Instead, the court has preferred to focus on tests of proportionality, leading to changes in the route in a few places but not preventing construction of the barrier deep inside the West Bank or the severe damage inflicted on the Palestinian population as a result.

Given the infringement of the human rights of Palestinians as an outcome of the construction of the Separation Barrier along its present route, the government of Israel must dismantle all the sections already built inside the territory of the West Bank and stop further construction there. Pending the dismantling, Israel must return to Palestinians all the land already seized in places where construction has not taken place, cancel the permit regime in the Seam Zone areas, and allow free access to these areas for all Palestinians. If Israel wishes to build a physical obstacle between Israel and the West Bank, as a rule it must do so along the Green Line or within the sovereign territory of Israel. Even in that case, Israel must avoid building in such a way as to divide and isolate Palestinian communities.

Appendix A

List of settlements, unauthorized outposts and industrial parks on the “Israeli” side of the Separation Barrier:

The settlements, including outposts, are (from north to south): Hinnanit, Shaqed, Rehan, Sal’it, Tal Menashe (outpost), Zufin, Alfei Menashe, Oranit, Sha’arei Tikva, Etz Efrayim, Elkana, Magen Dan (outpost), Ma’ale Shomron, Karnei Shomron, Elmatan (outpost), Nofim, Yaqir, Yair Farm (outpost), Alonei Shilo (outpost), Immanuel, Ramat Gilad (outpost), Kedumim, Har Hemed (outpost), Ariel, Bruchin (outpost), Barkan, Revava, Kiryat Netanim, Ma’ale Yisrael (outpost), Alei Zahav, Pedu’el, Bet Arye-Ofarim, Hashmonaim, Matityahu, Modi’in Illit, Kfar Haoranim, Mevo Horon, Merom Ayalon (outpost), Har Adar, Har Shmuel (a neighborhood of Giv’at Ze’ev but functions as an independent settlement), Givon Hahadasha, Bet Horon, Giv’at Ze’ev, Heruti (outpost), Almon, Nofei Prat West (outpost), Kfar Adumim (including Alon and Nofei Prat which function as separate settlements), Ma’ale Adumim, Qedar, Har Gilo, Neve Daniel North (outpost), Neve Daniel, Giv’at Hatamar (outpost), Giv’at Hadagan (outpost), Efrat, Migdal Oz, Giv’at Hahish (outpost), Elazar, Derech Ha’avot (outpost), Kfar Etzion, Bat-Ayin East (outpost), Bat-Ayin, Bat-Ayin West (outpost), Alon Shvut, Massu’ot Yitzhak Hayeshana (outpost), Rosh Tzurim, Gvaot (ostensibly a neighborhood of Alon Shvut, but actually distant from it), Beitar Illit, Eshkolot, Sansana, Mezadot Yehuda and Nof Neshar (outpost).

Jewish neighborhoods built in territories annexed to Israel and added to the jurisdiction of the Jerusalem municipality: Neve Ya’akov, Pisgat Ze’ev, French Hill, Ramat Eshkol and Giv’at Hamivtar, Ramat Shlomo (Rekhes Shu’afat), Ramot, Ma’alot Dafna, the Jewish Quarter, East Talpiot, Har Homa, Giv’at Hamatos and Gilo.

The industrial parks are: Shahak, Alfei Menashe, Karnei Shomron, Ariel, Barkan, Atarot, Mishor Adumim and Gush Etzion.

Appendix B

Response from Israel's Ministry of Justice



מדינת ישראל
משרד המשפטים
State of Israel
Ministry of Justice

The Department for International Agreements
and International Litigation

היחידה להסכמים בינלאומיים
ותביעות בינלאומיות

Date: Cheshvan 5, 5773

October 21, 2012

Number: 5037

To:

Mr. Eyal Ha'Reuveni
"Betzelem" Organization
8 HaTaa'siyah St., Talpiot
Jerusalem

Greetings,

Re: **Response to the "B'tzelem" Organization Report draft "Life Interrupted –
Long-Term Effects of the Separation Fence"**

Your request concerning the abovementioned report has been received in our office, and following is our response:

Firstly, we would like to emphasize that the facts presented in the report are not completely accurate, ignore the effect the fence has on guarding the security of Israeli residents and are biased.

