

**AL-NU'MAN VILLAGE**  
**A CASE STUDY OF INDIRECT FORCIBLE TRANSFER**



Grazia Careccia

John J. Reynolds

*November 2006*

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ISBN 978-9950-327-10-8

Cover photo: House in al-Nu'man, sealed and pending demolition, September 2006.

Design & Printing: 3<sup>rd</sup> Dimension 02 2986385

## ACKNOWLEDGEMENTS

**T**he authors would like to thank Al-Haq's staff for their help in making the present case study possible, in particular Shawan Jabarin, Gareth Gleed and Marko Divac Öberg for their insightful comments. Special gratitude must go to the fieldworkers Ziyad Hmeidan, Omar Jubran and Manaf 'Abbas for their tireless work in collecting vital information and testimonies. The authors are also indebted to Freya Putt for the initial research, Adv. Labib Habib for his kind assistance, and Bimkom and Mr. Halil Tufakje for providing maps and aerial plans. The views expressed here are attributable to Al-Haq alone.

**This case study is dedicated to Ziyad Hmeidan, Al-Haq fieldworker and human rights defender in administrative detention since 23 May 2005.**

*"I feel a ray of light extending from my suffering, and reaching my people, and then to the all people of the world who are suffering from oppression....I see the truth clearly. I tell you my beloveds that this land deserves to be lived for, especially with the presence of people like you, you who break the omnipotence of the oppressor."*

**Ziyad Hmeidan, Naqab Prison, 24 December 2006**



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## INTRODUCTION

**A**l-Nu'man is a small village consisting of one street and approximately 25 houses situated southeast of Jerusalem and northeast of Bethlehem, a few hundred metres north of Beit Sahour. In 1967, Israel illegally *de facto* annexed East Jerusalem and surrounding areas, including the land of al-Nu'man village. However, the inhabitants of the village were recorded as West Bank residents and given West Bank IDs rather than the Jerusalem IDs received by most Palestinians in illegally annexed areas. As West Bank ID holders, these residents are considered by Israel to be illegally residing in Jerusalem simply by being in their homes. A small minority of the village residents possess Jerusalem IDs, being former residents (and their offspring) of nearby Jerusalem villages who did not register the change in their place of residence when they moved to al-Nu'man. The Jerusalem ID holders remaining in the village amount to less than 10% of al-Nu'man's present population of approximately 220.

In addition to the difficulties caused by holding ID cards that, under Israeli law, do not permit them to reside in their own village, al-Nu'man villagers are detrimentally affected by Israeli settlement construction and expansion in the area. Har Homa settlement, begun in 1997 and built on the Abu-Ghneim mountain, lies nearby, and an extension is planned next to al-Nu'man, on a portion of the village's lands.<sup>1</sup> Substantial areas of land surrounding the village were also appropriated by Israeli confiscation orders for the establishment of a military area,<sup>2</sup> as well as a further 30 dunums for the building of Mazmouriyya trade terminal,<sup>3</sup> currently in progress. In addition, the route of the Jerusalem Ring Road, on which work has already commenced, will cut through the village. The village is also bounded by the Annexation Wall, which in this area takes the form of a fence, constructed inside the West Bank. As a result of these Israeli development plans in the area, to which the presence of the village is an obstacle, al-Nu'man is the target of a systematic campaign aiming to remove its inhabitants and subsequently appropriate its land.

The problems for al-Nu'man residents escalated in 2003 when construction of the Wall

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<sup>1</sup> See the proposed site of "Har Homa D" in Annex 3.

<sup>2</sup> Israeli Military Order 30/7/C.

<sup>3</sup> Israeli Military Order 155/5/T.

began near the village, and heightened even further in May 2006 when a permanent checkpoint in the Wall became the only entrance to, and exit from, the village. Al-Nu'man is now bordered on three sides by the Wall, isolating it from the rest of the West Bank, which is situated on the opposite side of the Wall, east of the village. Only al-Nu'man residents with West Bank IDs are permitted through the checkpoint. On the western side of the village, the former road to Jerusalem has been partially destroyed by Israeli authorities and is blocked by a metal gate at the entrance to the village. Thus, al-Nu'man is severed from both East Jerusalem and the rest of the West Bank. Movement of people and vehicles is tightly restricted, impacting residents' access to essential services and supplies.

This report examines the current living conditions of village residents from the perspective of international law, and the legal implications for Israel, the Occupying Power in the Occupied Palestinian Territory (OPT), under international humanitarian and human rights law, as well as for the High Contracting Parties to the Fourth Geneva Convention.

# 1. AL-NU'MAN VILLAGE: AN OVERVIEW

## 1.1 Background

From the beginning of the Israeli occupation in 1967, until 1986, al-Nu'man residents did not encounter problems with the Israeli authorities, beyond those suffered in general by Palestinians living under occupation.<sup>4</sup> In 1986, however, as the Knesset began to move towards planning for a "Greater Jerusalem," a garage in the village was demolished under the pretext of having being built without an Israeli license. In 1992, a letter from the Jerusalem Municipality informed the residents that the village was part of Jerusalem and, as holders of West Bank ID, their presence was illegal. The same year representatives of the Jerusalem Municipality visited the village and told the residents that no planning was authorised in the area and therefore that any further construction was prohibited.<sup>5</sup>

In 1993, village residents petitioned the Israeli High Court of Justice, requesting that the village be officially recognised as part of the West Bank, not the Israeli-defined Jerusalem Municipality; or, alternatively, that they be issued Israeli ID cards and receive planning permission and services from the Jerusalem Municipality. The latter option was seen as far from ideal due to its implicit recognition of Israel's illegal annexation of East Jerusalem. In 1996, the High Court granted a 60 day grace period for the Jerusalem Municipality and the Israeli Ministry of the Interior to resolve the issue of al-Nu'man.

These authorities, however, failed to take any action to clarify the status of al-Nu'man's residents, and throughout the 1990s restrictions on the residents of al-Nu'man gradually increased. Applications to obtain building licenses were consistently denied on the grounds that no construction was allowed in the area. In 1996, the Jerusalem Municipality instructed the Israeli Department of Education not to accept students holding West Bank ID cards, and the village students had to transfer from their schools in Um Touba to schools in Beit Sahour and surrounding West Bank areas. The road linking the village with Bethlehem was repeatedly closed for periods of 20-30

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<sup>4</sup> For evidence of the gradual and uninhibited development of al-Nu'man village from 1967 to 1986, see Annex 4.

<sup>5</sup> Al-Haq Affidavit No. 1237/2003. All excerpted Al-Haq affidavits are available at [www.alhaq.org](http://www.alhaq.org).

days between 1998 and 2003.<sup>6</sup> During this time, the water pipes to the village were deliberately broken by Israeli bulldozers on numerous occasions, apparently because the village is part of Jerusalem and therefore not permitted to receive services from the Palestinian National Authority (PNA). The Jerusalem Municipality, however, refused to provide al-Nu'man with services, leaving the village without water for days at a time until its citizens repaired the PNA-supplied water pipes.<sup>7</sup>

In April 2002, al-Nu'man's residents were verbally informed that the village lay adjacent to the planned route of the Wall. Shortly after, a preliminary road was built along the route of the Wall. The road to al-Nu'man from the neighbouring West Bank village of al-Khas was destroyed, as were the village water pipes. One year later, in April 2003, residents received a visit from a man purportedly working as a liaison between Israeli government ministries and residents of areas affected by the Wall. This man, who identified himself as Davier Kahana, showed them maps of the Wall route and bypass roads that would cut through the village. He informed the villagers that there would be no gate in the Wall, meaning they would have no access to either the West Bank or Jerusalem, and told them that the electricity and water supplies to the village would soon be cut. He suggested that in light of these circumstances, residents would be better served to move away from the village.<sup>8</sup> Shortly thereafter, construction of the Wall began in the area. In May 2006, a permanent military checkpoint was established at the entrance of the village, allowing only al-Nu'man residents to pass through.

## 1.2 Ongoing Legal Proceedings

With no resolution emanating from the previous legal proceedings in the 1990's, the villagers again petitioned the Israeli courts in 2004, requesting a change in the route of the Wall and seeking either unrestricted access to the Bethlehem area, or permits allowing them to remain in al-Nu'man. On 30 June 2004, the Israeli High Court of Justice issued an order forbidding the arrest of any of the village residents for illegal presence in Israel. On 22 March 2005, the same court issued a decision giving effect to an agreement concluded between a lawyer of the villagers and the Israeli authorities.<sup>9</sup>

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<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ahmed Al-Dar'awi and 65 others v. The Minister for Defence et al*, HCJ 6181/04. For the full text of this decision, including the agreement it gave effect to, see Annex 1.

