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Summary

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On 8 December 2003 the United Nations General Assembly passed a resolution requesting the International Court of Justice (ICJ) to issue an Advisory Opinion on the legal consequences of the construction by Israel of the fence/wall inside the Occupied Territories. The ICJ set the date of 23 February 2004 for the opening hearing.

Israel maintains that the ICJ does not have jurisdiction to issue an advisory opinion on what they characterize as a "political" matter. Amnesty International believes that the construction by Israel of the fence/wall inside the Occupied Territories violates international law and is contributing to grave human rights violations. Therefore, it is appropriate that a court of law examine this matter.

According to the Israeli authorities the fence/wall is "*a defensive measure, designed to block the passage of terrorists, weapons and explosives into the State of Israel...*"

However, most of the fence/wall is not being constructed on the Green Line between Israel and the West Bank. Close to 90% of the route of the fence/wall is on Palestinian land inside the West Bank, encircling Palestinian towns and villages and cutting off communities and families from each other, separating farmers from their land and Palestinians from their places of work and education and health care facilities and other essential services.

Israel's legitimate need to secure its borders and prevent access to people who may constitute a threat to its security do not justify the building of such a fence/wall *inside* the Occupied Territories. Security measures, including the building of a wall/fence, could be taken on Israeli territory on the Green Line, where mechanisms to control entry of outsiders could also be strengthened if deemed necessary.

Any measure Israel undertakes in the Occupied Territories in the name of security must comply with its obligations under international law. The building of this fence/wall mostly inside the Occupied Territories does not benefit in any way the Palestinian population living under Israeli occupation in the West Bank. On the contrary, it has severely negative consequences for hundreds of thousands of Palestinians, notably unprecedented disproportionate and discriminatory restrictions on their movements within the Occupied Territories and other violations of their fundamental rights, including the right to work, to food, to medical care, to education and to an adequate standard of living.

The fence/wall encompasses more than 50 Israeli civilian settlements in the Occupied Territories, in which the majority of Israeli settlers live and which are illegal under international law. The security exceptions in international humanitarian law cannot be invoked to justify measures that benefit unlawful civilian Israeli settlements at the expense of the occupied Palestinian population. The construction of the fence/wall inside the Occupied Territories is such a measure and in its present configuration violates Israel's obligations under international humanitarian law.

Amnesty International calls:

- On the Israeli authorities to immediately halt the construction of the fence/wall and related infrastructure *inside* the Occupied Territories. Sections of the fence/wall already built inside the Occupied Territories should be dismantled;

- On the international community to ensure that Israel's obligations under international human rights and humanitarian law, including its obligations as an occupying power under the Fourth Geneva Convention, are fully met;

The organization also reiterates its call on the Palestinian armed groups to put an immediate end to their policy of killing and targeting Israeli civilians, inside Israel and in the Occupied Territories, and on the Palestinian Authority to take urgent concrete measures to prevent attacks by Palestinian armed groups on Israeli civilians.

This report summarizes a 12-page document (4,673 words): *Israel and the Occupied Territories: The place of the fence/wall in international law* (AI Index: MDE 15/016/2004) issued by Amnesty International on 19 February 2004. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

<http://web.amnesty.org/ai.nsf/news>

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**Israel and the
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The place of the fence/wall in
international law



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Israel and the Occupied Territories: The place of the fence/wall in international law

Introduction

On 8 December 2003, exercising its power under Article 96 of the Charter of the United Nations (UN), the UN General Assembly passed a resolution requesting the International Court of Justice (ICJ) to issue an Advisory Opinion on the legal consequences of the construction by Israel of the fence/wall inside the Occupied Territories.¹ The ICJ set the date of 23 February 2004 for the opening hearing.

Israel maintains that the ICJ does not have jurisdiction to issue an advisory opinion on what they characterize as a “political” matter and, as the 30 January deadline for submitting material to the ICJ approached, a number of countries submitted affidavits to the ICJ supporting Israel’s opposition to the hearing on this issue.² Most of the governments which have expressed opposition to the ICJ hearing the case have also expressed their opposition to Israel’s construction of the fence/wall on occupied Palestinian land inside the West Bank. However, they contend that the ICJ’s involvement would only politicize the issue and that the matter should be resolved through political negotiations between the concerned parties.

