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מתכננים למען זכויות תכנון

Planners for Planning Rights

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## **Under the Guise of Security**

### **Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank**

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## **Introduction**

In June 2002, the government of Israel approved the first stage of a physical barrier that will separate the West Bank and Israel. The official reason for the decision was the wave of suicide attacks carried out by Palestinians against Israeli citizens in the preceding months. Over the next three years, the government and the Political-Security Cabinet approved additional stages of the barrier, as well as changes in the route in previously approved sections. In accordance with the government's last decision, in February 2005, the barrier is expected to be 680 kilometers in length. As of November 2005, one-third of the entire barrier has been built, one-third is under construction, and the construction of one-third of the barrier has not begun.

Officially, the purpose of the barrier is to prevent attacks, by means of a physical separation between the West Bank and Israel. However, only some twenty percent of the barrier's route will run along the border between them, the Green Line. As a result, more than 530,000 dunams [4 dunams = 1 acre], which represents 9.5 percent of the West Bank (including East Jerusalem) will ultimately be situated between the barrier and the Green Line. This area contains twenty-one Palestinian villages, which are home to more than 30,000 residents, and some 200,000 Palestinians who hold Israeli identity cards and live in East Jerusalem. After the barrier is constructed, all of these people will be separated from the West Bank. In addition, as a result of its winding route, the barrier will surround on at least three sides fifty more Palestinian villages, in which 244,000 persons live, that lie on the "Palestinian" side of the barrier.

Where the sections of the barrier have been completed, the barrier severely violates the human rights of Palestinians living near the route, in large part because of restrictions on freedom of movement. Thousands of families living east of the barrier are separated from their farmland situated west of the barrier, impairing their ability to earn a living. The barrier makes it difficult for residents of villages situated between the barrier and the Green Line, and residents of the eastern suburbs of Jerusalem, to obtain health services, obtain an education, and maintain family and social ties as they did in the past. In most cases, the barrier's route runs right alongside the village's built-up area, and often surrounds the village on three sides, blocking any possibility of urban development and breaching the residents' planning rights. Finally, construction of the barrier severely impinges the right of property: it limits access to private property, and the construction itself entails the taking of tens of thousands of dunams of private land and the destruction of agricultural property, such as trees, greenhouses, and irrigation systems.

The barrier's penetration into the West Bank, which is the cause of most of the human rights violations, occurred mostly in areas in which Israeli settlements are located, leaving them on the

"Israeli" side of the barrier. The route approved by the government in February 2005 leaves fifty-five settlements (twelve of them in East Jerusalem) west of the barrier, separated from the rest of the West Bank and contiguous with the State of Israel.

Despite the obvious connection between the settlements and the barrier's route, Israel's approach on many aspects of this connection has been characterized by an extreme lack of transparency. For example, while Israel officially contends that the objective underlying the inclusion of these fifty-five settlements on the "Israeli" side of the barrier is to protect the settlers' lives, senior government officials have broadly hinted that the real purpose is to prepare the land for annexation by Israel. Prime Minister Ariel Sharon, for example, said in an interview that the "settlement blocs," which will be located on the western side of the separation barrier, "will be part of the State of Israel, contiguous with Israel, with many more people."<sup>1</sup> Defense Minister Shaul Mofaz made a similar declaration.<sup>2</sup>

The goal of this report is to shed light on questions related to the connection between the settlements and the separation barrier's route: Have the expansion plans of settlements remaining on the "Israeli" side of the barrier played a significant role in determining the route, and if so, to what extent? To what degree, if at all, are the security reasons mentioned by Israel addressed in the areas around these settlements? To what degree do the sections of the barrier that surround the settlements violate the human rights of Palestinians living near the barrier?

The first chapter of the report presents our principal claims and findings, which will be developed in the case studies discussed in following chapters. The chapter points out the significant inconsistencies between the security considerations Israel purportedly relied on in setting the route, and the reasons relating to expansion of the settlements, as the report's findings show.

The next four chapters examine the connection between the barrier's route and the settlement-expansion plan in four different areas. The examination is made, in part, by means of analysis of the outline plans and aerial photos. Each of these chapters concentrates on a different pattern of human-rights violations resulting from the barrier's route. Chapter 2 involves the settlement Zufin, which is situated north of Qalqiliya, and examines the harm caused to residents of the nearby Palestinian villages, who are now separated from their farmland as a result of the settlement's expansion plans. Chapter 3 is a case study of the settlement Alfe Menashe, which lies

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<sup>1</sup> Aluf Benn and Nir Hasson, "Sharon: The Evacuation will Begin in Mid-August," *Ha'aretz*, 10 May 2005.

<sup>2</sup> Aluf Benn and Amos Harel, "Mofaz Promises to Strengthen the Settlement Blocs," *Ha'aretz*, 13 September 2005.

south of Qalqiliya. In this chapter, we examine the connection between the expansion plans and the harm suffered by residents of nearby Palestinian villages that have become an enclave separated from the rest of the West Bank. Chapter 4 analyzes Neve Ya'akov, a settlement ("neighborhood" in Israeli parlance) that lies within the borders of the Jerusalem Municipality. This case study discusses the grave effect of the inclusion of lands situated outside the city's borders, intended for the expansion of Neve Ya'akov, on the urban development of the neighboring Palestinian village of a-Ram. Chapter 5 discusses a bloc of settlements west of Ramallah, of which Modi'in Illit is the central settlement, and examines the claim that the barrier is intended to advance the bloc's expansion, in part by taking control of privately-owned Palestinian farmland.

Chapter 6 provides initial information on the existence of a link between the barrier's route and the expansion plans of eight other settlements: Rehan, Sal'it, Oranit, Ofarim, Ariel, Qedumim, Alon Shvut (Gevaot), and Eshkolot. This chapter includes aerial photos of the particular settlement, on which the barrier's route, the jurisdictional area of the settlement, and the borders of the expansion plans are shown.

Chapter 7 analyzes the legality of the route around the settlements in light of international humanitarian law and international human rights law.

Following the report's conclusions, two appendixes are attached to provide a brief explanation of two principal subjects discussed in the report. Appendix 1 deals with the procedure for declaring and registering land in the West Bank as state land. Appendix 2 describes the building and planning bureaucracy in the settlements, and explains fundamental terms appearing in the report.

The state's response to the report, prepared by the Ministry of Justice, is included at the end.

## *Chapter 1*

### **The Hidden Consideration: Expansion of the Settlements**

The barrier's penetration into the West Bank is the root cause of barrier-related human rights violations. How does Israel justify the deviation of the barrier's route from the Green Line? In particular, what does Israel contend is the connection between the barrier and the settlements? To what degree do the state's reasons and explanations reflect the real reasons for the barrier's route? These questions will be discussed below.

#### **The Considerations in Determining the Route: The Official Version**

The protection of settlements or settlers is not mentioned in the government's decision of June 2002, which approved the start of construction of Stage 1 of the separation barrier. The decision even gives the impression that the barrier is not connected in any way to settlements or settlers. The barrier, it states, "is intended to reduce the entry of terrorists from Judea and Samaria to carry out terror attacks in Israel."<sup>3</sup>

In its decision of October 2003 approving the route of Stages 3 and 4, the government used more general language, and defined the barrier as a "security means to prevent terror attacks," without expressly referring to the objective of preventing entry into Israel.<sup>4</sup> Unlike the previous decision, this decision briefly related to the need to protect the settlements, stating that in decisions related to funding the barrier, "additional and immediate security components will be instituted to protect Israeli communities in Judea and Samaria against existing threats during the course of building the barrier in the 'seam zone.'"<sup>5</sup> As we shall see below, there are strong indications that the government used such vague language deliberately.

In its most recent decision regarding the barrier, made in February 2005, the government repeated the wording used in the previous decision, whereby the barrier is "a security means to prevent terror attacks." This time, no mention was made of settlements or settlers.<sup>6</sup>

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<sup>3</sup> Cabinet Decision 2077, of 23 June 2002, Section B.3.

<sup>4</sup> Cabinet Decision 883, of 1 October 2003, Section B.2.

<sup>5</sup> *Ibid.*, Section B.5.

<sup>6</sup> Cabinet Decision 3283, of 20 February 2005, Section B.2.

Along with avoiding a clear statement about the connection between the barrier and the settlers, each of the three decisions state that the separation barrier is a "*temporary* security measure," that "does not reflect a political or other kind of border."<sup>7</sup>

Dozens of petitions filed in the High Court of Justice in the past three years against the barrier's route have argued that building the barrier inside the West Bank causes grave human rights violations. Some of these petitions contend that the route is illegal because it is based not on legitimate military considerations but on forbidden political reasons, primarily annexation of the settlements.

Relying solely on the evasive and vague language used by the Israeli government, the State Attorney's Office was unable to explain the connection between the barrier and the settlements, or justify the human rights violations. In its response to the High Court, the State Attorney's Office emphasized, as did the government's decisions, that security was the sole motive for building the barrier. However, unlike the government, the State Attorney's Office was forced to admit that one of the security-related elements in running the barrier on the other side of the Green Line was to protect the residents of the settlements:

Indeed, part of the route was planned with the objective of providing protection also for Israeli residents living in Judea and Samaria, who also suffer from terror attacks. However, there is nothing wrong in this, for... in accordance with Supreme Court decisions, and according to the Interim Agreement, Israel is responsible for the safety of Israelis in Judea and Samaria. Israel is of the opinion that the barrier is one of the necessary elements of this protection, so long as the route is proportionate.<sup>8</sup>

The State Attorney's Office's responses to the High Court in this matter gives the impression that the settlers whose protection requires that the barrier be built on the other side of the Green Line are those settlers currently living in the settlements, and not settlers who will move into settlements that have not yet been built. This conclusion also follows from the definition of the barrier as a temporary security measure, which is intended to provide a solution to a current problem, and not to threats that may occur in the future.

In addition, the state justifies the barrier's route running inside the West Bank on two additional security-related matters. One, the route creates a "warning space" – an area between the barrier

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<sup>7</sup> Ibid.; Cabinet Decision 883, Section B.2; Cabinet Decision 2077, Section B.4.

<sup>8</sup> HCJ 4825/04, *Muhammad Khaled 'Alian et al. v. The Prime Minister et al.*, Statement of Response, Section 469.

and the houses in Israeli communities, whether in Israel or in settlements. According to the State Attorney's Office, "this warning space is vital to strike against terrorists who succeed in crossing the barrier, before they carry out their attack."<sup>9</sup> The other reason is to "defend the forces protecting the barrier by running the route in areas that are not controlled from east of the barrier."<sup>10</sup> Because of the topographic conditions in the area, running the entire barrier along the Green Line, the State Attorney's Office contends, "would not enable protection of the soldiers patrolling the barrier, who would find themselves in many cases in inferior topography. A route along the Green Line also would not enable lookouts in the direction of Judea and Samaria, and would leave IDF forces in an operational position inferior to that of the terrorists waiting on the other side of the barrier."<sup>11</sup>

In almost all its responses to the High Court, the State Attorney's Office also contended that, taking into account its security needs, the state tried to select the route that would minimize as far as possible harm to the "fabric of life" of the Palestinian population, and would maintain the proper balance. This was done by preferring the use of uncultivated "state lands" over privately-owned cultivated land, to the greatest extent possible, in building the barrier; by attempting to find a route that does not separate Palestinians from their privately-owned farmland; and by not having the barrier block existing roads.<sup>12</sup>

This balance between security considerations and "humanitarian" considerations is intended to satisfy the principle of proportionality, which is required by international law and Israeli law. Proportionality is, according to Supreme Court case law, the primary criterion in examining the legality of each section of the route. This principle applies only, according to the High Court, where the state's objective is a legitimate security purpose.<sup>13</sup>

As the government did in its decisions discussed above, the State Attorney's Office emphasized that the barrier (including its route), being a temporary means of protection, is only intended to protect against existing security threats. Proof of the temporary nature of the barrier, according to

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<sup>9</sup> Ibid., Section 64.

<sup>10</sup> Ibid., Section 60.

<sup>11</sup> Ibid., Section 64.

<sup>12</sup> Ibid., Section 70.

<sup>13</sup> The High Court discussed at length the principle of proportionality in the framework of the separation barrier in *Beit Sourik Village Council et al. v. Government of Israel et al.* The decision was given in July 2004.

the State Attorney's Office, is that "the requisition orders issued to build the barrier in Judea and Samaria are for a limited period of a number of years."<sup>14</sup> The State Attorney's Office further contended that the temporary nature of the barrier "is also based on past experience." Indeed, in some places along the route of Stage 1 of the barrier, Israel decided, after reconsidering the route, to dismantle parts of the barrier after construction had been completed, and rebuild the section in another location. For example, in February 2004, Israel dismantled a part of the barrier that had been built to the east of the villages Baqa a-Sharqiya and Nazlat 'Issa, separating these two villages from the rest of the West Bank, after a section of the barrier was built west of the villages, near the Green Line.<sup>15</sup> The State Attorney's Office further argued, in *'Alian*, as follows:

In the past, Israel erected a number of fences along its border with Arab countries, such as Jordan and Egypt. Some of these fences were dismantled, and their route moved following negotiations between the sides. In Lebanon, Israel built a fence intended to prevent infiltration. The fence was not built necessarily along the international border with Lebanon. After the IDF left Lebanon, in May 2000, parts of the fence were dismantled, and its route changed, to meet the demands that the UN placed on Israel.<sup>16</sup>

Despite the explicit statements made by the State Attorney's Office that one of the principal considerations taken into account in setting the route is to protect the settlements, in many forums, Israel continues to ignore the connection between the two. For example, the Ministry of Defense continues to state on the homepage of its "Seam Z one' Website, which was launched to supply information about the barrier, that:

The "seam zone" plan is intended to reduce the ability of terrorists to infiltrate the territory of Israel from the territory of the Palestinian Authority, whose number has risen since September 2000 following the increase in the phenomenon of suicide terrorists. These terrorists are part of an extensive and large group of persons who stay illegally in Israel, which amounts to tens of thousands of Palestinian who pass illegally from the territory of the Palestinian Authority to the territory of Israel to work, each and every day.<sup>17</sup>

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<sup>14</sup> *'Alian*, Section 70.

<sup>15</sup> The section was dismantled a few days before the hearing before the International Court of Justice, in The Hague, regarding the legality of the barrier. It should be mentioned that the new section of the barrier still separates some houses in Nazlat 'Issa from the rest of the village and leaves them west of the barrier.

<sup>16</sup> *'Alian*, Section 54.

<sup>17</sup> The "Seam Zone" Website: [www.seamzone.mod.gov.il](http://www.seamzone.mod.gov.il).

In sum, Israel's principal justification for violating Palestinian human rights as a result of the barrier's route is the need to safeguard Israeli citizens from terrorist attacks. The comments of Lt. Col. Dan Tirza, head of planning of the barrier in the Seam Zone Administration, in an interview in a documentary that was televised in June 2005, clearly demonstrates the public-relations approach of Israel regarding the barrier's route.<sup>18</sup> In a response to the question why the barrier was not run along the Green Line, or at least closer to it, Tirza said that, "Doing so would create an immediate danger to Israeli citizens. And when we are talking about rights, the right to life is more important than the right to get to farmland." In response to the question of whether the fence's route was intended to steal land from Palestinians and enable the establishment of new settlements, Tirza responded:

I did not take land. The land is theirs [the Palestinians] and they get to their land and continue to work it. We did not steal even one meter of land. The people continue to own the land, and when that time comes, when the situation changes, the land will be returned to its owners. The fence does not give one centimeter to the settlements. The land for the settlements was apparently set by other conduits, in other places, and not by the fence's route. I have a mission: I have to prevent terrorists from crossing.

Were security considerations the sole reason for the planning of the barrier? Is it true that "the fence does not give one centimeter to the settlements," as Lt. Col. Tirza states?

### **Is it Really only Security Considerations?**

The revised route of the barrier surrounds fifty-five settlements (including twelve in East Jerusalem), separating them from the rest of the West Bank and creating territorial contiguity between them and Israel. In most cases, the barrier's route in the relevant sections was set hundreds, and even thousands, of meters from the built-up area of each settlement. The separation barrier more or less runs along the borders of the outline plans of each of the settlements that are examined in this report, so the connection between the two cannot be denied. In contrast to the picture presented by the state, these plans are very frequently given significant consideration in planning the route. It should be mentioned that, although the area covered by the plans lies within the jurisdiction of the "parent settlement," in some instances, the plan relates to a new settlement, and not to the expansion of the existing settlement.

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<sup>18</sup> "The Land of the Settlers," Segment 3, broadcast on Channel Two television in June 2005.

### **Neighborhood or new settlement?**

The manipulative use of language to obtain legitimacy has been one of the common tools used by Israel regarding its settlement policy. A conspicuous example is the attempt to blur the establishment of new settlements by treating them as neighborhoods of existing settlements. This manipulation eliminates the need for cabinet discussion and approval, and potential friction with the United States government over Israel's promises not to establish new settlements.

In her advisory opinion dealing with the illegal outposts in the West Bank, attorney Talia Sasson suggested a reasonable criterion for distinguishing between the building of a neighborhood or expansion of an existing settlement, and construction of a new settlement.<sup>19</sup> In an urban settlement, building outwards (that is, not within the built-up area) may be considered a neighborhood provided it is situated a reasonable distance from the existing settlement, and "there is an organic connection with the urban settlement and it is planned as part of it." In a rural settlement, on the other hand, the situation is different because, by definition, it is a small and integral entity. Therefore, based on Sasson's examination, "establishment of another neighborhood or expansion that is directly adjacent to the community, and certainly in the case of those that are far from the existing community, such as hundreds of meters by air and more (which is much further when traveled on the ground), cannot be considered part of the existing community, and is a new community." This distinction is particularly relevant when the number of housing units planned is from two to twenty times greater than the number of existing units in the "parent settlement."

It should be mentioned that characterizing a construction project as a neighborhood inside an existing settlement, or alternatively as a new settlement, is not connected in any way with the question of whether the land on which the project is built is within the jurisdictional area of the settlement. Jurisdictional area is often composed of non-contiguous areas that have been added, for reasons unrelated to planning, but with the desire to control as much land as possible.

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<sup>19</sup> Talia Sasson, *(Interim) Advisory Opinion on Illegal Outposts* (March 2005), 68-69.

The absolute denial of any connection between the route of the barrier and the expansion plans of existing settlements, and plans to establish new settlements, lasted less than two years after construction of the barrier began.

The first admission was made in the framework of the petition in *Beit Sourik*, referred to above, which was filed in the High Court of Justice in early 2004 by residents of Palestinian villages situated northwest of Jerusalem. The petitioners opposed the barrier's route, which would separate them from their farmland.