According to the terms of this agreement, the Israeli authorities committed “not to block the road that connects the area of al-Nu’man village to Judea and Samaria,”<sup>10</sup> to allow freedom of movement from the West Bank to al-Nu’man and back, and to repair and improve the safety of this road. An authorised body, to be appointed by the Israeli authorities, was to be established to determine, on an individual basis, the right of villagers to continue residing there. The Israeli authorities undertook “to avoid hindering the normal course of life” of the villagers and not to arrest or deport any of them for illegal presence in Israel until at least 45 days after the final decision by the “authorised body” as to the continued dwelling and permanent residence of each individual in the village.<sup>11</sup>

The village residents, however, affirm that they did not agree to the terms of this agreement, which was entered into by their lawyer at the time, Shlomo Lacker, without their consent. In any case, the agreement was not adhered to, the Israeli authorities failing to fulfil their obligations with regard to allowing ease of access to and from the village, not impeding the lives of the residents, maintaining the road, etc. Furthermore, the body intended to rule on the residency rights of the villagers was never established. In September 2006, Labib Habib, the lawyer with whom the villagers replaced Shlomo Lacker after his sanctioning of the March 2005 agreement, presented a list of residents of al-Nu’man to the Israeli Border Police who control the checkpoint at the entrance of the village, in the hope that it would ease the passage of those residents. This hope has not been realised, however, with residents in fact facing heightened difficulties and delays when attempting to enter or leave the village. Labib Habib is currently preparing a petition on behalf of Al-Haq and residents of al-Nu’man to the High Court seeking to improve the deteriorating living conditions of the villagers and to void the March 2005 agreement on the basis that it has been completely ineffective in helping their situation.

## **1.3 Current Living Conditions of the Population**

### **1.3.1 Movement Restrictions and their Impact**

One of the most pervasive elements of Israel’s occupation of the Palestinian territory,

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<sup>10</sup>“Judea and Samaria” is the name used by Israel to refer to the occupied West Bank.

<sup>11</sup> See *supra* note 9.

and the greatest single difficulty that al-Nu'man residents currently face, is the severe restrictions on movement imposed on Palestinians. Since the establishment of a checkpoint at the entrance of the village in May 2006, only al-Nu'man residents holding West Bank IDs have been permitted access to the village. Moreover, the residents face regular delays when passing through the checkpoint, which causes significant inconveniences to any travel. Dr. Ibrahim Abu-Sitta al-Dir'awi recounts one of his experiences:

*On 27 May 2006 at approximately 5:00 pm I was returning home with my wife, daughter and my friend's wife. As I arrived at the village gate where a number of soldiers were positioned, I asked the soldiers to let me through the gate. The soldiers agreed to let me pass through the gate with all the persons in my car as long as the address on my ID was al-Nu'man village. There were cement blocks at the gate and the soldiers told us to remove them if we wanted to pass, adding that they were not going to move the cement blocks. I moved these blocks with the help of the women who were with me in the car and we passed through the gate. On that day we arrived at home at around 7:00 pm.*

**Extract from Al-Haq Affidavit 3010/2006**

*Given by Dr. Ibrahim Abu-Sitta al-Dir'awi (resident of al-Nu'man village, Bethlehem Governorate, West Bank).*

There is also evidence of Israeli Border Police refusing residents entry to the village on the basis that "there is no such thing as al-Nu'man,"<sup>12</sup> as well as attempting to impose conditions that residents may only leave the village if they do not come back:

*When I left my village, al-Nu'man, in the morning towards Bethlehem to the doctor, a policeman standing at the entrance to the village stopped me. I told him where I was headed and that I am a resident of al-Nu'man. Although it is stated in my ID that I am a resident of the village, he refused to let me exit. After an argument he agreed to let me out, but on condition that I would not come back. I exited. When I returned in the afternoon the policeman refused to let me in. Only after about three hours, and after intervention by village residents, the policeman agreed to let me into the village.*

**Extract from affidavit given to Labib Habib, Adv., by 'Abed 'Ali 'Atiya**

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<sup>12</sup> Affidavit given to Labib Habib, Adv., by Muhammad Sliman Dar'awi. All affidavits taken by Labib Habib are on file with Al-Haq.

Non-residents of the village, including relatives of residents and service providers, are systematically prevented from entering. Even the villagers' lawyer, Labib Habib, holder of an Israeli ID, is unable to enter the village.<sup>13</sup> For villagers, the delays, intimidation, and humiliation involved in moving through the checkpoint complicate and discourage travel, especially after dark. Because of the small size of the village, which has no shops, school, mosque or health facilities, residents are particularly dependent on neighbouring villages for education, practice of religion, food and supplies, utility services, and healthcare. Moreover, many al-Nu'man residents have family in neighbouring villages. The restrictions on movement have grave implications for almost every aspect of the residents' lives.

## Education

Public transportation to and from al-Nu'man village has stopped because of the military checkpoint at its entrance and the ban on entry of non-residents.<sup>14</sup> Because al-Nu'man has no school, students are obliged to pass through the checkpoint and then walk to neighbouring West Bank villages in order to attend school or reach transportation to schools further away. Children and students have also been subjected to lengthy delays and harassment at checkpoints, resulting in tardiness at school and untenable travel hours. Ashraf Jamal Shawawra, a student at Al-Quds University in nearby Abu Dis, describes the impact of these obstructive movement restrictions:

*For almost a year, I have had to walk on dirt roads for approximately 45 minutes, in all weather conditions, in order to reach al-'Beidiyya Street. From there I take public transportation to Abu-Dis through the Container checkpoint, well-known for the complications faced in passing through it. It takes me between one and two hours every day to pass through that checkpoint, under normal circumstances. This is because the Israeli soldiers at the checkpoint gather the ID cards of the passengers in the bus or any vehicle for a "security inspection," as they claim, and leave us in the bus for an hour or two, whether in the hot summer or the cold winter weather.*

*Moreover, whenever I pass through al-Nu'man checkpoint, the soldiers force me to go through inspection and I have to lift up my clothes and show my abdomen and waist.*

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<sup>13</sup>See complaint filed by Labib Habib to the State Prosecutor's Office, 31 October 2006, Annex 2.

<sup>14</sup>Al-Haq Affidavit 3092/2006.

*Sometimes they deny me access for some time, either entering or leaving al-Nu'man. So, it currently takes me around three hours to reach my university. For instance, if the first lecture starts at 10:00 am, I have to leave my home in al-Nu'man village at approximately 7:00 am. Similarly, when I leave the university at 4:00 pm, I reach home at 7:30 or 8:00 pm.*

**Extract from Al-Haq Affidavit 3092/2006**

*Given by Ashraf Jamal Shawawra (resident of al-Nu'man village, Bethlehem Governorate, West Bank)*

The journey taken by Ashraf Jamal Shawawra, without these movement restrictions, would take only 20 minutes.

## **Food**

With no shops in al-Nu'man, residents have no alternative but to bring supplies from elsewhere. They face constant complications in bringing food and other provisions to the village. In particular, it is difficult to bring large quantities of goods through the checkpoint. Dr. Ibrahim Abu-Sitta al-Dir'awi recounts one such instance:

*On Friday 2 June 2006, I was returning from Bethlehem in my own car in which I was carrying vegetables, fruit and a 60 kilogram sack of flour. As I arrived at the village gate, the soldiers who were positioned at the gate asked me to open the car boot. I did. The soldiers took all the vegetables and fruit and put them down on the ground and when I protested about what they were doing, they said they were doing it for security reasons. Then one of the soldiers poked his gun barrel in the flour sack in many places which resulted in the flour being scattered. This act aggravated me because I felt it was unnecessary for security as I was merely moving from one West Bank village to another. Moreover, entering al-Nu'man village did not mean in any way that I could reach Israel.*

**Extract from Al-Haq Affidavit 3010/2006**

*Given by Dr. Ibrahim Abu-Sitta al-Dir'awi (resident of al-Nu'man village, Bethlehem Governorate, West Bank)*

## Services

Movement restrictions have also led to cessation of services on which the village formerly relied. Palestinian service providers are prevented from entering al-Nu'man, but at the same time the Jerusalem Municipality refuses to provide essential services. Since May 2006, garbage trucks have been unable to enter the village. Residents now burn their garbage at a site on the outskirts of the village. The vehicle that used to deliver gas to the village is no longer able to enter, and residents are obliged to obtain gas for cooking in canisters that they transport to the village individually. However, even this leads to harassment at the checkpoint. Residents have sometimes been told that transporting gas canisters is "illegal" and have been refused both entry and exit while carrying them.

*On 9 June 2006 at around 11:00 am, I left my village and headed to Beit Sahour and Bethlehem to perform my Friday prayer. Before I went, my family told me that our gas canister was empty; so I put it in my car and left home. As I reached the gate, I found a number of the border guard soldiers who inspected my car. They saw the gas canister and told me that it was against the law and that they would not let me return with the canister. When I asked why, one of the soldiers said that he could not be sure that I filled the canister with gas and not with anything else. When I told him that I did not have another gas canister in my home, he answered that it was not his problem and that he was carrying out his orders and would not let me pass through the gate.*

### **Extract from Al-Haq Affidavit 3010/2006**

*Given by Dr. Ibrahim Abu-Sitta al-Dir'awi (resident of al-Nu'man village, Bethlehem Governorate, West Bank)*

Al-Nu'man's access to services has been gravely affected by construction of the Wall. In May 2006, the water pipes and main electricity pylon supplying the village were destroyed during bulldozing for the Wall, leaving the village without running water and power for over two weeks:

*During the digging and excavation works for the Separation Wall, the bulldozers destroyed the electricity and water networks and the main water pipeline and caused the fall of electrical poles, resulting in electricity and water being cut off in al-Nu'man village for 15 days.*

***Extract from Al-Haq Affidavit 2974/2006***

*Given by Muhammad 'Isa Hmeidan (resident of al-Khas village, Bethlehem Governorate, West Bank)*

The water pipe was replaced, but the new pipe is made of black plastic and runs above the ground, making it susceptible to damage and to weather conditions – the water the village received all summer was warm, while the above-ground pipe will be prone to freezing in winter. Regarding the electricity pylon, repairmen from Beit Sahour were refused entry to the village because they were not al-Nu'man residents. Repairmen from Jerusalem were eventually permitted to enter, escorted by Israeli Border Police officers.<sup>15</sup>

## **Healthcare**

Because al-Nu'man has no medical facilities or pharmacy, residents can only access healthcare outside the village; they must stop and pass through the checkpoint regardless of their condition. Doctors cannot enter the village and should one of the residents require emergency treatment, an ambulance might not be able to get to the village due to the ban on non-residents entering.