Amnesty International believes that the construction by Israel of the fence/wall inside the Occupied Territories violates international law and is contributing to grave human rights violations. Therefore, it is appropriate that a court of law examine this matter. Attempts to

¹ UN GA Resolution A/RES/ES-10/14 was adopted at the tenth emergency special session on 8 December 2003 by a recorded vote of 90 in favour, eight against and 74 abstentions. It requested the International Court of Justice to urgently render an advisory opinion on the question: “What are the legal consequences arising from the construction of the Barrier being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?”.

² These countries include the 15 member-states of the European Union and 10 members-in-waiting, the United States, Canada, Australia, Russia, South Africa and Senegal.

resolve the conflict between Israel and the Palestinians through political negotiations must address and ensure respect for the fundamental human rights of both populations. The organization has repeatedly called on the Israeli authorities to stop the construction of the fence/wall *inside* the Occupied Territories.

Background

In the past three and a half years, since the beginning of the ongoing *intifada* (uprising) in September 2000, violence and human rights violations have reached a level unprecedented in the 36 years of Israel's occupation of the West Bank and Gaza Strip. Amnesty International has documented in numerous reports the abuses which have been perpetrated on a massive scale by both the Israeli army and Palestinian armed groups.³ Since September 2000 the Israeli army has killed more than 2,300 Palestinians, most of them unarmed and including more than 400 children. In the same period, Palestinian armed groups have killed some 850 Israelis, most of them civilians and including 100 children. Amnesty International has repeatedly called on both sides to put an end to the killing of civilians.

In addition, in the same period the Israeli army has destroyed more than 3,000 Palestinian homes, and hundreds of workshops, factories and public buildings, as well as large areas of cultivated land in the West Bank and Gaza Strip. Amnesty International considers that in the overwhelming majority of cases the destruction was not justified by military necessity. These abuses, notably the unlawful destruction of land and property, have contributed to damaging the economy in the Occupied Territories. However, the stringent restrictions on the movement of Palestinians imposed in the past three years have been the main cause of the severe economic depression and the increase in unemployment and poverty.⁴

Amnesty International has also called on Israel to stop unlawful destruction of Palestinian homes, land and other properties, to lift the current regime of restrictions imposed on the movement of Palestinians in the Occupied Territories, and to stop building and expanding settlements and the fence/wall inside the Occupied Territories.

Construction of the fence/wall

In April 2002 the Israeli government approved the plan to construct a fence/wall⁵ in some parts of the West Bank and in June 2002 it approved the construction of the first phase of the

³ Amnesty International reports, news releases and other documents are available at www.amnesty.org

⁴ "Twenty-seven Months of Intifada, Closures and Palestinian Economic Crisis: An assessment", World Bank, May 2003. Also see: *Israel and the Occupied Territories: Surviving under Siege, the impact of movement restrictions on the right to work*, September 2003 (AI Index: MDE 15/001/2003), on <http://web.amnesty.org/library/Index/ENGMDE150012003?open&of=ENG-ISR>

⁵ The Israeli authorities have usually referred to this fence/wall as "separation barrier" or "security fence", but as of the end of 2003 they also started to refer to it as the "anti-terror fence".

project.⁶ The Israeli army is proceeding with the construction of a fence/wall which runs from the north to the south of the West Bank and around Jerusalem. According to the Israeli authorities the fence/wall is “a defensive measure, designed to block the passage of terrorists, weapons and explosives into the State of Israel...”⁷

However, most of the fence/wall is not being constructed on the Green Line⁸ between Israel and the West Bank. Close to 90% of the route of the fence/wall is on Palestinian land inside the West Bank, encircling Palestinian towns and villages and cutting off communities and families from each other, separating farmers from their land and Palestinians from their places of work, education and health care facilities and other essential services.⁹ The total route of the fence/wall runs for more than 650 kilometres, more than double the length of the Green Line, and has an average width of 60 to 80 meters, including barbed wire, ditches, large trace paths and tank patrol lanes on each sides of the fence/wall, as well as additional buffer zones/no-go areas of varying depths.

To date less than half of the route has been completed, mostly in the northern regions of the West Bank and around Jerusalem. Large areas of fertile Palestinian farmland have been destroyed or seized by the Israeli army to make way for the fence/wall and other larger areas have been cut off from the rest of the West Bank.