In its response, the state justified the route in the area of the villages a-Tira and Beit Duqu – where the barrier ran next to houses in the village and separated the residents from thousands of dunams of farmland – on the need to protect an area in which a new neighborhood, Agan Ha'ayalot, of the Givat Ze'ev settlement, was under construction. The state contends there is nothing wrong in this, for "the military commander is empowered to consider, in determining the fence's route, also the existence of valid outline plans for the expansion of an Israeli community."<sup>20</sup>

The judgment on the petition received much public attention because it was the first time that the High Court ruled that a section of the barrier was illegal, the court holding that it caused disproportionate harm. Much less attention was given to the court's approval of the state taking into account the expansion of settlements in setting the barrier's route. In the words of Supreme Court President Aharon Barak, "We also accept that Agan Ha'ayalot is part of Givat Ze'ev and needs defense just like the rest of the town."<sup>21</sup>

Without minimizing the gravity of the approval given by the High Court to the expansion of settlements, which as we shall see below is illegal under international law, attention should be given to the significant difference between the project discussed by the court and some of the plans that we shall discuss below. The planning process for the establishment of Agan Ha'ayalot ended a long time before the planning of the barrier began, and when the barrier in this area was approved, in October 2003, much progress had already been made on some of the construction work, and marketing of the neighborhood had begun.

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<sup>20</sup> H CJ 8414/05, *Ahmad 'Issa Yassin et al. v. Government of Israel et al.*, Response on Behalf of the Respondents, Section 77. This argument was also made by the State Attorney's Office in *Beit Sourik*.

<sup>21</sup> *Beit Sourik*, Judgment, Section 80.

Another proof that the expansion plans of the settlements are a significant consideration in setting the barrier's route is found in the correspondence between the Association for Civil Rights in Israel, which represents residents of Nil'in, a Palestinian village situated west of Ramallah, and the legal advisor of the Civil Administration, who handles objections against the barrier prior to the filing of petitions to the High Court of Justice. In one letter, the legal advisor of the Civil Administration informed ACRI that the defense establishment was considering changing the route that had been approved by the government in February 2005, moving it closer to houses in Nil'in. The reason for the change was the desire that land owned by an Israeli real-estate developer remain on the "Israeli" side of the barrier. The developer was planning to build a new "neighborhood" for the Hashmonaim settlement. The Civil Administration's legal advisor wrote:

We received objections on behalf of Philodendron 12 Ltd., which owns a parcel of land that is to be situated north of the fence's route... In choosing between the available options (the original route and the new route)... we request that you inform us of the identity of the residents who will be harmed by construction of the fence... as a result of building the fence along the original route, rather than along the amended route, so that we can weigh the said details against the harm to Philodendron 12 Ltd. resulting from building the fence along the new route.<sup>22</sup>

This statement is particularly noteworthy because it deviates from the "security needs" discourse and the attempt to balance security considerations with the Palestinians' fabric of life. Instead, the Civil Administration's legal advisor simply contends that the interest opposing the fabric of life of Palestinians is nothing more than the economic interest of an Israeli real-estate developer (from Haifa). Later, the Hashmonaim committee requested a change in the route. The committee attached the opinion of Major General (res.) Yom Tov Samia, prepared at the committee's request for a fee of NIS 50,000, which stated that the amended route is preferable on security grounds.<sup>23</sup> Ultimately, the defense establishment decided to change the route in accordance with the request of the committee and Philodendron 12 Ltd., and thereby separate some residents of Nil'in from their farmland.<sup>24</sup>

Another instance in which the state admitted that the reason for running the barrier far from the Green Line (about seven kilometers) is related to the expansion of a settlement is the case of

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<sup>22</sup> Letter of 15 December 2004 from the Civil Administration's legal advisor to attorney Avner Pinchuk, of ACRI.

<sup>23</sup> Akiva Eldar, "There's No Such Thing as a Free Conference," *Ha'aretz*, 26 July 2005.

<sup>24</sup> For details on the expansion plans for Hashmonaim, see Chapter 5.

Zufin, a settlement situated north of Qalqiliya. This case is a clear example of the crack in the security argument, as well as the transition from denial to total admission of the connection between the barrier's route and the expansion of settlements.

In October 2002, Palestinian residents of 'Azzun and a-Nabi Elyas petitioned the High Court against a section of the barrier that was to be built east of Zufin, which threatened to detach them from their farmland situated west of the barrier.<sup>25</sup> In her decision, Justice Dorit Beinisch accepted unchallenged the state's contention that running the barrier inside the West Bank was necessary to create a "warning space":

The seam zone is intended to block suicide terrorists and other terrorists from crossing into the State of Israel... If and to the degree that the barricade that is built does not completely block the infiltration of terrorists, the purpose of the barrier is to delay infiltration into Israel for a period of time that will enable forces to reach the area of infiltration, and thus create a geographic security space that enables combat forces to chase after terrorists before they enter the state's territory.<sup>26</sup>

Accordingly, the court denied the petition and the barrier was built along the originally planned route. However, in light of the severe impairment of access to their lands since construction of the barrier in July 2003, residents of 'Azzun and a-Nabi Elyas again petitioned the court. Represented by HaMoked: Center for the Defence of the Individual, the petitioners requested the court to order that the barrier be dismantled or moved to a place that does not block access to their farmland.<sup>27</sup> Unlike its response to the previous petition, the State Attorney's Office emphasized that the barrier had to be built along the route chosen "to protect the southern and eastern parts of the Israeli community Zufin."<sup>28</sup> The State Attorney's Office went further and admitted that, "In planning the route in the area, consideration was given to the existence of a plan that is under preparation, but has not yet gained official approval."<sup>29</sup> This admission is of extreme importance, not only because it deviates from the limitation that the state imposed on itself in *Beit Sourik* (that it only takes into account an approved outline plan), but also because it concealed information from the court and the public.

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<sup>25</sup> HCJ 8532/02, *Rashid 'Abd Alsalam et al. v. Commander of IDF Forces in the West Bank et al.*, *Takdin Elyon* 2002 (4) 1078.

<sup>26</sup> *Ibid.*, 1080.

<sup>27</sup> HCJ 2732/05, *Head of the 'Azzun Local Council et al. v. Government of Israel et al.*

<sup>28</sup> *Ibid.*, Response of the State, Section 14.

<sup>29</sup> *Ibid.*, Section 17.

Do these cases reflect a significant change in the state's public-relations approach to the barrier? Has the desire to expand the settlements become an integral part of the state's official discourse regarding its justification for choosing the barrier's route? The answer is no. The main justification for the barrier's route and the violation of human rights that result are still framed in terms of pure security considerations – preventing uncontrolled entry into Israel and operational needs. In looking at the overall public-relations approach used by Israel, both to the public and in defending against petitions to the High Court of Justice, the cases described here are portrayed as exceptions rather than the rule.

### **Security Considerations versus Settlement Considerations**

Israel's unwillingness to fully admit that the expansion plans of certain settlements played a decisive role in planning the barrier's route results from the inconsistencies between the security discourse and the settlement-expansion consideration. Four of these inconsistencies are discussed below.

First, setting the barrier's route in accordance with the settlements' expansion plans contradicts the contention that the barrier is temporary, which is one of the primary elements of the security discourse. The success of a building project depends, in part, on the demand for the housing units that will be built. In building the settlements, isolating a planning area from its Palestinian surroundings by means of the barrier is an extremely important factor in increasing that demand. Furthermore, in at least some of the cases, it can be assumed that inclusion of the land designated for expansion of the settlement west of the barrier is not only "another" factor in promoting sales, but is the decisive determinant in whether the project is built.

Therefore, even if security factors change in a way that enables the barrier to be torn down or moved, as the State Attorney's Office points out, it is reasonable to assume that these settlements (or their new "neighborhoods") would not be evacuated and dismantled along with the barrier. Rather, Israel will likely relate to these settlements as facts on the ground that cannot be ignored. At best, the future of these settlements will be a subject for negotiations in advance of the final-status agreement. In addition, the chance that the barrier will be moved in a place where a new settlement was set up "under the protection" of the barrier is less than in other sections, for such an intention would encounter adamant opposition from residents of the settlement as well as right-wing politicians.

Second, the intention to expand a settlement in the area between its built-up area (or its perimeter fence) and the barrier is totally inconsistent with the claim that moving the barrier westward is

needed to provide a "warning space" that will enable the army to capture terrorists who managed to cross the barrier before they reach an Israeli community. The "warning space" is by definition open space, so any attempt to use it to justify the barrier's route (and the resulting violation of human rights) in the space designated for construction is pure deception.

Third, the further the barrier is from the Green Line, the greater the amount of Palestinian farmland in the "seam zone." The more farmland in the "seam zone," the more Palestinians who will be entitled to enter this area with no physical obstruction blocking access to Israeli territory. Taking into account the settlement-expansion plans in determining the barrier's route thus increases the number of Palestinians holding permits to enter the "seam zone" who can, if they wish, enter Israeli territory unimpeded. Settlement expansion of this kind contradicts the security objective of the barrier, as defined by the government, which is to limit Palestinians without permits from entering Israel.

Fourth, the state argues that to protect security forces that patrol the barrier, a route was chosen that provides "topographic control" of the area to the greatest extent possible. However, the desire to surround areas intended for settlement expansion conflicts with the desire to protect the security forces. In other words, the optimal topographic route in certain areas may be along a line closer to the existing built-up area of the settlement. This situation exists in three of the case studies presented below (Zufin, Neve Ya'akov, and the Modi'in Illit bloc). Also, the State Attorney's Office failed to mention that logic dictates that the shorter the route, the greater the safety enjoyed by the forces patrolling it. The degree of danger is, in part, a function of the amount of time that the forces are exposed to danger, and the number of soldiers exposed to danger. As we shall explain in the following chapters, inclusion of areas intended for expansion of the settlements has led in almost all cases to a longer barrier.

It goes without saying that, because many sections of the barrier's route were not based on security considerations – not even according to Israel's definition of the term – but on the settlements' expansion plans, the argument that the human rights violations resulting from the route chosen are proportionate automatically collapses. Had settlement expansion not played a role in dictating the route, Israel would have been able to achieve its purported principal security objectives (preventing the infiltration of terrorists into Israel and protection of the settlers) without causing nearly as much harm as the chosen route has caused.

## Chapter 2

### Case Study: The Zufin Settlement<sup>30</sup>

The settlement of Zufin was founded in 1989, during the period when Yitzhak Shamir was prime minister. Zufin is located three kilometers northeast of the Green Line, two kilometers northeast of Qalqiliya, on a hill at an altitude of 200 meters. Two roads connect Zufin with Israel. The first, Route 5504, runs west in the direction of Kfar Saba, a suburb of Tel Aviv, within a few minutes or Route 6 (the Trans-Israel Highway). The second road runs south from the settlement, passes through a checkpoint in the separation barrier near the eastern entrance to Qalqiliya, and meets Route 55, which runs west (to Israel) and east to other settlements in the area and to Nablus.

Zufin has about 1,000 residents and 200 housing units. Over the past eight years, the population has grown by 300 residents, an increase of forty percent.<sup>31</sup> Its built-up area covers 200 dunams.<sup>32</sup> However, the jurisdictional area of the settlement, as defined by the OC Central Command's order, encompasses an area that is ten times larger, some 2,000 dunams.<sup>33</sup> This jurisdictional area includes an enormous area on the east that is not contiguous with the rest of the settlement's jurisdictional area. Zufin is classified as a rural community. The Samaria Regional Council, to which Zufin belongs, provides some of the services to the residents, while other services are provided by the community's Executive Committee.

As described below, the primary consideration in determining the route of the barrier around Zufin was to leave areas planned for the settlement's expansion and for a nearby industrial zone on the "Israeli" side of the barrier. In certain sections of the barrier, this consideration is inconsistent with Israel's declared security considerations. Leaving the area in which expansion is planned on the "Israeli side" of the barrier increases the number of Palestinians who are separated

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<sup>30</sup> In certain places, the name is written as "Tzufim." The Interior Ministry's list of communities gives the spelling as Zufin, which will be used in this report.

<sup>31</sup> Central Bureau of Statistics, List of Towns and Villages, Population, and Characteristics (Selected Years), available at [www.moch.gov.il/moch/proyekteybriya.htm](http://www.moch.gov.il/moch/proyekteybriya.htm).

<sup>32</sup> This figure takes into account only the built-up area of the settlement and not the area surrounded by the settlement's fence, much of which is not built-up.

<sup>33</sup> The precise term for this area is "community domain," because Zufin is not an independent local council, but a community within a regional council. Nevertheless, to avoid confusion, we shall use the standard term "jurisdictional area" in all cases regardless of the municipal status of the particular settlement.

from their farmland, infringing their right to freedom of movement, their right to work and gain a livelihood, and their right of property.

## **The Outline Plans<sup>34</sup>**

### ***Outline Plan 149/4 (Central Zufin)***

Outline Plan 149/4, referred to also as Central Zufin, received final approval from the Supreme Planning Council in March 2000. The owner of the land and the party that submitted the plan is Leader Company Ltd., a real-estate enterprise linked with the businessman Lev Leviev.<sup>35</sup> As described below, this company is also involved in promoting and developing projects in other settlements.

The plan involves 300 dunams and covers the entire built-up area of Zufin and the non-built-up area to the east and south of the built-up area. It entails extensive revisions of the original outline plan for Zufin (Outline Plan 149), changing the designated use of some of the land from farmland or open spaces to residential use, and permitting greater density (building percentages) in the areas designated as residential in the original plan, but where construction has not yet begun.

The plan calls for three kinds of residential areas, spread out over 160 dunams, of various building density.<sup>36</sup> Accordingly, the plan allows for the construction of up to a total of some 600 housing units: 400 new units plus the existing 200 units. A small number of houses have been built in recent months or are close to completion, and are being marketed by Leader Company.<sup>37</sup>

The increase of 400 housing units approved in the framework of the plan represents a 200 percent expansion in the number of housing units in the settlement. Assuming that the settlement continues to increase at the same rate as in the past – about forty percent every eight years – the

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<sup>34</sup> For background on the planning system in the settlements, see Appendix 2.

<sup>35</sup> The connection between Leviev was recently mentioned in the media in the framework of a civil suit over wages that was filed against him and the company by a geologist who had been retained by the company for the planning of the quarry operating in the area of Outline Plan 149/2 (see below). "Leviev to Pay Geologist NIS 1.75 Million," *Ha'aretz*, 5 July 2005.

<sup>36</sup> Residential Area 1 covers 28 dunams and is designated for one-family homes on lots at least 450 sq. meters in size; Residential Area 1 Special covers 60 dunams and is designated for dual-family structures on lots no smaller than 475 sq. meters. Residential Area 2 encompasses 72 dunams and is designated for spacious construction, not to exceed six units per dunam.

<sup>37</sup> For the advertising of the marketing of these units by Leader Company, see

[www.webadmin.co.il/clients/lider](http://www.webadmin.co.il/clients/lider).

increase in housing units will meet the growth needs for the next thirty years. This fact indicates, that the spread of Zufin to land outside the area of Plan 149/4, such as to the land in Plans 149/2 and 149/5 described below, does not result from an attempt to accommodate the natural growth of Zufin, but is intended to draw Israelis from inside the Green Line.

***Outline Plan 149/2 (Nofei Zufin)***

This plan, referred to also as Nofei Zufin, received the final approval of the Supreme Planning Council in 1998.<sup>38</sup> The plan covers 460 dunams that are situated north of the settlement's built-up area, at a distance of 700 meters from the last row of houses. In late 2004, development work began at the site, but ceased a few weeks afterwards for reasons that remain unclear. Work at the site recommenced in November 2005.

Outline Plan 149/2 is formally classified as a change in the regional outline plan that was approved during the British Mandate (Outline Plan 15-S), which designated the area as farmland. A large part of the area is now used as a quarry, though it is not clear whether this use has received planning approval. According to Outline Plan 149/2, ownership of the land is divided between the Custodian of Government and Abandoned Property in Judea and Samaria (hereafter "the Custodian") and the non-profit Fund for the Redemption of the Land of Israel. The developer and the party that submitted the plan to the planning council is Leader Company Ltd. Presumably, Leader Company Ltd. has entered into an agreement with the two landowners of the property that enables it to build on the land.

Forty percent of the area encompassed by the plan (186 dunams) is designated for the construction of 1,134 units that are expected to house 5,000 persons. The plan also calls for four nursery schools, an elementary school and a high school, several synagogues, a cemetery, recreation and sport facilities, and public open spaces. Twenty percent of the area is designated for roads.

***Outline Plan 149/5***

This plan was prepared in March 1999 as a joint venture of the Samaria Regional Council and Leader Company Ltd. It has not yet been submitted to the Supreme Planning Council. The copy

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<sup>38</sup> An earlier version of this plan was approved in the early 1990s. However, following the change in government, with Yitzhak Rabin becoming prime minister, the plan was frozen. When Binyamin Netanyahu became prime minister, a slightly different version of the plan was submitted.

of the plan obtained by B'Tselem and Bimkom is incomplete, so the information provided below is not comprehensive.

An examination of Outline Plan 149/5 indicates that it is intended to serve as a kind of master plan of Zufin, so it covers almost the settlement's entire jurisdictional area of 1,895 dunams. For this reason, it includes the currently built-up area, areas for which there are approved plans that have not been implemented, and areas that were not previously part of any plan. We shall relate only to two sites in the plan that come within the latter category, areas being planned for the first time, as these are relevant to the barrier's route.

The first site is located on a hill east of the currently built-up area, between Zufin and the Palestinian village of Jayyus. The site covers an area of ninety dunams. In the original version of Outline Plan 149/5, the area was designated as farmland, but the designation was later changed to residential. The plan calls for 145 housing units on this site.<sup>39</sup>

The second site is located on a non-contiguous section of land within the jurisdictional area of Zufin southeast of the built-up area. The site is 600 dunams and is designated under the plan as an industrial zone. Access to the site will not be from the settlement. Since the site lies within the jurisdictional area of the settlement, it is ostensibly not privately owned by Palestinians, meaning that it has been declared "state land" or was purchased by Israelis.<sup>40</sup> However, residents from the nearby villages, 'Azzun and a-Nabi Elyas, contend that they own some of the land. This claim is consistent with the fact that some of the land has olive trees on it (see the aerial photo).<sup>41</sup>

### **The Barrier's Route**

The section of the barrier that surrounds the built-up and planned areas of Zufin is 15 kilometers long, running from the northwest edge of Qalqiliya, on the Green Line, to the outskirts of Falamyia, a Palestinian village one kilometer east of Kochav Ya'ir, a community in Israel. At its most eastern point, the barrier is six kilometers from the Green Line. This section of the barrier is part of Stage 1, and was approved by the government in June 2002. It was completed in the summer of 2003.

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<sup>39</sup> This change was made in Outline Plan 149/8, which, like Outline Plan 149/5, has not yet been deposited.

<sup>40</sup> For details on the procedure for declaring land state land, and the significance of the declaration, see Appendix 1.

<sup>41</sup> For further discussion on this question, see the last part of this chapter.

Study of the route shows that the outline plan described above, particularly the last two sites, which are situated a distance from the settlement's current built-up area, was the primary consideration in setting the barrier's route. The barrier envelops the entire area to be developed in Outline Plan 149/2 (Nofei Zufin), at a distance of some 3-4 kilometers from the Green Line, and 500 meters from the eastern edge of Nofei Zufin. Just as clear an intention is apparent from the barrier's route around the industrial zone, Outline Plan 149/5, south of Jayyus. In this case, the State Attorney's Office explicitly admitted that the plan was indeed taken into account in determining the route.<sup>42</sup> It is not clear to what degree, if at all, the portion of Outline Plan 149/5 that lies between the built-up area and Jayyus was taken into account, because the barrier divides the land covered by the plan, leaving one-third on the other side.