## **Family Life**

The closure of roads to al-Nu'man and ban on entry by non-residents has segregated the village from all neighbouring communities. Families are separated, and the enjoyment of normal family life obstructed, where some family members live in al-Nu'man village and their relatives elsewhere. Sharif'Ali's father holds a West Bank ID card and his residence is listed as al-Nu'man village, while Sharif, his mother, and his sister hold Jerusalem ID cards. In order to keep their Jerusalem IDs, he, his mother, and his sister live in a rented house just a few hundred metres away in Um Touba, a Jerusalem Municipality village. They face severe difficulties in visiting the father in

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<sup>15</sup>ARIJ, *An Nu'man village turned into an open air prison*, 15 June 2006.

al-Nu'man.<sup>16</sup> Similarly, Jamal Suleiman Dir'awi's elderly mother is unable to receive visits from her children:

*Four of my brothers and I live in al-Nu'man village and our address on our ID cards is Mazmouriyya – al-Nu'man. To enter through the gate you must have this address on your card. My other eight brothers and sisters live in the surrounding villages such as al-Khas, which is a few hundred metres away from our village. Two of my sisters and their 11 children are prohibited from coming to al-Nu'man village to visit us. Since April-May 2006, my sisters have not been able to visit their mother although she is old and sick and cannot move easily. My sisters' four attempts to enter the village through the gate have all failed. The same is true of my other six sisters living in al-Shawawra, Tqou' and Dar Salah villages.*

**Extract from Al-Haq Affidavit 3009/2006**

*Given by Jamal Suleiman Dir'awi (resident of al-Nu'man village, Bethlehem Governorate, West Bank)*

### **1.3.2 Harassment and Degrading Treatment**

In addition to the severe restrictions on movement persistently imposed on al-Nu'man's residents, they endure physical harassment and psychological humiliation at the checkpoint. Numerous villagers have testified that they have been ordered to remove their clothes under threat of being shot. Children have also been subjected to intimidating and degrading treatment. Ten year old Samer Jamal Dar'awi was walking home from school via the checkpoint:

*The policemen played a cassette and demanded that we dance. I refused and did not comply with them, but Muhammad Samih and Muhammad Radi, who had also arrived from school, from the first grade, were afraid and started dancing. Often, on the way from school and back the policemen ask us for an ID or birth certificate although we do not have any. When we tell them that, the policemen detain us, search through our bags and only release us after a while. Almost every day the policemen demand of me, and of friends my age and even younger, to empty our entire school bags so they can search them. When the soldiers finish the search they usually throw the bag far away on the dirt road so that we have to go fetch them. The harassments that I experience*

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<sup>16</sup>Al-Haq Affidavit 3027/2006.

*every day cause me constant fear although I do not want the policemen to see that I am afraid of them. About two days ago, we were returning from school. Muhammad Samih, about seven years old, was with us. The policemen demanded that he drop his trousers, but I told him not to answer them. We kept on walking and that was that.*

***Extract from affidavit given to Labib Habib, Adv., by 'Abed 'Ali 'Atiya***

According to Jamal Suleiman Dir'awi, harassment increases in the evenings. He describes one of his experiences:

*It was approximately 11:00 pm [on 13 May 2006]. The soldiers ordered us in Arabic through loud speakers to take off our clothes. One of the soldiers ordered me to lift up my shirt and pull down my trousers. I refused his demand whereas the four other men did what the soldiers ordered them. They pulled down their trousers a little but the soldiers constantly asked them to further remove their trousers and take them off. The four young men also lifted their shirts up to their chins. This took place in front of a number of the citizens of al-Nu'man. I refused to follow the soldiers' orders and, as a result, one of the soldiers threatened me and aimed his weapon at me but I nevertheless continued to disobey. Eventually, they released me and I arrived in Bethlehem.*

***Extract from Al-Haq Affidavit 3009/2006***

*Given by Jamal Suleiman Dir'awi (resident of al-Nu'man village, Bethlehem Governorate, West Bank)*

As a result of these and other recurring provocations, residents of the village almost never dare to exit the village at night, effectively cutting al-Nu'man off from the outside world.

### **1.3.3 Israeli Land Use Policy and its Effects**

In addition to the pressures imposed on residents by restrictions on movement and harassment at the checkpoint, Israeli construction and land use plans in the area have a direct and grave effect on village life.

#### **Settlement Expansion and Property Destruction**

The Israeli government considers the area of al-Nu'man village to be "white land." Under this classification, building permits may not be issued, regardless of the status of the residents. However, the Jerusalem Municipality's Master Plan 2000 shows a

planned expansion of Har Homa settlement (“Har Homa D”) next to al-Nu‘man village and indicates that it will consume 530 dunums of al-Nu‘man land.<sup>17</sup> It is expected to contain approximately 12,000 housing units. The site of the planned settlement has been confirmed by both the Israeli military, in discussions with al-Nu‘man residents, and by Bimkom’s projection plans of the area.<sup>18</sup>

Meanwhile, residents of al-Nu‘man are prohibited from building under the pretext of a blanket ban on constructing new structures or adding to existing structures. This has been enforced against the village since 1992. Those who have built houses have been unable to obtain licenses retroactively, and have faced steep fines and/or demolition of their houses. The Jerusalem Municipality ordered one house, on which a demolition order is pending, to be sealed – its windows and doorway filled with bricks – as a stopgap measure.

On 31 December 2005, two houses were demolished in the village. After village resident Nidal Ahmad al-Dir‘awi received a demolition warning from the Israeli Ministry of Interior for a house he had built on his family’s land in al-Nu‘man in 2000, he applied for a building license and agreed to pay a fine of 50,000 Shekels (approximately 12,000 US dollars). However, his petition for a permit was denied. On 31 December 2005, around 8:00 am, Israeli soldiers and bulldozers approached his home. When he tried to prevent them from coming further, they struck him and he lost consciousness.

*When I regained consciousness, I saw a number of Israeli workers removing the furniture from my house in a very bad way that destroyed much of it. For example, they were dismantling the cupboards and beds with crowbars and putting the plates and glasses in bags and throwing it all outside. . . . As soon as the furniture was taken outside, my brothers and I tried to take some things from inside, but they did not allow us to do so; they only permitted their workers to do it. As they pushed us several metres away from the house, a bulldozer and other machinery demolished the home completely, over the furniture that remained inside. It is worth noting that this house cost me around 30,000 US dollars to build. I saved a part of this amount from my salary over ten years of work as a teacher. When my house was demolished, I was 5,000 US dollars in debt in addition to the fine, which I started to pay and which will not be cancelled even though the house was demolished.*

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<sup>17</sup> The proposed site of “Har Homa D” can be seen in Annex 3.

<sup>18</sup> Annex 3.

### **Extract from Al-Haq Affidavit 3091/2006**

Given by Nidal Ahmad al-Dir'awi (resident of al-Nu'man village, Bethlehem Governorate, West Bank)

In addition to house demolitions, physical property in the village such as water pipes and electricity pylons have also been destroyed by Israeli authorities.

### **Land Confiscation and Indirect Transfer of Village Residents**

In addition to the prohibition on building, al-Nu'man residents have been the victims of significant land confiscation over the past three years. Discussions with Israeli authorities have led them to expect more to come. In April 2003, al-Nu'man residents were visited by man named Davier Kahana, escorted by Border Police officers. Mr. Kahana told the residents that he represented the relevant Israeli ministries in resolving potential problems with local residents affected by Israeli development plans. He asked whether any of the villagers would want to sell their land, and offered them compensation for houses built prior to 1993, claiming that the other houses were slated for demolition.<sup>19</sup> He stated that because the "area lies along the seam line between the Palestinian Authority and Jerusalem's jurisdictional area," Israel has "decided to leave the area as an open and uninhabited space."<sup>20</sup> Mr. Kahana's advice to the residents, therefore, was to leave the village; otherwise their situation would be "comparable to a tree without water,"<sup>21</sup> as their water and electricity supply would soon be disconnected, and the Wall would completely sever al-Nu'man's access to the rest of the West Bank.

*In the course of talking to me, Davier said that if the problems were only faced by one or two families, it would be easy to evacuate them, but that the whole village was too big to evacuate. He also said that the village residents would face problems after the Wall separated them from the West Bank in addition to the closure imposed in the direction of Jerusalem. Davier also said that the Israelis would cut water and electricity supplies to the village to encourage the villagers to evacuate voluntarily from the village, which would then have become like a cage.*

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<sup>19</sup> See B'Tselem, *Nu'man, East Jerusalem: Life Under the Threat of Expulsion*, September 2003, p. 20.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

*He pretended that he was sympathising with us and said that we would be like prisoners but with the privilege to be with our families. He added that the village would be the border with the Palestinian Authority in the future and therefore would have to be empty, so our presence there was illegal. Davier showed us a map with three roads that will pass through the village (two bypass roads and the third being the 800 metre wide Separation Wall). The Wall, he added, would swallow the land of the village and residents would be given permits to reach their land, which could be rejected for security reasons.*

**Extract from Al-Haq Affidavit 1237/2003**

*Given by Jamal Suleiman Dir'awi (resident of al-Nu'man village, Bethlehem Governorate, West Bank)*

On 21 July and 16 September 2003, residents of al-Nu'man received Israeli military orders confiscating part of the village's land for "military use" (construction of the Wall and a military base), while on 26 September 2003 a further 100 dunums of agricultural land were confiscated to construct a bypass road along the Wall.<sup>22</sup> In August and September 2005, more land was confiscated for the trade terminal being built next to al-Nu'man<sup>23</sup> and for a road connecting the village to the checkpoint in the Wall.<sup>24</sup> Another military order notified residents of a planned road leading to Har Homa settlement.<sup>25</sup> The continuous expansion of Har Homa since 1996, as well as future development plans regarding the planned route of the Jerusalem ring road through the village, can be seen on aerial maps annexed to this report.<sup>26</sup>

Furthermore, as Davier Kahana predicted, the conditions in al-Nu'man village have sharply deteriorated over the past three years and are now such that village residents face severe obstacles in continuing to live there. Although many residents are determined to remain on their lands against all odds, some are already beginning to leave.