When completed, the fence/wall will cut off more than 15% of the West Bank land from the rest of the West Bank and some 270,000 Palestinians living in these areas will be trapped in closed military areas between the fence/wall and the Green Line or in enclaves encircled by the fence/wall.¹⁰ More than 200,000 Palestinian residents of East Jerusalem will also be cut off from the West Bank and hundreds of thousands of other Palestinians living in towns and villages to the east of the fence/wall will also be affected as they need access to the areas on the other side of the fence/wall to reach their land and their workplaces, schools and health care facilities and other services, and to visit their relatives.

The route of the fence/wall has been designed so as to encompass a large number of Israeli settlements inside the Occupied Territories, which have been built and continue to be

⁶ The fence/wall is being built in five stages/sections. Construction of the first stage began in the second half of 2002 in the northern part of the West Bank, which has almost been completed, and on the section around Jerusalem. The remaining three stages are under construction.

⁷ Israeli Ministry of Defence on 31 July 2003. News briefs on:

<http://www.seamzone.mod.gov.il/Pages/ENG/news.htm>

⁸ The Green Line is the 1949 Armistice Line between Israel and the West Bank.

⁹ For maps and further details about the consequences of the fence/wall see, amongst other sources: *Special Report on the West Bank Barrier* by UNRWA (UN Relief and Works Agency for Palestinian Refugees in the Near East - www.un.org/unrwa/emergency/barrier); *Analysis of impact* by OCHA (UN Office for the Coordinator of Humanitarian Affairs - www.reliefweb.int/hic-opt/docs/UN/OCHA/English_update_15dec03.pdf); *The Separation Barrier* by the Israeli human rights organization B'Tselem (www.btselem.org).

¹⁰ *Ibid.*

expanded in violation of international law.¹¹ Some 54 Israeli settlements in the West Bank and 12 in East Jerusalem are located on Palestinian land which is being cut off from the rest of the West Bank by the fence/wall.¹² In total, more than 320,000 Israeli settlers, that is approximately 80% of the settlers living in the Occupied Territories, will be living on the western side of the fence/wall, thereby enjoying more direct territorial contiguity with Israel.

Human rights and humanitarian implications of the fence/wall

Israel has the right to take reasonable, necessary and proportionate measures to protect the security of its citizens and its borders. These include measures to prevent the entry into Israel of Palestinians and others who are reasonably suspected of intending to carry out suicide bombings or other attacks. Therefore, it is not unlawful for Israel to establish fences or other structures on its own territory to control access to its territory.

The fact that for the most part the fence/wall runs and is planned to run deep *inside* the West Bank, and not *between* Israel and the Occupied Territories, indicates that it is not, as claimed by the Israeli authorities, designed only “...to block the passage of terrorists, weapons and explosives into the State of Israel”.¹³

Any measure Israel undertakes in the Occupied Territories in the name of security must comply with its obligations under international law. The construction of the fence/wall *inside* the Occupied Territories violates both international humanitarian and human rights law.

Two sets of complementary legal frameworks apply to Israel’s conduct in the West Bank and Gaza Strip: international humanitarian law and international human rights law. International humanitarian law applicable to belligerent occupation includes: the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) of 12 August 1949;¹⁴ the Hague Convention (IV) respecting the Laws and Customs of War on Land (Hague Convention) and its annexed Regulations respecting the Laws and Customs of War on Land (Hague Regulations) of 18 October 1907; and rules of customary international law.

Relevant international human rights law includes the human rights treaties that Israel has ratified, including those mentioned below.

¹¹ See: Amnesty International’s report *Israel and the Occupied Territories: The issue of settlements must be addressed according to international law*, 8 September 2003 (AI Index: MDE 15/085/2003).

¹² More than 140,000 Israeli settlers live in the 54 settlements in the West Bank and some 180,000 others live in the 12 settlements in East Jerusalem.

¹³ See footnote 7.

¹⁴ Israel has ratified the Geneva Conventions but claims that the Fourth Geneva Convention does not apply *de jure* to the Occupied Territories. The UN, the International Committee of the Red Cross (ICRC) and the international community at large has rejected this assertion and has consistently maintained that the Fourth Geneva Convention fully applies to the Occupied Territories.

International Humanitarian Law

According to international law, an occupying power is required to administer the territory it controls as far as possible without making far-reaching changes to the existing order, while at the same time ensuring the protection of the fundamental rights of the inhabitants of the occupied territory. The core idea of the international rules of belligerent occupation is that occupation is transitional, for a limited period, and one of its key aims is to enable the inhabitants of an occupied territory to live as "normal" a life as possible.

