



***Building Walls, Breaking Communities:
The Impact of the Annexation Wall on
East Jerusalem Palestinians***

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Preface

This report has been documented, researched and written within the context of Al-Haq's Campaign, *No to Collective Punishment: Promoting and Protecting the Rights of the Palestinian Civilian Population of East Jerusalem*.

The campaign was launched in the first months of 2005, and has since then been actively responding to violations of human rights and humanitarian law in East Jerusalem through focused advocacy activities, exploring possibilities for legal challenges to Israeli practices in occupied East Jerusalem, and consistently monitoring and documenting violations of the rights of the Palestinian population of East Jerusalem guaranteed under international law.

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1. INTRODUCTION

Since Israel's conquest and *de facto* annexation of East Jerusalem and 70,000 dunums¹ of the surrounding West Bank in June 1967,² East Jerusalem has grown to be a concept that is difficult to define as a geographic, demographic or political space. If the expanded Israeli municipal boundaries are taken as a reference point, it must be noted that these boundaries were ignored by both the Israeli authorities and Palestinians for the greater part of the four decades of occupation. Israel extended the boundaries in certain areas, and built settlements that it claims as part of Jerusalem well outside these municipal boundaries. At the same time East Jerusalem continued as the economic, social and cultural hub for Palestinian communities located outside the municipal boundaries, and Palestinians from within the municipal boundaries relocated outside due to the cheaper cost of living. At the political level both Palestinians and the international community view East Jerusalem as occupied, and refuse Israel's claim to sovereignty over the territory annexed in 1967. Nonetheless, Israel has taken substantial measures to impose its claim of sovereignty over East Jerusalem and part of the surrounding West Bank.

Securing control over the entirety of Jerusalem has been a persistent objective of Israel's occupation of the West Bank. However, with the beginning of the Oslo process, the Israeli authorities intensified already substantial efforts to isolate and consolidate control over annexed East Jerusalem and its surroundings.³ Initially this isolation was pursued through the imposition of severe movement restrictions, including the requirement that those Palestinians without East Jerusalem identity cards obtain a special permit to enter East Jerusalem. These permits were hard to come by at best, with the outbreak of the current *intifada* in 2000 used as a pretext to further increase the isolation of West Bank geographical areas, including East Jerusalem, from each other. In parallel, Israel continued its efforts to cement demographic and territorial control over occupied East Jerusalem and its surroundings through an aggressive settlement policy and associated exclusive-use road network. Finally, in 2002 Israel began the construction of the Annexation Wall⁴ in and around East Jerusalem, consolidating and punctuating its policies of isolation and control with an impermeable and divisive barrier.

It must be emphatically stated from the outset that the international community, upholding the principles of international law, has never recognised Israel's formal annexation efforts as valid. East Jerusalem, both within and outside the municipal boundaries, remains occupied territory. The

¹ 1 dunum is equivalent to 1,000 square metres

² Alison Hodgkins, *The Judaization of Jerusalem – Israeli Policy Since 1967*, (Jerusalem, Passia, 1996), Chap. 1, at http://www.passia.org/index_publication.htm

³ Jan de Jong, "The Geography of Politics: Israel's Settlement Drive After Oslo," pg. 78, in *After Oslo*, Giacaman and Jorund Lonning (eds), (Chicago, Pluto, 1998).

⁴ The terminology "Annexation Wall" is that employed by the UN Special Rapporteur on the Situation of Human Rights in the OPT, and is adhered to by Al-Haq. Other common terminologies are, *inter alia*: Separation Barrier, Security Fence, *Apartheid* Wall.

protections afforded to Palestinians, as well as Israel's obligations under international law, are no different in East Jerusalem to elsewhere in the Occupied Palestinian Territories (OPT).

This report focuses on those Palestinian communities that are profoundly intertwined with East Jerusalem, but find themselves cut off by the Annexation Wall. In these communities, the Wall has precipitated a process of economic and social decline that is imposing severe hardship on their Palestinian inhabitants.

The damage caused to the social and economic fabric of Palestinian East Jerusalem by the construction of the Annexation Wall results from the interaction of two distinct impacts. The first is the Wall's physical enforcement of the largely illusory separation between municipal East Jerusalem, the surrounding areas, and the rest of the West Bank, which severely limits Palestinian access. The second is the confiscation of land and destruction of property that results from the construction of the Wall. Combining these two impacts, the Annexation Wall is the final link assuring Israel's illegal dominion over East Jerusalem. It redefines the borders of Jerusalem to optimally serve Israel's territorial, demographic and political ambitions, to the extreme detriment of Palestinians both within, and outside the Wall. The route of the Wall, following the municipal boundaries in places, and in others weaving around settlements and Palestinian villages, towns and neighbourhoods, is a palely concealed effort to secure the maximum land for the expansion of settlements, while the lack of access isolates East Jerusalem from the rest of the West Bank.

In focusing on the impact of the Annexation Wall around Jerusalem, this report does not address the wide range of Israeli measures imposed within the municipal boundaries of East Jerusalem that adversely affect the lives of the Palestinians living there, or those that hope to obtain residence. Limitations on land use, lack of services, the discriminatory planning schemes that provide an administrative pretext for the destruction of Palestinian property, and the plethora of legislative measures aimed at reducing the number of Palestinians resident in municipal Jerusalem, while essential in understanding the plight of Palestinian East Jerusalem, do not directly relate to the route or construction of the Annexation Wall and are therefore largely excluded from discussion.

The final section of the report will address the legal implications of the construction of the Annexation Wall around Jerusalem from the perspective of international human rights and humanitarian law. In doing so it creates a framework in which Israeli policy can be addressed and challenged.

2. THE ANNEXATION WALL AROUND JERUSALEM

Since the occupation of East Jerusalem in June 1967, the Israeli authorities have engaged in sustained efforts to establish total Israeli control over the entirety of the city of Jerusalem, including Palestinian East Jerusalem and its surroundings. Beginning in 1967 with the unilateral expansion of the municipal boundaries of West Jerusalem by 70,000 dunums, partially or fully engulfing 28 Palestinian villages and their lands,⁵ successive Israeli governments have attempted to secure the *de facto* annexation of East Jerusalem by implementing measures to isolate it from the rest of the West Bank, expropriate Palestinian land, destroy Palestinian property and housing, curb Palestinian demographic and geographic expansion, and reduce the number of Palestinians resident in East Jerusalem. In parallel Israel has aggressively pursued the construction and expansion of illegal settlements and encouraged the transfer of significant portions of its civilian population to occupied East Jerusalem. Veiling itself within the hollow politicking of the Oslo process, and the ‘security’ response to the outbreak of the current *intifada*, Israel added the total control of Palestinian movement to and from the city and its surroundings⁶ to its pre-existing control of land, building and residency in occupied East Jerusalem and its surrounding areas. The most recent measure, the construction of the Annexation Wall around Jerusalem, physically re-enforces this control and furthers the isolation of occupied East Jerusalem. The final route of the Wall, approved by the Israeli Cabinet on 10 July 2005, is the final step towards consolidating Israel’s illegal annexation of occupied East Jerusalem and its surrounding areas.

While no exact figures specific to Jerusalem are as of yet available, in its analysis of the projected route of the Annexation Wall, the United Nations Organisation for the Coordination of Humanitarian Affairs (UNOCHA) calculated that 10.1 percent of the entire West Bank, including East Jerusalem, would be between the Annexation Wall and the Green Line.⁷ If the segments around the West Bank settlements of Ma’ale Adumim and Ariel were removed from this calculation then the amount of occupied land between the Wall and the Green Line is 6.8 percent of the West Bank, including East Jerusalem.⁸ It must be noted that the Wall to the north and south of Jerusalem, and most of the eastern section, were already built, or under construction by February’s inter-ministerial decision. The amount of land affected is increased by the implementation of buffer zones that stretched on average 150-200 metres from the Wall into the OPT, on which no new construction was allowed.⁹

Further, UNOCHA notes that,

⁵ Badil, *Ruling Palestine: A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine*, (Geneva, Badil and COHRE, 2005), page 125

⁶ On movement restrictions in general see the chapter on movement restrictions in: Al-Haq, *Waiting for Justice*, (Ramallah, Al-Haq, 2005).

⁷ The 1949 Armistice Line, considered the *de facto* border between Israel and the West Bank.