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<sup>22</sup> ARIJ, *Al-Khas and Al Nu'man villages suffocated by the Israeli colonisation*, 1 October 2003.

<sup>23</sup> Israeli Military Order 155/5/T.

<sup>24</sup> Israeli Military Order 154/5/T.

<sup>25</sup> Israeli Military Order 52/05.

<sup>26</sup> See Annex 5 and Annex 3 respectively.

In 2005, seven families resident in al-Nu'man who hold Jerusalem IDs moved from al-Nu'man to the nearby village of Sour Baher. Remaining al-Nu'man residents have confirmed that these people moved out of fear of their Jerusalem ID being confiscated and changed to a West Bank ID, and because the movement restrictions imposed on them had made life in al-Nu'man unbearably difficult. Al-Haq was unable to obtain affidavits from any of the families concerned on account of their fear that they would lose their Jerusalem ID if it became known that they previously lived in al-Nu'man.

Young residents of al-Nu'man are unable to create a future for themselves in their village. Newly-married couples are prevented from building houses because of the ban on construction. Consequently, no young families can establish themselves in the village. Of the 13 expected to marry within the next two years, two are already building houses in al-Khas.<sup>27</sup> Nidal Ahmad al-Dir'awi, whose house was demolished at the end of 2005, has been obliged to live outside the village with his family in order to obtain adequate housing.<sup>28</sup>

The stunting of al-Nu'man's natural growth, the gradual enforced departure of residents and the obstruction of any incoming residents can all be attributed to Israel's systematic campaign to ultimately rid the area of its Palestinian inhabitants. Should these policies be allowed to continue, the small village will become a ghost town.

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<sup>27</sup> Jamal Suleiman Dir'awi, verbal statement 31 July 2006.

<sup>28</sup> Al-Haq Affidavit 3091/2006.

## 2. LEGAL ANALYSIS

### 2.1 Indirect Forcible Transfer of the Occupied Population

International humanitarian law, applicable in times of occupation as well as armed conflict, places various obligations on the Occupying Power. The *de jure* applicability of the Fourth Geneva Convention in the OPT is almost universally accepted, Israel itself being a notable exception, and has recently been confirmed by the International Court of Justice (ICJ).<sup>29</sup>

The residents of al-Nu‘man are protected persons under Article 4 of the Fourth Geneva Convention, which covers “those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.” International humanitarian law prohibits deportations and forcible transfers of such protected persons. Both deportation and forcible transfer relate to the imposed evacuation of individuals from the territory in which they reside, by the Occupying Power. Deportation presumes displacement beyond State borders, whereas forcible transfer relates to displacements within a State or occupied territory.<sup>30</sup> Article 49(1) of the Fourth Geneva Convention provides,

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

The International Committee of the Red Cross (ICRC) has confirmed that the prohibition of forcible transfer is enshrined in customary international law.<sup>31</sup>

<sup>29</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ (2004), para. 101.

<sup>30</sup> See *The Prosecutor v. Radislav Krstić*, Case No. IT-98-33-T, Trial Chamber I, Judgement, 2 August 2001, para. 521. This distinction was affirmed in *The Prosecutor v. Milomir Stakić*, Case No. IT-97-24-T, Appeals Chamber, Judgement, 22 March 2006, para. 300.

<sup>31</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law – Volume I: Rules* (Cambridge, Cambridge University Press, 2005), p. 457.

In essence, it is the absence of genuine choice by the individuals displaced that makes displacement unlawful. The authoritative commentary of the ICRC on the Fourth Geneva Convention confirms that Article 49(1) applies to transfers which are contrary to the free will of the protected persons.<sup>32</sup> Whether a transferred person exercised genuine choice depends on the prevailing situation, atmosphere, and all relevant circumstances, including the victim's vulnerability.<sup>33</sup> According to the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY), the term "forced", when used in the context of forcible transfer, is not to be interpreted in a restrictive manner.<sup>34</sup> The Appeals Chamber has held that it is "not to be limited to physical force"<sup>35</sup> but that "factors other than force itself may render an act involuntary, such as taking advantage of coercive circumstances."<sup>36</sup>

The ICTY's recent *Krajišnik* judgement provides a precedent that is relevant for al-Nu'man:

Serb municipal authorities and Serb forces created severe living conditions for Muslims and Croats which aimed, and succeeded, in making it practically impossible for most of them to remain.<sup>37</sup>

The Tribunal concluded that by creating such conditions through house searches, arrests and physical harassment, as well as cutting off water, electricity and telephone services, the Serb authorities succeeded in causing many Muslims and Croats to abandon their homes.<sup>38</sup> This was held to constitute, with regard to those who departed to other areas within the same territory, forcible transfer.<sup>39</sup> This concept of indirect forcible transfer is codified in international criminal law by virtue of Article 8(2)(b)(viii) of the Rome Statute of the International Criminal Court, which delineates the war crime of forcible transfer, stating that the transfer can occur "directly or indirectly."

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<sup>32</sup> ICRC, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva, ICRC, 1958), p. 279.

<sup>33</sup> *The Prosecutor v. Vidoje Blagojevic and Dragan Jokic*, Case No. IT-02-60-T, Trial Chamber I, Judgement, 17 January 2005, para. 596.

<sup>34</sup> See, for example, *The Prosecutor v. Milorad Krnojelic*, Case No. IT-97-25-T, Trial Chamber I, Judgement, 15 March 2002, para. 475.

<sup>35</sup> See *Stakić*, supra note 30, para. 281.

<sup>36</sup> *Ibid.*, para. 279.

<sup>37</sup> *The Prosecutor v. Momčilo Krajišnik*, Case No. IT-00-39-T, Trial Chamber I, Judgement, 27 September 2006, para. 729.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, para. 732.

Article 49(2) of the Fourth Geneva Convention does allow for two exceptions to the otherwise “absolute”<sup>40</sup> prohibition on forcible transfer of protected persons, namely when it is demanded by the security of the occupied population, or by imperative military reasons. However, the forcible transfer of this tiny village’s residents can in no conceivable way be demanded by the security of the Palestinian population or the imperative military necessity of Israel.

The severity of forcible transfer is highlighted by its inclusion as a “grave breach” of the Fourth Geneva Convention. Grave breaches are the most heinous of violations of the Convention. Article 147 brands as a grave breach the “unlawful deportation or transfer” of protected persons by an Occupying Power. Article 147 must be read in conjunction with Article 49, and, as such, encompasses within its ambit indirect forcible transfer, such as that which is occurring in al-Nu‘man. Article 146 requires High Contracting Parties establish universal jurisdiction over grave breaches of the Convention.

A person commits the war crime of forcible transfer if he or she carries out an act amounting to such transfer (material element or *actus reus*), and does so “wilfully and knowingly” (mental element or *mens rea*),<sup>41</sup> in the context of an armed conflict. The severe living conditions imposed on the residents of al-Nu‘man by the Occupying Power are gradually compelling these protected persons to move elsewhere. The comments of Davier Kahana in 2003 show that these conditions were constructed deliberately. Finally, the policy of indirect forcible transfer is carried out in connection with the Israeli occupation of the OPT and associated armed conflict. The actions examined in the present study therefore qualify as war crimes and imply the criminal liability of their authors. The criminalisation of deportations and forcible transfers has been codified in the Statute of the International Criminal Court.<sup>42</sup>

The grave breach and war crime of unlawful forcible transfer of the population of al-Nu‘man is the direct result of the combination of numerous other contraventions of

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<sup>40</sup> See *supra* note 32, p. 279.

<sup>41</sup> *Flick and Five Others Case*, in UNWCC, LRTWC, vol. IX, p. 3; 14 AD 266 at 269; *IG FARBEN Trial*, in UNWCC, LRTWC, vol. X, pp. 4 ff.; 15 AD 668; *A. Krupp Trial*, in UNWCC, LRTWC, pp. 74 ff; 15 AD 620.

<sup>42</sup> Articles 7(1)(d) – crime against humanity, 8(2)(a)(vii) – grave breach of the Fourth Geneva Convention, and 8(2)(b)(viii) – war crime.

international humanitarian and human rights law, namely property destruction, land appropriation, and violations of the rights of the villagers to freedom of movement, to education, to supplies and services, and to family life.

