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**HIDDEN IN PLAIN SIGHT: THE VILLAGE OF
NABI SAMWIL**

2018



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NABI SAMWIL**

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2018



THE VILLAGE OF NABI SAMWIL



AL-HAQ

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Executive Summary

Nabi Samwil is a small Palestinian village located in the West Bank. Having not been included in the expanded municipal boundaries of Jerusalem, but considered an area of strategic importance, the village became an immediate target of Israeli authorities following the start of the occupation in 1967. Israeli officials sent numerous correspondences debating how to take control over the village, including through settling Nabi Samwil. One such plan was implemented in 1971, when Palestinians living near the tomb alleged to be that of the prophet Samuel (Nabi Samwil in Arabic) had their homes demolished by the Israeli Occupying Forces (IOF), and were transferred to an area a few hundred meters away. Individuals were forced to take shelter in the abandoned homes and structures of other Palestinian village residents who had fled during the 1967 war.

The targeting of the village continued, and was further facilitated decades later by its designation as “Area C” under the Oslo Accords, and as a “national park” by Israel in 1995. As a result, residents of Nabi Samwil face extreme restrictions on building and land use. In addition to the hindrances already faced by residents, Israel’s establishment of the Annexation Wall left the village isolated, positioning it to the east of the Green Line and to the west of the Wall. Movement and access restrictions created by the Wall and other Israeli policies and practices have both created and exacerbated an array of other obstacles to the attainment of basic rights. In total, residents face a coercive environment that propels their transfer from Nabi Samwil. Part I of this report details the plight of residents, and attempts to provide a snapshot of their daily lives using their own words.

While the occupation’s impacts on Palestinians are foremost, the manner in which Israel seeks to validate its presence is also important to examine. Accordingly, Part II of the report discusses Israel’s establishment of the village as a “national park.” In doing so, Israel has emphasized the alleged religious significance of the village, and has conducted excavations there seemingly in order to corroborate its control over the land. Even though there are clear inconsistencies within the Israeli narrative, the presence of the village and the targeting of residents remain obscured.

In total, the report not only seeks to give voice to Nabi Samwil’s residents and express the all-encompassing impacts of Israel’s occupation, it also seeks to highlight the deep contradictions between Israel’s public narrative and the reality of its practices. These contradictions are starkly evident within the village’s space (between the “archeological site” and the inhabited area), and perhaps more importantly, in how the narrative has evolved over time. Israeli officials discussing the ‘settlement’ of Nabi Samwil and the evacuation of residents immediately following 1967, remains an active policy, even if the methods have been adapted.

Part I. The Village of Nabi Samwil

1. Background

Nabi Samwil¹ is named after the prophet Samuel, whose tomb is alleged to be on the village's lands and encapsulated by a mosque there. Aside from its purported religious significance, Nabi Samwil's strategic location, on a mountaintop near Jerusalem, has recorded a variety of conquests and battles.² In 1099, the Crusaders dubbed the village the "Mount of Joy," because it was the first place from where Jerusalem could be seen.³

More recent history has illustrated that Nabi Samwil continues to be a prime target for conquest. During the 1967 war, many of Nabi Samwil's 1000 residents fled to nearby Jordan, with approximately only 200 residents remaining thereafter.⁴ Following the war, Israel became the occupying power of the Palestinian territory, including Nabi Samwil. The village was identified as a matter of immediate strategic importance: while the topography of Nabi Samwil is one of the highest points in the area, Israel failed to include it in the expanded municipality boundaries of Jerusalem.⁵ The perceived oversight was discussed extensively between Israeli authorities and officials. For example, in a letter to Israeli Prime Minister Golda Meir in 1972, Israeli Minister without Portfolio Yisrael Galili stated that a mistake was made on 26 June 1967 when Nabi Samwil was excluded as part of annexed Jerusalem, and that it would be subject to political risks if it was not populated.⁶

Galili recognized this "risk" early on. Immediately following the occupation in 1967, Galili and others targeted the village through land expropriation policies,⁷ and plans

1 Other common spellings for the village, including those used in cited documents are: Nabi Samuel, Nebi Samuel, and Nebi Samwil. Where a direct quotation has been used, the spelling of the village by the original author was maintained.