⁸ UNOCHA, *Preliminary Analysis: The Humanitarian Implications of the February 2005 Projected West Bank Barrier Route*, February 2005, page 2

⁹ *Ibid.*

[t]he Barrier will also affect those people living east of it who may need to cross the Barrier to get to their farms, jobs and services. More than 500,000 Palestinians, for example, live within a one kilometre strip of the Barrier.¹⁰

2.1 The Annexation Wall and Access to East Jerusalem

While the economic and social decline of Palestinian East Jerusalem, its surroundings, and the West Bank as a whole, has substantially accelerated since the beginning of the Oslo process and the outbreak of the current *intifada*,¹¹ the origins of this decline in East Jerusalem are found in Israel's 1967 redefinition of the municipal boundaries of Jerusalem which sought to serve its ambitions of annexation. The cornerstone of Israeli policy in East Jerusalem is to ensure and maintain the substantial demographic superiority of the Jewish Israeli population of Jerusalem over the Palestinian population mainly in the east of the city, and render the entirety of Israeli-defined Jerusalem impossible to partition.

In pursuit of the policy of maximum land, minimum Palestinians, the Israeli-defined municipal boundaries of Jerusalem dislocated Palestinian towns, villages and neighbourhoods whose social and economic fabric were deeply intertwined. Shortly after the occupation of East Jerusalem in 1967, the Israeli authorities gave those Palestinians that were deemed to live within the newly-defined municipal borders residency status, denoted by a blue, 'East Jerusalem' identity cards. Green, 'West Bank' identity cards were imposed on those Palestinians outside the municipal boundaries. In 1967, the village of Sheikh Sa'ed, to the southeast of Jerusalem, found itself to be situated outside Jerusalem's newly-defined municipal boundaries, in the West Bank.

The village is considered a part of Jabal al-Mukabber, but has been separated from it since 1967, after the demarcation of the borders of the Jerusalem Municipality. Accordingly, many of the residents of al-Sheikh Sa'ed hold West Bank identity cards. The population of the village is approximately 1500 persons, while it was 3000 two years ago, because approximately half the residents of al-Sheik Sa'ed left when the Israeli army started the excavation work for the construction of the Separation Wall. I would like to point out that the residents who left al-Sheikh Sa'ed hold Israeli [East Jerusalem] and West Bank IDs. I hold a West Bank ID, while three of my family holds Israeli [East Jerusalem] IDs, and so does my wife.

Extracts from Al-Haq Affidavit No. 2196/2005

Given by: Muhammad 'Ali Ibrahim 'Weisat (Resident of al-Sheikh Sa'ed, Jerusalem Governorate)

¹⁰ *Ibid.*

¹¹ See generally World Bank, *Four Years – Intifada, Closures and Palestinian Economic Crisis: An Assessment*, (Washington, World Bank, 2004)

The partition of municipal Jerusalem and the surrounding West Bank in 1967 bore very little resemblance to the social, economic and cultural structures existing at the time, and bear even less today. In effect, until the beginning of the Oslo process the differentiation between the rest of the West Bank and East Jerusalem went generally unobserved.

The majority of the families in al-Sheikh Sa'ed and Jabal al-Mukabber are socially linked, whether through marriage or natural social relations. The familial roots of al-Sheikh Sa'ed families are of the same source, which is Jabal al-Mukabber. Moreover, many of al-Sheikh Sa'ed youths have married girls from Jabal al-Mukabber who hold Israeli identity cards, hoping that they will obtain family unification¹² in the future. But this situation has created sufferings and problems for the majority of the families.

Extracts from Al-Haq Affidavit No. 2194/2005

Given by: Rami Naser Muhammad Mashahra (Resident of al-Sheikh Sa'ed, Jerusalem Governate)

It is worth noting that in response to a letter protesting the suffering imposed on the residents of al-Sheikh Sa'ed by the Annexation Wall, the Jerusalem Municipality acknowledge the common social roots of families in al-Sheikh Sa'ed and Jabal Mukabber, as well as the blurring of the municipal line through marriage and simple relocation. However, the Municipality is nonetheless enforcing the route of the Wall between these two communities.

While only those Palestinians with East Jerusalem identification were allowed to reside within municipal Jerusalem and receive benefits such as health insurance, the access of West Bank Palestinians to Jerusalem to work, go to school, obtain health care as well as visit socially, was largely unimpeded. As a result, despite the declared municipal boundaries demarcating East Jerusalem from the surrounding West Bank, Jerusalem continued to serve as the gravitational centre of the lives of the Palestinians living in proximity to the city. In fact, due to the severe limitations on land use and housing construction many Palestinians with East Jerusalem identification over the years moved to the surrounding West Bank. The construction of the Wall is causing many to move back to within the municipal boundaries to avoid being isolated, and to preserve their status as permanent residents of Jerusalem.

This merging of outlying Palestinian communities, coupled with the proliferation of Israeli settlements throughout the area, and the total lack of interaction between the two neighbouring populations, has

¹² The legal process by which Palestinian spouses and children, who do not possess East Jerusalem identification cards, can obtain the right to reside in East Jerusalem. Applications for family unification were frozen indefinitely in May 2002. For more information see: Al-Haq, *Waiting for Justice*, (Ramallah, Al-Haq, 2005) pages 201-224.

lead both Palestinian and Israeli commentators to describe the boundaries of municipal Jerusalem as “virtual”¹³ and “meaningless.”¹⁴ Yet these boundaries are being used to justify parts of the construction of the Annexation Wall around East Jerusalem, and to heavily restrict the Palestinians’ movement and access to work, education, health and other social necessities.

2.1.1 Employment

With the beginning of the Oslo process in 1993, Palestinians not holding East Jerusalem identification cards have required special permits to enter Jerusalem granted on an individual basis, with the system becoming more institutionalised since the outbreak of the current *intifada*.¹⁵ The process for obtaining a permit has never been clarified by the Israeli authorities, nor are there any definitive criteria for examining a request for a permit.¹⁶ The permit system has been described by the Special Rapporteur on the Situation of Human Rights in the OPT as reminiscent of the “pass laws” of *Apartheid* South Africa. However, he added,

The pass laws were administered in an arbitrary and humiliating manner, but uniformly. Israel’s laws governing freedom of movement are likewise administered in a humiliating manner, but they are governed by arbitrariness and caprice.¹⁷

The difficulties in obtaining a permit have forced many Palestinians holding West Bank identity to enter Jerusalem illegally in order to search for work to provide for the needs of their families.

I became unemployed and I have a family for which I am unable to meet even the basic needs of. I often ask my brother to give me the subsistence of my family. I applied to the Israeli liaison to obtain a permit that allows me to work in Israel, but my application was rejected. The need pushed me to sneak through to Jerusalem without a permit in search of a job, but the Israeli army, which is present most of time at the barrier at the entrance of or village, arrested me. I was put in custody for six days, and then released after I signed a statement that I would not enter Israel again, and that I would be deprived of the ability to obtain a permit. My social life has been affected. I have not visited my sister who is married and lives in Jerusalem. Currently, I work as a driver of an illegal car, with which I carry passengers from al-Sheik Sa'ed to the closed entrance of the village, in order to provide the

¹³ International Crisis Group, “The Jerusalem Powder Keg,” *Crisis Group Middle East Report N°44*, August 2005, page 3

¹⁴ *Ibid.*

¹⁵ Leila Farsahk, “Israel: An Apartheid State,” *le Monde Diplomatique*, November 2003

¹⁶ B’Tselem, *Forbidden Roads: Israel’s Discriminatory Road Regime in the West Bank*, (Jerusalem, B’Tselem, 2004), page 30

¹⁷ “Report of the Special Rapporteur of the Commission on Human Rights on the Situation of Human Rights in the Palestinian Territories Occupied by Israeli Since 1967,” 12 August 2004, A/59/256, summary

minimum needs of my family. For example, I work from seven in the morning till five in the evening to earn 30 Shekels, and to return to my wife and children with little hope in life.

Extracts from Al-Haq Affidavit No. 2196/2005

Given by: Muhammad 'Ali Ibrahim 'Weisat (Resident of al-Sheikh Sa'ed, Jerusalem Governorate)

The Israeli authorities have stated that access to East Jerusalem for the approximately 55,000 Palestinians holding East Jerusalem identification who find themselves outside the Annexation Wall, will not be impeded. However, the fact that these Palestinians will have to pass through gates in the Wall, the operation of elsewhere in the West Bank has proved to be inconsistent, far from bolsters this claim.

Immediately prior to the outbreak of the current *intifada* in September 2000, an estimated 146,000 Palestinians, including East Jerusalem residents, worked in the Israeli labour market. This amounted to 22 percent of total Palestinian employment. By 2003, only 9 percent of employed Palestinians, or roughly 57'000 people, worked in the Israeli labour market.¹⁸ The inability of workers and other Palestinians from the surrounding West Bank to obtain permits to enter East Jerusalem, has in turn impacted Palestinian businesses that were dependent on the movement of customers, workers and goods.