## 2.2 Factors Contributing to the Indirect Forcible Transfer

As the Occupying Power, Israel has an obligation to provide for the welfare of the population of the OPT. Article 27 of the Fourth Geneva Convention has been described as “the basis on which the Convention rests”<sup>43</sup> and indeed “the leitmotiv of the four Geneva Conventions.”<sup>44</sup> It articulates the fundamental principles, pertaining to protected persons, of respect (“for their persons, their honour, their family rights. . .”), protection (“against all acts of violence or threats thereof. . .”), and humane treatment. The acute failure of the Israeli authorities to respect their legal duties as they pertain to the occupied civilian population serves to further Israel’s goal of transforming al-Nu’man into an “open and uninhabited space.”<sup>45</sup> Israel’s violations of both international humanitarian and human rights law are contributing to the indirect forcible transfer of the residents of al-Nu’man, and take numerous forms.

### 2.2.1 Annexation of Occupied Territory

Contrary to the official Israeli argument that the Wall is temporary and that its sole purpose is security, the ICJ’s 2004 Advisory Opinion on the Wall found that “construction of the wall and its associated regime create a ‘fait accompli’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterisation of the wall by Israel, it would be tantamount to *de facto* annexation.”<sup>46</sup> The court stated that “it could not remain indifferent to certain fears expressed to it that the route of the wall will prejudice the future frontier between Israel and Palestine, and the fear that Israel may integrate the settlements and their means of access.”<sup>47</sup> This was based on the fact that “the wall’s sinuous route has been traced in such a way as to include within that area the great majority of the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem).”<sup>48</sup> These

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<sup>43</sup> See *supra* note 32, p. 200.

<sup>44</sup> *Ibid.*, p. 204.

<sup>45</sup> See *supra* note 19, p. 20.

<sup>46</sup> See *supra* note 29, para. 121.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*, para. 119.

settlements have been held by the UN Security Council<sup>49</sup> and the ICJ<sup>50</sup> to be illegal, constituting, in the words of the Security Council, a “flagrant violation”<sup>51</sup> of the Fourth Geneva Convention, Article 49(6) of which prohibits the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies.

The ICJ accordingly voiced its concern that these interrelated factors are contributing “to the departure of Palestinian populations from certain areas.”<sup>52</sup> In the case of al-Nu‘man, the construction of the Wall and its attendant restrictions, the prohibition on construction for villagers, and the planned expansion of the illegal Har Homa settlement, amount to de facto annexation of the area, as well as alteration of its demographic composition.

The General Assembly’s “Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States”<sup>53</sup> emphasises that, “No territorial acquisition resulting from the threat or use of force shall be recognized as legal.” The customary status of this norm was confirmed by the ICJ.<sup>54</sup> Israel’s annexation of part of the occupied West Bank violates this rule of customary international law.

## **2.2.2 Property Destruction and Land Confiscation**

### **International Humanitarian Law**

Homes, electricity pylons, water pipes and olive trees have been destroyed in the small village of al-Nu‘man, from which no military threat emanates. The house demolitions in the village were executed under the pretext of lack of building license. Israel routinely uses lack of planning in Palestinian areas, denial of construction permits, and “administrative” house demolitions as a means of compelling Palestinians to leave areas of land that are wanted for Israeli settlements, bypass roads, or to prevent Palestinians from establishing claims to land that Israel wants to keep in final-status agreements. In addition, Israel has confiscated land belonging to al-Nu‘man villagers

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<sup>49</sup> See, for example, SC Resolution 446 (1979), SC Resolution 452 (1979), SC Resolution 465 (1980).

<sup>50</sup> See *supra* note 29, para. 120.

<sup>51</sup> SC Resolution 465 (1980), § 5.

<sup>52</sup> See *supra* note 29, para. 122.

<sup>53</sup> GA Resolution 2625 (XXV), 24 October 1970.

<sup>54</sup> See *supra* note 29, para. 87.

for the purpose of constructing the Wall, a trade terminal and bypass roads, which are linked to the regime of the Wall.

Article 53 of the Fourth Geneva Convention provides,

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

Articles 46 and 52 of the Hague Regulations,<sup>55</sup> declaratory of customary international law, provide further protection for property in occupied territory. The ICRC has confirmed that the destruction or confiscation of private property is prohibited under customary international humanitarian law, unless required by “imperative military necessity.”<sup>56</sup>

In its broadest and simplest sense, military necessity means “doing what is necessary to achieve a war aim.”<sup>57</sup> It has consistently been construed extremely restrictively, with the judgements of the ICTY placing significant weight on the adjective “absolutely” as used in the Geneva Convention.<sup>58</sup> The Trial Chamber held in *Blaskic* that “an occupying Power is prohibited from destroying moveable and non-moveable property except where such destruction is made absolutely necessary by military operations.”<sup>59</sup> Similarly, the judgement in the post-World War II “Hostages” Trial established that, “The destruction of property to be lawful must be imperatively demanded by the necessities of war.”<sup>60</sup>

The property destruction and confiscation perpetrated in al-Nu‘man were not

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<sup>55</sup> *Regulations Annexed to the Fourth Hague Convention Respecting the Laws and Customs of War on Land of 18 October 1907.*

<sup>56</sup> See *supra* note 31, p.178.

<sup>57</sup> *The Prosecutor v. Stanislav Galic*, Case No. IT-98-29-T, Trial Chamber I, Judgement, 5 December 2003, para. 44 [Quoting ICRC, *Dictionary of International Law of Armed Conflict* (ICRC, Geneva, 1992)].

<sup>58</sup> See, for example, *The Prosecutor v. Mladin Naletilic and Vinko Martinovic*, Case No. IT-98-34-T, Trial Chamber I, Judgement, 31 March 2003, para. 577.

<sup>59</sup> *The Prosecutor v. Tihomir Blaskic*, Case No. IT-95-14-T, Judgement, Trial Chamber I, 3 March 2000, para. 157.

<sup>60</sup> *Trial of Wilhelm List and Others* in UNWCC, LTRWC, vol.VIII, at 66.

absolutely necessary in this sense and therefore, in addition to contributing to the indirect forcible transfer of the population of al-Nu'man, constituted violations of international humanitarian law in themselves. The ICJ, speaking of the Wall in general, confirmed this analysis:

the construction of the wall has led to the destruction or requisition of properties under conditions which contravene the requirements of Articles 46 and 52 of the Hague Regulations of 1907 and of Article 53 of the Fourth Geneva Convention.<sup>61</sup>

As previously discussed, the Israeli settlements in the OPT (including East Jerusalem) have been established in breach of international law.<sup>62</sup> Any confiscation of land in al-Nu'man driven by expansion of the adjacent settlement of Har Homa is consequently also illegal on this ground.

### **Human Rights Law**

When al-Nu'man residents have attempted to construct housing to meet their basic subsistence needs, it has been demolished by the Israeli authorities. One house stands sealed, pending demolition, and residents are prevented from undertaking further building of any kind. Nidal Ahmad al-Dir'awi, whose house was destroyed, was forced first to live in a small structure with his family, and now rents a small apartment in a neighbouring village.<sup>63</sup> This illustrates the present situation whereby residents of al-Nu'man are forced to endure crowded housing as their families expand, or move away from their village.

International human rights law, which is applicable in times of armed conflict and occupation, guarantees the right to adequate housing. The *de jure* applicability of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 in the OPT is almost universally accepted, Israel itself being a notable exception, and has recently been confirmed by the ICJ.<sup>64</sup> Article 11(1) of the ICESCR recognises the right of everyone to an adequate standard of living, including adequate housing. In this regard, the

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<sup>61</sup> See *supra* note 29, para. 132.

<sup>62</sup> See section 2.2.1 above.

<sup>63</sup> Al-Haq Affidavit 3091/2006.

<sup>64</sup> See *supra* note 29, para. 111.

Committee on Economic, Social and Cultural Rights reiterated in 2003 its “grave concern about the continuing practices by [Israel] of home demolitions [and] land confiscations. . . and its adoption of policies resulting in substandard housing and living conditions. . . of Palestinians in East Jerusalem.”<sup>65</sup> Al-Nu‘man is an outstanding example of Israeli practices violating the right to an adequate standard of living.

### 2.2.3 Movement Restrictions

The movement restrictions imposed on al-Nu‘man village, comprised of the closure of the road to East Jerusalem, the construction of the Wall on three sides of the village, and the checkpoint and ban on the entry of everyone but certain al-Nu‘man residents to the village, are part of the larger scheme of restrictions imposed on the Palestinian population in the OPT. These restrictions prevent holders of West Bank IDs from travelling to East Jerusalem, and now also prevent them from crossing the Wall in the direction of Israel, even on illegally annexed West Bank land. The Israeli authorities invoke the security of Israel’s population to ostensibly justify these restrictions.

The restrictions on movement for residents of al-Nu‘man contravene the right to liberty of movement, as laid out in Article 12(1) of the ICCPR. Article 12(3) provides that this right can be limited as long as the restrictions are “provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant”. However, the Human Rights Committee (HRC) has clarified that, in adopting laws that restrict movement, “States should always be guided by the principle that the restrictions must not impair the essence of the right; the relation between the right and the restriction, between norm and exception, must not be reversed.”<sup>66</sup> The HRC has also stated that restrictions must comply with the principles of necessity and proportionality, in that restrictive measures “must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.”<sup>67</sup>

The ICJ found that the construction of the Wall and the establishment of a closed zone

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<sup>65</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Israel*, UN Doc. E/C.12/1/Add.90, 5-23 May 2003, para. 26.

<sup>66</sup> HRC, *General Comment No. 27: Freedom of Movement*, (Article 12), UN Doc. CCPR/C/21/Rev.1/Add.9, 2 November 1999, para. 13.