The first two plans completely negate the contention that the route was set east of the Green Line in the area because the army wanted to create a "warning space" to enable it to chase terrorists who manage to cross the barrier before they reach nearby Israeli communities near the Green Line (Kochav Ya'ir and Zur Yigal). As stated, the designation of certain land for residential use, on the one hand, and "warning space," on the other land, are mutually exclusive. You cannot achieve both.

One of the main factors that led to the decision to enclose the area covered by the two plans is the harsh topography in the area, which led to a winding route that ascends and descends for short distances, requiring complex engineering work, such as construction of support walls and excavation deep into the mountain rock. For example, in the area of the olive groves northwest of Jayyus, the barrier ascends from an altitude of 120 meters to an altitude of 220 meters, toward the ridge on which Jayyus is built. While the distance between these points is 500 meters by air, the barrier winds a distance of 1,500 meters to get from one to the other.

In addition to the great expense in building such a long barrier and the engineering complexity involved, it seems that the chosen route violates one of the main operational objectives that the route was intended to achieve: not running the barrier along points that are controlled from the east. For example, to surround the planned industrial zone (Outline Plan 149/5) from the north, the barrier descends to an altitude of 170 meters, in an area in which the houses in Jayyus are located at an altitude of 200-240 meters; that is, it runs along an area that is completely controlled by these houses.

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<sup>42</sup> *Head of 'Azzun Local Council et al.*, Response of the State, Section 17.

If the purpose of the barrier is to protect residents of Zufin without evacuating them, it could be done by having the barrier run by the area of Plan 149/4 (Central Zufin), the area that contains the currently built-up area and has sufficient space for up to 400 more housing units.<sup>43</sup> This section of the barrier could join up with the rest of the barrier by means of a wall on the sides of the access road leading to the settlement from the west, enabling a safe journey between Zufin and Israel. Taking the topographical consideration into account, as Israel contends it does, this route is clearly preferable to the present route because it does not pass through lower areas that are controlled from the east, and is situated a relative large distance from the houses of Jaiyyus.

Even more obvious is that an optional route of this kind would reduce the harm to the Palestinian population: it would cause almost no separation between the residents and their land and would almost completely eliminate the need for permits. As pointed out in the previous chapter, this result is preferred also from the perspective of the main objective of the barrier according to the government – to prevent the uncontrolled entry of Palestinians into Israel.

### **The Route's Effect on the Palestinian Population**

The barrier's route around Zufin separates hundreds of Palestinian families in nearby villages from their farmland. The five towns and villages that are directly affected are, from north to south, Falamiya, Jaiyyus, 'Azzun, a-Nabi Elyas, and Qalqiliya. Since October 2003, residents of these communities have been required to obtain a permit from the Civil Administration to reach their farmland on the other side of the separation barrier. To get to their land, the permit holders must cross one of the gates in the barrier, which are not always open. The president of the Supreme Court, Aharon Barak, clearly described the harm resulting from the separation of farmers from their land:

... This state of affairs injures the farmers severely, as access to their lands (early in the morning, in the afternoon, and in the evening), will be subject to restrictions inherent to a system of licensing. Such a system will result in long lines for the passage of the farmers themselves; it will make the passage of vehicles (which themselves require licensing and examination) difficult, and will distance the farmer from his lands (since only two daytime gates are planned for the entire length of this segment of the route). As a result, the life of the farmer will change completely in comparison to his previous life. The route of the separation fence severely violates their right of property and their freedom of movement.

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<sup>43</sup> Although this route would protect the settlement, it is illegal because its objective is to perpetuate the settlement. For a discussion on the legality of the barrier's route, see Chapter 7.

Their livelihood is severely impaired. The difficult reality of life from which they have suffered (due, for example, to high unemployment in that area) will only become more severe.<sup>44</sup>

Residents whose request to obtain a permit was denied are unable to reach their land. The Civil Administration denies requests on the grounds that the applicant has been declared a security threat by the General Security Service, or was unable to prove to the Civil Administration's satisfaction sufficient ties to the particular plot of land in the "seam zone." Notice of rejection is only given verbally, with no more than an explanation that the request is denied for security reasons or for failure to prove rights to the land. An applicant whose request for a permit has been denied has a right of appeal to a special committee of the Civil Administration, but is not permitted to appear before the committee and present his case. Rejected applicants are not entitled to any compensation for their losses resulting from the restriction placed on them. Operating the permit regime in this manner arbitrarily violates the applicant's rights.<sup>45</sup>

#### **Effect on Palestinian Lands resulting from the Barrier's Route around Zufin**

<b>Palestinian community</b>	<b>Number of residents</b>	<b>Total land area of the community (in dunams)<sup>2</sup></b>	<b>Lands taken to build the barrier (in dunams)</b>	<b>Lands on the Israeli side of the barrier (in dunams)</b>	<b>Lands in the community harmed (by percentage)</b>
Falameya	683	3,500	130	1,600	49
Jayyus	3,196	13,000	550	8,600	70
'Azzun	7,895	4,000	650	1,000	41
a-Nabi Elyas	1,174	5,000	unknown	400	8
Qalqiliya	43,212	12,500	850	700	12
<b>Total</b>	<b>56,250</b>	<b>32,500</b>	<b>2,180</b>	<b>12,100</b>	<b>44</b>

<sup>44</sup> *Beit Sourik*, Judgment, Section 60.

<sup>45</sup> For an extensive discussion of the permit regime, see B'Tselem, *Not All it Seems: Preventing Palestinians Access to their Lands West of the Separation Barrier in the Tulkarm-Qalqiliya Area*, June 2004.

Source: The data on the amount of land affected was calculated by cross-referencing figures from various Palestinian sources, including local councils and non-governmental organizations.

Among the five communities affected, the greatest harm is suffered by Jayyus, which is located two kilometers east of Zufin. The fence runs right along the houses in the southern section of the village of 3,200 residents, most of whom make a living from farming. To build the barrier, Israel took and damaged 550 dunams of farmland owned by the residents. An additional 8,500 dunams, about seventy percent of the village's land, lie between the barrier and the Green Line. During the first year of the permit regime, hundreds of Jayyus residents were refused permits, either for alleged security reasons or for failure to prove ties to the land. For example, in the first six months (October 2003-March 2004), the Civil Administration denied 273 requests submitted by Jayyus residents.<sup>46</sup> In the past year, however, as a result of international criticism of Israel's policy and petitions filed with the High Court of Justice, the number of permits issued to Jayyus residents to enter the seam zone has increased. For example, in the first seven months of 2005, the Civil Administration issued 541 permits.<sup>47</sup> The number of rejected applicants dropped accordingly and as of August 2004, stands at "only" twenty. Farmers who have been prohibited access to their lands since the building of the barrier generally rent their land to residents in the village who have permits, in return for two-thirds of the crop.

**From the testimony of 'Itaf Ahmad Sa'id Khaled, resident of Jayyus<sup>48</sup>**

I am fifty-seven years old and married. My husband and I have five sons and one daughter. We have twenty-two dunams of land situated west of the separation fence. Since 1989, I have helped work this land. The crops we grow are the sole source of our family's livelihood. All of us were involved in the farming. Then the Israeli authorities began to build the separation fence west of our village. My husband, our sons, and I received permits to pass through one specific gate to get to our land. In January 2005, my husband submitted requests to the DCO in Qedumim to renew all our permits. The requests for my husband and the boys were rejected, and I was given a six-month permit. They resubmitted their requests several times, the last being this month [November]. All were rejected.

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<sup>46</sup> The figure was provided to B'Tselem by the Civil Administration in a letter of 22 March 2004.

<sup>47</sup> The figure was provided to B'Tselem by the Civil Administration in a letter of 1 August 2005.

<sup>48</sup> The testimony was given to 'Abd al-Karim Sa'adi in Jayyus on 23 November 2005.

The refusal to grant the permits causes great problems. I am unable to work the land by myself. I can't do the plowing or the spraying or the other work needed to be done on the trees and land. Besides, I am diabetic and suffer from high blood pressure and muscular problems, so I can't do the work by myself. My husband had to get a farmer with a permit to cross the fence, and make an agreement with him to work our land. As payment, the farmer gets one-third of the crop. But you can't compare the quality of care given to the land – it is much greater when the person working the land is the owner. For example, in 2004, my husband and the boys did the planting and handled all the farming chores, and we made NIS 40,000 from the tomatoes and cucumbers in our greenhouses. In 2005, when my husband and the boys were unable to reach the land, particularly the greenhouses, we did not get enough revenue to cover the expenses for water, seedlings, spray, and other things needed to grow the crops.

The refusal to give my husband and the boys permits has gradually ruined our family's livelihood. They sit at home without work, and it is the olive-picking season. I can't pick the olives alone. Everything I picked does not amount to more than three tins of olive oil. Last year, when my husband and the boys worked the land, we picked enough olives to fill up sixty-five tins. My permit was extended for two years (until 5 September 2007), but because of my age and health, I can't do the work necessary to get maximum production.

In addition to the inherent harm caused by the permit regime, residents of the five towns and villages also suffer from the blocking of roads they previously used to reach their land. Residents who want to get to their land on the other side of the barrier can only do so through the particular agricultural gate that is stated on the permit. In most cases, this requirement greatly increases travel time and complicates the work to cultivate the land.

The barrier's route around Zufin has four gates used by farmers: Falamy Gate North, which is used only by Falamy's farmers; Jayyus Gate West, which is situated between Jayyus and Falamy and is used by most of Jayyus's farmers; Jayyus Gate South, used by a small number of Jayyus's farmers, and by one family whose home is located in the "seam zone"; and Zufin Gate, which is a checkpoint located on the southern access road of Zufin and is used by farmers from

Qalqiliya, 'Azzun, and a-Nabi Elyas.<sup>49</sup> Initially, the first three gates were generally opened three times a day, for about an hour to an hour and a half each time, except during closures and Israeli holidays, when the gates are not opened. Since June 2005, Jayyus Gate West has been open for twelve consecutive hours a day, but it is unclear if this arrangement will continue throughout the year. Zufin Gate, which is intended primarily for settlers, is staffed by soldiers around the clock and is open to Palestinians during the daytime.

The need to coordinate farm work around the times that the gates are opened creates a hardship for the farmers. The problem is especially significant in the harvest season, in which the entire family is recruited to help. Families now have great difficulty doing this. The possibility that a prolonged general closure will be imposed right at the critical time, and as a result the gates will not be opened, threatens the farmers with the complete loss of their crop, which is what happened in October 2003 with the guava crop.<sup>50</sup>

The difficulty in gaining access to farmland is especially acute for residents of 'Azzun and a-Nabi Elyas who have olive trees at the southeastern corner of the Zufin jurisdictional area, where the industrial zone is planned (Outline Plan 149/5). They have to travel west to Zufin Gate, a distance of seven kilometers for residents of 'Azzun, only to turn back to the east from the other side of the barrier, substantially increasing the distance between the village and the farmland. Furthermore, there is currently no road that leads from Zufin Gate to the olive orchards to the east, and the space between them is hilly and impossible to cross by vehicle. Therefore, residents with permits who want to get to this land have to go by foot or on donkeys. In addition to the enormous loss of time, this trek limits the residents' ability to carry their produce to the village. As a result of this situation, nine families from 'Azzun and six families from a-Nabi Elyas stopped working their farmland in this area, and the output of other families dropped sharply.<sup>51</sup> In its response to the petition in *Head of 'Azzun Local Council et. al.*, the state indicated that, at the request of the residents, it will open a new gate near this area for the use of residents of the two villages.<sup>52</sup> At

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<sup>49</sup> In addition, there are four other gates that are not open to Palestinians and are used only by the army: two north of Qalqiliya, one southeast of Zufin, and one south of Falameya.

<sup>50</sup> See the testimony of 'Abd al-Karim Muhammad Mahmud Khaled, below in this chapter.

<sup>51</sup> A detailed list of the families owning land in the area, and a comparison of the olive harvest for 2002 with those of 2003 and 2004, was given in supporting affidavits filed by the heads of the councils of the two villages in *Head of 'Azzun Local Council et. al.*

<sup>52</sup> *Head of 'Azzun Local Council et al.*, Response of the Respondents, Section 32.

the hearing on the petition, the state indicated the gate would be used during the olive-picking season only. The gate has been built and is presently used only by the army.

Separation from the land on the other side of the barrier has caused the residents of Jayyus and Falamyra much hardship because a substantial part of the farmland requires intensive irrigation, which entails almost daily attention. This is true for land on which citrus fruits, guava, mango, and peaches are grown. In addition to the citrus and olive trees, residents of the two villages have a few dozen greenhouses for growing vegetables that remain on the other side of the barrier and also require almost daily care. The intensity of effort is very different than the cultivation of the 12,000 olive trees that are located on the other side of the barrier,<sup>53</sup> which require intensive work only during the tilling (April-May) and harvesting seasons (October-November). Guavas, for example, must be picked within twenty-four hours from the time that the fruit ripens to protect against rotting. The various restrictions resulting from the existence of the barrier, the permit regime, and the gate regime have led many owners to dismantle their greenhouses and have caused a loss of income in these sensitive agricultural sectors.

**From the testimony of 'Abd al-Karim Khaled, resident of Jayyus<sup>54</sup>**

My four brothers and I inherited thirty-five dunams of farmland in Yubaq, an area west of Jayyus. Six dunams have greenhouses in which I grow vegetables, four dunams have guava trees, five dunams are planted with plum, peach and loquat trees, there is an olive orchard on ten dunams, and on another ten dunams we grow barley, which we use to feed our livestock.

The separation fence causes great damage and loss. For example, in September 2003, a closure was placed on the West Bank, which meant that farmers were unable to get to their land on the other side of the fence. The guava season began, but for a whole month we couldn't reach our land, and the guavas that had not been picked rotted on the tree. We lost almost an entire season's revenue. Generally, I produce more than 1,200 crates of guavas in a season, which comes in September and October. That year, the crop fell to the ground, destroyed, and almost nothing was left to harvest and sell...

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<sup>53</sup> UNRWA, *The West Bank Barrier: Jayyus Profile*

([www.un.org.unrwa/emergency/barrierbarrierbarrierbarrierbarrier/profiles/jayyus.html](http://www.un.org.unrwa/emergency/barrierbarrierbarrierbarrierbarrier/profiles/jayyus.html)).

<sup>54</sup> The testimony was given to 'Abd al-Karim Sa'adi at the witness's home on 15 August 2005.

We still have a problem with the prohibition on trucks transporting the vegetables and other produce and crops from our fields to the West Bank via the gates. Only two trucks belonging to residents of the village are permitted to handle the transport, because their owners [are the only ones with trucks who] have land on the other side of the fence. The truck drivers also transport produce for other residents and are paid three shekels a crate. Before the fence was built, there were about twenty trucks from all around that came and transported the produce for 1.5 shekels a crate.

It should be emphasized that imposing limitations on access to the farmland on the other side of the barrier violates not only the right of property and the right to livelihood of the residents of the five towns and villages, it also affects their way of life. Attorney Micha'el Sfard, who represents the residents of 'Azzun and a-Nabi Elyas in a petition against the barrier's route, stated that considering only the economic harm ignores the fact that:

People not only draw their bread from the earth, they also draw rest and tranquility from it. That fields and trees are not only a source of toil, but also of recreation.

For two years, children of 'Azzun and a-Nabi Elyas have been unable to hike through their fields. For two years, the families of Azzun and a-Nabi Elyas have not gone to their fields to eat a meal under the trees or play ball in the orchards. For two years, the school children have not gone on nature hikes. The nature areas on the other side of the fence disappeared, and they had no access to them.<sup>55</sup>

Presumably, the difficulty Palestinians have in getting to their lands and cultivating them as a result of the barrier's route will worsen if the expansion plans for Zufin are implemented. If the situation indeed worsens, it will likely lead to further dispossession of Palestinian lands. Over the past year already, the first signs of this process have been visible.

The construction of Nofei Zufin, for example, will block the road leading from the Jayyus agricultural gate to the farmland west of Zufin. Apparently, the army intends to close this gate and channel Jayyus's farmers to the Falamyia gate, which is situated two kilometers to the north. To do this, in March of this year the army expropriated a strip of land east of the barrier, and in June began to pave a road joining the current Jayyus gate and Falamyia Gate. If this is done, it will

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<sup>55</sup> *Head of 'Azzun Local Council et al.*, Petition for Order Nisi, Sections 47-48.

take longer for residents to reach their farmland, making it even less economically feasible for them to work their land. Based on Israeli policy since 1979, land that is not cultivated for three consecutive years and is not listed in the land registry is subject to being declared "state land."<sup>56</sup>

Another consequence that will likely result from the expansion of Zufin is the gradual erosion of "islands" of privately-owned Palestinian land that is surrounded on all sides by land planned for construction. An island of this kind, containing a few dozen dunams, will be created between Zufin's current built-up area and the planned southern edge of Nofei Zufin. Similarly, the northern half of Nofei Zufin contains two islands. In doing the development work in advance of construction of this plan, bulldozers of one of the contractors entered one of these lots and uprooted some 350 olive trees, contending that the lot had been purchased by Jews and was included in the outline plan.<sup>57</sup> Later, the Civil Administration stopped the uprooting until the "dispute" is resolved. Taking control of islands of private land inside the jurisdictional area of settlements is a known phenomenon throughout the West Bank.<sup>58</sup>

In other cases, the ownership of Palestinian residents of certain lots is not acknowledged. For example, study of the aerial photo of the area in which the industrial zone is planned (Outline Plan 149/5) indicates that the area includes olive orchards, which are owned by residents of a-Nabi Elyas and 'Azzun. It follows, therefore, that Israel believes that these orchards are planted on "state land" or on land that was purchased by Jews. In other words, implementation of the plan will automatically dispossess the Palestinian residents of their land. In this scenario, the residents have no chance to avoid losing their land, both because the time set in the military legislation for appealing the declaration of land as "state land" (forty days from the day the declaration is made) passed some time ago, and because presumably there is no official land registry abstract indicting their rights to the land, a document that would assist them in proving their ownership in court.

**From the testimony of Ibrahim Stareh, resident of 'Azzun<sup>59</sup>**

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<sup>56</sup> B'Tselem, *Land Grab: Israel's Settlement Policy in the West Bank*, May 2002, Chapter 3.

<sup>57</sup> Arnon Regular, "Palestinians: Armed Settlers Uprooted 117 Olive Trees on Land the Civil Administration Declared Private," *Ha'aretz*, 10 December 2004; OCHA, *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities*, March 2005 (Update 5), 12.

<sup>58</sup> See, for example, the case involving the Ariel settlement, in *Land Grab*.

<sup>59</sup> The testimony was given to 'Abd al-Karim Sa'adi at the witness's home on 15 June 2005.

I am seventy-seven years old and am married. I own about 650 dunams of olive orchards on different lots outside the village. One 100-dunam lot is situated in the "Manatir" area northeast of a-Nabi Elyas, west of the separation fence. A section of the fence six hundred meters long and eighty to one hundred meters wide was built on my land. One hundred and four fruit-bearing trees were uprooted. I will never forget how I begged the bulldozer driver [to stop] while he was destroying the land. That lot also had a wine press and a well dating from Roman times, which the tractors demolished. My best memories came from that place, where my family and I used to hike and relax.