I own a shop called al-Hilal shop located next to the Separation Wall at Abu-Dis Junction. My shop is located in the Jerusalem area to the west of the Wall, and I have inherited it from my father who established it in 1961. This area is considered the nearest to Jerusalem and is the main road to Jerusalem for people coming from the south and the east of the West Bank. Approximately 10,000 people used to pass to and from Jerusalem everyday. I could not imagine the area isolated and separated from Abu-Dis and al-'Eizariyya, but since the beginning of the construction of the Separation Wall on 29 August 2001,¹⁹ the area has become isolated. The Wall completely separates Abu-Dis and al-'Eizariyya from Jerusalem. A strange and unnatural atmosphere prevails over the area. The movement of people has fallen to a minimum and movement has become difficult. People living in Jerusalem can no longer reach al-'Eizariyya and Abu-Dis through the junction. Similarly, Palestinians holding West Bank IDs can no longer reach Jerusalem, whether to work or to visit. In some cases people, especially workers, pass through a small opening in the Wall.

¹⁸ *Supra* note 11, page 3

¹⁹ The construction of the Annexation Wall in Abu Dis received final approval from the Israeli authorities in August 2002, with construction beginning shortly thereafter. However, prior to the construction of the Wall a fence had been built, starting 29 August 2001, along the route that the Wall would follow in Abu Dis.

At the commercial and work level, the area has been completely paralysed and my shop's sales have dropped by more than 60 percent. Sales are now restricted to the few people living in the area. This situation has affected my standard of living. The situation is sad and hopeless as daily you see groups of people, especially workers, pass quickly and sneak through the opening to and from Abu-Dis to Jerusalem, fearing that the Israeli soldiers who are stationed in the area all day long might arrest them, or withhold their identity cards. Such a scene takes place daily.

Extracts from Al-Haq Affidavit No. 2297/2005

Given by: Hasan Mousa Mahmoud al-'Ikrmawi (Resident of Abu-Dis, Jerusalem Governate)

The lack of access to a viable labour market, coupled with the loss of commercial activity, inevitably causes economic hardship in communities on both sides of the Wall. Similar problems are faced in Sheik Sa'ed, which is located outside the Wall on the eastern side.

Another problem from which residents of the village suffer, is the impact of the construction of the Separation Wall on the economic situation of the residents. My father, for example, owns a shop for women's clothes and garments. In the past, this shop gave fairly good returns, whereas currently, days, and sometimes weeks, pass without selling one piece of clothing due to the bad economic situation of the Village's residents which is a result of the construction of the Wall. For example, a piece of clothing, which my father bought for 500 NIS and has been in the shop for a long time without finding anybody to buy it, he then sells it at 200 NIS (with loss) in order to ensure the basic needs of the family. Similarly, many families have lost their source of income and become unable to provide for their basic needs because of the closures, separations and restrictions, imposed by the Israeli army on the residents of al-Sheikh Sa'ed.

Extracts from Al-Haq Affidavit No. 2194/2005

Given by: Rami Naser Muhammad Mashahra (Resident of al-Sheikh Sa'ed, Jerusalem Governate)

The economic impact of the construction of the Annexation Wall, and restricted movement of workers and goods, can not be viewed in isolation from the wider economic decline to which it contributes. The progressive economic decline of Palestinian communities in and surrounding East Jerusalem, as a result of increasingly stringent movement restrictions, is vividly evident in the cases of those villages whose economic viability became dependent on trade with both Jerusalem and the West Bank, due to their location between both.

I live in al-Jeeb 12 kilometres west of Jerusalem and the same distance from Ramallah. Over the years of Israeli occupation, our village has been distinguished by its location between

Ramallah and Jerusalem. Moreover, our village is located on the bypass road to Giv'at Ze'ev settlement. Al-Jeeb and Bir Nabala gradually became important commercial and industrial centres up until the outbreak of the *intifada* in 2000. After the outbreak of the *intifada*, the occupation forces closed the west entrance to the villages of al-Jeeb, Bir Nabala and al-Jdeira, on the side of Giv'at Ze'ev settlement. This entrance was closed by earth barriers and concrete blocks, and deprived the three villages of any customers, whether for the quarries or aluminium workshops or garages, all located in the area. Moreover, the trade of stones, tiles and pre-cast concrete, being the main industries in these villages, deteriorated. Added to this, Qalandiya and al-Ram checkpoints restricted movement, especially for trucks to and from these villages. The economic situation in these three villages significantly deteriorated.... We became a cluster of isolated villages and we lost both our Ramallah and East Jerusalem clients. In addition, the workers in these villages lost their jobs in Israel. Under the successive Israeli military orders during al-Aqsa *Intifada*, workers began to need permits to work in Israel and driving on Road 443 to Giv'at Ze'ev became prohibited.

Extracts from Al-Haq Affidavit No. 2148/2005

Given by: Jadallah 'Ali 'Abd-al-'Al (Resident of al-Jeeb, Jerusalem Governate)

Under current route projections for the Annexation Wall the villages of Bir Nabala, al-Jeeb and al-Jdeira will be completely encircled. All three villages will be completely enclosed on all sides by the Annexation Wall.²⁰

The impact of the Annexation Wall therefore goes beyond denying access to employment but precipitates a decline in the economic fabric that is necessary to sustain not only an adequate quality of life for individuals and their families, but also the adequate standard of living of entire communities. The unravelling of the economic fibre caused by the Annexation Wall, and the implicit movement restrictions it imposes, is reflected in the decline of other essential human requirements such as education and health.

2.1.2 Education

The detrimental economic impact of increased movement restrictions and the construction of the Annexation Wall in and around East Jerusalem, translates directly into a negative impact on education in terms of both the financial and academic support parents can give their children.

It is beyond doubt that the closure of the main, and only, entrance to the town made many Jerusalemite families living in the town leave, and deprived many household heads of earning their livings and the living of their families. The closure of the entrance prevented many from working inside Israel, which impacted the educational process. Parents stopped paying

²⁰ For reference see: UNOCHA, *Map of West Bank Closures – Jerusalem*, April 2005

school fees, and many could not afford buying stationery and other school requirements for their children. The Ministry of Education provides students with books free of charge and the school sought to provide stationery for free through donations. The lack of investment in education from families has made them less concerned about sending their children to school. Moreover, the families neglected their children's education as the father became unemployed and the mother works outside home to support the family, in addition to her work inside home. This heavily burdened mothers, and therefore they did not have enough time to take care of their children, especially as regards tutoring them and following up their educational progress. This was clear in the students' educational achievement. No extracurricular activities are carried out in the school any more, especially handicrafts, because that requires financial contribution from the families.

Extracts from Al-Haq Affidavit No. 2295/2005

Given by: 'Afaf Ahmad Muhammad Zahran (Resident of Beit Hanina al-Balad, Jerusalem Governate)

As a brief aside, it is pertinent to note the extra burden the economic impact of the Annexation Wall in East Jerusalem and the surrounding West Bank has placed on women. In addition to fulfilling their traditional roles within the household they are also compelled to work outside the home to try and provide for the basic needs of their families, and improve their dire economic situation.

Education in East Jerusalem is disrupted not only by the unravelling of the economic fabric of East Jerusalem that ultimately leads to a decline in student attendance and performance, but also through a lack of physical access produced by the Annexation Wall and associated movement restrictions. Many of the smaller villages on the outskirts of Jerusalem's municipal boundaries do not have the necessary educational facilities to provide sustained education. Students in these villages are therefore dependent on access to municipal East Jerusalem to obtain a full education.

I am a student in the Tawjihi²¹ exam grade at Jabal al-Mukabber Boys School, which is one kilometer away from my home in al-Sheikh Sa'ed. I hold a West Bank identity card. I go to school daily on foot because the entrance of al-Sheikh Sa'ed is closed. Vehicles can not enter the village, and so I find myself obliged to walk. On my way to school, I suffer a lot, feel impatient and bored, and often I feel that I do not want to learn because on the road to school, the Israeli army often surprises us by installing roadblocks, preventing students from going to school and workers from going to their work places.

We go to Jabal al-Mukabber School because there is only an elementary school in al-Sheikh Sa'ed, and so all the village's students (male and female) are obliged to study in Jabal al-

²¹ The Tawjihi is a national exam, typically taken by students aged 17 – 18, and is required to enter university.

Mukabber School after their finish the elementary level. I would like to note that Jabal al-Mukabber is considered the centre of life for residents of al-Sheikh Sa'ed, which has become like a bottleneck. The closure of the village entrance and the construction of the Separation Wall have caused huge and severe sufferings for all the residents of al-Sheikh Sa'ed in all aspects of life, and affected their social and economic situation.