As an occupying power Israel must treat the occupied Palestinian population humanely at all times. Measures of control or security must be "*necessary as a result of the war*." (Article 27, Fourth Geneva Convention)

However, "*regulations concerning occupation...are based on the idea of the personal freedom of civilians remaining in general unimpaired. ... What is essential is that the measures of constraint they adopt should not affect the fundamental rights of the persons concerned ... those rights must be respected even when measures of constraint are justified*." (ICRC Commentary to Article 27 of the Fourth Geneva Convention)

Article 53 of the Fourth Geneva Convention prohibits the destruction by the occupying power of private or public property, except where rendered absolutely necessary by military operations. Article 147 of the Fourth Geneva Convention lists as a grave breach "*extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly*."

Article 55 of the Hague Regulations forbids the occupying state from changing the character and nature of state property, except for security needs and for the benefit of the local population.

Moreover, measures of collective punishment by the occupying power are forbidden by Article 33 of the Fourth Geneva Convention, and the restrictions allowed by Article 64 of the same Convention "*must not under any circumstance serve as a means of oppressing the population*". (ICRC Commentary on Article 64 of the Fourth Geneva Convention)

In its current location the fence/wall causes extreme hardship to a large number of Palestinians. The sections of the fence/wall which have been or are being built within the West Bank cannot be considered a necessary or proportionate security measure. Neither does it benefit the local Palestinian population.

Israel's legitimate need to secure its borders and prevent access to people who may constitute a threat to its security do not justify the building of such a fence/wall *inside* the Occupied Territories. Security measures, including the building of a fence/wall, could be taken on Israeli territory on the Green Line, where mechanisms to control entry of outsiders

could also be strengthened if deemed necessary.¹⁵

The building of this fence/wall mostly inside the Occupied Territories does not benefit in any way the Palestinian population living under Israeli occupation in the West Bank. On the contrary, it has severely negative consequence for hundreds of thousands of Palestinians, notably unprecedented disproportionate and discriminatory restrictions on their movements within the Occupied Territories and other violations of their fundamental rights, including the right to work, to food, to medical care, to education, and to an adequate standard of living.

The fence/wall encompasses more than 50 Israeli civilian settlements in the Occupied Territories, in which the majority of Israeli settlers live. Israeli settlements in the Occupied Territories are illegal under international law, notably Article 49 of the Fourth Geneva Convention, which states categorically: "... *The Occupying Power shall not deport or transfer parts of its own civilian population in the territory it occupies.*". Amnesty International notes that the Rome Statute of the International Criminal Court, in force since 1 July 2002, which includes the most contemporary and comprehensive enumeration of war crimes agreed by the international community, includes among the war crimes within the jurisdiction of the court the "*transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies ... when committed as part of a plan or policy or a part of a large scale commission of such crimes*" (Article 8 (2) (b) (viii)).

The international community has long recognized the unlawfulness of the Israeli settlements in the Occupied Territories. The UN Security Council, in its resolution 465 of 1 March 1980 called on Israel to: "...*dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem*".

For almost four decades Israel has repeatedly violated international law by its continued construction and expansion inside the Occupied Territories of illegal settlements and related infrastructure, notably the extensive network of roads for Israeli settlers (known as "bypass roads") and large areas around settlements designed as "security areas".

The security exceptions in the Fourth Geneva Convention cannot be invoked to justify measures that benefit unlawful civilian Israeli settlements at the expense of the occupied Palestinian population. The construction of the fence/wall inside the Occupied Territories is such a measure. Routing the fence/wall *inside* the West Bank in a manner purportedly aimed at protecting unlawful settlements and resulting in unlawful destruction and appropriation of Palestinian property and other violations of Palestinian rights is not

¹⁵ For example, the Israeli State Comptroller in his 2002 *Audit Report on the Seam Area* noted that "IDF [Israeli Defence Forces] documents indicate that most of the suicide terrorists and car bombs crossed the seam area into Israel through the checkpoints, where they underwent faulty and even shoddy checks". In January 2004 five Israeli soldiers were arrested on charges of taking bribes from Palestinians to allow them to cross checkpoints into Israel without permits (see Haaretz 27 January 2004: *5 IDF troops suspected of taking bribes from Palestinians*).

proportionate or necessary. The fence/wall, in its present configuration, violates Israel's obligations under international humanitarian law.