<sup>67</sup> *Ibid.*, para. 14.

between the Green Line and the Wall “imposed substantial restriction on the freedom of movement of the inhabitants of the Occupied Palestinian Territory”<sup>68</sup> and that “the construction of the wall and its associated regime impede the liberty of movement of the inhabitants of the Occupied Palestinian Territory (with the exception of Israeli citizens and those assimilated thereto) as guaranteed under Article 12, paragraph 1, of the International Covenant on Civil and Political Rights.”<sup>69</sup> Furthermore, with regard to restrictions on the right to liberty of movement, the Court found that the requirements of necessity and proportionality were not met in the construction of the Wall.<sup>70</sup>

It is therefore clear that the construction of the Wall on three sides of al-Nu‘man, the delaying and harassment of residents entering and exiting their own village, as well as the closure of the village to outsiders, amount to a violation by the Israeli authorities of the right to freedom of movement.

#### **2.2.4 Disruption of Access to Supplies and Services**

##### **International Humanitarian Law**

The difficulties that residents of al-Nu‘man face in obtaining food and essential supplies, the interruptions they have experienced in electricity and water supply, and the restrictions on access to medical services, are all in violation of Israel’s obligations under international humanitarian law.

Article 55 of the Fourth Geneva Convention provides,

To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.

According to the ICRC’s authoritative interpretation, this article creates “a definite obligation to maintain at a reasonable level the material conditions under which the population of the occupied territory lives.”<sup>71</sup> Furthermore, “supplies for the population

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<sup>68</sup> See *supra* note 29, para. 133.

<sup>69</sup> *Ibid.*, para. 134.

<sup>70</sup> *Ibid.*, para. 136.

<sup>71</sup> See *supra* note 32, p. 310.

are not limited to food, but include medical supplies and any article necessary to support life.<sup>72</sup> With no shops or pharmacies in al-Nu'man, the villagers' access to food and medical supplies is severely impaired by the presence of the permanent checkpoint.

Additionally, Article 56 of the Fourth Geneva Convention states the Occupying Power's duty of ensuring that "medical personnel of all categories shall be allowed to carry out their duties." Healthcare personnel, including ambulance drivers and any people engaged in medical work "must therefore be exempted from any measures (such as restrictions on movement, requisitioning of vehicles, supplies or equipment) liable to interfere with the performance of their duty."<sup>73</sup>

By restricting the access of al-Nu'man's residents to necessary supplies, as well as imposing movement restrictions with no apparent exemption for medical personnel, Israel is in clear breach of its obligations under Articles 55 and 56 of the Fourth Geneva Convention.

### **Human Rights Law**

Although the residents of al-Nu'man are still by and large able to access medical services outside the village, and are currently managing to obtain sufficient food and supplies, they do so with great difficulty. Travel time for any activity by the residents outside the village has increased exponentially, while access to the village for suppliers and service providers is now virtually impossible. Services such as water and electricity have been interrupted for prolonged periods of time, while gas delivery and garbage disposal have ceased.

The construction of the Wall next to al-Nu'man village and the attendant restrictions on residents' mobility violate several rights under the ICESCR, including the right to an adequate standard of living, provided for in Article 11, and the right to health, guaranteed by Article 12. Indeed, in its Advisory Opinion on the Wall, the ICJ found violations of the Palestinian population's rights to health and to an adequate standard of living,<sup>74</sup> which are clearly applicable to residents of al-Nu'man. Thus, al-Nu'man's residents are being systematically denied basic human rights pertaining to their living conditions.

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<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*, p. 314.

<sup>74</sup> See *supra* note 29, para. 134.

## 2.2.5 Disruption of Access to Education

### International Humanitarian Law

The al-Nu'man checkpoint, and the harassment faced when crossing it, create great difficulties for students in accessing their schools. Article 50(1) of the Fourth Geneva Convention provides that the "Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children." Accordingly, the occupying authorities are bound not merely to refrain from adversely affecting the workings of educational institutions in the occupied territory but "also to support them actively and even encourage them if the responsible authorities of the country fail in their duty."<sup>75</sup> As the Occupying Power in the OPT, Israel, by impeding access to educational institutions, is clearly not fulfilling its obligations under Article 50 of the Fourth Geneva Convention.

### Human Rights Law

Because of restrictions on movement in and out of the village, the students and schoolchildren of al-Nu'man experience regular delays and difficulties in reaching their place of education. Article 13 of ICESCR protects the right to education, while under Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) States Parties undertake to safeguard that right "without distinction as to race, colour, or national or ethnic origin." In addition, states are obliged under Article 28 of the Convention on the Rights of the Child (CRC) to "take measures to encourage regular attendance at schools and the reduction of drop-out rates." Thus, Israel has undertaken legal obligations to "respect, protect and fulfil" the essential features of the right to education, including accessibility,<sup>76</sup> and to ensure that education is within "safe physical reach"<sup>77</sup> for those that it serves.

In its Advisory Opinion on the Wall, the ICJ found that the Wall and its associated régime of movement restrictions impede the exercise of the Palestinian population's right to education as proclaimed in the ICESCR and in the CRC.<sup>78</sup> The difficulties and delays faced by the students of al-Nu'man in reaching their educational institutions is one example of this systematic violation.

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<sup>75</sup> See *supra* note 32, p. 286.

<sup>76</sup> Committee on Economic, Social and Cultural Rights, *General Comment 13: The Right to Education*, UN Doc. E/C.12/1999/10 (8 December 1999), § 50.

<sup>77</sup> *Ibid.*, § 6(b).

<sup>78</sup> See *supra* note 29, para. 134.

## 2.2.6 Disruption of Family Life

### International Humanitarian Law

The relatives of al-Nu'man's residents are precluded from entering the village to visit their loved ones. The division of wives and husbands, and parents and children, within an occupied territory, based on the residency listed on their ID card, contravenes the protection accorded to the family under international humanitarian law. Article 27 of the Fourth Geneva Convention provides that "protected persons are entitled, in all circumstances, to respect for. . . their family rights." According to the ICRC, this provision is "intended to safeguard the marriage ties and that community of parents and children which constitutes a family."<sup>79</sup> Moreover, Article 46 of the Hague Regulations states that the family rights of an occupied population must be safeguarded. In the case of al-Nu'man, these provisions are being infringed by Israel.

### Human Rights Law

Human rights law also provides protection for the family. Preventing family members from living together because some members have or do not have al-Nu'man listed as the place of residence on their ID, and preventing family members from visiting their parents or siblings in al-Nu'man for the same reason goes against the right to family life. The ICESCR states that the "widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society,"<sup>80</sup> with the ICCPR reiterating that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State."<sup>81</sup> By inhibiting, rather than protecting, the natural family life of al-Nu'man's residents, Israel is openly defying these obligations.

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<sup>79</sup> See *supra* note 32, p. 202.

<sup>80</sup> ICESCR, Article 10(1).

<sup>81</sup> ICCPR, Article 23(1).

## CONCLUSION

The hardships imposed on the population of al-Nu‘man are indicative of a concerted and deliberate policy on the part of Israel to force the villagers to leave. The Occupying Power’s systematic property destruction, land appropriation and *de facto* annexation, physical and psychological harassment and restrictions on movement all combine to create living conditions so unbearable as to bring about the gradual indirect forcible transfer of residents out of the village.

*We feel isolated and under siege. The authorities, so we see, are trying to make things hard for us, to molest us and our children and to cut us off from our entire surroundings, all in order to hinder us and to cause us despair on the way to abandoning our village.*

***Extract from affidavit given to Labib Habib, Adv., by Yousef Dir’awi***

Indirect forcible transfer is prohibited under international humanitarian law, constitutes a war crime, and a grave breach of the Fourth Geneva Convention. Article 1 of the Fourth Geneva Convention, which the ICJ has held to represent customary international law,<sup>82</sup> imposes an inter-state obligation on the High Contracting Parties to “respect and ensure respect for the present Convention in all circumstances.” The legal regime of grave breaches enunciated in Articles 146-148 of the Fourth Geneva Convention supplements and expands on the legal duties created under Article 1. Article 146 places on all High Contracting Parties the duty to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches detailed in Article 147, including “unlawful deportation or transfer” of civilians. Each High Contracting Party is obliged to search for such persons and bring them to justice, either before a domestic court or a foreign court, by regular extradition.<sup>83</sup>

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<sup>82</sup> See *Nicaragua v. United States of America*, ICJ (1986), para. 220, *Legality of the Threat or Use of Nuclear Weapons*, ICJ, (1996), para. 79.

<sup>83</sup> See *supra* note 32, p. 590.

The violation of the basic rights of Palestinians, such as the residents of al-Nu'man, will remain a fundamental feature of the occupation for as long as Israeli authorities are not held accountable for their violations of international law. Third states must exercise the legal means available to them, including the exercise of universal jurisdiction, to enforce the rule of law in the OPT. Impunity for war crimes is "a betrayal of our human solidarity"<sup>84</sup> with the victims of those crimes.

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<sup>84</sup> M. Cherif Bassiouni, 'The Normative Framework of International Humanitarian Law: Overlaps, Gaps and Ambiguities' (1998) 8 *Transnational Law and Contemporary Problems* 199, p. 237.