Extracts from Al-Haq Affidavit No. 2194/2005

Given by: Rami Naser Muhammad Mashahra (Resident of al-Sheikh Sa'ed, Jerusalem Governate)

Difficulties in access affect not only students and their ability and willingness to learn, but also affect teachers and their ability to teach. Once again impact of the Annexation Wall and associated movement restrictions affects both those within and outside the municipal boundaries.

I am a teacher at al-Adhamiyya Mixed Basic School in Beit Hanina al-Balad, which is a part of Beit Hanina²². The Israeli authorities are seeking to annex it [Beit Hanina] to Jerusalem so as to annex it to Israel. The town [Beit Hanina al-Balad] is considered within the lands of the PNA although it is only a few minutes from Beit Hanina. In the past, in 2000, I used to arrive at my school ten minutes after leaving my home. Then the Israeli occupying forces closed the eastern entrance of the town [Beit Hanina al-Balad], which is the only entrance to Jerusalem and to Beit Hanina, with earth blockades and cement blocks, bulldozed the main street, and put a series of consecutive blockades over a distance of one kilometre. This punishment, aimed at preventing Palestinians from the West Bank, especially inhabitants of Beit Hanina al-Balad, from sneaking through to Jerusalem or reaching their relatives in Beit Hanina, has exhausted me physically and mentally. Instead of the few minutes I needed to reach my school in the past, I now need hours, and sometimes I cannot even reach my school at all.

Extracts from Al-Haq Affidavit No. 2296/2005

Given by: Maha 'Umran Muhammad Yaghmour (Resident of Beit Hanina al-Jadida, Jerusalem Governate)

The Annexation Wall, once completed, will completely sever Beit Hanina from Beit Hanina al-Balad.

2.1.3 Health

Unlike employment and education, a lack of unimpeded access to essential health services can have immediate fatal consequences. Many of the villages located outside municipal East Jerusalem lack health care facilities and rely on access to Jerusalem to provide these services. The hermetic sealing of

²² Beit Hanina is also interchangeably referred to as Beit Hanina al-Jadida.

Jerusalem from the rest of the West Bank means that access to emergency medical care is greatly impeded, with potentially fatal consequences.

I live in al-Skeikh Sa'ed located southeast of Jerusalem. On 16 January 2005, my father (87 years) had a heart attack. It happened at 4:30 in the afternoon while my father was visiting me at home. I called my cousin who brought his private car in order to take my father to the hospital. When our car reached the entrance of al-Sheikh Sa'ed, which the Israeli army closed with earth blockades and huge rocks on 23 September 2002, we found it crowded with cars. It is worth noting that this is the only entrance to Jerusalem.

At the entrance, there were many cars, and it took us approximately 20 minutes to carry him from one side of the blockade to the other, which also meant carrying him from one car to another. My father was in very difficult situation. It took us another hour to reach to al-Maqased Hospital on Jabal al-Zaytoun, while it took us only 10 minutes before the closure of al-Sheikh Sa'ed entrance. It is worth noting that there are not any medical centres in al-Sheikh Sa'ed and Jerusalem is the only place where the residents of the village can obtain treatment. The situation has become more difficult with the construction of the Separation Wall, which has isolated our village from the other parts of Jabal al-Mukabber. Every time we take my father to the doctor, we face a lot of difficulties, especially since we hold the West Bank identity cards, and all the members of the family do not have permits to enter Jerusalem, which means nobody can accompany my father when he goes to the hospital. It should be noted that our life is historically linked with Jerusalem.

Extracts from Al-Haq Affidavit No. 2195/2005

Name withheld from publication

Once of the most disturbing aspects of the construction of the Annexation Wall around Jerusalem and Israeli movement restrictions, is that it puts the greatest strain on those least able to deal with it. Movement restrictions and the Annexation Wall forces children, pregnant women, the elderly and the sick to undertake longer and more strenuous journeys to receive medical care.

My home is not more than ten minutes by car from the French Hospital in Jerusalem. As I suffer from many illnesses such as diabetes and high blood pressure, I have to visit the French Hospital and St. John's Eye Hospital frequently. Things were going along very smoothly until the *intifada* broke out on 28 September 2000. Since then, the Israeli occupying forces, as a collective punishment, have worked on the isolation of the West Bank from Jerusalem. Beit Hanina al-Balad's share in these procedures has been that it was isolated from Beit Hanina al-Jadida, and inevitably from Jerusalem, by earth barriers placed at its only entrance. In order to visit the doctor, I have to go approximately 600 metres by foot, climbing earth barriers every hundred metres, because the occupying forces were not satisfied with

one barrier, they piled six earth barriers to impede the passage of West Bank citizens to Jerusalem. As for me, I have been receiving treatment in Jerusalem hospitals for years, and I all my medical files are in Jerusalem. I do not have any files in Ramallah hospitals as it was easier for me to reach Jerusalem than Ramallah, Since the Israeli Occupation Forces implemented several military orders as a type of collective punishment imposed on Palestinians, our daily lives have become complicated and reaching Jerusalem has become exhausting.

Extracts from Al-Haq Affidavit No. 2211/2005

Given by: Amnah Ahmad Mustafa' Abdallah (Resident of Beit Hanina al-Balad, Jerusalem Governate)

As can be seen from the above affidavits, the construction of the Wall around Jerusalem is not merely a passive impediment to the movement of Palestinians in and around East Jerusalem, but is in fact actively tearing apart the social and economic fabric of the Palestinian communities affected by it.

2.2 The Annexation Wall, Land Confiscation, Property Destruction and Settlements

Just as the Annexation Wall entrenches the severe movement restrictions imposed on Palestinians, so too it entrenches the presence of the illegal settlements in the OPT, furthering and consolidating the illegal confiscation and expropriation of Palestinian land. This is nowhere more apparent than in East Jerusalem and the surrounding West Bank.

During the years following the illegal annexation of East Jerusalem and the expansion of the municipal boundaries, approximately one-third of the land was expropriated to build 12 settlements, home to some 175,000 Israeli settlers by 2002.²³ The majority of the remaining land was re-zoned so as to prevent Palestinian use, and in effect serve as a land reserve for further settlement construction and expansion. Only 7.3 percent of the land in municipal East Jerusalem is available for Palestinian construction, most of which is in already built-up areas.²⁴ In addition, between 1967 and 1993, Israel established a series of settlements outside the municipal boundaries of East Jerusalem creating an 'outer ring' of Israeli control that, when combined with the exclusive network of bypass roads connecting the settlements to each other and Jerusalem, further dismembers Palestinian communities and isolates occupied East Jerusalem from the rest of the West Bank.²⁵

²³ B'tselem, *Land Grab: Israel's Settlement Policy in the West Bank*, (Jerusalem, B'tselem, 2002) page 103

²⁴ Menachem Klein, *Jerusalem: the Contested City*, (London, Jerusalem Institute for Israel Studies, 2001) page 29

²⁵ Jeff Halper, "The 94% Solution: A Matrix of Control," *Middle East Report no. 216*, Fall 2000

Over the nearly four decades of occupation, the construction of settlements in East Jerusalem and the surrounding West Bank has been a process of attrition, the final component of which is the route of the Annexation Wall around Jerusalem.

I remember my first battle with the Israeli occupation when it confiscated tens of dunums of my family's land and hundreds of dunums of the village agricultural land in 1983, the same year in which the Israeli occupying forces embarked on building the Giv'at Ze'ev settlement. That settlement has been built on the lands of our village (90 percent of the area of the settlement) and on the lands of Bitouniya (10 percent of the area of the settlement). The second battle with the occupying forces was in 1992, when seven dunums were of my land were confiscated for the benefit of the expansion of the same settlement: Giv'at Ze'ev. We still have several dunums of fertile green land left, the land to which my sons and I returned to cultivate and take care of after many sources of living closed in front of us.

The story has not finished, and one more military order, No. 5/13/T, was issued by the Commander of the Israeli Defense Army Forces in Judea and Samaria [sic.], requiring the seizure of 263 dunums of the village lands on the grounds of military necessity. The decision was attached to a map illustrating the lands seized for building the Separation Wall, and expansion of the settlement at the expense of village lands to the west, north and south. When I examined the map in reality, I discovered that the Wall will be built on part of our remaining lands and we will not be able to reach the other part to cultivate and harvest our crops.