International Human Rights Law

As a party to the International Covenant on Civil and Political Rights (ICCPR), Israel has agreed and is obligated to respect, protect and ensure the rights set out in the treaties to all persons within its territory or subject to its jurisdiction. Israel has consistently argued that its obligations under international human rights treaties to which it is a party do not apply to persons in the Occupied Territories. However, Israel's position has not been accepted by any of the UN human rights treaty bodies, which have repeatedly reaffirmed that the human rights treaties to which Israel is a State Party do apply, and that Israel remains bound to ensure respect and protect the human rights of all persons living in the West Bank and Gaza Strip.¹⁶

The prohibition of discrimination is a fundamental principle of human rights enshrined in several treaties which Israel has ratified and is obliged to uphold, including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights (ICCPR, Article 2(1)) and the International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 2(2)).¹⁷

In their present form, the fence/wall and accompanying restrictive measures imposed on the Palestinians are inherently discriminatory. They specifically target Palestinians – *because* they are Palestinians – and are not proportionate, for they are imposed on all Palestinians and not on specific individuals who are reasonably considered to pose a security threat. In the enclaves which are now encircled by the fence/wall the restrictions on movement and permit requirements are only imposed on Palestinians and not on Israelis who live in or visit the settlements in those areas.

Article 12 of the ICCPR guarantees the right to freedom of movement. Restrictions to this right imposed to protect national security and public order (*ordre public*) are permissible. Such restrictions must be necessary, proportionate, provided by law and consistent with the respect for other internationally guaranteed human rights. Notably, the (UN) Human Rights Committee, the expert-body which monitors implementation of states' obligations under the ICCPR, has clarified that:

"The permissible limitations which may be imposed on the right protected under article 12 must not nullify the principle of liberty of movement ... It is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to

¹⁶ Concluding Observations of the Human Rights Committee: Israel, UN Doc: CCPR/CO/78/ISR (21 August 2003) at para 11; Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel, UN Doc: E/C.12/1/Add.90 (23 May 2003) at para 15 and para 31; Concluding Observations of the Committee on the Elimination of Racial Discrimination: Israel, UN Doc: CERD/C/304/Add.45 (30 March 1998) at para 12.

¹⁷ Other conventions ratified by Israel and relevant to the issues raised in this report include the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the UN Convention on the Rights of the Child (CRC).

*protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected". "The application of restrictions in any individual case must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality. These conditions would not be met, for example, ... if an individual were prevented from travelling internally without a specific permit"*¹⁸

The ICESCR requires Israel to secure the realization of a range of basic rights, including the right to work, to health, to education, to an adequate standard of living, to food and to family life. Under Article 2(1) of the ICESCR Israel is required to take steps "...to the maximum of its available resources..." to progressively achieve the full realization of the rights recognized in the Covenant.

The Palestinian population of the Occupied Territories for the most part does not enjoy these basic human rights and the situation is continuing to worsen. Unemployment is now close to 40% and some two thirds of the population are living below the poverty line. Malnutrition, anaemia and other health problems have increased, and a fall in school performance and increase in child labour are reported. This is not due to a natural catastrophe, nor to the lack of state resources. On the contrary, it is the direct result of measures, including the building of the fence/wall, which Israel has deliberately taken and to which it has committed very substantial financial and human resources.

The seizure, destruction and encirclement of large areas of Palestinian land resulting from the construction of the fence/wall have caused widespread violations of the rights enshrined in the ICESCR, as Palestinians' access to their land, workplaces, education and health care facilities and other essential services is disproportionately and discriminatorily impaired.

According to Article 6 of the ICESCR Israel must take steps to safeguard the right to work of Palestinians, which includes: "...the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts". This Article also requires Israel to "take steps to ... achieve the full realization of [the right to work] and ... full and productive employment under conditions safeguarding fundamental and economic freedoms to the individual". The consequences of the fence/wall and other measures taken by Israel to hinder or prevent the movement of Palestinians *inside* the Occupied Territories, is the creation of large-scale unemployment, the antithesis of full and productive employment.

The right to work is also instrumental to the realization of other rights, including the right to an adequate standard of living. Article 11 of the ICESCR requires states parties to "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions". States must refrain from impeding access to the resources needed for the

¹⁸ Human Rights Committee General Comment 27 of 2 November 1999 (CCPR/C/21/Rev.1/Add.9).

realization of this right, including income-generating activities that allow individuals to maintain an adequate standard of living.¹⁹

Many Palestinians have lost their income as a result of the fence/wall and are now forced to rely on aid.²⁰ However, the availability of charity and humanitarian assistance in the Occupied Territories does not absolve Israel from its obligation to guarantee Palestinians' right to work, so that they can feed and provide for themselves and their families with dignity.