### *Chapter 3*

#### **Case Study: The Alfe Menashe Settlement**

The settlement now known as Alfe Menashe was originally founded, in 1983, under the name Tzavta. It is located on a hill at an altitude of 330 meters, three kilometers southeast of Qalqiliya and five kilometers from the Green Line. The one access road leading to the settlement comes from the west and is 2.5 kilometers long. This road connects with Route 55, which runs west toward Israel and east toward Nablus.

Alfe Menashe currently has 5,700 residents living in 1,400 housing units. In the past eight years, the population has increased by almost 1,500, a growth of about thirty-five percent.<sup>60</sup> The built-up area covers 2,000 dunams. The jurisdictional area of the settlement, as set by the OC Central Command's order issued in 1998, amounts to 4,700 dunams. Most of the jurisdictional area is concentrated about the built-up area, but there are also a few sections of non-contiguous land situated southwest of the built-up area.

At the time of its founding, the settlement was classified a community settlement within the Samaria Regional Council. Because of its rapid growth, in 1987 it became a local council and ceased being part of the regional council.

This chapter shows that one of the primary considerations taken into account in setting the barrier's route around Alfe Menashe was to place the expansion-plan areas on the "Israeli" side of the barrier. In doing so, five Palestinian villages, with their 1,200 residents, became an enclave west of the barrier, separated from the rest of the West Bank. Creation of the enclave seriously impaired the lives of residents of Qalqiliya District, in general, and residents of the enclave, in particular.

#### **The Outline Plans**

##### ***Outline Plan 115/8 (Givat Tal)***

Outline Plan 115/8, referred to also as Givat Tal, received the final approval of the Supreme Planning Council in 1998. The Custodian is the registered landowner, which, as noted above, indicates that the land has been declared and recorded as "state land." The developer of the plan is

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<sup>60</sup> Central Bureau of Statistics, List of Towns and Villages, Population, and Characteristics (Selected Years), available at [www.moch.gov.il/moch/proyekteybriya.htm](http://www.moch.gov.il/moch/proyekteybriya.htm).

the Planning and Building Committee of Alfe Menashe, and it was submitted for approval by the Ministry of Construction and Housing. The development is located on a hill at an altitude of 280 meters, some 400 meters southeast of the settlement's built-up area. The new "neighborhood" will not be connected to the current built-up area of Alfe Menashe, but to the main road leading to the settlement.

The plan covers 1,008 dunams. Only sixty percent of the land area is designated for development, with the remaining space being designated for woods or future planning. About one-third of the space designated for development (194 dunams) is classified as residential; the other two-thirds are for roads (124 dunams), public and commercial buildings (41 dunams), tourist facilities (77 dunams), and a zoo (100 dunams). The plan calls for 1,406 housing units to be built in stages, and will double the number of dwellings in Alfe Menashe.

The area designated for residential construction is divided into subdivisions, each one enabling different styles and lot sizes. At the top of Givat Tal, the plan calls for five-story buildings that will surround it on all sides. In this subdivision, approval has already been given for the construction of 288 housing units, about 100 of which have already been sold and are in an advanced stage of completion.<sup>61</sup> Further down, three-story terraced homes are planned. There are also two offshoots, one east and the other west of the peak of the hill, on which two-story houses in different styles are planned. Also planned are five seven-story buildings built along the entire axis of the "neighborhood," 400 meters apart from each other.

#### ***Outline Plan 115/16/4 (Nof Hasharon)***

This plan, which is also called Nof Hasharon, is situated near the Green Line, alongside Nirit, a community inside Israel.<sup>62</sup> Although the plan lies within the jurisdictional area of Alfe Menashe, Nof Hasharon and Alfe Menashe are 3.5 kilometers from each other. Situated between them are the Palestinian villages Ras 'Atiya and Wadi a-Rasha.

The plan, which covers less than forty dunams, received final approval by the Supreme Planning Council in 2003. It is a new version of a plan that was approved in 2000 (Outline Plan 115/16).

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<sup>61</sup> See the Ministry of Construction and Housing Website.

<sup>62</sup> Residents of Nirit petitioned the High Court (HCJ 10042,04, *Nirit Community Settlement et al. v. Minister of Defense et al.*) against the plan after final approval was given, in part, because it will turn part of Nirit into a settlement and because the plan does not provide the services needed for the new neighborhood far from Alfe Menashe. The petition was denied. See, also, Shahar Rotem, "Regrets in Nirit: Don't Want Alfe Menashe Neighborhood in their Community," *Ha'aretz*, 18 August 2004.

The land is owned partly by the Custodian and partly by The Land of Israel Heritage Fund Ltd. – Qedumim. The latter submitted the plan.

The plan calls for fifty lots, each about one-half dunam in size, intended for single-family homes, open public areas, and an area of about one dunam for a public building. Although Nof Hasharon is part of the Alfe Menashe Municipality, some of the services to the residents will apparently be provided by Nirit and the South Sharon Regional Council.

#### ***Outline Plan 115/10 (Jewish lands)***

This plan has not yet been filed with the Supreme Planning Council. The only information about it is a sketch of the plan that B'Tselem and Bimkom obtained. The sketch indicates the plan's location and features. However, the lack of a statutory status means that the details of the plan are likely to change.

The plan is essentially an extension of "Nof Hasharon" plan. It is located near the Green Line, alongside Nirit and Matan, which are situated inside Israel. Like Nof Hasharon, it lies within the jurisdictional area of Alfe Menashe, but is far from the built-up area. In the open space between them lie the Palestinian villages Habla and Ras 'Atiya. The plan covers at least 760 dunams and includes about 1,260 housing units, with an average of three units per dunam.

Alfe Menashe and Civil Administration officials refer to the land as "Jewish lands," based on the contention that Jews had purchased the land before the state was founded, and were handed over to the Custodian after 1967.<sup>63</sup>

#### ***Outline Plan 115/9 (Ilanit/Qaniel)***

This plan, like Outline Plan 115/10, has not yet been submitted to the Supreme Planning Council, and the only information about it comes from a sketch of the plan that B'Tselem and Bimkom obtained. The area covered by the plan is situated 1.5 kilometers south of the built-up area of Alfe Menashe. In between are two Palestinian villages, a-Dab'a and Ras a-Tira, and farmland and grazing land of the villages' residents. Over the years, the site has been referred to by different names, among them Ilanit and Qaniel. The plan covers 215 dunams, and includes 322 lots of about one-half dunam each. The plan also calls for a system of roads, a public building, and open spaces.

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<sup>63</sup> For further information about this situation in the Occupied Territories, see Eyal Zamir and Eyal Benvenisti, *"Jewish Lands" in Judea, Samaria, the Gaza Strip, and East Jerusalem* (Jerusalem: The Jerusalem Institute for Israel Studies, 1993).

It should be noted that the area covered by the plan does not lie entirely within Alfe Menashe's jurisdictional area, as defined in the OC Central Command's order. This fact implies that the ownership of the land covered by the plan has not yet been arranged, meaning that some of the land that is privately owned by Palestinians will be transferred into Israeli hands (see below).

Outline Plan 115/9 seeks to revive a development plan for the site (Outline Plan 134), on which 240 housing units were to be built. The earlier plan was approved by the Supreme Planning Council in 1985, but was not implemented. The Civil Administration informed Bimkom that the approval of the plan expired after fifteen years had passed, and the plan was cancelled. When the old plan was approved, the site was not part of Alfe Menashe (Tzavta), so it was viewed as a plan for a new settlement. Two years later, with the declaration of Alfe Menashe as a local council, the area covered by the plan was made part of Alfe Menashe's jurisdictional area, as a new "neighborhood."

#### ***Outline Plan 960/1 (Route 5250 – Kufr Thulth bypass road)***

In late 2003, the Defense Ministry filed an outline plan with the Supreme Planning Council for a new eleven-kilometer-long road. The road would begin at Route 55 near the Ma'aleh Shomeron settlement, run south to Alfe Menashe, between the villages Ras a-Tira and a-Dab'a, and end in Nirit or Matan, communities in Israel.<sup>64</sup> This road is intended to serve the residents of Alfe Menashe and settlements east of it, and to provide an option to Route 55. The estimated cost of construction is 80 million shekels. The plan has not yet been approved, but has been forwarded to the Civil Administration's planning department with a recommendation to deposit it for objections in August 2005. To date, the plan has not been deposited.

#### **The Barrier's Route**

The barrier surrounding the built-up and planned areas is longer and more winding than any other section of the barrier. It begins in the southwestern part of Qalqiliya, on the Green Line, and ends about five kilometers south of the starting point, in the southern suburbs of Nirit, on the Green Line. Along this route, the barrier winds for twenty-five kilometers and reaches a distance of seven kilometers from the Green Line. Because it winds so much, a hypothetical trip directly east

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<sup>64</sup> Residents of Nirit and Matan bitterly opposed this road. They contended that it would harm green areas and their quality of life. For the effect of this opposition on the barrier's route, see footnote 67. See, also, Shahar Rotem, "Between Qarney Shomeron and Sharon," *Ha'aretz*, 28 January 2004.

from the Green Line would require the traveler to cross the barrier three times.<sup>65</sup> It should be mentioned that the barrier's section between Matan, in Israel, and Habla, a Palestinian village, is a wall. In the other sections, the barrier is composed of an electronic fence, barbed-wire fences, and trenches. The cabinet approved the entire section as part of Stage 1 of the barrier, and its construction was completed in the summer of 2003.

A look at the barrier's route in the area of Alfe Menashe reinforces the belief that major parts of the route were set with the expansion plans described above in mind:

- South of the built-up area of Alfe Menashe, the route runs 1.5 kilometers from the houses on the edge of the settlement in an obvious attempt to run along the entire area of Outline Plan 115/8, leaving 500 meters between the barrier and the southern edge of the planned "neighborhood." Lt. Col. Dan Tirza, head of planning of the barrier in the Seam Zone Administration, confirmed this in his testimony to the High Court of Justice opposing a petition against the route of the barrier in the area.<sup>66</sup> Tirza also admitted that, to protect the planned settlement, he had to place two Palestinian villages (a-Dab'a and Ras a-Tira) inside the Alfe Menashe enclave, separating them from the rest of the West Bank. In addition, the chosen route leaves much of the planned route (Route 5250), discussed above, on the "Israeli" side of the barrier, crossing the barrier three times. This will enable rapid and easy access to it from Alfe Menashe, Givat Tal, and Ilanit.

- Then the barrier runs to the southern edge of Ras 'Atiya, some three kilometers from the southwestern corner of Alfe Menashe. The barrier's route in this area, so far from the settlement, can only be understood by the state's desire to surround the area covered by Outline Plan 115/9 (Ilanit), and keep it contiguous with Alfe Menashe. In addition to protecting Givat Tal, the barrier places a-Dab'a and Ras a-Tira inside the Alfe Menashe enclave. This section of the route borders the houses on the eastern side of Ras 'Atiya and surrounds it and Habla on all sides.

- West of the Habla-Ras 'Atiya enclave, the barrier creates contiguity between Israel and the area of Outline Plan 115/10 ("Jewish lands") and the Nof Hasharon "neighborhood." Were it

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<sup>65</sup> The traveler will subsequently encounter the barrier a fourth time, where it passes west of Ma'aleh Shomeron.

<sup>66</sup> HCJ 7957/04, *Zaharan Yunis Muhammad Mara'abe v. The Prime Minister of Israel*. The hearing was held on 21 June 2005. The petition was filed by the Association for Civil Rights in Israel on behalf of Palestinians living in the Alfe Menashe enclave.

not for the two plans, Israel could have justified a relatively small deviation from the Green Line (only about 1,000 meters) to provide protection to the two Israel communities (Nirit and Matan) that are located just on the other side of the Green Line.

It should be mentioned that part of the winding route around Alfe Menashe was dictated by other considerations, which were not directly related to the expansion plans. The main factor affecting the decision to set a route that separates Qalqiliya in the north and the Habla-Ras 'Atiya enclave in the south was the desire to leave the section of Route 55 joining Alfe Menashe and Israel as a road for Israelis only under the army's complete control.<sup>67</sup>

Had the purpose of the barrier been to protect the residents of Alfe Menashe, as Israel contends, and not to promote the expansion plans and to establish new settlements inside Alfe Menashe's jurisdictional area, the barrier could be built along the route of the fence surrounding the settlement. This option would still enable substantial growth of Alfe Menashe, for there is much land inside the fence available for construction. The advantage of such a route from a security perspective, as defined by Israel, is that it would prevent the creation of the present situation, in which some 1,200 Palestinians imprisoned in the Alfe Menashe enclave can (if they so wish) enter Israel without difficulty. From a human rights perspective, such a route would reduce the harm to many Palestinians, as described below.

The nine-justice panel of the High Court of Justice reached a similar conclusion in its judgment of 15 September 2005. The judgment makes almost no mention of the Alfe Menashe expansion plans, but the justices all agreed that, in light of the violation of the human rights of the residents of the five nearby Palestinian villages, protection of the settlement could not justify the route chosen: "Indeed, based upon the factual basis as presented to us, the existing route of the fence seems strange."<sup>68</sup> Regarding the southern section of the route, the justices held that, "We are by no means persuaded that there is a decisive security-military reason for setting the fence route

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<sup>67</sup> In its decision of June 2002, the cabinet approved a route different than the one that was built, which left Qalqiliya and Habla inside one enclave. Route 5250, which was intended to connect Alfe Menashe to Israel, was to be built simultaneously. However, following pressure from residents of Alfe Menashe, who refused to give up Route 55, and of residents of Matan, who opposed Route 5250 running to their community, the prime minister and the defense minister, who had been empowered by the cabinet to make adjustments in the barrier's route, approved the present route. See B'Tselem, *Behind the Barrier: Human Rights Violations as a Result of the Separation Barrier*, March 2003, 31-32.

<sup>68</sup> *Mara'abe*, Section 113 of the opinion of Supreme Court President Aharon Barak.

where it presently is. Why is it not possible to change the route in a way that the three villages in this part (Wadi a-Rasha, a-Dab'a, and Ras a-Tira), or most of them, remain outside of the fenced enclave?"<sup>69</sup> Further on, the court stated that, "we were by no means convinced that it is necessary, for security-military reasons, to preserve the northwest route of the enclave."<sup>70</sup> As a result, the court ordered that:

[The state] must, within a reasonable period, reconsider the various alternatives for the separation fence route at Alfe Menashe, while examining security alternatives which injure the fabric of life of the residents of the villages of the enclave to a lesser extent. In this context, the alternative by which the enclave will contain only Alfe Menashe and a connecting road to Israel, while moving the existing road connecting Alfe Menashe to Israel to another location in the south of the enclave, should be examined.<sup>71</sup>

Even if the state concludes that the barrier can run along a route that impinges less on Palestinian rights, as the High Court suggested, dismantling the present barrier will take an extremely long time, the reason being that the High Court linked the change in route to construction of a substitute for Route 55, which connects Alfe Menashe and Israel. Also, the judgment only orders the state to "consider" an alternate route. It may be that, following its reconsideration, the state will conclude that, for security reasons, the current route cannot be altered. Regarding this possibility, the justices stated: "It seems to us that the time has not yet come to confront this difficulty."<sup>72</sup>

### **The Route's Effect on the Palestinian Population**

The route along which the separation barrier was built around the jurisdictional area of Alfe Menashe severely impairs the extensive relations between residents of Palestinian towns and villages in the Qalqiliya District.<sup>73</sup> The harm is felt in every town and village and by every person, in almost every aspect of life, such as freedom of movement, employment and commerce, property rights, and family and social ties. The route in this area created three enclaves, separating the towns and villages from each other and from the rest of the West Bank:

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<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid., Section 116.

<sup>72</sup> Ibid.

<sup>73</sup> Bimkom, Expert Opinion Filed in HCJ 7957/0 [*Mara'abe*], December 2004.

- (1) The Qalqiliya enclave (the northern enclave), covering 9,400 dunams, has 43,000 residents. The barrier surrounds the enclave on three sides, leaving only the eastern side open.
- (2) The Alfe Menashe enclave (the central enclave) is 12,000 dunams large and has, in addition to the residents of Alfe Menashe, 1,200 Palestinians living in five villages: Ras a-Tira (400), a-Dab'a (250), 'Arab a-Ramadin (250), Wadi a-Rasha (120), and 'Arab Abu Farda (120). The barrier surrounds the enclave on all sides except the west, in the direction of Israel.
- (3) The Habla-Ras 'Atiya enclave (the southern enclave), containing 3,500 dunams, in which 7,500 Palestinians reside. The barrier surrounds this enclave on all sides, leaving only an extremely narrow opening to the south.

The Palestinians living in the villages in the Alfe Menashe enclave suffer the most severe and extensive harm. In October 2003, the army declared the enclave area, together with the rest of the territory remaining in Stage 1 between the barrier and the Green Line, a "closed military area."<sup>74</sup> The prohibition on staying in the area does not apply, according to the declaration, to settlers living there or to Israelis in general, but only to Palestinians. Palestinians need to obtain a permit from the Civil Administration if they wish to continue to live in their villages and to move to and from other areas in the West Bank. The residents have to renew the permits annually. Recently, in a responsive pleading filed with the High Court in *Mara'abe*, the state indicated that, "soon the permits are expected to be replaced by permanent resident-of-the-seam-area cards, which will be valid so long as the declaration remains in effect."<sup>75</sup>

The Palestinian villages in the Alfe Menashe enclave are very small, so their residents have always been dependent on access to Habla, Ras 'Atiya and Qalqiliya for services and to purchase goods to meet their household and farming needs. They are allowed to pass through a gate in the barrier, at which they must wait in line, show their permit, and undergo a physical check. Also, they must be sure to get to the gate at times that it is open. This process lengthens travel time and makes it more difficult for them to obtain goods and services than in the past.

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<sup>74</sup> Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970, Declaration Regarding the Closing of Area 'b2/03 (the Seam Zone).

<sup>75</sup> *Mara'abe*, Supplemental Response by the State, Section 37.

Contact with the southern enclave is possible through two gates, one near Habla, which is opened three times a day for an hour each time (primarily to enable children to go to school in Habla), and one near Ras 'Atiya, which, starting in June 2005, has been opened from six in the morning to six in the evening. Travel to Qalqiliya is via the gate/checkpoint at the junction between the barrier and Route 55, east of Qalqiliya (referred to as "Crossing 109" by the army). This gate, which primarily serves the settlers of Qedumim and Qarney Shomeron, is staffed around the clock. From time to time, Palestinian residents also have to cross a checkpoint at the entrance to Qalqiliya (the "DCO checkpoint"), which is staffed only during "security incidents." It is also possible to reach Qalqiliya via Habla, through a tunnel built by Israel that connects the two communities.

**From the testimony of Yassin Mara'abe, resident of Ras a-Tira<sup>76</sup>**

Before the fence was built, traveling to Habla took no more than ten minutes by car. Now, we have to go via the gate that is opened from six in the morning to six in the evening. However, we can't cross that gate with any merchandise or other things. So we have to take our merchandise via the DCO checkpoint, which means an extra fifteen kilometers on the road. In addition to the cost to go the additional distance, we also have to look for a car that has a permit issued by the licensing bureau and is mechanically sound. This is necessary because there are Israeli police at the checkpoint and they usually check the cars and give fines to cars that don't meet the required standards.