Extracts from Al-Haq Affidavit No. 2148/2005

Given by: Jadallah' Ali 'Abd-al-'Al (Resident of al-Jeeb, Jerusalem Governate)

According to the plans approved by the Israeli Cabinet on 10 July 2005, the Annexation Wall around Jerusalem will be 80 kilometres long, extending 14 kilometres into the West Bank to the east of Jerusalem and encompassing in total 4 percent of the OPT.²⁶ It will enclose major Israeli settlements to the north, east and south of the city, including 'buffer zones' of open land for settlement expansion. Weaving in between settlements and Palestinian population centres the Annexation Wall encloses roughly three-quarters of the 230,000 Palestinians who hold East Jerusalem identity cards, while excluding the other quarter, who are equally dependent on municipal East Jerusalem for economic and social services.²⁷

The Annexation Wall embodies sustained Israeli policy in East Jerusalem, in that it secures the maximum amount of land around the illegal Israeli settlements, while denying Palestinians access to, or

²⁶ Miftah, *The Segregation and Annexation Wall: A Crime Against Humanity*, August 2005, page 3

²⁷ *Supra* note 8, page 2

use of their land, and confines them to limited living space. The village of Hizma, to the northeast of Jerusalem has a total of 18,000 dunums of land left after the construction of the Pizgat Ze'ev settlement in the 1980s, which was built on 80 percent of the village's land. However, of the land left to the village, the Israeli authorities only allow for construction on 1,500 dunums. Further, the Wall will confiscate more village land.

The Wall starts from the north of the village from the Jaba' direction, turns to the west and totally separates us from Jerusalem; then it returns towards the north to besiege the village, and isolates five families of the village on the other side of the Wall.²⁸ The fate of these families is unknown and it is expected that their houses will be demolished, especially that many of these houses are built without licenses. Moreover, this Wall will isolate another three families completely from the village because they became within the borders of the Pizgat Ze'ev settlement a long time ago; their Palestinian identity cards were taken from them and they were given Jerusalem residency cards (IDs). The military order was a shock to the village inhabitants because it will besiege 4,318 dunums of the village lands behind the Wall, and will transform them into uncultivated land after it had become a good source of living for the village inhabitants. As for the Wall itself, it will swallow hundreds of agricultural dunums, which it will change into a concrete Wall and military patrol roads 5,000 metres long and 60 metres wide.

Extracts from Al-Haq Affidavit No. 2182/2005

Given by: Mwafaq Sa'id 'Ayed al-Khatib (Resident of Hizma, Jerusalem Governate)

In addition to confiscating and limiting access to land, the construction of the Annexation Wall around Jerusalem has also lead to the demolition of Palestinian private property located on the route of the Wall. One of the most severe manifestations of this is the destruction of Palestinian houses and residential buildings.

²⁸ For reference see: UNOCHA, *Map of West Bank Closures – Jerusalem*, April 2005

On 6 April 2005, we were surprised when the Israeli bulldozers, Israeli army forces and Beit El teams, came and told us that our building is very close to the Separation Wall and that they have a decision requiring its demolition. I had not received any written documents in this regard.²⁹ Immediately, the workers who came with the army entered our home and took the furniture out. After that the Israeli bulldozers demolished the whole building, and all the families who were living in the building are now living in tents.

Extracts from Al-Haq Affidavit No. 2287/2005

Given by: Saleh Zar'i Mousa Ali Za'atra (Resident of al-'Eizariyya, Jerusalem Governate)

The construction of the Wall around Jerusalem, in addition to limiting access to land, has also resulted in the destruction of agricultural assets and the levelling of agricultural land. The construction of the Annexation Wall is not only denying access to land but also actively destroying it.

Moreover, the Wall has confiscated the lands in al-Shayah area located to the west of al-'Eizariyya where I owned three dunums of land near the al-Shayah junction. I inherited the land from my father, and it was planted with olive trees which are older than I am.

With the construction of the Wall, my land became located behind the Wall to the west. Also, parts of the Wall were constructed on my land after it was bulldozed and the olive trees were uprooted. My heart is broken because I have been deprived of my land that I used to cultivate and take care of the trees. It is worth noting that the confiscation process for my land has not taken place in legal way. The only thing that the Israeli occupation did is post a land confiscation order in both Arabic and Hebrew issued by the Israeli army in the al-'Eizariyya Local Council premises. This Order pointed out the lands to be confiscated, indicated in the Order by the number of the area and plot. My land was within the lands to be confiscated. I did not take my case to court because I am convinced that this will not have any effect and will not change the situation. Finally, I would like to point out that the value of one dunum in the area confiscated is worth approximately 3,000 Jordanian Dinars.

Extracts from Al-Haq Affidavit No. 2358/2005

Given by: Mousa Suleiman 'Ali Saleh (Resident of al-'Eizariyya, Jerusalem Governate)

The importance of land as an economic and social asset has been emphasised by the increasing severity of movement restrictions and the construction of the Annexation Wall around Jerusalem. As already noted, numerous Palestinians from communities surrounding municipal Jerusalem who were once dependent on access to Jerusalem to earn a living, have been prevented from doing so. Often these

²⁹ The affiant had previously received verbal notification from the Israeli authorities and had engaged in legal proceedings to challenge the demolition. After protracted procedures the affiant was informed by his lawyer that the order had been cancelled.

Palestinians revert to relying on family land held over generations, in order to support themselves and their families.

Gradually I returned to take care of the land I inherited from my father and grandfather, especially since my inherited lands are located on al-Jeeb's fertile plains. My sons and I returned to working on our land to earn our livelihood because out of the whole family, one son was working within the industrial zone of 'Atarot near our village, while my other sons were unemployed. We relied on seasonal crops, especially the vegetables and cereals. Four difficult years passed. The needs of our large family increases day by day, and our financial income is in continuous decline.

....

What makes me sad is that we are currently cultivating the land and harvesting its crops, and earn our income from it, but after several months or maybe weeks, the order will be applied and we will lose our livelihood. I have eight sons and daughters, some of them are unemployed workers and others are university students in need of fee payments and pocket money, and still others are in basic and secondary schools. Our future has become vague as most of our lands were confiscated or besieged. Where will my children build their homes and where they will live? How will the situation of the village after 10 years on this small plot of land be? The area of our village was 9,000 dunums and it has become 3,000 dunums.

Extracts from Al-Haq Affidavit No. 2148/2005

Given by: Jadallah 'Ali Abd-al-'Al (Resident of al-Jeeb, Jerusalem Governate)

The Annexation Wall, settlements and the movement restrictions have rendered the viable existence of East Jerusalem's outlying Palestinian communities precarious at best. The limitations on access to, destruction and confiscation of land by the Annexation Wall, coupled with severe movement restrictions, removes one of the last obstacles to the total destitution of Palestinian communities in and around East Jerusalem. It is with the urgency of this unjust human suffering in mind that this report now focuses on a legal analysis of the impact of the Annexation Wall on the outlying Palestinian East Jerusalem communities. An essential first step in this analysis is examining the status of East Jerusalem and its surroundings in international law. This will provide the general legal framework in which specific violations can be addressed.

3. THE STATUS OF JERUSALEM AND THE LEGALITY OF THE ANNEXATION WALL IN INTERNATIONAL LAW

3.1 The Legal Status of Annexed East Jerusalem in International Law

The illegal annexation of Jerusalem was first brought about by an amendment to the *Law and Administrative Ordinance 1948*, passed on 27 June 1967, which held the law, jurisdiction and administration of the state shall extend to any area of Eretz [the Land of] Israel designated by the government as such. On 28 June 1967 the Israeli authorities used this amendment to designate East Jerusalem, its Old City and part of the surrounding West Bank, under Israeli judicial and administrative control. On the same day, using another amended law, the Israeli Municipality of West Jerusalem extended its borders over these same lands. The Jordanian East Jerusalem Municipality was ordered to cease operations the next day, and Israel completed its illegal annexation of some 70,000 dunums of the occupied West Bank under the banner of integration of services. These measures met with strong international condemnation.

Shortly after the Israeli occupation of East Jerusalem in 1967, the UN Security Council passed Resolution 242, emphasising the inadmissibility of the acquisition of territory by war, and calling upon the Israeli armed forces to leave territories that it had occupied in the conflict, including East Jerusalem. Israel refused to comply with this, marking the beginning of its sustained refusal to heed UN resolutions on the subject of East Jerusalem, or to uphold its obligations therein under international law.

Over the nearly four decades of Israeli occupation, numerous UN bodies, including the General Assembly, the Security Council, and the International Court of Justice (ICJ), have reiterated the illegality of Israel's occupation of East Jerusalem. The United Nations has repeatedly condemned Israeli attempts, both to alter the character of East Jerusalem and to change its status as occupied territory. Security Council Resolution 298 (1971) clearly states that:

All legislative and administrative action taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status.