# ANNEXES

## ANNEX 1: AL-DAR'AWI ET AL V. MINISTER FOR DEFENCE ET AL, HCJ 6181/04

[Unofficial Translation]

**At the Supreme Court**

**HCJ 6181/04**

**Sitting as a High Court of Justice**

Before:                   The hon. President A. Barak  
                              The hon. Vice President M. Heshin  
                              The hon. Judge E. Rivlin

The Appellants:       Ahmed Al-Dar'awi and 65 others  
                              - Versus -

The Respondents:     1. The Minister of Defense  
                              2. The Minister of Internal Security  
                              3. The Military Commander of Judea and Samaria

For the Appellants:   Adv. Shlomo Lacker

For the Respondents: Adv. Yuval Roitman

### **Ruling**

This appeal concerns the route of the separation fence in the area of Nu'man village, which is located in the area of Jerusalem. The appellants requested to change this route and to grant them temporary dwelling permits until the Ministry of Interior makes its decision on their requests to grant them permanent resident status. Alternatively, the appellants asked that a gate be erected that would enable passage from their houses to the Bethlehem area.

The sides declared (on 17.3.05) that they have arrived at an agreed resolution, which we give the standing of a ruling. According to the main elements of this resolution, the respondents commit not to block the road that connects the area of Nu'man village to Judea and Samaria, and to allow the movement of the appellants and their vehicles from that area to the village grounds and back. Also the respondents commit to improve the safety of the route of the road leading from the village to the Judea and Samaria, and to connect it to the area where the temporary passage through the security fence will be built. As for the dwelling of the appellants in the area of the village, the sides agreed to turn to an authorised body, whose identity will be decided by the respondents in a notice that will be given to the appellants, requesting to allow their continued dwelling and residence in the area. The appellants, for their part, commit to fully cooperate with the body that will be decided. 45 days after the notice is sent to the appellants, the order given by this court (on 30.6.04) which forbade the arrest any of the appellants for illegal presence in Israel will be cancelled. In parallel, the respondents commit not to hinder the normal course of life of the appellants, including avoiding arresting and deporting any of the village residents who present an orderly request according to the conditions detailed in the notice. This commitment will stay in effect until 45 days after the issuing of a final decision concerning the request of each appellant. The respondents emphasise that they will not deport from Israel any of the appellants that dwell in his area of residence in the village, in the context of enforcing the law of entry to Israel or the enforcement of instructions, orders, or regulations concerning leaving the area, until 45 days have passed from the granting of a final decision on his request. To remove doubt, the respondents clarify that they will be permitted to refuse the request of whoever does not cooperate with the inspection procedures. They also clarify that this resolution does not prevent them from acting to enforce the laws on presence in Israel upon any of the appellants who shall be found outside the boundaries of the village, inside the territory of the State of Israel. Finally, the appellants retain their right to appeal again against a decision by the respondents to refuse a specific request.

We note the declaration of the appellants, which was given without the consensus of the respondents, according to which they insist that there will not be a breach of their property rights, their freedom of movement, and their right to reside and conduct a functional life in the village of Nu'man, as a result of the erection of the security

fence. The appellants also declare their right to continue residing at their homes in the village and to receive normal municipal services. Finally, the appellants declare their right to appeal again to this court following final answers concerning their status in their place of residence.

Concomitant to the aforementioned and to the agreed resolution to which we give the status of a ruling, we order the cancellation of the appeal without ordering expenses.

Given today 22.03.05

## **Notice on behalf of the sides**

In accordance with the decision of the honourable court, the sides are honoured to inform the honourable court as follows:

1. The respondents commit that the existing road connecting Hirbet Mazmuriya (Nu'man village) to Judea and Samaria will not be blocked, and that the movement of the appellants and their vehicles will be possible from Judea and Samaria to the area of the village and from the village to Judea and Samaria.

In addition, the respondents will carry out local repairs on the road leading from the village to Judea and Samaria, in order to improve its safety, and to connect it to the area where the temporary passage through the security fence will be built. A copy of a map detailing the route of the alternate road will be given to the appellants' attorney one week before the start of works for preparing the road.

2. In all that concerns the continued dwelling of the appellants in the village, the sides agree that the appellants will have to turn, on an individual basis, to the authorised body that will be determined by the respondents and of which the appellants will be notified in a notice sent to their attorney (hereafter: "the notice"), requesting that it allow their continued dwelling and residence in the village. The appellants will append to their individual requests all the documents requested by the respondents, as far as they have them, or that they can obtain, with reasonable effort. The appellants commit to fully cooperate with the authorised body in the inspection procedure.

3. The sides agree that the order instructing the respondents to avoid arresting the appellants in their homes and the area of Hirbet Mazmuriya (Nu'man village) and deporting the appellants from their homes, due to illegal presence in Israel, will be cancelled 45 days after the sending of the notice according to clause 2 above.

In parallel, the respondents commit to avoid hindering the normal course of life of the appellants in the area of Hirbet Mazmuriya (Nu'man village), including avoiding arresting in their homes due to illegal presence in the area of Hirbet Mazmuriya (Nu'man village), and deporting from their houses in the area of Hirbet Mazmuriya (Nu'man village), of any of the appellants who will present an orderly request according to the conditions that will be detailed in the notice. This commitment will remain in effect for 45 days after the giving of the final decision concerning each appellant, specifically, that his continued dwelling and permanent residence in the village would be allowed.

It must additionally be noted that the aforesaid does not reduce the right of the respondents to act according to any law valid in Israel to enforce law and public order, excepting actions against the appellants in the context of enforcing the law of entry to Israel, as long as they are dwelling in their area of residence, in the village of Hirbet Mazmuriya (Nu'man village), up to 45 days after giving the notice, or after giving a final decision in their matter, as the case may be.

And for the avoidance of doubt – the respondents will not deport from Israel any of the appellants who will dwell in his area of residence in the village of Mazmuriya (Nu'man), in the context of enforcing the law of entry to Israel or the enforcement of instructions, orders, or regulations concerning leaving the area, until 45 days have passed from giving a final decision on his request. This instruction will only be valid concerning an appellant who will approach the respondents with a request within 45 days from the date of the notice.

4. For the avoidance of doubt let it be clarified, that the respondents will be permitted to refuse the request on whoever does not fully cooperate with the inspection procedures. Also let it be noted, that this notice does not prevent the respondents from acting to enforce the laws on presence in Israel upon any of the appellants who shall be found outside the boundaries of the village, inside the territory of the State of Israel. The appellants retain their right to appeal again against a decision to refuse their request.

5. The sides agree that the order issued by the hon. Judge Heshin on 30.6.2004 will be cancelled, concomitant to an immediate enactment of the respondents' commitments as detailed in this notice, and that the appeal shall be cancelled.
6. Appended is a declaration by the appellants. This declaration is on behalf of the appellants only. The declaration is not agreed to by the respondents, and they reject it completely.

The appellants would like to declare the following:

1. They insist on their right that there will not be a breach of their property rights, their freedom of movement, and their right to reside and conduct a functional life in the village of Nu'man, as a result of the erection of the security fence.
2. The appellants insist on their right to continue residing at their homes in the village of Nu'man, homes which are their private property and which were built on lands that belong to them and to their families since before 1967.
3. The appellants insist on their right to receive normal municipal services, such as connection to the electricity grid and to a water line, and to planning that will enable the issuing of building permits to existing buildings and the issuing of building permits to planned buildings.
4. If, following final answers that the respondents will give to requests on behalf of the appellants to settle a permanent status in their area of residence, there will be expected a breach of the appellants' rights as detailed above, the appellants will retain their right to appeal again to the honourable High Court of Justice.

This declaration, as detailed above, is not agreed to by the respondents.

## ANNEX 2: COMPLAINT FILED BY LABIB HABIB TO STATE PROSECUTOR'S OFFICE

[Unofficial Translation]

Labib G. Habib, Adv.  
3 Al-Masaudi Street  
Jerusalem  
31 October 2006

Mr. Yuval Roitman  
HCJ department  
Salah A-Din 29  
Jerusalem

### **Re: Nu'man village**

Dear Sir,

On 28.10.06 I accompanied a resident of al-Nu'man village, in his vehicle, in order to reach the village. We reached the Border Police position permanently stationed at the entrance to the village and requested to enter.

A border policewoman named Noa Giv'oni (identification number 7689271) received us. She demanded to conduct a search of the vehicle, giving no reason, and despite the facts that I identified myself to her as a lawyer, and that she knows the village resident who was with me in the vehicle.

After conducting the search, she refused to permit me entry to the village, on the basis that I am not registered as a resident of the village, although she knew that I am a lawyer holding an Israeli ID. My explanation that I must enter the village for legal dealings pertaining to matters of the village was of no avail.

Another border policeman who arrived subsequently, named Munir Serhan (identification number 753843) also refused to let me in, and told me that I should enter the village from another side, in spite of the fact that this is the only possible entry, which the Border Police had committed not to block.

It must be noted that when we had arrived there, another resident of the village had been standing and waiting for over an hour, with the policewoman refusing to allow him in. I notified her that the man is a resident of the village, and that she must check the list of residents that had been given to the Border Police in order to ease the entry of the residents, but she refused to check.

Even after the policemen agreed to check, and discovered that he is a resident of the village, the policeman Mr. Serhan refused to allow him in claiming that he had “not spoken nicely to the policewoman”.

Beyond the impolite and humiliating treatment that I, along with the residents of the village, experienced at the hands of the policemen, it appears that the policemen believe that they are the prison-guards of the village residents, and behave accordingly.

The entry of the residents to the village has long become a complicated task that involves humiliation and even endangerment of their lives. Only recently the policemen shot a round of gunfire towards the village residents, without any reason or justification. The aforementioned policewoman makes sure to regularly harass and humiliate the entrants at the gate.