When my brother Loay brought a ton of fodder for the cows, the soldiers asked him to unload the fodder for inspection. He said that he can't because it was so heavy, and they told him to go and get some laborers to do it. When he said that the laborers don't have permits, they said that that was not their problem, and that, "You will stay here all day long if you don't unload the cargo." He had to unload it and then load it onto the truck again after the inspection. This happens most of the time for most of the village residents.

In the past, we received medical services in Habla or Thulth. It only took a few minutes to get to either of these villages. Now we have to go via the gate, which takes much longer. At night, we have to go to Qalqiliya for medical treatment. About two years ago, when my brother's

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<sup>76</sup> The testimony was given to Karim Jubran at the witness's home on 20 July 2005.

nine-year-old daughter Nabal got sick and had a dangerously high temperature, my brother wanted to take her to Habla. When he got to the gate, the soldiers did not let him pass, saying that they did not have keys to the gate. My brother called a doctor to come, and the doctor treated her from behind the barbed-wire fence.

According to army procedures, residents of the enclave are permitted to drive vehicles through the gates only if the driver is the owner of the vehicle: a relative or friend of the vehicle's owner who is resident of the enclave and has a proper permit is not permitted to drive the vehicle to or from the enclave.

The villages in the enclave are not provided medical services locally, except for an improvised clinic that was recently set up, with funding from international organizations, in a room in the Ras a-Tira Council building. A physician from Qalqiliya arrives three times a week for a short period of time. In most cases, residents needing treatment must go to Habla, Qalqiliya, and sometimes to Nablus, depending on the restrictions resulting from the barrier. For example, residents of Ras a-Tira and a-Dab'a, which are located in the southern enclave, who require medical treatment after six in the evening (when the gate near Ras 'Atiya closes), have to travel all the way to "Crossing 109" and then to a clinic in Qalqiliya. When an ambulance stationed in Qalqiliya has an emergency case in the enclave, the matter must be coordinated through the DCO in Qalqiliya, which is liable to take much time and ultimately affect the patient's health.

The ability of the residents in the enclave to earn a living has also suffered greatly. One reason is that dozens of dunams of farmland lie on the other side of the barrier. For example, 120 dunams of land owned by residents of Ras a-Tira, and eight greenhouses owned by residents of Wadi a-Rasha are situated in the southern enclave. The difficulties in reaching the land resulting from the construction of the barrier has led the residents of Wadi a-Rasha to sell all the greenhouses at a loss. Also, separation of residents from the grazing land on the other side of the barrier has forced them to buy fodder for their sheep and goats, which has affected the financial desirability of keeping them. Last year, for example, more than half of the residents of 'Arab a-Ramadin sold their flocks for this reason. Most of the residents have been left with no option but to seek

temporary work in Alfe Menashe (mostly in cleaning and gardening) or in Israel (usually without a permit).<sup>77</sup>

In addition, the barrier has severely impaired family and social relations of residents of the Alfe Menashe enclave. The harm is primarily evident in the difficulty, and often impossibility, of hosting relatives and friends who live outside the enclave. To enter the enclave, a guest must request a one-time entry permit from the Civil Administration seven to ten days in advance. Many of these requests are rejected on security grounds. This being the case, residents of the enclave find it almost impossible to hold a large family gathering, such as for a wedding or funeral, in their village.

The gloomy situation in which the residents currently live, especially the residents of Ras a-Tira and a-Dab'a, will likely worsen if the expansion plans for Alfe Menashe are implemented. Construction in the two villages will be blocked almost completely by Givat Tal to the east, by Ilanit to the west, and Route 5250 to the south. These new settlements, together with the new road, will also limit the freedom of movement of residents inside the enclave. In other words, if the plans described above are implemented, it is doubtful that life in the villages will be possible.

**From the testimony of 'Abd a-Latif Ibrahim 'Odeh al-'Araj, resident of a-Dab'a<sup>78</sup>**

My house is situated sixty meters from the fence. My land is on the other side. I can see it from my house, but I can only get to it by crossing the Ras 'Atiya gate. You need a special permit to use that gate. From there, I continue on to the Habla junction, and then to the Jal'ud intersection. Then I go to 'Izbat Salman, and then another eight kilometers by car and two kilometers by foot, because there is no paved road or farmer's road to get to the land. It takes me about two hours to get to my land. If there are delays at the gate, it can take three or four hours. As a result, I am prevented from working my land and from working it for many hours, because I spend most of my time going to and from it. This problem has caused many farmers to abandon their fields, and not to work them. We also have problems hosting relatives and friends. Whenever people want to visit, we have to obtain a permit for them. Often, the requests are rejected. Even if they are granted, it usually takes more than a week to receive them. My son Ibrahim married two months ago. More than twenty percent of the invited

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<sup>77</sup> *Mara'abe*, Petition, Section 60.

guests did not attend.

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<sup>78</sup> The testimony was given to Karim Jubran at the witness's home on 21 July 2005.

## Chapter 4

### Case Study: The Neve Ya'akov Settlement (Jerusalem)

This case involves the plan to expand the Neve Ya'akov settlement ("neighborhood" in Israeli parlance), which is located in East Jerusalem, and the connection between the plan and the route of the separation barrier. Neve Ya'akov is located in the northeast corner of Jerusalem. It is part of the extensive areas of the West Bank that Israel formally annexed into Jerusalem shortly after the 1967 war. The construction of Neve Ya'akov began in 1972 as part of a broad plan at the edges of the annexed area, which also included Gilo in the south, East Talpiot in the southeast, and Ramot Alon in the northwest.<sup>79</sup>

Neve Ya'akov encompasses 1,760 dunams and has 21,000 residents, who live in 4,900 housing units.<sup>80</sup> The population is mixed, containing immigrants from the former Soviet Union, a veteran secular, traditional population, and ultra-Orthodox. The built-up area of the settlement is contiguous with the Pisgat Ze'ev settlement to the south and with the Palestinian neighborhood of Beit Hanina to the west, both of which lie inside Jerusalem's borders. Route 1 connects Neve Ya'akov with the city center and other parts of Jerusalem.

This case is unique because the land designated for expansion of the settlement lies within the jurisdictional area of the Geva Binyamin settlement (also known as Adam), which lies outside Jerusalem's borders. Geva Binyamin was established in 1984 on a 640-meter-high ridge in the heart of cultivated farmland, seven kilometers from the Green Line and two kilometers from the municipal boundary of Jerusalem. The settlement has 2,000 residents. Its total land area is 3,600 dunams, 600 of which are built-up. Geva Binyamin belongs to the Mateh Binyamin Regional Council and is connected to Jerusalem by Route 437, which runs, via the Palestinian village of Hizma, to Pisgat Ze'ev.

As we shall see below, the desire to expand Neve Ya'akov to the east, beyond Jerusalem's border, was a decisive consideration in setting the separation barrier's route in this area. Running the

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<sup>79</sup> In 1925, an agricultural settlement called The Hebrew Village was established in this area. It was abandoned in 1948 during the war. See Israel Kimche, "Atarot and Neve Ya'akov," in *The Jerusalem Lexicon*, Amnon Ramon, ed. (Jerusalem Center for Israel Studies, 2003), 177-178.

<sup>80</sup> *Jerusalem Statistical Yearbook*, No. 20 (Jerusalem Institute for Israel Studies, The Jerusalem Municipality). The figures in the yearbook are for the end of 2002. We have updated them to the end of 2004 based on the average annual growth of Jerusalem's total population (1.8 percent).

barrier along the chosen route will block the only land available for the urban development of the Palestinian village a-Ram and block access to farmland and grazing land of other Palestinian villages near the separation barrier.

***Outline Plan 240/3 (Geva neighborhood)***

Outline Plan 240/3, also referred to as the Geva neighborhood, runs eastward from the northeast corner of Neve Ya'akov. The western border of the plan runs along the city's border. On the east, the plan borders Route 437. The plan, which was initiated by the Ministry of Construction and Housing, has not yet been filed with the Supreme Planning Council for initial consideration.

According to information that Bimkom obtained at a meeting in May 2005 with the engineer of the Mateh Binyamin Regional Council, to which Geva Binyamin belongs, the plan will be filed soon. The most recent version of the plan, prepared following the cabinet's decision relating to the barrier's route in the area, will enable the construction of 1,200 housing units that are intended for ultra-Orthodox families.<sup>81</sup> Most of the land covered by the plan has been declared state land and is administered by the Custodian. Ownership of the western section of the area encompassed by the plan, which lies adjacent to Neve Ya'akov, is in dispute, with two Israeli companies claiming ownership.<sup>82</sup>

Although the plan site is part of the Geva Binyamin settlement, the attempt to represent the plan as a new community of Geva Binyamin is misleading. In fact, the planned neighborhood will expand Neve Ya'akov and include an area outside Jerusalem's borders. The new community will be located adjacent to Neve Ya'akov and the only planned access road will join it to Neve Ya'akov and not to Geva Binyamin. Also, Route 437 now runs between this location and the built-up area of Geva Binyamin, and construction of the separation barrier along the side of this road is near completion (see below). In addition, Geva Binyamin is formally defined as a secular settlement, in which a traditional and national-religious population also resides. However, the

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<sup>81</sup> This information was provided to Bimkom by the architectural firm A. B. Planning Ltd., which was retained to prepare the outline plan.

<sup>82</sup> The parties claiming ownership are the Holyland Land Company, a foreign company owned by Israeli resident Mark Yekutieli, and the Nahalat David non-profit organization. The former contends that it acquired the land from Palestinians in the 1970s. It petitioned the High Court in opposition to the barrier's route, which runs through the property (HCJ 7210/04, *Societe Fonciere de Terre Sante v. State of Israel et al.*) Nahalat David contends that it acquired the land in the 1920s, making the land part of the "Jewish land," which, like other parts of the plan, is administered by the Custodian. For further details, see Yuval Yoaz, "Impairing Palestinian Quality of Life," *Ha'aretz*, 29 August 2004.

ultra-Orthodox nature of the planned residential area will create a natural extension of the northern residential area of Neve Ya'akov, which is populated by ultra-Orthodox Jews. Finally, other parts of Geva Binyamin are subject to an outline plan that was approved in 1994 (Outline Plan 240/2), which enables the construction of 1,200 housing units, less than half of which have been built. It is clear, then, that the new plan is not intended to meet the settlement's natural growth needs.

### **The Barrier's Route**

The section of the barrier that surrounds Neve Ya'akov is part of what is referred to as "the Jerusalem envelope," the separation barrier that runs around the city's post-1967 borders. In June 2002, the government approved Stage 1 of the barrier, which included the first two sections of the Jerusalem envelope, one in the north (from the Qalandiya checkpoint to the village of Bitunya), and one in the south (from Beit Sahur to the Tunnel Road). In September 2003, the Political-Security Cabinet approved the barrier's route along the city's eastern border and also the section surrounding Neve Ya'akov that is discussed in this chapter.

Unlike the other sections of the barrier, Israel admitted that, regarding the Jerusalem Envelope, the route was not based solely on security considerations, but also, in the words of the State Attorney's Office, in a way that "considers Israel's political interests."<sup>83</sup> Accordingly, the route was set to run along Jerusalem's post-annexation municipal border. In Israel's opinion, this, and not the Green Line, is the border of the sovereign State of Israel, and should, therefore, be taken into account in determining the route of the separation barrier.

A substantial part of the route of the Jerusalem Envelope indeed runs more or less along the municipal border. As a result, it leaves 200,000 Palestinian residents of East Jerusalem on the "Israeli" side of the barrier. In some sections though, the route veers sharply from the municipal border, at times leaving out areas within Jerusalem's jurisdictional area in which Palestinians live, thus separating the residents from the rest of the city. This is the case with the neighborhoods Kafr 'Aqeb, 'Anata Hahadasha ("the Shalom" neighborhood), Wallaja, and the Shu'afat refugee camp, which are home to at least 30,000 Palestinians.<sup>84</sup> In other sections, the route veers from the

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<sup>83</sup> HCJ 6080/04, *Dr. Ahmad Bader Miselmani et al. v. The Prime Minister et al.*, Response on Behalf of the Respondents, Section 11.

<sup>84</sup> For a higher estimate, see Nadav Shargai, "The Fence's Route in Jerusalem is Liable to Create Serious Social Problems," *Ha'aretz*, 6 October 2005.

municipal boundary in the opposite direction, and "annexes" additional areas into the city's jurisdictional area.

The barrier's route around Neve Ya'akov clearly belongs to the latter category: it "annexes" into Jerusalem 1,800 dunams of land situated between it and the city's border. The route clearly indicates that Israel intends to build the Geva neighborhood (Outline Plan 240/3), described above, contiguous with Neve Ya'akov. Further to the east, the route lies 1.5 kilometers from Jerusalem's municipal border, and almost seven kilometers from the Green Line. Except for the northeastern section, the construction is almost completed. As is true regarding other parts of the Jerusalem Envelope, the barrier around Neve Ya'akov will be composed of an eight-meter-high wall in most areas.

The northeast corner of the section surrounding Neve Ya'akov will pass through the southern neighborhood of the nearby Palestinian village of a-Ram (Dahiyat al-Barid), separating the neighborhood from the rest of the community.<sup>85</sup> This part of the route is not directly connected to the expansion plan of Neve Ya'akov.

In a section north of Neve Ya'akov, the route runs alongside the homes on the southern edge of a-Ram, passing along the northern bank of a river bed that runs between the two. According to the state, this section of the route is intended to prevent soldiers from being exposed to gunfire when patrolling the barrier, and also to create a "warning space" between the barrier and Neve Ya'akov.<sup>86</sup> However, many points along this section of the route lie below the houses of a-Ram, creating a topographic disadvantage for the troops on patrol. Furthermore, the western section of the planned Geva neighborhood lies on land between Neve Ya'akov and a-Ram, so this area cannot serve as a warning space for Neve Ya'akov, as Israel contends.

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<sup>85</sup> The original route in this section, set in September 2003, ran a few hundred meters to the south and left all of a-Ram north of the barrier. In early 2005, Israel announced that it had changed the route to its present course. The state contended that the change resulted from operational needs and the opposition of Christian educational and religious institutions in Dahiyat al-Barid, which would be separated from the large number of East Jerusalem residents who rely on their services. Upon the application of the a-Ram Local Council and other petitioners, the High Court issued a temporary order in June 2005 prohibiting the state from doing work on this section. The temporary injunction was removed in October, and work began on the new route. See H CJ 5488/04, *A-Ram Local Council et al. v. Government of Israel et al.*

<sup>86</sup> *Miselmani*, Supplemental Response on Behalf of the Respondents, Section 17.

The barrier proceeds east to Route 437, and then turns southwest and rejoins the municipal border on the outskirts of the Palestinian village of Hizma. Regarding this section, experts from the Peace and Security Council, in their opinion filed with the High Court of Justice, held that running the route "1,500 meters from the houses at the edge of Neve Ya'akov is not necessary from a security perspective," and a much shorter distance would suffice as a warning space.<sup>87</sup> Here, too, it is clear that the Neve Ya'akov expansion plan was extremely significant in setting the barrier's route.

Had the intention been to protect Neve Ya'akov as it currently exists, as Israel contends was the goal, the route could have been moved closer to the houses at the edge of the settlement, as was done in the case of Pisgat Ze'ev, which lies just south of Neve Ya'akov. Running the barrier only 150-200 meters from the southernmost houses in the settlement would have shortened the route to two kilometers, a third of what it presently is, and in certain parts, prevented the danger ostensibly inherent in running the barrier along a topographically inferior route.

### **The Route's Effect on the Palestinian Population**

The barrier's route around Neve Ya'akov, which leaves 1,800 dunams between it and Jerusalem's municipal border, will impinge on the rights of thousands of Palestinians living in three nearby villages: a-Ram (58,000 residents), Jab'a (3,000), and Hizma (6,000). The harm to a-Ram is greatest. The barrier surrounds a-Ram almost completely and cuts off its residents, a substantial portion of whom are from East Jerusalem and carry Israeli identity cards, from Jerusalem. For these residents, East Jerusalem provides services and employment. The barrier in the section around Neve Ya'akov surrounds a-Ram on the south and east, and makes urban development of a-Ram almost impossible, in addition to separating the community from East Jerusalem.

The built-up area of a-Ram contains almost no land reserves for development. West of the community is the Atarot industrial zone and the Beit Hanina neighborhood, which lie within Jerusalem's municipal borders. The barrier, an eight-meter-high wall, was built along this western border of a-Ram, making urban development impossible in this direction. Development is also impossible to the north, both because of topography (a-Ram sits on a cliff) and because of Route 45. The area north of Route 45, which is located inside a-Ram's jurisdiction, is used as an army base and as quarries.

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<sup>87</sup> Section 19 of the opinion, which was submitted in *Miselmani*.

The only land reserves available for a-Ram lie to the southeast, on the land between the barrier and the Jerusalem border, the area planned for the Geva neighborhood. The small amount of land to the southeast that remains alongside the "Palestinian" side of the route cannot be used for development because Israel prohibits any Palestinian construction within 300 meters of the barrier. Indeed, only part of this land belongs to the a-Ram Local Council, with most of it belonging to the nearby villages Hizma and Jab'a. However, this administrative division does not itself create an obstacle to development in accordance with the community's urban needs, or affect real-estate transactions in the area.

In response to the petition filed in the High Court by the a-Ram Local Council and others against the route, Israel rejected the contention that the route impedes the urban development of a-Ram. Its main argument was that a substantial part of the area southeast of a-Ram was declared state land in the past; therefore, "the ownership of the land makes it unlikely that it will be used for the future development of a-Ram."<sup>88</sup> Apart from the fact that only one-third of these lands were declared state land, the state's argument is bizarre and reflects forbidden considerations. As the occupier, Israel is required by international humanitarian law to administer public property in the occupied territory, including state land, for the benefit of the occupied population.<sup>89</sup> Therefore, even assuming that the land was properly declared state land, which is itself questionable, it is reasonable to allocate the land for the urban development of a-Ram. In any event, humanitarian law prohibits the establishment of settlements in occupied territory, thereby rendering illegal the allocation of public property for the purpose chosen by Israel.

Part of the barrier around Neve Ya'akov also limits the access of residents of Jab'a and Hizma to their farmland, which contains dozens of olive and fig trees, on the other side of the barrier. As has occurred in other cases, Israel will likely declare this area a closed military area when the construction work on the barrier is completed, and will apply the permit regime to control the entry of persons into the area. It is unclear at this point if Israel will install agricultural gates through which the Palestinians will be able to reach their land.

A more serious problem will be faced by residents of Jab'a and Hizma who raise sheep and goats and grazed them, before work on the barrier began, on the land on which the Geva neighborhood is planned. It is not expected that they will be able to use the land for grazing in the future, even if

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<sup>88</sup> *Miselmani*, Supplemental Response on Behalf of the Respondents, Section 17.

<sup>89</sup> For further on this subject, see B'Tselem, *Land Grab*, Chapter 2.

agricultural gates are installed, because Israel generally does not grant entry permits to the "seam zone" for grazing purposes.

**From the testimony of Ibrahim a-Najada, resident of Jab'a<sup>90</sup>**

I have been grazing sheep and goats all my life. I own more than 400 head. Until the end of the 1970s, I lived in the al-Khan al-Ahmar area [near Mishor Adumim], which has a good area for grazing. In 1977, they [the army] forced me to leave, claiming that the area had been declared a closed military area. Then I moved to this area, south of Jab'a... Until last year, things were stable, because the place we live is near a large, fertile grazing area, which extends from south of Jab'a to north of Hizma, and east to a-Ram. I used to take my flock out daily, graze them, and return in the evening. At night, I needed a small amount of fodder for the animals, and in the spring, I didn't need to give them any fodder. Raising sheep and goats is profitable and enables me to support fourteen persons...