In 1980, Israel passed legislation to formalise annexation of East Jerusalem in domestic Israeli law. The *Basic Law: Jerusalem, the Capital of Israel*³⁰ declared the city the “complete and united” as the capital of Israel. This official, albeit illegal, annexation was condemned by the United Nation's Security

³⁰ Article 1, *The Basic Law: Jerusalem, Capital of Israel*, 30 July 1980, *Laws of the State of Israel*, Vol. 34, 5740 - 1979/80 (Jerusalem: Government Printer, 1980) page 209

Council which refused to recognise the validity of the annexation and reaffirmed East Jerusalem's status as occupied territory. The Security Council held that,

all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem...are null and void.

The July 2004 ICJ Advisory Opinion on the Wall confirmed the longstanding position of the international community regarding East Jerusalem when it held,

The territories situated between the Green Line and the former eastern boundary of Palestine under the Mandate was occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power.... All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power.³¹

The Court further reiterated the applicability of international humanitarian and human rights law to the OPT, including East Jerusalem, thereby comprehensively bankrupting the Israeli claim that it is not bound by these norms of international law in respect of its action in the territories it occupies.

3.2 International Humanitarian Law

3.2.1 Illegality of Annexation

Under Article 47 of the Fourth Geneva Convention, an occupied civilian population,

...shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying power, nor by any annexation by the latter of the whole or part of the occupied territory.

This provision clearly establishes numerous measures taken by the Israeli authorities in East Jerusalem since 1967 as violations of international humanitarian law. The authoritative commentary to the Fourth Geneva Convention highlights the temporal and legal limitations of occupation, stating that "...the occupation of territory in wartime is essentially a temporary, *de facto* situation..." and, "occupation as a result of war, while actually representing actual possession to all appearances, cannot imply any right

³¹ International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory*, 9 July 2004, paragraph 78

whatsoever to dispose of territory.”³² The exercise of eventual sovereign rights over any area of territory occupied in conflict cannot be determined unilaterally by the Occupying Power through the creation of facts on the ground. The Commentary succinctly highlights this point by noting that the mention of annexation in the provisions of Article 47, “cannot be considered as implying recognition of this manner of acquiring sovereignty.”³³

While Israel disputes the status of East Jerusalem as occupied territory, the provisions of international humanitarian law are clear in establishing that, not only the specific practices of the Israeli authorities in East Jerusalem are in violation of numerous provisions of international humanitarian law, but also that the claimed annexation, itself the basis upon which Israel purports to exercise its authority over East Jerusalem, is fundamentally flawed.

3.2.2 Movement Restriction

Article 27 of the Fourth Geneva Convention establishes the human person and the inviolability of the basic rights of individuals as the bedrock of international humanitarian law, from which all protections, rights and entitlements flow. As noted by the International Committee of the Red Cross (ICRC), this article is the “basis of the whole Fourth Geneva Convention, proclaiming as it does the principles upon which the whole of the Geneva law is founded.”³⁴ Of these fundamental principles, nearly all are affected by the construction of the Annexation Wall and its associated regime of property destruction and confiscation, settlement expansion and movement restrictions. Of most relevance to the analysis of Israeli violations in East Jerusalem and the surrounding West Bank, is that Article 27 specifically lists “respect for the person” as a fundamental right.

Respect for the person includes the right to personal liberty and to move about freely. However, as acknowledged by the ICRC this right is not absolute and can, in the case of an occupied civilian population, be made subject to restriction and even temporary suspension “if circumstances so require.”³⁵ However, this in no way means that movement can be suspended in a general manner³⁶ and any restriction must conform to the “limits laid down by the Convention.” The ICRC further highlights,

³² International Committee of the Red Cross (ICRC), *The Geneva Conventions of 12 August 1949, Commentary –Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, Pictet (ed), page 275

³³ *Ibid.*, page 277

³⁴ *Ibid.*, pages 199-200

³⁵ *Ibid.*, page 202

³⁶ *Ibid.*

What is essential is that the measures of constraint [an occupying authority] adopt should not affect the fundamental rights of the persons concerned. ..., those rights must be respected even when measures of constraint are justified.³⁷

While this confers a wide degree of discretion on an Occupying Power to restrict movement, an underlying tenet of Article 27 is that the “personal freedom of civilians remaining in general unimpaired.”³⁸ Therefore, while security considerations may be used to restrict the movement of Palestinians in East Jerusalem in certain instances, international humanitarian law does not allow for the systematic suspension of this right, as embodied by Israeli practice in East Jerusalem.

3.2.3 Prohibition on Collective Punishment

International humanitarian law under Article 33 of the Fourth Geneva Convention prohibits the imposition of “[c]ollective penalties and likewise all measures of intimidation or of terrorism...” While the construction of the Annexation Wall is difficult to construe as a penalty, the prohibition on collective punishment extends beyond such a limited interpretation. As noted by the ICRC,

During past conflicts, the infliction of collective penalties has been intended to forestall breaches of the law rather than to repress them; in resorting to intimidatory measures to terrorise the population, the belligerents hoped to prevent hostile acts.³⁹

The Commentary then continues,

[Collective penalties] are opposed to all principles based on humanity and justice, and it is for that reason that the prohibition on collective penalties is followed formally by the prohibition of all measures of intimidation or terrorism with regard to protected persons wherever they may be.

Although it is difficult to consider the Annexation Wall a ‘penalty’ or ‘terrorism’ under the terms of Article 33, its construction and route, the stated intention of which is to prevent attacks on Israelis, can be described using the analysis of the ICRC, as a measure of intimidation that violates the prohibition on collective punishment. It is the intention to forestall future actions, coupled with the construction and route of the Wall being contrary to the principles of humanity and justice, which makes it a measure of collective punishment in violation of the Fourth Geneva Convention.

³⁷ *Ibid.*, page 207

³⁸ *Ibid.*, page 203

³⁹ *Ibid.*, page 226

3.2.4 Land Confiscation and Destruction

The confiscation of private property is specifically prohibited under Article 46 of the Hague Regulations, which are customary international law, and have been accepted by the Israeli courts to apply to the OPT as such.⁴⁰ This customary prohibition is supplemented by Article 53 of the Fourth Geneva Convention which, while recognising the right of the occupying authorities to requisition, confiscate, and use certain types of property, prohibits it from destroying property:

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 co-operative organisations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

In order for the destruction of property, such as house demolitions, levelling agricultural land or uprooting olive trees, caused by the construction of the Annexation Wall to be lawful under Article 53, it must therefore meet the requirements of military necessity. It must be emphatically stated that no other justification allows for the destruction of property by an Occupying Power. Israel pays lip service to the principle of military necessity by claiming that the construction of the Annexation Wall is based on the need to protect from attack both the civilian population on the Israeli side of the Green Line, and the illegal settlers in the OPT. These two legally distinguishable justifications are equally untenable when the requirements of military necessity are compared to the physical realities of the situation on the ground.

The first test of military necessity is essentially a formulation of the principle of proportionality. This inherently includes consideration of the appropriate means to achieve a given military objective, which constitutes the second test. In respect of the principle of proportionality, “whenever it is felt essential to resort to destruction, the occupying authorities must try to keep a sense of proportion in comparing the military advantages gained with the damage done.”⁴¹ This is inevitably a subjective endeavour, and therefore no absolute determination can be made. While Israel advances the notion that security is the only valid consideration in assessing the impact construction of the Wall in the OPT, this represents a significant misinterpretation of international law. The destruction of family homes and agricultural land, both of which have profound impacts on the lives of those affected, must be proportionately balanced against any gain in security. It can be convincingly argued that, if the stated objective is the protection of the civilian population within Israel, then this would be achieved by building the Wall along the Green Line. In not doing so Israel causes disproportionate harm to the Palestinian population of the OPT. Viewed in this light, the construction of the Wall in the occupied territory around

⁴⁰ In the judgment of *Hilu v. Government of Israel, et al*, H CJ 302/72 and 306/72, the Israeli High Court of Justice maintained that customary international law is considered to be part of Israeli internal law without the need for any special legislation, unless contradictory to another provision in internal law.

⁴¹ *Supra* note 32, page 320

Jerusalem is neither the most effective nor the most adequate means of protecting those inside the Green Line from armed attack. The Annexation Wall therefore also fails the second test of appropriate means. Considered alone, or in combination, Israel's inability to meet either of these tests of military necessity in justifying the construction of the Annexation Wall establishes it as a breach of international humanitarian law.

The argument may be raised that the Wall is militarily necessary in relation to the protection of the settlements in and around East Jerusalem. However, this argument fails on two counts. First, the harm caused to the Palestinian population by the route and construction of the Wall is still not proportionate. Second, it is an established principle of international law that legal rights cannot derive from illegal acts. It would be an aberration if the settlements, which are illegal under the Fourth Geneva Convention, were allowed to derive lawful protection from principles enshrined in the very Convention they violate.