The rights to family life, to health and to education are recognized under Articles 10, 11 and 13 of the ICESCR. These rights are also being increasingly violated as a result of the construction of the fence/wall inside the West Bank. Under Article 10 Israel is obliged to ensure that: "*The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental unit of society...*". In Palestinian society the family is the main structure for social and emotional interaction and support. As the construction of the fence/wall progresses an increasing number of Palestinians who live in the surrounding areas are being cut off from their relatives, with family visits being subject to obtaining a special permit – when at all possible. Access to health and education facilities has also been similarly affected.²¹

Increased restrictions and violations of fundamental rights due to the fence/wall

Altogether it is estimated that close to one million Palestinians in the Occupied Territories will be negatively affected and will be subjected to violations of their fundamental rights by the fence/wall. The gravity of the impact on the lives of hundreds of thousands of Palestinians is already being felt, with an increasingly large number of families being forced to depend on food and aid hand outs.

Restrictions on movement: Thousands of Palestinians whose homes and land have been trapped between the fence/wall and Israel must now request special permits from the Israeli army to be allowed to continue living in their homes, to gain access to their farmland and to perform other basic functions of everyday life, such as going to work, attending school, getting medical care or visiting their families and friends.²²

Those who work in these areas but reside elsewhere need special permits to reach their workplace. Applying for such permits involves a very complicated, lengthy and costly

¹⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 12 (E/C.12/1999/5).

²⁰ UNRWA: Emergency appeal of 12 December 2003 and *Special Report on the West Bank Barrier* (www.un.org/unrwa/emergency/barrier); and UN OCHA Consolidated Appeals Process (CAP): Humanitarian Appeal 2004 for occupied Palestinian territory of 18 November 2003.

²¹ See for example the report *At Israel's Will: The Permit Policy in the West Bank*, issued in September 2003 by Physicians for Human Rights-Israel (www.phr.org.il)

²² See for example the report *New Orders in Barrier Enclaves: 11,400 Palestinians need permits to live in their homes* by B'Tselem (<http://www.btselem.org>)

process, and applications are frequently rejected by the Israeli army on unspecified “security grounds”.²³

For those who succeed in obtaining the necessary permits, movement in and out of these enclaves encircled by the fence/wall remains limited. Permits are for fixed periods, ranging from one day to several months. Some permit are only valid for certain days or at fixed times, while for the rest passage depends on the opening hours of the checkpoints. Checkpoints are closed at night and are generally supposed to be open from morning to early evening. However, they frequently open late or close early. In addition, closures²⁴ of an area without prior notice, sometimes lasting for a whole day or even several days, are frequent.²⁵ Such sudden closures, which are routinely justified by the Israeli army and authorities as necessary for unspecified “security reasons”, leave Palestinians stranded away from home, unable to get to work, to school or to hospital, or confined to their homes or to their immediate surroundings – depending on where they are at the time when a closure is imposed.

Destruction and seizure of land: In order to build the fence/wall large areas of cultivated Palestinian land have been destroyed. The Palestinian land on which the fence/wall is being built is requisitioned by the Israeli authorities for “military needs” and the seizure orders are generally “temporary”, until the end of 2005, but can be renewed indefinitely.

Since Israel’s occupation of the West Bank and Gaza Strip Palestinian land “temporarily” seized by Israel has been used to build structures which are permanent in nature, including settlements and roads for settlers, and has not been returned to its owners. In their response to a case before the Israeli High Court, the Israeli authorities have recognized that temporary seizure orders have been and may be used to establish permanent structures.²⁶

Most Palestinian agricultural land which has been seized by the army is used to build new roads for Israeli settlers or to expand the perimeter of Israeli settlements. Invariably the result is to create facts on the ground which will be difficult to reverse. Once trees have been uprooted and crops destroyed and a road has been paved in their place, it would be impossible or very difficult to restore the land to its previous use. The large scale and high cost of this project would make it even more difficult to reverse. In any event, to date Israel has not dismantled any settlements, roads or similar structures built on land “temporarily” seized by the Israeli army in the West Bank and Gaza Strip. On the contrary, the practice of “temporary” seizure of more Palestinian land by the Israeli army for building permanent structures continues throughout the Occupied Territories.