One day in 2004, eight Israelis came to my home and offered to buy my house... They suggested that I move to Israel and receive an Israeli ID card. I rejected their offers, and told them that I would stay in my house until I die. I also told them it made no difference to me who was in control here, the Palestinian Authority or the Israeli authorities, and that I would stay in my house. They threatened me and said that the separation fence would isolate me, but I was not tempted and was not afraid of their threats. Twenty days later, the construction work on the fence began about one hundred meters from my house. I began to worry and became uneasy, because it was hard for me to get to the grazing area. Despite this, we continued to graze our flock as usual because the fence was not completely closed, though it was very hard to cross.

Today [15 August 2005], at six in the morning, my sons took the flock out to graze behind the area where the separation fence is being built. My son Sufian took half the flock, and his brother 'Adnan, who was a few minutes behind him [with the other half], came across two jeeps, one a Border Police jeep, and the other belonged to the army. One of the soldiers got out and told 'Adnan in Arabic that he was forbidden to enter this area, and that if he saw him there again, he would confiscate the flock. He brought him and the flock home, and the flock

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<sup>90</sup> The testimony was given to Karim Jubran on 15 August 2004 at the witness's home.

did not go out to graze. Our fears were realized today. This will devastate the family in every way: keeping 400 head of sheep and goats at home will force me to buy fodder for them, and the business won't be worthwhile financially.

## *Chapter 5*

### **Case Study: The Modi'in Illit Bloc**

This case relates to a group of four settlements that were built as one urban bloc west of Ramallah and near Modi'in, a town inside Israel. The largest of the group is Modi'in Illit, which is located in the middle of the bloc. The other settlements in the bloc – Hashmonaim, Matityahu, and Menorah – lie to the west and south of Modi'in Illit. Access to the bloc is via Route 446, an offshoot of Route 443 going north. At the end of 2004, the Modi'in Illit bloc had 32,000 residents.

West of the bloc is a strip of land that runs to the outskirts of Jerusalem and known as "no-man's land" because, until 1967, it was not under the control of either Jordan or Israel. Following Israel's occupation of the West Bank, Israel annexed this strip and subsequently built four communities on it, three of them – Shilat, Lapid, and Kfar Ruth – in territorial contiguity with the Modi'in Illit bloc.<sup>91</sup>

The Modi'in Illit settlement was established in 1993 as an urban community intended to ease the housing shortage of ultra-Orthodox Jews from Bnai Brak and Jerusalem. With 28,000 residents, it is the second largest settlement in the West Bank (not including East Jerusalem). As a result of a high birth rate and large-scale movement of families into the community, the settlement has grown by 350 percent in the past eight years. In 1996, Modi'in Illit was declared a local council. Its jurisdictional area covers 5,800 dunams, half of which is built-up. The settlement has two principal neighborhoods: Kiryat Sefer, in the center of the settlement, and Ahuzat Brechfeld, in the north. In 1996, Ganei Modi'in, a "neighborhood" west of Hashmonaim that is not contiguous with Modi'in Illit, became part of the settlement.

The other three settlements in the bloc belong to the Mateh Binyamin Regional Council. Hashmonaim, which lies west of Modi'in Illit, was established in 1988 and has 2,200 residents living in 500 housing units.<sup>92</sup> Its jurisdictional area covers 500 dunams. Matityahu, which is situated between Modi'in Illit and Hashmonaim, was established in 1981 and has 400

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<sup>91</sup> The international-law status of this strip, which is demarcated on the map relating to this chapter between the two green lines, is in dispute: the Palestinians contend that the land is occupied territory and its status the same as that of the rest of the West Bank, while Israel contends that it is an integral part of Israel.

<sup>92</sup> Hashmonaim had two neighborhoods: Ramat Modi'in, which was built in 1983, and Ganei Modi'in, which was built two years later. As noted, in 1996, Ganei Modi'in was transferred to Modi'in Illit.

residents.<sup>93</sup> Its jurisdictional area covers 900 dunams. Most of the residents of these two settlements, like those in Modi'in Illit, are ultra-Orthodox.

The Menorah settlement (also known as Kfar Haoranim) lies south of Modi'in Illit and has 1,700 residents. It is the only settlement in the Modi'in Illit bloc that is secular. It was founded in 1998 with complete territorial contiguity with Lapid, one of the communities inside the "no-man's land." Access to Menorah is possible only via Lapid.

Many outline plans relating to the Modi'in Illit bloc are now in advanced stages of development. We shall only consider the plans that significantly affected the determination of the separation barrier's route. We shall see that the route chosen has caused greater harm to Palestinian farmers living in the nearby villages than would have resulted had the route been determined solely on the desire to protect the bloc as it exists today. Our findings also prove that Israel's goal is to gain control of privately-owned Palestinian land on the Israeli side of the barrier and thereby enable construction on that land as well.

## **The Outline Plans**

### ***Outline Plan 210/8/1 (Matityahu East)***

The site of Outline Plan 210/8/1, known as Matityahu East and Nahalat Hephziba, is also situated within the jurisdictional area of Modi'in Illit and lies southeast of the settlement's built-up area. The land is owned by the Custodian and the non-profit organization *Keren L'geulat Hakarka* (Redemption of the Land Foundation). The organization is the project developer and the party that filed the plan. The plan covers 872 dunams, one-quarter of which is designated for the construction of 3,008 housing units. The plan also designates land for public buildings (135 dunams), a nature reserve (30 dunams), roads (126 dunams), future planning (100 dunams), and other uses. The plan is a revision of a previous plan for the site (Outline Plan 210/8), which was approved in November 1998, and enabled the construction of "only" 1,500 housing units.

The Supreme Planning Council discussed the plan in 2004 and recommended that it be deposited for the filing of objections. However, approval of the plan by the barrier's planners was halted because of uncertainty regarding the route of the separation barrier in the area. Eighteen months later, in September 2005, the Supreme Planning Council's subcommittee for settlement approved the plan. However, following the filing of a petition in the High Court against the barrier's route

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<sup>93</sup> According to the Central Bureau of Statistics, the community has 1,400 residents. Following clarification made with settlement officials, it was found that this figure is erroneous.

in this area, the State Attorney's Office directed the planners not to publish the plan, i.e., not to take the actions necessary to obtain approval of the plan.<sup>94</sup>

However, in early 2004, construction began on the site, before the plan was approved and without building permits. Thirteen buildings eight- or nine-stories high, containing some 280 housing units, have already been built.<sup>95</sup> In addition, the construction of twenty more buildings has begun. About one-quarter of the land designated for residential use is under construction. In response to Bimkom's question to the Civil Administration inquiring about the illegal construction taking place on the site, the Civil Administration stated that it had issued stop-work orders. In a visit to the site in September 2005, Bimkom and B'Tselem found that the work was moving ahead rapidly.

#### ***Outline Plan 210/4/2 (Ohr Someyach)***

This plan, also known as Ohr Someyach and Naot Hapisga, lies within the confines of Modi'in Illit, east of the built-up area. The land is owned in part by the Custodian and in part by the *Hareut* Company. The plan was initiated by the Special Committee for the Planning and Building of Modi'in Illit, and was submitted by "Ohr Someyach institutions" and "Kiryat Ohr," which are based in Jerusalem. In July 2002, the Supreme Planning Council gave its final approval to the plan, and construction work began in 2004. The site covers 559 dunams, 154 of which are designated for the construction of 2,748 housing units. The plan designates 140 dunams for public buildings, 85 dunams for open space, 133 dunams for roads, and 14 dunams for a commercial area.

#### ***Outline Plan 210/6/3 (Matityahu North)***

Matityahu North is the northern neighborhood of the Modi'in Illit Local Council. Its plan encompasses four stages: Stages 1 and 2, the western sections (Outline Plan 210/6/1-2), were approved in 2000 and much of the construction has been completed. These two stages, which contain 2,600 housing units, were given the name Ahuzat Brechfeld. Stages 3 and 4, the eastern sections (Outline Plan 210/6/3), have not yet been deposited, so only partial details are available.

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<sup>94</sup> *Yassin*, Response on Behalf of the Respondents, Section 29. For details on the procedure for approving a plan, see Appendix 2.

<sup>95</sup> The contention that the building was done pursuant to the previous plan (Outline Plan 210/8), which was approved in 1998, is mistaken. The designated uses of the land and the road system delineated in that plan were significantly different from that of Outline Plan 210/8/1, and the construction is being carried out in accordance with the details of Outline Plan 210/8/1.

Most of the Matityahu North site is linked to *Keren L'geulat Hakarka* and Zipha International Ltd., which are partial owners of the land, the developers, and the parties that submitted the plan. The site covers 334 dunams, with 108 dunams allocated for housing. According to the Modi'in Illit Master Plan, which will be discussed below, 4,460 housing units (this number is not final) are to be built in Matityahu North. The eastern sections, Stages 3 and 4, call for 1,800 housing units, some of which lie outside of Modi'in Illit's municipal borders.

***Outline Plan 208/3 (Ganei Modi'in 3)***

This plan, known as Ganei Modi'in 3, is situated north of Ganei Modi'in, in the jurisdictional area of Modi'in Illit, but is not contiguous with the rest of the settlement. This site runs along the eastern slope of a 238-meter-high hill, 200 meters from the nearby village al-Midya. The developer is Philodendron 12 Ltd., a real-estate company that claims to own the land.<sup>96</sup> The plan was heard by the Supreme Planning Council in February 2004. Because the route of the separation barrier in that area had not been determined at that time, it was decided to postpone depositing the plan until a later date. The site covers 200 dunams, most of which is designated for the construction of 280 housing units. The buildings are dual-family structures with each unit comprising 220 sq. meters. The plan also designates land for roads (50 dunams), public buildings (4-10 dunams), and a commercial area (less than one dunam).

***Outline Plan 211/2 (Menorah)***

The site of this plan lies inside the jurisdictional area of Menorah (Kfar Haoranim), southeast of the settlement's built-up area. The Custodian owns the land. The developer and party submitting the plan is Bar-Tura Ltd.<sup>97</sup> The plan covers 668 dunams, with thirty percent of the land (100 dunams) intended for residential use. The rest of the land is designated as woods (84 dunams), and public open spaces (129 dunams). It should be noted that the plan contains a few islands of Palestinian-owned land that are not included in the plan. The Supreme Planning Council granted

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<sup>96</sup> The information on the plan appears in the response filed by Philodendron 12 Ltd. in HCJ 2577/04, *Taha al-Hawaja et al. v. The Prime Minister et al.*

<sup>97</sup> Bar-Tura Ltd. transferred land it owns to the Ministry of Construction and Housing for the establishment of Lapid, a community next to Menorah. In consideration, the Custodian transferred to the company 600 dunams of land situated in the Menorah settlement's Outline Plan 211/2.

final approval in 1999, but construction has not yet begun, apparently because of difficulties in finding a route for an access road to the new neighborhood.<sup>98</sup>

### ***The Modi'in Illit Master Plan***

The Modi'in Illit Master Plan, made in 1998, relates to the four settlements in the bloc and to Lapid, Shilat, and Kfar Ruth, the communities situated in the "no-man's land." The plan was initiated by the Ministry of Construction and Housing, with the cooperation of the Civil Administration's Planning Department, the Modi'in Illit Local Council, and the Mateh Binyamin Regional Council. A master plan does not have a statutory status and does not undergo any approval process. It is a guide for planning policy for a specific area, and forms the basis for the preparation of outline plans. One of the "advantages" of a master plan, as far as the authorities are concerned, is that objections cannot be raised against it.<sup>99</sup>

The master plan provides a forecast for the year 2020, by which time Modi'in Illit bloc will have 25,000 housing units and 150,000 residents. The total land area of the plan, including roads, is 17,302 dunams, forty percent of which are for residential use, fifteen percent for public buildings, and open spaces, and six percent for roads.<sup>100</sup>

One of the conspicuous features of the master plan is that it ignores the borders of the local authorities. Part of the plan applies to land lying outside its jurisdictional area, including some that is privately-owned Palestinian land. For example, attached to Outline Plan 210/8/1 (Matityahu East), discussed above, are 600 dunams of land that now lie outside Modi'in Illit's jurisdictional area, on which 1,200 housing units are to be built, in addition to the 3,000 units in the official plan. The "attached" land, which contains many olive trees, is owned by Palestinian residents of the adjacent village Bil'in. The Matityahu North plan goes beyond the settlement's borders and adds 1,800 housing units to the 2,600 units set forth in the approved plans, which are to be built on the land of the village Deir Qadis. The master plan also contains a neighborhood (Ramat Modi'in) northeast of the Hashmonaim settlement. This plan, which covers an area of 400

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<sup>98</sup> Apparently, an access road is planned to run via Kfar Ruth to Route 443. The access road cannot be built until at least half of the residents of Kfar Ruth remove their objection to the road. Also, funding has not been found to build the road.

<sup>99</sup> Binyamin Hyman, *Planning and Building Law*, 34.

<sup>100</sup> Implementation of the master plan is to be done in three stages. The first stage, which is to be completed by 2005, calls for 9,000 housing units. Stages 2 and 3, which are to be completed by 2012 and 2019 respectively, call for the construction of 16,000 housing units.

dunams, lies outside Hashmonaim's borders. The land, on which olive trees are planted, is owned by residents of the Palestinian village Nil'in. The master plan also proposes for construction large areas of land situated next to the built-up area, indicating that the land reserves inside Modi'in Illit's built-up area have not yet been exhausted.

### **The Barrier's Route**

The route of the separation barrier around the Modi'in Illit bloc was first approved by the government in October 2003, as part of Stage 3 of the barrier. It is fifteen kilometers long, and runs from the southern edge of al-Midya in the north to Saffa in the south, and extends as far as four kilometers from the Green Line. For most of its length, the route runs alongside the nearby Palestinian villages. Following the High Court's decision in *Beit Sourik*, given in June 2004, Israel thoroughly revised the barrier's route. In February 2005, the government approved the revised route, which moved most of the route around the Modi'in Illit bloc a few hundred meters closer to the Green Line, shortening the route by two kilometers. As a result, the area between the barrier and the Green Line was reduced by 2,000 dunams.

Despite this, most of the route around the Modi'in Illit bloc is almost identical to the original route that was set in September 2003, and does not conform to the revised route approved by the government in February 2005. An exception is the most southern section, west of Saffa, where the barrier was built according to the revised route. In the northern section (south of Deir Qadis, N'alín, and al-Midya), work has not begun because of petitions pending in the High Court of Justice that were filed by Palestinian and by settlers. However, based on the recent requisition orders relating to these areas, which are currently in effect, the route was generally based on the original decision, and not on the revised route.

The aerial photo of the Modi'in Illit bloc shows that the outline plans described above, which will expand the Modi'in Illit bloc in all directions, was a primary consideration in setting the barrier's route. In the southern section, the route runs along the border of Area B around Saffa, some 1,200 meters from the built-up area of Menorah, completely surrounding the Outline Plan 211/2 site. In the eastern section, the route follows the eastern borders of Outline Plan 210/8/1 (Matityahu East) and Outline Plan 210/4/2 (Ohr Someyach), and the borders that were drawn in the master plan. In this section, the route runs 1,800 meters from the built-up area of Modi'in Illit (the Kiryat Sefer neighborhood), very close to the houses of the Palestinian villages Bil'in and Kharbata. The state

admitted that these two plans were taken into account in setting the route.<sup>101</sup> Regarding the northern section, based on the requisition orders that have been issued, the route leaves the sites of Outline Plans 210-/6/3 (Matityahu North) and 208/3 (Ganei Modi'in 3), neither of which has been approved, on the "Israeli" side of the barrier.

Consideration of these expansion plans compelled, in certain instances, the planners to choose an inferior route from a topographical and engineering perspective. For example, placing the area covered by Outline Plan 208/3 (Ganei Modi'in 3) on the "Israeli" side of the barrier required that the barrier run north of the hilltop on which the neighborhood is planned, placing the barrier at a lower altitude than the houses on the western side of the Palestinian village Nil'in. The revised route that the government approved in February 2005 runs a few hundred meters to the south, closer to the built-up area of Hashmonaim and Ganei Modi'in, on land with superior topographical features. In light of the topographical inferiority, seven generals serving in the reserves, in an opinion on behalf of the Council for Peace and Security, warned against the security ramifications of running the barrier north of the hilltop on which Ganei Modi'in 3 is planned.<sup>102</sup>

A similar situation was created in the section west of Bil'in, where Israel wanted to run the barrier around the site of the Matityahu East and Naot Hapisga plans. The route descends to an altitude of 260 meters, to the bottom of a deep river bed (Wadi a-Ralb), which separates the planned neighborhoods. In the segment that crosses the wadi, the route is lower than Bil'in, thus requiring complex and expensive engineering work. Had the barrier's goal been to protect Modi'in Illit as it currently exists – in this area, only Kiryat Sefer – the barrier could run a few hundred meters to the west, 200 hundred meters from the built-up area, and avoid the descent to the wadi.

### **Effect of the Barrier's Route on the Palestinian Population**

The separation barrier being built around the Modi'in Illit bloc runs adjacent to the houses of six Palestinian villages: al-Midya, Nil'in, Deir Qadis, Kharbata, Bil'in, and Saffa. These villages have a total of 16,000 residents. In the 1980s and early 1990s, thousands of dunams of these villages, some of which are privately owned, were declared state land and designated for the establishment and expansion of the Modi'in Illit bloc settlements. As a result of the barrier's route, thousands

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<sup>101</sup> *Yassin*, Response on Behalf of the Respondents, Section 20.

<sup>102</sup> See, primarily, Section 11 of the opinion, which was filed in *Taha al-Hawaja*, in opposition to the opinion that was prepared by Major General (res.) Yom Tov Samia, who had been retained, for remuneration, by the Hashmonaim settlement.

more dunams that are now used for farming and grazing, or are intended for future development, will be separated from the rest of the villages' land.

For example, 3,000 dunams of land belonging to Saffa that are situated southeast of the Menorah settlement, which comprise one-third of the village's land, remain on the western side of the barrier (construction of this section of the barrier will soon be completed). In addition, 250 dunams of the village's land have been taken to build the barrier, during which trees were uprooted and the land leveled. Of the land remaining west of the barrier, 2,100 dunams are privately owned and contain, among other things, 3,000 old olive trees. The head of the village council estimates that the income from the sale of olive oil generated from these trees amounts to half a million shekels a year, and constitutes a major part of the livelihood of many families.<sup>103</sup> The same is true for the other five Palestinian villages.

**The Palestinian Land Affected by the Route of the Separation Barrier  
around the Modi'in Illit Bloc (in dunams)**

<i>Name of community</i>	<i>Number of residents</i>	<i>Land area</i>	<i>Land taken to build the barrier</i>	<i>Land on the "Israeli" side</i>	<i>Amount of village land harmed (by percentage)</i>
<b>al-Midya</b>	1,200	900	120	270	43
<b>Nil'in</b>	4,600	13,300	200	5,200	41
<b>Dir Qadis</b>	1,900	8,200	200	2,600	34
<b>Kharbata</b>	2,800	7,000	150	600	11
<b>Bil'in</b>	1,700	4,000	150	1,900	51
<b>Saffa</b>	3,900	9,700	250	3,000	33
<b>Total</b>	<b>16,100</b>	<b>43,100</b>	<b>1,070</b>	<b>13,570</b>	<b>34</b>

Source: The figures on the amount of land affected were obtained by cross-referencing figures from various Palestinian sources, among them local councils and non-governmental organizations.