Speaking of the construction of the entire Wall, in its July 2004 Advisory Opinion the ICJ noted that,

...on the material before it, the Court is not convinced that the destructions carried out contrary to the prohibition in Article 53 of the Fourth Geneva Convention were rendered absolutely necessary by military operations.⁴²

On 11 July 2005, the Israeli minister in charge of Jerusalem admitted that there was a political dimension to the construction of the Annexation Wall in East Jerusalem; stating that the planned route of the Annexation Wall in East Jerusalem "also makes Jerusalem more Jewish."⁴³ This comment succinctly underlines the political motivation behind the construction of the Wall around Jerusalem veiled in the rhetoric of security, and highlights the route of the Wall as part of Israel's *de facto* annexation efforts.

The Fourth Geneva Convention establishes that the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly," amounts to a grave breach of the Convention. In respect of grave breaches, the High Contracting Parties must enact the necessary legislation to provide effective penal sanctions for those who commit, or order to commit, such breaches. In addition,

Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.

⁴² *Supra* note 31, paragraph 135

⁴³ Mark Lavie, *Barrier Meant to Ensure Jewish Majority*, Associated Press, 11 July 2005

Having established that the test of military necessity is not met in respect of the construction of the Wall around Jerusalem, and that the associated destruction and confiscation of Palestinian land and property violates conventional and customary international humanitarian law, the unlawfulness of Israeli actions in this regard cannot be disputed. It therefore remains to determine whether the destruction and appropriation can be described as “extensive” and carried out “wantonly.”

The only guidance provided by the ICRC Commentary on the Fourth Geneva Convention is that in order to constitute a grave breach, the destruction or confiscation of property must not be an isolated incident.⁴⁴ The ICRC has further noted that the construction of the Annexation Wall in the West Bank, “...continues to give rise to widespread appropriation of Palestinian property and extensive damage to or destruction of buildings and farmland.”⁴⁵ Adding to this affirmation the information gathered through Al-Haq affidavits and statistical sources cited earlier in this report, a strong argument can be made that the confiscation and destruction is extensive within the meaning of Article 147 of the Fourth Geneva Convention.

While less guidance is available for whether the confiscation and destruction of Palestinian property can be said to have been carried out wantonly, the case law of the International Criminal Tribunal for the former Yugoslavia (ICTY) provides some guidance. Article 2 of the ICTY Statute establishes the power of the tribunal to prosecute grave breaches of the Geneva Conventions. Amongst the grave breaches specifically listed is the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.” This reiteration of Article 147 of the Fourth Geneva Convention lends substantial weight to the ICTY’s interpretation of “wantonly.”

In *Kordic and Cerkez* the ICTY established that destruction of property could be described as having been carried out wantonly where, “the perpetrator acted with the intent to destroy the property in question or in reckless disregard of the likelihood of its destruction.”⁴⁶ Using this definition, even if the argument of the Israeli authorities that the confiscation and destruction of Palestinian property is not an intended consequence of the Annexation Wall is accepted, the element of ‘reckless disregard’ allows the destruction to be described as occurring wantonly. Having established the extensive nature the destruction and confiscation of Palestinian property in East Jerusalem for the construction of the Wall, and the lack of military necessity, it can be argued that the construction of the Annexation Wall around Jerusalem may amount to a grave breach of the Fourth Geneva Convention.

⁴⁴ *Supra* note 32, page 601

⁴⁵ ICRC, *Israel/Occupied and Autonomous Palestinian Territories: West Bank Barrier caused serious humanitarian and legal problems*, Press Release, 18 February 2004

⁴⁶ ICTY, *Kordic and Cerkez*, (Trial Chamber), February 26, 2001, paragraphs 335-341

3.4 International Human Rights Law

In addition to violations of international humanitarian law, the construction of the Annexation Wall and associated movement restrictions in East Jerusalem also violate numerous provisions of international human rights law. These are enshrined in numerous international treaties to which Israel is a State Party. Accordingly, the Israeli authorities are bound to uphold the rights of the Palestinian residents of East Jerusalem to ownership of property, free movement, and access to essential social and economic rights such as work, education, and healthcare. Further, Israel is bound by international human rights law and public international law more broadly not to discriminate between the Palestinian and Israeli population of East Jerusalem in the enjoyment of human rights. The measures implemented by the Israeli authorities in East Jerusalem and the surrounding West Bank, embodied by the Annexation Wall, fail significantly to uphold these obligations.

3.4.1 Freedom of Movement

The construction of the Annexation Wall around Jerusalem, and the associated regime of permits and other physical obstacles, has massively hindered the movement of Palestinians to and from East Jerusalem. Article 12 of the International Covenant on Civil and Political Rights (ICCPR) holds,

Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

This is however, qualified by Article 12(3) which allows for restriction on the freedom of movement of individuals if 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 recognised in the present Covenant.

Palestinians who are lawfully resident in the OPT, including East Jerusalem, can only have their freedom of movement restricted under international human rights law within these parameters.

In addition to being based in law, the Human Rights Committee (HRC), the UN body responsible for monitoring compliance with the ICCPR, has noted that restrictions must meet the test of necessity and the requirements of proportionality. Defining necessity, the Committee outlined that “it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them.”⁴⁷ The principle of proportionality, in the words of the Committee, requires that the 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

⁴⁷ HRC, *General Comment No. 27: Freedom of Movement*, (Article 12), (2 November 1999) CCPR/C/21/Rev.1/Add.9, paragraph 13

the interest to be protected.”⁴⁸ Movement may therefore, under certain circumstances, be restricted if not imposed in a disproportionate or unnecessary way. The restrictions placed on Palestinian movement imposed by Israel fail to meet these fundamental requirements. Importantly, the HRC has held that the above-mentioned conditions for permissible restrictions would not be met if an individual were prevented from travelling internally without a specific permit.⁴⁹

In seeking to justify movement restrictions in the OPT Israel often refers to the notion of ‘security.’ This justification, if substantiated in international law, allows for freedom of movement to be legitimately restricted or suspended under paragraph 1 of Article 4 of the ICCPR. However, while this article concedes that “[i]n time of public emergency which threatens the life of the nation” the state may derogate from its obligations under the ICCPR, it also maintains that derogations must *inter alia*, “not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”

3.4.1.2 Rights to Work, Education and Health

The construction of the Annexation Wall in East Jerusalem, when coupled with the already existing physical and administrative barriers to the movement of Palestinians, negatively impacts the rights to work, education and health. Each of these rights is of particular importance because in addition to their specific content they also are inherently related to the enjoyment of other rights.

In respect of work the Committee on Economic Social and Cultural Rights (CESCR) has noted that preventing workers from reaching their workplaces results in “depriving them of income and livelihood and their enjoyment of their rights under the Covenant.”⁵⁰ The right to education is,

an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalised adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities.⁵¹

The CESCR has further stated that the right to health is closely related to, and dependent upon the realisation of other human rights.⁵² An essential characteristic of these rights is that the means by

⁴⁸ *Ibid.*, paragraph 14

⁴⁹ *Ibid.*, paragraph 16

⁵⁰ CESCR, Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding observations of the Committee of Economic, Social and Cultural Rights: Israel, (4 December 1998) E/C.12/1/Add.27, paragraph 18

⁵¹ CESCR, General Comment No. 13: The Right to Education, (Article 13), (8 December 1999) E/C.12/1999/10, paragraph 1

⁵² CESCR, *General Comment Number 14: The Right to the Highest Possible Standard of Health*, (Article 12), (11 August 2000) E/C.12/2000/4, paragraph 3

which they can be realised must be physically accessible.⁵³ The continued isolation of East Jerusalem communities through the construction of the Annexation Wall is contrary to the realisation of these rights, and thereby unlawful.

3.4.2 Right to Own Property

As has been illustrated above the construction of the Annexation Wall around Jerusalem has resulted in the confiscation and destruction of Palestinian private land and property. The right to own property “alone as well as in association with others,” is enshrined in Article 17 of the Universal Declaration of Human Rights, which also establishes that “no one shall be arbitrarily deprived of his property.” The simple language of this provision is enough to conclude that, even using a narrow interpretation of property, the confiscation and destruction of Palestinian-owned land, buildings and other holdings in and around East Jerusalem to expand settlements, build their infrastructure and construct the Annexation Wall, violate the right to own property.

3.4.2.1 Right to Adequate Housing

The importance of land in East Jerusalem extends beyond mere ownership or the value of the land itself in fiscal terms, but is also intrinsic to the enjoyment of a number of other significant social rights, such as the right to adequate housing. Many of these rights are expressed in Article 11(1) of the ICESCR, amongst other essential social rights,

The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions...