Secondly, we would like to present the following response, regarding the points raised in the report:

1. In the wake of thousands of terrorist acts and attacks aimed against citizens, that were carried out within the State of Israel, prior to 2002, and which turned the terrorism against the country into a strategic threat, the Israeli Government decided to eradicate the Palestinian terrorist infrastructure by taking various measures, and

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population; and clarified that under these circumstances the military commander must balance the military need to build the fence on one hand against the needs of the local residents on the other hand (paragraph 27 of the *Beit Surik case*).

7. And indeed, such balance was made by the military commander. As proof of the extreme importance the state attributed to the words of the Supreme Court and its decision in the *Beit Surik case*, below are the words of the Supreme Court in the *Alfei Menashe case*:

"Since the decision to construct the fence, a constant and continual process of analysis and improvement has been taking place. This process was intensified, of course, after the judgment in the *Beit Sourik Case* (given on June 30, 2004). As a result, some segments of the existing route were altered. The planning of phases not yet constructed was changed. When necessary, a government decision was made, ordering an alteration of the route of the fence."

8. Regarding the fence's route, the State's position is that Israel has the right and the duty to protect the settlers, including by building the fence, a position that was recognized by the Supreme Court in the *Alfei Menashe case*:

"Our conclusion is, therefore, that the military commander is authorized to construct a separation fence in the *area* for the purpose of defending the lives and safety of the Israeli settlers in the *area*. It is not relevant whatsoever to this conclusion to examine whether this settlement activity conforms to international law or defies it, as determined in the Advisory Opinion of the International Court of Justice at the Hague."

9. For different reasons, first and foremost of which is the security consideration, together with practical considerations such as: topographical and engineering considerations, the route of the fence does not entirely coincide with the West Bank Demarcation line . Therefore, the security fence passes through various parts of the West Bank and creates a space of the Bank areas which are situated between the fence and the West bank Demarcation line . These areas are labeled the "Seam Zone". Since there is no barrier between the Seam Zone and the areas of the State of Israel, and in view of the security risk that exists for the movement of terrorist entities from these areas into Israeli areas, the military commander used his

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the authority to order the closure of the Seam Zone in a manner that would require a permit for each entry into it. This, in view of the close link between the security fence, which was built for security reasons, and the Seam Zone. It can be said that there is a clear security purpose at the base of the decision to close the Seam Zone, which complements the purpose for which the security fence was constructed.

14. The Court further stated that the arrangement detailed in the Seam Zone file of orders (hereafter: "Seam Zone file of orders"), which lists the permit regime for allowing the entry of Palestinians to this area, is proportionate and expresses an adequate balance between the security needs on one hand, and the need to minimize the disturbance caused to the Palestinian residents following the closure decision on the other hand. This, subject to making a small number of changes. These were incorporated by the military commander within the update of the Seam Zone file of orders during the deliberation on the petitions and following the Court's ruling. Review of the adaptation of the Seam Zone file of orders to this balance and to the procedural requirements for handling the applications is done periodically by the relevant bodies.
15. It should be emphasized that all the IDF units in the West Bank act to implement the Supreme Court's instructions regarding the construction of the security fence in the Area, the route of the fence and the minimization of its consequences with respect to the fabric of life of the residents living in its proximity.
16. The authorized bodies are acting all the time with the aim of planning for the wellbeing of the area's residents. It should be stressed that over the years, dozens of changes have been made to the mandatory outline plans that relate to the area of the West Bank, which are aimed at adapting the outline plans to the needs of the population in the West Bank, this in order to reflect the changes that took place in the area and the scope of the population.
17. In view of all the above said it should be clarified that indeed, the construction of the security fence does have consequences on the Area's residents. But it is clear that this alternative, which embodies the balance between the security need and the difficulties caused to the population as a result, is preferable to the security consequences with the absence of the fence. In any case, the security authorities are



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