<sup>103</sup> The information was provided by Ra'id Nasser, head of the village council, to Iyad Haddad, a B'Tselem field researcher, on 20 July 2005. The state contends that the amount of land privately owned by residents of Saffa that will remain on the western side of the barrier is "only" 1,660 dunams. See H CJ 11363/04, *Ahmad 'Issa 'Abdallah Yassin et al. v. The Prime Minister of Israel et al.*, Response of the Respondents, Section 27.

After completing construction work on the barrier, Israel is expected to declare the area between it and the Green Line a closed military area, as it did in the case of sections of the barrier built as part of Stage 1 of the project. From that moment, Palestinians will be allowed access to their land east of the barrier only if they have an entry permit from the Civil Administration, which is contingent on a GSS finding there are no security reasons to refuse granting the permit, and subject to the resident proving ownership of land in the closed area. Based on past experience, some Palestinians will be denied all access to their land. Those who obtain permits will only be able to gain access during the hours in which the agricultural gates that will be installed in the barrier are open.

Israel contends that the establishment of gates reduces the harm caused to the Palestinian population by the construction of the barrier and makes it proportionate to the benefit provided by the barrier. This argument assumes that harm is caused to meet a military-security need. As we have seen above in this chapter, the primary reasons for setting the route around the Modi'in Illit bloc are not related to military-security needs, but are political and economic (i.e., are intended to benefit the real-estate developers). This being the case, the question of proportionality is irrelevant.

Furthermore, the permit regime proposed by Israel will not solve the two significant problems that are derived from the villagers' separation from their land. First, some of the land that is situated west of the barrier comprises the small, and in some instances the only, amount of land reserves available for village construction. In their testimonies to B'Tselem, the village heads noted that the lack of building options is one of the main reasons that the young generation is leaving the villages. Second, one of the income sources of the villagers is raising sheep and goats. The barrier separates them from land that they previously used for grazing. Israel does not grant permits to residents to cross the barrier with their sheep and goats, so the villagers will have to buy more and more fodder for their flocks. This increased expense will force the villages to consider whether they should continue raising animals for a living.

Even worse, there is concrete evidence that plans exist to expand the Modi'in Illit bloc on privately-owned Palestinian land situated on the "Israeli" side of the barrier. As noted above, hundreds of dunams of privately-owned farmland outside the Modi'in Illit bloc, and also outside its official outline plans, are intended, according to the Modi'in Illit Master Plan, for the expansion of the settlements. For example, 600 dunams adjacent to Outline Plan 210/8/1 (Matityahu East), which are owned by a few families in nearby Bil'in, and on which hundreds of

old olive trees are planted, are designated as a site for 1,200 housing units.<sup>104</sup> In early November 2005, residents of Bil'in were surprised to find that a new road had been built leading from Matityahu East to the area involved. In the process, more than 100 olive trees were uprooted and stolen. On 13 November, the Bil'in Village Council filed a complaint with the Israeli Police Department's Shai District. The building of the road strengthens the contention that Israel seeks to take control of the Palestinian land.

Similarly, 1,000 dunams of cultivated land owned by residents of Deir Qadis and N'alim that are situated near the site of Outline Plan 210/6/3 (Matityahu North 3) were attached in the master plan to land comprising the site of this outline plan.

Beginning in the early 1970s, Israel took control of hundreds of thousands of dunams throughout the West Bank by declaring them state land. According to the applicable legislation, such a declaration is legal, inter alia, if it is proven that the land was not worked for at least three consecutive years (see Appendix 1). In light of the objectives that are apparent in the master plan, there is grave concern that the hidden objective of the barrier is to cause the Palestinian residents to cease working the land that is intended for expansion of the settlements, and thereby enable Israel to declare them state land.

Suliman Yassin, 69, a resident of Bil'in, described in his testimony to B'Tselem the dramatic change in his life following construction of the barrier:

More than twenty-five years ago, I bought thirty dunams of land on the edge of my village... Our house, which is located in the center of the village, is too small for us, and we hoped to build houses for our children, when they grow up, on the land that I bought. I have been working the land ever since I bought it. I dug a well to water the land. I brought tons of dirt for planting and sowing. I needed to add the dirt because much of the land was rocky. There were twenty-five old olive trees on the land when I bought it. I planted more than fifty olive trees, about fifty almond and fig trees, and about twenty grapevines. In another part of the land, an area of some ten dunams, I planted grains, and on seven dunams I planted vegetables.

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<sup>104</sup> According to the deputy head of the Bil'in Village Council, in the 1980s, one of the villagers forged documents of ownership of land west of the village, sold the land to Israelis, and fled. When the Civil Administration stated that it intended to register the land on the name of the new "owners," the real owners objected to the registration, and the Civil Administration did not record the change, and also did not incorporate the land in the jurisdictional area of Modi'in Illit. This information was given to B'Tselem researcher Iyad Haddad on 3 July 2005.

When I bought the land, I built a five-room house and a bathroom because I have twelve children, the oldest being forty-three years old and the youngest twenty-two. All of my children are married, and I have some thirty grandchildren. We all earn a livelihood from the land, and we all share the yield... In addition, I bought more than one hundred head of sheep and goats, which provide milk products and meat for the whole family. With the revenue, I bought another parcel of land that was next to my farmland...

A year ago, the Israeli army expropriated most of my farmland so they could build the separation fence. In February 2004, I received an order taking twenty-five dunams. The order came as a big surprise. Ten dunams planted with trees remain on the western side of the fence, and in a few days I won't be able to get to them. Everything I had invested in the land, and the security that it gave me and my family was at risk... Although they took less land from me than from others [in the village], I was the only one who lost his primary source of income and most of his land. I was left with only five dunams, those on which we live – the house, which is 120 sq. meters, and three structures for the flock, and the well... I tried to replant the uprooted olive trees on the land that remained, but I only succeeded in planting fifteen of them. Now, the fence is in the final stages of completion.

Many demonstrations take place near my house, which lies about twenty meters from the fence. Lots of tear gas and stun grenades have been fired into my yard, and live ammunition and rubber bullets fired at demonstrators have hit the walls and windows of the house. Stones thrown by the demonstrators have landed inside our house. On numerous occasions, my family choked from the tear gas that was fired at the demonstrators. Two and a half months ago, my son Muhammad, who is thirty years old, choked and was wounded in the head by a tear-gas canister.

My flock, too, has been hit by army gunfire. Since last March, thirty of my goats have been killed by gunfire. In November 2004, I planted potatoes, but did not pick them, not even one, because the soldiers damaged the crop when they walked over it. They also destroyed more than two hundred heads of cauliflower, one-quarter dunam of garlic, half a dunam of onions, and one and a half dunams of beans.

Since they have taken my land, I feel as if my children and I have no future. I have become poor, and am left with only thirty head of sheep and goats. I began to sell my flock to meet our household needs. In the past, the flock grazed in wide-open spaces on the land, but now they are confined, and I have to buy them fodder. I feel that I'll end up with not even one sheep, which means that I will have lost my livelihood and my last source of food, having lost my land. I hear the flock moaning, and understand their frustration, just as I understand the frustration of a person who is imprisoned and can't get out. When the time comes for me to feed them, I feel queasy out of sorrow for my flock and the situation they are in.

Those of my children who were living with me left and moved to live in the village. Some of them had already left before work on the fence began, because they couldn't build houses on our land, which is situated in Area C. Others, such as my son Marzuq, who lived with me together with his family, left the house because of the many demonstrations near the house, and out of fear of harassment by the soldiers. In the past, my whole family used to gather at our house, eat together, and spend most of our time there, and the children played on our large piece of land. Now we are all dispersed. Only my son Taysir and his wife and one of the grandchildren and my small daughter, who will soon marry, remain in the house. In the past, at this time of year, I fertilized the land. In the two months after I fertilized it, I sowed the wheat and barley, and grazed the flock in the morning. This year, though, I did not work the land and did not fertilize it, and the flock remained in the pen.

Not only has the fence damaged our livelihood, it also destroyed our privacy. They [the army] set up electric cameras to monitor the fence. These cameras document every movement and everything that happens near the fence. My house lies very close to the fence, so they document every movement of mine and of my family. For example, if at night I want to go to the bathroom, which is outside, an army patrol comes to the house to check what is going on in the yard. About a month ago, I forgot that a sack of fertilizer belonging to a relative of mine was next to the fence. Army jeeps broke into our house at 8:30 P.M., and the soldiers demanded that I go outside and take them to check what was in the sack... This is very scary, and I hate to think what would happen to me if one day somebody places next to the fence a sack like that with explosives inside. Our life has become hell. I feel humiliated and harassed all the time, and I don't know what to do.<sup>105</sup>

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<sup>105</sup> The testimony was given to Iyad Haddad at the witness's house on 20 July 2005.

## *Chapter 6*

### **Eight More Cases**

This chapter provides preliminary data on the connection between the barrier's route in areas other than those discussed in the previous chapters, and on Israel's intention to expand eight settlements that are situated on the "Israeli" side of the barrier: Rehan, Sal'it, Oranit, Ofarim, Ariel, Qedumim, Alon Shvut (Gevaot), and Eshkolot.

The barrier around Rehan, Sal'it, and Oranit is part of Stage 1, and was completed in 2003. Ofarim, Ariel, and Qedumim are in the area referred to in the media as the "fingers," which is part of Stage 3. Unlike other areas in this stage, the government's decision of February 2005 stated that the route selected in the "fingers" area was subject to approval of the legal authorities, which has not yet been given. However, the government approved construction of the barrier around some of the settlements in this area, among them these three settlements, while postponing the linking of these sections to the rest of the barrier.<sup>106</sup> The construction work in these sections is underway. The barrier around the other two settlements – Alon Shvut and Eshkolot – is part of Stage 4. The work around Eshkolot is in its initial stage, and construction around Alon Shvut has not yet begun.

Three facts indicate the connection between expansion of the eight settlements and the separation barrier. First, in each instance, the route has been set several hundred meters, even a thousand meters, from the settlement's built-up area, at least on one side of the settlement. Second, a substantial portion of the land near the houses of each settlement, which lie on the "Israeli" side of the barrier, are included in its jurisdictional area. Third, in each case, outline plans designating these lands for expansion of the nearby settlement have been prepared, although most of them have not yet been submitted.

We do not contend that the desire to expand these settlements was the sole factor in setting the barrier's route. Rather, we argue that the intention to expand the settlements played an important role in determining the route. In other words, were it not for this intention, the state may well have chosen a different route.

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<sup>106</sup> Accordingly, the defense establishment officially relates to the barrier built around the settlements in this area as a "special security area," i.e., as a kind of perimeter fence that is built primarily around settlements east of the barrier, and not as part of the separation barrier.

Initial investigation indicates that in each of these eight cases, routing the barrier far from the settlement's houses to enable expansion increases the impingement on the rights of the Palestinians living in the nearby villages. The harm is comparable to that described in the previous chapters. In all eight cases, the barrier separates the Palestinians from some of their land, as we saw in Chapter 2 (the Zufin case study). In two cases, those of Rehan and Alon Shvut, the barrier creates Palestinian enclaves, detaching them from the rest of the West Bank, as we saw in Chapter 3 (the Alfe Menashe case study). In at least one case, that of Ariel, the barrier will block almost completely the urban development of a nearby Palestinian village, Salfit, in a manner similar to the impediments we discussed in Chapter 4 (the Neve Ya'akov case study). It is not clear to what extent, if at all, Israel intends to seize control of privately-owned Palestinian land, as we contended in Chapter 5 (the Modi'in Illit Bloc case study).

Following are aerial photos of these eight settlements, on which we have marked the Green Line, the barrier's route, and the settlements' borders. The photos are accompanied by a table containing relevant information on the settlement and the barrier.

## **Rehan**

Date founded: 1979

Number of residents: 160

Municipal status: Community in the Samaria Regional Council

Built-up area: 188 dunams

Jurisdictional area: 1,412 dunams

Maximum distance of barrier from the Green Line: 3 kilometers

Land reserves on "Israeli" side of the barrier: 800 dunams

Palestinian communities affected: Bart'a a-Sharqiya (3,499 residents), Khirbet Sheikh Sa'ad (212)

Outline plans relevant to the separation barrier:

<b>Name/ number of plan</b>	<b>Area of plan (in dunams)</b>	<b>Housing units</b>	<b>Current status</b>
103/1	1,209	159	approved
Rehanit	800	2,500	not approved <sup>107</sup>

<sup>107</sup> The term "not approved" means that the plan has either not yet been filed or has been filed but no decision has yet been reached.

## Sal'it

Date founded: 1977

Number of residents: 481

Municipal status: Community in the Samaria Regional Council

Built-up area: 715 dunams

Jurisdictional area: 1,377

Maximum distance of barrier from the Green Line: 3.5 kilometers

Land reserves on "Israeli" side of the barrier: 3,000 dunams

Palestinian communities affected: Khirbet Jubara (317), Kafr Zur (1,218), a-Ras (492)

Outline plans relevant to the separation barrier:

Name/ number of plan	Area of plan (in dunams)	Housing units	Current status
112/2	4,188	1,930	not approved
112/1/2	843	175	approved
112/3	182	79	approved

## Oranit

Date founded: 1884

Number of residents: 5,300

Municipal status: Local Council

Built-up area: 998 dunam

Jurisdictional area: 1,800 dunams

Maximum distance of barrier from the Green Line: 2.5 kilometers

Land reserves on "Israeli" side of the barrier: 800 dunams

Palestinian communities affected: 'Azzun 'Atma (1,614), 'Izbat Salman (622), Beit Amin (1,108)

Outline plans relevant to the separation barrier:

Name/ number of plan	Area of plan (in dunams)	Housing units	Current status
121/10	194	344	approved
121/11	118	180	approved
121/13	24	50	approved

## **Ofarim**

Date founded: 1989

Number of residents: 810

Municipal status: Community in the Beit Ariyeh Local Council

Built-up area: 429 dunams

Jurisdictional area: 6,156 dunams

Maximum distance of barrier from the Green Line: 6 kilometers

Land reserves on "Israeli" side of the barrier: 2,700 dunams

Palestinian communities affected: 'Abud (2,374), Luban al-Gharbiya (1,458)

Outline plans relevant to the separation barrier:

<b>Name/ number of plan</b>	<b>Area of plan (in dunams)</b>	<b>Housing units</b>	<b>Current status</b>
202/2/2	589	1,100 (+ 1,606 rooms in hotels and senior-citizen homes)	approved
Industrial area	800		not approved

## **Ariel**

Date founded: 1978

Number of residents: 17,555

Municipal status: Municipality

Built-up area: 2,998 dunams

Jurisdictional area: 13,755 dunams

Maximum distance of barrier from the Green Line: 22 kilometers

Land reserves on "Israeli" side of the barrier: 9,000 dunams

Palestinian communities affected: Salfit (9,452), Iskaka (1,063), Marda (2,142), Kifl Haris (3,132), Haris (6,885)

Outline plans relevant to the separation barrier:

<b>Name/ number of plan</b>	<b>Area of plan</b>	<b>Housing units</b>	<b>Current status</b>
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	(in dunams)		
Quarter 2 East	unknown <sup>108</sup>	755	not approved
130/2/3	unknown	unknown	not approved
130/3/1	unknown	unknown	not approved

## Qedumim

Date founded: 1975

Number of residents: 3,263

Municipal status: Local Council

Built-up area: 1,214 dunams

Jurisdictional area: 2,039 dunams

Maximum distance of barrier from the Green Line: 14 kilometers

Land reserves on "Israeli" side of the barrier: 800 dunams

Palestinian communities affected: Kafr Qadum (3,376), Jit (2,243), Haja (2,444)

Outline plans relevant to the separation barrier:

Name/ number of plan	Area of plan (in dunams)	Housing units	Current status
113/8	unknown	250	unknown
113/17	unknown	350	unknown

## Alon Shvut (Gevaot)

Date founded: 1970

Number of residents: 3,152

Municipal status: Community in the Gush Etzion Regional Council

Built-up area: 417

Jurisdictional area: 4,500 dunams

Maximum distance of barrier from the Green Line: 9 kilometers

Land reserves on "Israeli" side of the barrier: 4,000 dunams

Palestinian communities affected: Jab'a (876), Saffa (1,068), Nahlin (6,215)

Outline plans relevant to the separation barrier:

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<sup>108</sup> "Unknown" means that B'Tselem and Bimkom do not have this information.

<b>Name/ number of plan</b>	<b>Area of plan (in dunams)</b>	<b>Housing units</b>	<b>Current status</b>
Gevaot	unknown	4,700	not approved
Hafurit	unknown	600	not approved

### **Eshklolot**

Date founded: 1991

Number of residents: 220

Municipal status: Community in the Mt. Hebron Regional Council

Built-up area: 144 dunams

Jurisdictional area: 7,640 dunams

Maximum distance of barrier from the Green Line: 2.5 kilometers

Land reserves on "Israeli" side of the barrier: 4,000 dunams

Palestinian communities affected: 'Arab a-Ramadin (3,000)

Outline plans relevant to the separation barrier:

<b>Name/ number of plan</b>	<b>Area of plan (in dunams)</b>	<b>Housing units</b>	<b>Current status</b>
505	720	330	approved
505/1 (Sansana)	unknown	unknown	not approved

## Chapter 7

### The Barrier's Route Breaches International Law

The settlements that Israel established in the Occupied Territories are illegal and breach international humanitarian law. The primary reason is that the Fourth Geneva Convention forbids the occupying state to transfer its civilian population to the occupied territory.<sup>109</sup> The purpose of the prohibition, as pointed out in official commentary on the Convention, is to prevent exploitation of the consequences of war to colonize occupied territory, and to avoid the resulting harm to the civilian population.<sup>110</sup>

The breach of international humanitarian law that results from establishment of the settlements is a continuing breach, and not only a breach that took place at the time they were established. Therefore, acts intended to perpetuate the settlements are, by definition, breaches of law. Selection of a route that separates the settlements from the rest of the West Bank and the creation of territorial contiguity between the settlements and Israeli territory is clearly intended to achieve this purpose, and are, therefore, illegal.

International humanitarian law provides exceptions that allow for proportionate infringement of the rights of civilians living under occupation. These exceptions apply when military necessity justifies the breach. For example, the Fourth Geneva Convention's prohibition on the destruction of private property does not apply when the destruction is "rendered absolutely necessary by military operations."<sup>111</sup> Israel indeed seeks to use this necessity to justify the harm to the Palestinian population resulting from construction of the barrier. However, given that the very establishment of the settlements is illegal, it is inconceivable that acts intended to perpetuate the breach of law would be considered a legitimate military need that warrants violating the rights of the local civilian population.

Furthermore, even if sections of the wall that surround the settlements do not directly violate Palestinians' human rights, there is no justification in considering them a military need. The reason is clear: the transfer of a civilian population to occupied territory is absolute, and not even

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<sup>109</sup> *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, of 1949, Article 49.