This provision situates the right to adequate housing within the broader context of and adequate standard of living and the improvement of living conditions. As noted by the CESCR, the right to adequate housing should not be interpreted narrowly, but “should be seen as the right to live somewhere in security, peace and dignity.”⁵⁴ It must be considered in terms of availability of services, habitability, accessibility and location.⁵⁵ By virtue of where they have their homes, Palestinians are denied access to employment and essential services such as health care and education. Further, they may at any time face the confiscation of their land or the destruction of their property. Limitations on the amount of space available for Palestinians to build resulting from land confiscation, settlement expansion and the construction of the Annexation Wall, further increases the precarious existence of Palestinian communities recently severed from Jerusalem.

⁵³ For education: CESCR, *General Comment No. 13: The Right to Education (Article 13)*, (8 December 1999) E/C.12/1999/10, paragraph 6(b). For health: CESCR, *General Comment Number 14: The Right to the Highest Possible Standard of Health (Article 12)*, (11 August 2000) E/C.12/2000/4, paragraph 12

⁵⁴ CESCR, *General Comment No. 4: The Right to Adequate Housing (Article 11(1))*, (13 December 1991), paragraph 7

⁵⁵ *Ibid.*, paragraph 8

3.4.3 The Principle of Non-Discrimination

Underlying the numerous violations of international human rights law created by the construction of the Annexation Wall around Jerusalem is pervasive and systematic discrimination against Palestinians. The prohibition on discrimination is a fundamental principle of conventional and customary international law. It is enshrined in both the ICCPR and ICESCR as well as numerous other treaties.

Articles 2(1) and 2(2) of the ICCPR and ICESCR respectively, contain clear prohibitions on discrimination, without establishing the precise content of the term. Discrimination has only achieved concise legal definition in instruments dealing with particular aspects of discrimination. Amongst these the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) is of greatest relevance to the current analysis, Article 1(1) of which defines racial discrimination as,

...any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The extensive definition of racial discrimination provided by ICERD is tempered by the important caution that it “shall not apply to any distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.”⁵⁶ This may suggest that by virtue of the fact that both East Jerusalem and other West Bank Palestinians do not have the status of Israeli citizens, they may be treated differently. However, as noted by various UN bodies, what is significant when determining discriminatory practice, is not only the object of this practice, but also its character. The Committee on the Elimination of Racial Discrimination (CERD) has held that to constitute racial discrimination a given practice must have “an unjustifiable disparate impact upon a group distinguished by race, colour, descent, or national or ethnic origin.”⁵⁷ Further, the CERD has specifically noted that the permitted differentiation in treatment between citizens and non-citizens,

...must be construed so as to avoid undermining the basic prohibition of discrimination; hence, it should not be interpreted to detract in any way from the rights and freedoms recognized and enunciated in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;⁵⁸

⁵⁶ ICERD Article 1(2)

⁵⁷ CERD, *General Recommendation XIV: Definition of Discrimination (Art 1, par. 1)*, (22 March 1993) paragraph 2

⁵⁸ CERD, *General Recommendation No.30: Discrimination Against Non Citizens*, (01 October 2004) paragraph 2

The fact that Palestinians are not citizens of Israel does not eliminate the possibility that Israel's actions towards them may be discriminatory under international law.

Article 5 of ICERD which refers, amongst others, to freedom of movement, notes that,

Whenever a State imposes a restriction upon one of the rights listed in article 5 of the Convention, which applies ostensibly to all within its jurisdiction, it must ensure that neither in purpose nor effect is the restriction incompatible with article 1 of the Convention as an integral part of international human rights standards.

The rights listed in Article 5 ICERD include freedom of movement, the rights to work, education and health, the right to housing, and the right to own property alone as well as in association with others. In and around Jerusalem the Israeli authorities apply a bifurcated policy in relation to the enjoyment of all of these rights, endorsing the open discrimination entrenched by the existence and construction of the Annexation Wall. Neither Israeli settlers nor international passport holders require special permits to travel to and from East Jerusalem. Accordingly, the denial of access to services created by the construction of the Annexation Wall affects only Palestinians. Further, it is only Palestinian property that is confiscated and destroyed for the construction of the Wall. Palestinian inhabitants of East Jerusalem and the surrounding West Bank are not only deprived of the rights enshrined and protected by international treaty and custom, but this deprivation occurs to the express benefit of the Israeli settlers. This flagrant discrimination places the Israeli authorities in further contravention of international law.

3.5 Israeli Case Law

Despite holding the erroneous position that the construction of the Annexation Wall in the OPT is legitimate under international law, the Israeli courts have nonetheless selectively required a re-routing of the Wall to reduce the harm caused to affected Palestinians. In the few decisions where this has been the case the Israeli High Court of Justice (HCJ) bases itself upon its interpretation of the requirement of military necessity, with particular emphasis on the notion of proportionality.

In the *Beit Surik* case⁵⁹ the HCJ established that proportionality is to be determined according to three tests. The first of these was that the means used must rationally lead to the realisation of the objective, and the second was that the least injurious means must be used to achieve the objective. The third test was that of what the Court termed 'narrow proportionality.' In effect this test requires an evaluation of the damage incurred against the advantage gained.⁶⁰ In the case in question, the HCJ found that in five out of the six confiscation orders contested, the damage caused by the route of the Annexation Wall

⁵⁹ *Beit Surik Village v. the Government of Israel, et al.*, HCJ 2056/04

⁶⁰ *Ibid.*, paragraphs 40 and 41

did not meet this third test and therefore was disproportionate. Accordingly it ruled that the route of the Wall was to be altered. In the first Order considered, the Court noted that,

The route undermines the delicate balance between the obligation of the military commander to preserve security and his obligation to provide for the needs of the local inhabitants. This approach is based on the fact that the route which the military commander established for the security fence – which separates the local inhabitants from their agricultural lands – injures the local inhabitants in a severe and acute way, while violating their rights under humanitarian international law.⁶¹

The Court further stated,

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. 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. These injuries are not proportionate.

While this ruling, as with other more recent rulings requiring the route of the Wall to be modified to reduce the harm caused to Palestinians,⁶² provides substantial weight to the argument that the construction of the Wall around Jerusalem is illegal, it must be emphasised that the HCJ deliberately avoids reaching this conclusion. In fact the HCJ upholds the idea that the construction of the Wall in the OPT is legal, in direct contradiction of the Advisory Opinion of the ICJ, and further condones other violations of international law, such as the presence of settlements and the routing of the Wall to ensure their safety. Therefore, for the purposes of this report it is simply pertinent to note that, while adopting a general approach that bolsters official Israel political rhetoric, the Israeli HCJ has, in certain cases, acknowledged the excessive harm the construction of the Wall causes Palestinians.

⁶¹ *Ibid.*, paragraph 60

⁶² *Mara'abe v. Prime Minister of Israel, et al.*, HCJ 7957/04

4. CONCLUSION

As has been illustrated in this report, the construction of the Annexation Wall around Jerusalem is illegal under international law. This illegality stems not only from the construction of the Wall within the OPT, but also from the entrenching of illegal Israeli policies such as settlements, restrictions on Palestinian movement and the *de facto* annexation. In relation to the final point, the Wall around Jerusalem serves to predetermine borders between Israel and an eventual Palestinian state, and as such has profound consequences in terms of political stability, and the realisation of a just and durable solution to the conflict. No less significant however, is the immediacy of the economic and social harm being inflicted upon the Palestinian population of East Jerusalem; a population that includes both those Palestinians within and outside the municipal boundaries of Jerusalem and/or the Wall. In view of the severe violations of both international human rights and humanitarian law, it is incumbent upon the international community to act to prevent these breaches and protect the Palestinian population of East Jerusalem. While it is conceded that in strict legal doctrine this obligation exists to a greater degree in terms of international humanitarian law, it is submitted that the moral argument for attempting to enforce Israel's compliance with human rights standards is equally compelling.

In its Advisory Opinion on the Wall the ICJ outlined in its *dispositif* (findings) the obligations of the international community as,

All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;⁶³

This summary of the obligations of the international community highlights the essential role of international law as the framework within which to address the construction of the Annexation Wall and the territorial claims Israel hopes to enforce therewith, as well as its impact on the Palestinian population. In respect of East Jerusalem, combining this framework with the urgency of the grave harm caused to Palestinians by the construction of the Wall and the irreversible physical reality it seeks to impose, it can only be concluded that inaction or mere rhetoric on behalf of the international community is no longer a tenable position if their obligations under international law are to be discharged.

⁶³ *Supra* note 31, paragraph 163(D)