This complaint is added to the chain of complaints that I have submitted, and which have yet to receive any reaction, and which create a sad picture of a deliberate and continuous attempt to abuse the residents and bring about their expulsion.

(signed)

Labib G. Habib, Adv.

[Unofficial Translation]

State of Israel  
State Prosecutor's Office

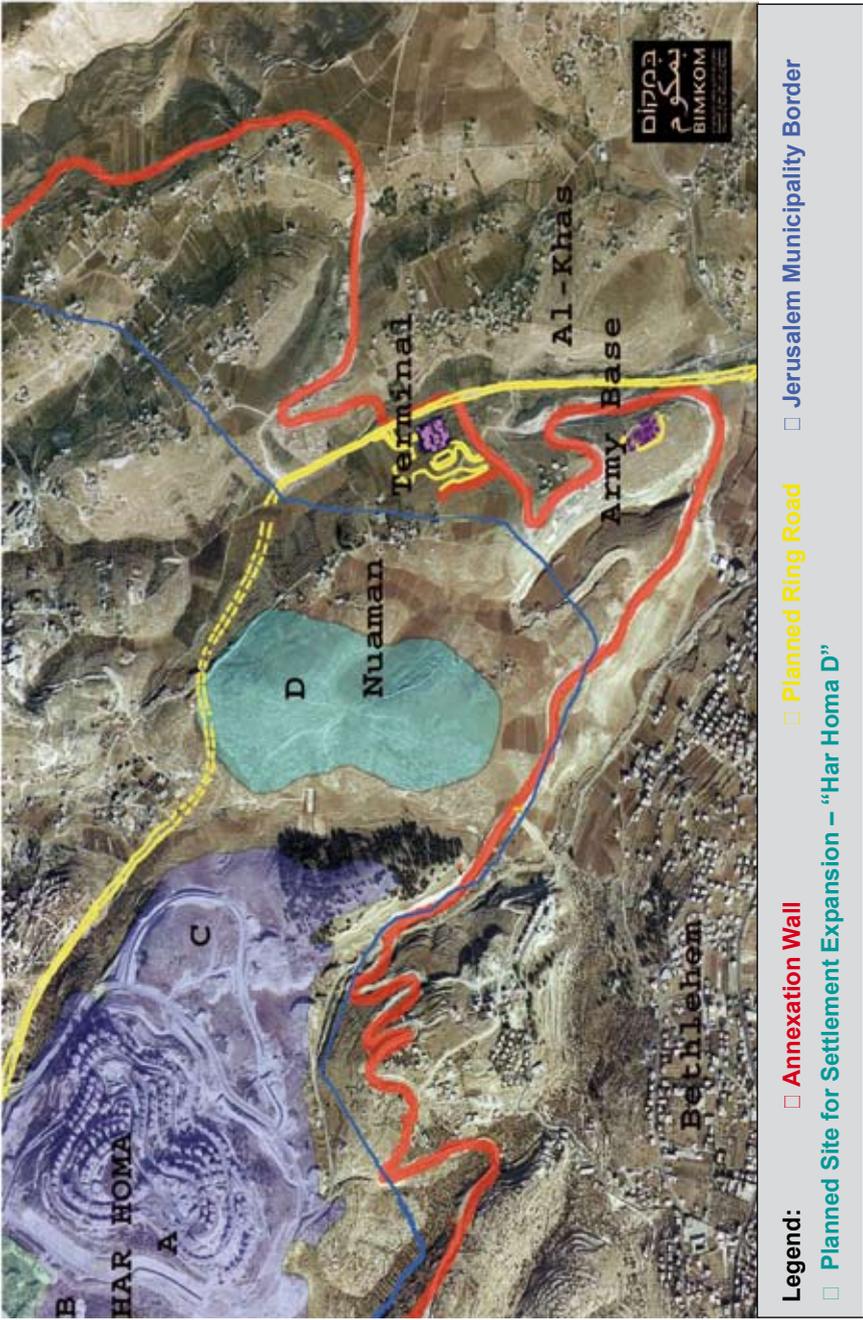
To: Labib Habib, Adv.

**Re: Nu'man village**

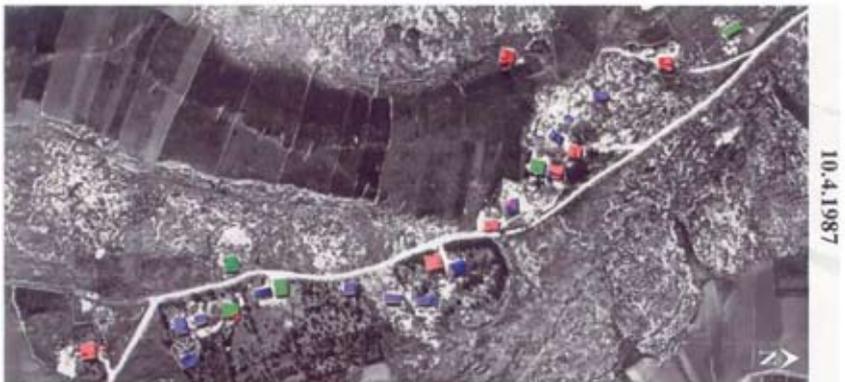
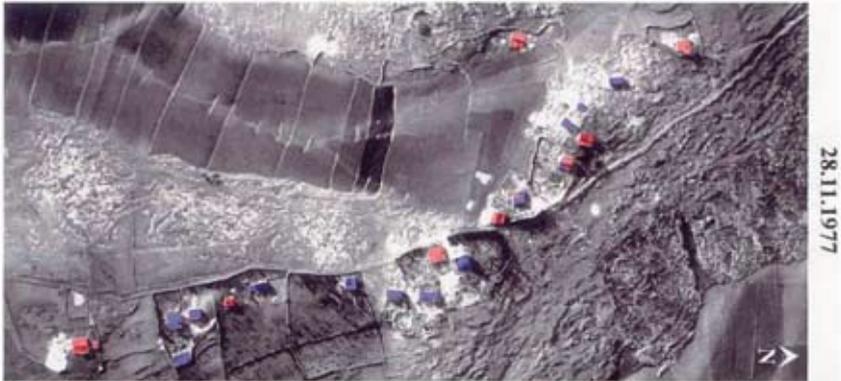
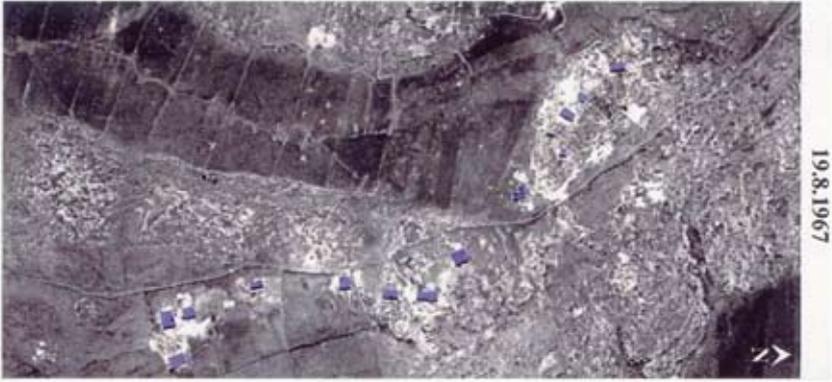
1. I confirm receipt of your communication of 31.10.06.
2. Your communication has been transferred to Adv. Ronen Leibowitz from the legal office at the police, Jerusalem district, and he will reply to you directly.

Sincerely,  
Adv. Yuval Roitman

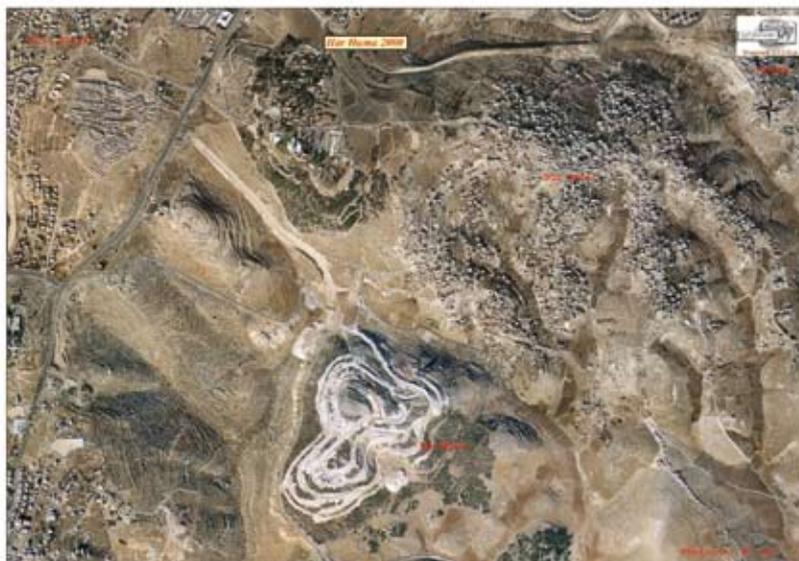
ANNEX 3: AERIAL PLANS SHOWING PLANNED EXPANSION OF HAR HOMA SETTLEMENT



ANNEX 4: DEVELOPMENT OF AL-NU'MAN VILLAGE 1967-1987



## ANNEX 5: CONTINUOUS EXPANSION OF HAR HOMA SETTLEMENT SINCE 1996



Map 11 (oma 2001)