<sup>110</sup> Jean Pictet, *Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), 283.

<sup>111</sup> Fourth Geneva Convention, Article 53.

military necessity can justify it.<sup>112</sup> For this reason, the International Court of Justice ruled unanimously that the sections of the barrier's route that were set with the objective of defending the settlements are illegal.<sup>113</sup>

This does not lead to the conclusion that Israel is not allowed to defend the settlers. Quite the opposite. International humanitarian law requires Israel to ensure public order in the territory under its effective control, and this includes protecting the lives of all persons in the territory, regardless of the legality of their presence in the area.<sup>114</sup> The decisive question is, therefore, which measures Israel is permitted to use to achieve this purpose. On the one hand, the variety of legal measures is limited in comparison with the measures it may take to meet a legitimate military need. For example, in accordance with the Fourth Geneva Convention, the destruction of private property cannot be justified on the grounds that it is necessary to protect the lives of settlers.

On the other hand, insofar as the settlers are not "protected persons" within the definition of this term in the Fourth Geneva Convention, Israel may take actions to protect them by means that could not be used if "protected persons" were involved.<sup>115</sup> For example, Israel may prevent its citizens from entering the occupied territory if it believes that entry would endanger their lives. Israel has exercised this authority regularly since the beginning of the second intifada, in 2000.<sup>116</sup> Furthermore, Israel is also allowed to evacuate civilians from the occupied territory and return them to Israel, as it recently did in implementing the disengagement plan.

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<sup>112</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, Paragraph 135.

<sup>113</sup> Judge Buergenthal, who wrote a minority opinion, agreed with the majority on this point. See Paragraph 135 of the majority opinion and Paragraph 9 of Judge Buergenthal's minority opinion.

<sup>114</sup> *Regulations attached to the Hague Convention Respecting the Laws and Customs of War on Land*, of 1907, Article 43.

<sup>115</sup> Fourth Geneva Convention, Article 4. The State Attorney's Office accepts this conclusion as well, as appears from its declaration that the settlers "are not protected persons for the purposes of the Geneva Convention." HCJ 1661/05, *Gaza Coast Regional Council et al. v. The Knesset et al.*, Response on Behalf of the Respondents, Section 36.

<sup>116</sup> For a discussion on the power to prevent the entry of Israelis into the Gaza Strip during the period prior to implementation of the disengagement plan, see B'Tselem and HaMoked: Center for the Defence of the Individual, *One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan*, March 2005, Chapter 3.

In other words, although protecting the settlers is a legitimate objective, achieving it by running the barrier along a route that perpetuates the settlements or involves expressly forbidden acts, such as destruction of private property, is illegal. This illegality is even clearer when the primary goal in setting the route is itself unlawful: expanding settlements and protecting the economic interests of Israeli developers.

As the analysis of the cases show, the barrier's route around the settlements violates the human rights of the Palestinians living in nearby villages. Where the barrier separates farmers from their land, the route severely breaches the farmers' right to freedom of movement, their right of property, and their right to gain a livelihood. Where the barrier separates whole villages from the rest of the West Bank, turning them into enclaves, the harm is even greater, and infringes the residents' right to health, education, and family life. These rights are protected in the International Covenant on Civil and Political Rights (primarily Articles 12.1 and 17), and the International Covenant on Economic, Social and Cultural Rights (primarily Articles 6, 10, 12, and 13), which apply to Israel's actions in the Occupied Territories.<sup>117</sup>

The conventions permit the signatory states to breach rights if the breach is proportionate.<sup>118</sup> As the Supreme Court held in *Beit Sourik*, pursuant to the principle of proportionality, the state must meet a three-pronged test: the objective must bear a rational relationship to the means; the means used must injure the individual to the least extent possible; and the damage caused to the individual by the means used must be of proper proportion to the gain brought about by that means.<sup>119</sup> The infringement of human rights resulting from the barrier's route in those sections where the route is intended to enable expansion of the settlements failed each prong of this test. First, given that its declared purpose is security – preventing the uncontrolled entry of Palestinian into Israel and to protect the settlers, while creating minimal danger to security forces – there is no rational connection between the infringement of human rights and the declared security objective. Furthermore, as explained in Chapter 1, basing the route on the expansion plans substantially contradicts the security rationale. Second, there are a number of alternative means to

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<sup>117</sup> For an extensive discussion on the application of international human rights law in the Occupied Territories, see O. Ben-Naftali and Y. Shani, "Living in Denial: The Application of Human Rights in the Occupied Territories," 37 *Israel Law Review* (2004) 1.

<sup>118</sup> The principal of proportionality is enshrined in Article 4 of these two human rights conventions. It should be noted that this principal is a general principle of international customary law and Israeli administrative law, so it does not require explicit incorporation in Israeli statutory law.

<sup>119</sup> *Beit Sourik*, Judgment, Section 41.

protect the settlers in a way that causes much less damage. The first alternative is to return the settlers to Israel. Assuming that this option is not feasible in the near future, the settlements can be safeguarded without separating Palestinian farmers from their land and without creating enclaves of Palestinian villages, separating them from the rest of the West Bank. Although protection of this kind will extend the life of these settlements, it will not perpetuate them by connecting the settlements with the sovereign territory of the State of Israel. Third, the inconsistency between the security interest and the barrier's route makes the damages excessive and improper.

## Conclusions and Recommendations

In December 2002, B'Tselem asked the Defense Ministry for a map of the route of Stage 1 of the separation barrier, as approved by the defense establishment. The ministry's spokesperson refused, contending that "publication of the map has not been approved."<sup>120</sup> A follow-up request to the ministry was rejected on the grounds that, "We cannot give any information beyond that which has been reported in the media."<sup>121</sup> In a third attempt, an official request for the map was made pursuant to the Freedom of Information Act, which requires every public authority to provide the information requested within thirty days. After thirty days passed, the official in charge of Freedom of Information Act matters in the Defense Ministry informed B'Tselem that, "Because of the scope, complexity, security sensitivity, and unavailability of the information you requested, it is necessary to extend the period for making a decision on your request for an additional thirty days," in accordance with Section 7(b) of the Freedom of Information Act.<sup>122</sup> It was not until May, some five months after the original request was made, that the ministry sent B'Tselem a map A-3 in size (17 x12 inches) in extremely poor resolution, on which the barrier's route was marked.

Since then, Israel's public-relations efforts regarding the barrier have improved. The map of the barrier's route is now available to everyone, and the ministry itself publishes it on a Website dedicated solely to the barrier.<sup>123</sup> However, central aspects of the planning and construction of the barrier remain unclear, and in some instances, the ministry has attempted to mislead the public. This lack of transparency and deception has been particularly obvious regarding the considerations taken into account in setting the barrier's route around the settlements. For example, in researching this report, Bimkom made several requests to the Civil Administration for a copy of the outline plans of settlements in the West Bank that have been approved in the past four years. Following the Civil Administration's failure to respond, Bimkom, represented by

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<sup>120</sup> Letter of 2 January 2003 from Rachel Nidak-Ashkenazi, Defense Ministry Spokesperson.

<sup>121</sup> Letter of 17 February 2003 from A. Barak, senior assistant, Defense Ministry Public Relations Department.

<sup>122</sup> Letter of 9 April 2003 from Hadassah Kaplish, head of Freedom of Information Act matters in the Defense Ministry.

<sup>123</sup> [www.seamzone.mod.gov.il](http://www.seamzone.mod.gov.il)

the Association for Civil Rights in Israel, was left no alternative but to file a petition in district court to obtain the copies of the plans, pursuant to the Freedom of Information Act .<sup>124</sup>

In addition to these and other efforts to conceal vital information, the lack of transparency regarding the goals and considerations underlying the planning of the separation barrier is evident. As we have shown in this report, although Israel's principal contention has been that the barrier is intended to prevent the entry of terrorists into Israel, one of the main considerations in determining the route of several sections of the barrier has been the desire to perpetuate the settlements and enable the implementation of existing expansion plans. As a result, it has been impossible to conduct an informed public debate on a project with far-reaching legal, political, and economic consequences.

Taking into account the expansion plans of certain settlements when planning the barrier's route has led to further violation of the human rights of Palestinians living near the barrier. The nature and scope of the harm varies from place to place. In some areas, such as near the Zufin settlement, concern for the expansion of settlements has resulted in more Palestinian farmland being situated on the other side of the barrier, increasing the number of Palestinians who require permits to gain access to their land. In other areas, such as near the Alfe Menashe settlement, the result has been the creation of enclaves in which Palestinian are separated from the rest of the West Bank, and Palestinians have been severely harmed in many aspects of life. Also, in certain areas, such as the area northeast of Jerusalem, the barrier has impeded the urban development of Palestinian villages, in some cases making any development impossible. Implementation of the expansion plans in the areas remaining on the "Israeli" side of the barrier is likely to further harm the Palestinians by dispossessing them of more farmland and by causing further deterioration of the lives of residents of the villages that have become isolated enclaves.

The settlements are illegal under international humanitarian law. Therefore, any act to perpetuate them is illegal, especially if the act involves expansion of the settlements.

For these reasons, Bimkom and B'Tselem urge the government of Israel to

- immediately cease the planning and execution of additional sections of the separation barrier around settlements in the West Bank, and dismantle those sections that have already

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<sup>124</sup> The matter is still pending. The Civil Administration consented to let Bimkom photocopy the plans at a maximum rate of ten plans a week.

been built. If the state believes that a physical barrier is needed in those areas, it should be built, as a rule, along the Green Line or in Israeli territory;

- return the land taken to build the barrier to their Palestinian owners, and cancel the order declaring the "seam zone" a closed military area;
- immediately cancel all plans to expand settlements in the West Bank, whether they have been approved or are awaiting approval, and cease construction where work has begun.

## *Appendix 1*

### **State Land in the West Bank**

The declaration of land as state land and the registration of state land in the land registry has, since 1967, been the principal method used by Israel to take control of land to build settlements and create land reserves for their future expansion.<sup>125</sup> Until then, the state relied on the claim of "military need" to seize private land, which often required that it prove to the High Court of Justice that the taking indeed was a military necessity.<sup>126</sup>

In implementing this procedure, Israel relies on its manipulative use of the Ottoman Land Law of 1858, which was incorporated in British Mandate legislation, and later in Jordanian law. This law was part of the local law at the time Israel occupied the West Bank, and as such has remained in effect. The law states that a person may acquire ownership of farmland and register it in the land registration office (*Tabu*) after working it for ten consecutive years. If the person ceases to work the land for three consecutive years, the land is considered state land, and possession is transferred to the government. The power to declare land state land and to administer it is given by the Israel military legislation to the Custodian for Government and Abandoned Property in Judea and Samaria.<sup>127</sup>

A parcel of land that is examined prior to registering it as state land is classified as "survey land."<sup>128</sup> Until the check is completed, the Custodian declares the parcel state land and enables Palestinians who claim rights in the parcel to file an appeal before a military committee within forty-five days of the declaration. At the end of this period, or following the committee's decision if an appeal is filed, the land is registered as state land. From 1979-1992, the Custodian registered 908,000 dunams as state land.<sup>129</sup> The procedure for declaring and registering land as state land

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<sup>125</sup> For further discussion on this issue, see *Land Grab*, Chapter 3.

<sup>126</sup> The decision to move from this method to that of declaring the land state land was made following the Elon Moreh case, in which the High Court nullified an order requisitioning private land to build a new settlement, the court having been convinced that no military need existed. See *Land Grab*, 49-50.

<sup>127</sup> Order Regarding Government Property (Judea and Samaria) (No. 59), 5727 – 1967.

<sup>128</sup> The examination process that is required before the land is registered as state land is set forth in the Procedure for Supervision and Protection of Survey Lands, their Administration, and Evacuation of Squatters, which was approved in 1997 by the Attorney General. For the specific details on the procedure, see State Comptroller, *Annual Report 56A*, 206-208.

<sup>129</sup> *Ibid.*, p. 206.

was suspended from 1992 to 1996 [when Yitzhak Rabin was prime minister]. It was re-instituted in 1997.

A substantial portion of the land registered as state land and used to establish settlements and land reserves for their expansion was, even according to a strict reading of the Ottoman Land Law, privately owned by Palestinians. Israel's illegal seizure of private land was possible, in part, because of the nature of the bureaucratic process in which the taking of control was carried out. Often (primarily in the 1980s), information indicating that a declaration of a particular parcel as state land did not reach the Palestinians, and when it did, the time for filing an appeal had already passed. Also, for a variety of reasons, Palestinians were unable to successfully compete against the military authorities at the appeals hearing. Even worse, there have been many cases in which Israel related to survey lands (the land that had not been proven to be state land) as if they were registered state land, and allocated them to the settlements.<sup>130</sup>

It should be noted that, even if Israel had followed the strict letter of the Ottoman Land Law fairly and justly, and had not declared privately owned land as state land, the state has acted improperly because it administered the state land in a discriminatory and illegal manner. State land is public property, belonging to the lawful residents of the West Bank. The role of the occupying state, as the temporary substitute for the sovereign, is to administer the public land for the benefit of that public, or, in the alternative, to meet its military needs in the occupied territory. Rather than act in this way, since Israel began to take control of state land, it has completely denied the Palestinians their right to use these lands, and has allocated them only for the establishment and expansion of settlements.

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<sup>130</sup> Talia Sasson, *(Interim) Advisory Opinion on Illegal Outposts*, 81-82.

## *Appendix 2*

### **The Planning System in the Settlements**

Obtaining a building permit in a settlement in the West Bank is a complicated and prolonged procedure, set forth in the Jordanian planning and building law,<sup>131</sup> which was in effect when the occupation began, and in the military legislation.<sup>132</sup> The institutional system charged with implementing this bureaucratic procedure is composed of three bodies in a hierarchical chain.<sup>133</sup>

At the top of the pyramid is the Supreme Planning Council, headed by the Civil Administration's staff officer for internal affairs. The council is empowered to approve the settlements' local outline plans, which set forth the principal land uses in the planned area. Also, the council serves as an appeals body regarding decisions of the two bodies lower on the chain.

According to the Jordanian law, the local outline plans are subject to the regional outline plans. However, the only regional outline plans that have been approved in the West Bank are the two plans dating from British Mandate Outline Plan S-15, for the northern West Bank, and Outline Plan RJ-5, for the southern part. Given that these are old plans, which designate most of the West Bank as agricultural land or nature reserves on which building is forbidden, they are unsuitable as a tool for planning where a valid local outline plan exists. Their main use is to restrict Palestinian construction in Area C, where Israel has refused over the years to prepare local outline plans.

The Jordanian planning law calls for a number of district planning committees to act under the control of the Supreme Planning Council. The military legislation transferred their powers to subcommittees of the Supreme Planning Council, among them the Settlement Subcommittee, which is in charge of planning in the settlements. This subcommittee is empowered to approve detailed

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<sup>131</sup> The Town, Villages, and Buildings Law, No. 79, of 1966.

<sup>132</sup> Order Regarding Town, City, and Building Planning Law (Judea and Samaria) (No. 418), 5731 – 1971; Order Regarding Approval of Planning and Building Procedures (Judea and Samaria) (No. 1455), 5756 – 1996.

<sup>133</sup> For further details, see Anthony Coon, *Town Planning under Military Occupation: An Examination of the Law and Practice of Town Planning in the Occupied West Bank* (Ramallah: Al-Haq, 1992); Talia Sasson, *(Interim) Advisory Opinion on Illegal Outposts*, 87-90; Binyamin Hyman, *Planning and Building Law*.

plans that meet the directives set forth in the local outline plans. The detailed plan states the borders of the parcels and indicates in more precise terms what may be done on each parcel of land, and how the buildings that are allowed to be constructed are to be built. Settlements classified as "rural" do not require a local outline plan, so the planning process begins with the preparation of a detailed plan.

Approval of a local outline plan and detailed plan includes a number of stages: decision by a public or private entity to develop a plan; preparation of the plan by an architect; submission of the plan to the relevant planning body; hearing and decision on whether to deposit the plan for the making of objections; deposition of the plan for the making of objections for a period of sixty days, and giving of appropriate notice in the press; hearing of the objections, if any are made; alteration of the plan where the objections have been found worthy; approval of the plan by the planning body; publication of the plan, which takes effect fifteen days after publication.

At the bottom of the pyramid are the local planning committees, which are subject to the Supreme Planning Council and its subcommittees. The council of each of the Israeli local authorities in the West Bank – municipality, local council, or regional council – carries out the function of a local planning committee. The main role of the local planning committee is to issue building permits, in accordance with the detailed plans, and to monitor the construction to ensure that it complies with the law. Each committee carries out this function in the jurisdiction of the local authority within which it operates.

Most of the land on which settlements are planned and built in the West Bank is "state land," which is administered by the Custodian for Government Property and Abandoned Property, who is part of the Civil Administration.<sup>134</sup> Three public institutions are charged with the initiation of plans for building on state land, which are referred to by planning authorities as "settling bodies": the Ministry of Construction and Housing; the Rural Construction Division, of the Ministry of Agriculture; and the Settlement Division, of the World Zionist Organization. The first of the three is primarily involved in urban settlements, and the other two with the rest of the settlements.

The government decided in 1996 that the allocation of state land must be approved by the Defense Minister.<sup>135</sup> Subsequently, a detailed procedure was set forth in the military legislation

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<sup>134</sup> For details on the procedure to declare land "state land," see Appendix 1.

<sup>135</sup> Cabinet Decision No. 150.

for allocating state land.<sup>136</sup> According to the procedure, the Defense Minister must first approve the allocation of a certain piece of land to a settlement, after which the Custodian is allowed to sign an agreement with the settling body, authorizing the entity to plan the area. After a valid detailed plan is in effect, the Custodian may transfer possession of the land to the settling body for development to be executed by a private contractor, non-profit organization, or other person or entity. After that, the Custodian is empowered to lease the property to a third party for forty-nine years, with an option to extend the agreement for an additional forty-nine-year period.

The procedure is not enforced in many cases. The State Comptroller found that, after signing of the agreement that authorizes the planning, the WZO's Settlement Division transfers the land for construction without first having the outline plan approved and without the Custodian's approval.<sup>137</sup>

Clearly, the Custodian should not be involved in the allocation and planning of land that is not state land, i.e., land that is purchased by private Israeli persons and entities. However, the Custodian is involved in "revolving transactions" that aid in realizing the potential of the land purchased by these private parties. In Palestinian society, the sale of land to Israelis is a grave offense, so the Israelis promise the potential sellers that they will keep the seller's identity a secret. To maintain secrecy, they do not register the acquired land in the Land Registration Office. Rather, they transfer the land they purchased to the Custodian, who declares it state land. This enables the planning process to start. The Custodian allocates the land to the purchaser in the framework of the planning-authorization agreement, and then for development, for no consideration.<sup>138</sup>

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<sup>136</sup> Order Regarding Approval of Planning and Building Procedures (Judea and Samaria) (No. 1455), 5756 – 1996.

<sup>137</sup> State Comptroller, *Annual Report 56A*, 216-218. This practice is also documented in Talia Sasson, *(Interim) Advisory Opinion on Illegal Outposts*.

<sup>138</sup> For documentation of such a case, see State Comptroller, *ibid.*, 223-224.

## **Response of the Ministry of Justice**