²³ Many applicants cannot provide the required documents, such as proof of ownership, residence or employment. Land is often in the name of the head of the family and is only informally divided between family members; some people who have been living in the areas may not have been registered as residents by the Israeli army; workers in the agricultural sector often do not have formal employment contracts, especially if their work is casual, like day labourers or those who help relatives on their farms.

²⁴ A “closure” is when the Israeli army prohibits all movement in and out of a place.

²⁵ See for example the reports and cases studies by the UN Relief and Works Agency (UNRWA) on: <http://www.un.org/unrwa/emergency/barrier/index.html>.

²⁶ *The Separation Barrier*, B’Tselem (www.btselem.org)

Economic and social consequences of the fence/wall: In the areas where the fence/wall has been completed, notably in the north of the West Bank, it is already having very grave economic and social consequences for hundreds of thousands of Palestinians in adjacent towns and villages. The land in these areas is among the most fertile in the West Bank and agriculture in the region constitutes a key source of income for the Palestinian population. Reliance on the agriculture sector has sharply increased in recent years because most Palestinians are no longer allowed to work in Israel, and the restrictions imposed by the Israeli army on the movement of Palestinians have caused a dramatic increase in unemployment in the Occupied Territories and the virtual collapse of the Palestinian economy. The stringent restrictions imposed on the movement of residents and farmers in the areas inside the West Bank near the fence/wall has made it extremely difficult and often impossible for farmers to tend to their land and animals and to get whatever produce they manage to harvest to the markets.

The winding route/trajectory of the fence/wall has blocked off many roads between towns and villages, forcing long detours on alternative roads. The journey time to towns and villages which are encircled by the fence/wall has been multiplied, making the cost of travelling to nearby locations increasingly unaffordable for local residents. A ten-minute journey to a village a few kilometres away now takes several hours as people are forced to travel around the enclaves or to reach and wait at one of the gates in the fence/wall. In addition to the increased time and cost of such journeys, the possibility that the gate may not be opened discourages many people from going anywhere unless it is absolutely essential. People are becoming increasingly isolated. An increasing number of people are neglecting their health and only try to seek medical care for urgent matters. Child labour has reportedly increased because in some families school children, due to the location of their school, are the only ones allowed access to the family land in the enclaves, while their parents and older siblings are denied passage.

Residents of Qalqilya²⁷ and other towns and villages, which were amongst the most prosperous of the West Bank because of the rich agriculture and vibrant trade, fear that eventually they will be forced to leave their homes and their land because the fence/wall has cut them off their land and destroyed their trade prospects.

Recommendations

To the Israeli authorities:

- To immediately halt the construction of the fence/wall and related infrastructure or other permanent structures *inside* the Occupied Territories. Sections of the fence/wall already built inside the Occupied Territories should be dismantled.

²⁷ The town of Qalqilya, home to more than 40,000 Palestinians and until a few years ago a centre of trade, is now completely encircled by the fence/wall from all sides with a single checkpoint in and out of the city. Many residents of Qalqilya own land in surrounding areas which have also been encircled by the fence/wall in separate enclaves.

- To put an immediate end to the construction or expansion of Israeli settlements in the Occupied Territories and to take measures to evacuate Israeli civilians living in settlements in the West Bank and Gaza Strip.
- To refrain in all circumstances from imposing closures, curfews and other restrictions on movement in the Occupied Territories which constitute collective punishment, and ensure that restrictions on movement are only imposed if they are absolutely necessary, are related to a specific security threat and are non-discriminatory and proportionate in terms of their scope, impact and duration.

To the international community

- To ensure that Israel's obligations under international human rights and humanitarian law, including its obligations as an occupying power under the Fourth Geneva Convention, are fully met.
- The High Contracting parties to the Fourth Geneva Convention should take appropriate measures without delay in order to ensure Israel's compliance with the provisions of the Convention.
- To ensure that human rights are central to all negotiations, interim accords and any final agreement.

To the Palestinian Authority

- To take urgent concrete measures to prevent attacks by Palestinian armed groups on Israeli civilians, inside Israel and in the Occupied Territories.
- To thoroughly investigate any such attacks and ensure that those responsible are brought to justice in proceedings that meet international fair trial standards.

To the Palestinian armed groups:

- To put an immediate end to their policy of killing and targeting Israeli civilians, whether inside Israel or in the Occupied Territories.