2 For example, decisive battles were fought in Nabi Samwil in 1917 between British and Ottoman forces. Richard the Lionheart also had his first sight of Jerusalem from the mountaintop of Nabi Samwil in his failed conquest. See: Eastward: Travels in Egypt, Palestine and Syria, Norman Macleod, 1869, p.170, available at https://books.google.co.il/books?redir_esc=y&id=i-ljmYVvILEC&q=samuel#v=snippet&q=neby&f=false.

3 Nabi Samuel - Jerusalem, This Week in Palestine, February 2008, available at <http://archive.thisweekinpalestine.com/details.php?id=2395&ed=150&edid=150>.

4 Current residents of the village provided these figures to Al-Haq during interviews. Residents stated that many individuals hid in nearby caves and returned to Nabi Samwil soon after the war. Although a 2014 Human Rights Watch report stated that an Israeli military census recorded 66 residents remaining in the village in 1967, a 1971 UN report cited over 200 residents being evacuated after 1967. See Israel: Military Choking Palestinian Village, Planning Tourist Site, Human Rights Watch, 4 February 2014, available at <https://www.hrw.org/news/2014/02/04/israel-military-choking-palestinian-village-planning-tourist-site>; UN Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, 5 October 1971, A/8389, para. 48(c)(i), available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/858C88EB973847F4802564B5003D1083>.

5 Former director of the Israeli Jerusalem District of the Ministry of Housing, Shmaryahu Cohen, reportedly stated, "everyone regarded the united Jerusalem as a border city and its boundaries of jurisdiction as the border of the state of Israel. What was to be done to prevent the Jordanian guns from taking up again positions in Nabi Samwil?" See: The Politics of Jerusalem Since 1967, Michael Dumper, p.110, see also p.279 FN 58.

6 Letter: Yisrael Galili to Prime Minister Golda Meir, 10 October 1972, Akevot's Conflict Records Digital Repository (CRDR) document 9169.

7 "In 1970 additional areas of predominantly Arab-owned land were expropriated at Kalandia, the Nebi Samu'il area (outside the expanded boundaries), Neve Ya'aqov, Sur Bahir, and Shu'fat. Although the Israelis have indicated their willingness to compensate the affected land-owners, in most cases the Arabs have refused the offer, reasoning that to accept would legitimize the expropriation." Jerusalem: Some Aspects of a Complex Problem, National Foreign Assessment Center, United States Central Intelligence Agency, May 1978, p.6, available at <https://www.cia.gov/library/readingroom/docs/1978-05-01.pdf>. Also, in 1971, a spokesperson for the Jewish National Fund (JNF) reported that the JNF had been purchasing land for the previous two years in "Nebi Samwil, Jerusalem, and the Etzion Bloc." Supra at note 4, UN Report, para. 48b(iii).

to establish residential settlements in the area.⁸ In a memo dated 4 March 1971, Galili wrote that the Israeli government would take specific steps in order to take over the land of Nabi Samwil, including: demolishing the empty structures in the village, negotiating with the 11 remaining families in order to evacuate them, and exerting efforts to buy the village's lands from its inhabitants.⁹ A few weeks later, on 22 March 1971, Israeli military forces arrived, without prior notice, with bulldozers to Nabi Samwil and demolished up to 52 homes¹⁰ located near the mosque. Notably, the "11 families" were extended families that reportedly included more than 200 individuals.¹¹ The demolition was recorded by a delegate of the International Committee of the Red Cross (ICRC) to the Jordan National Red Crescent Society:

"... I would like to inform you that, according to our delegation in the West Bank, the village of Nebi Samwil was in fact destroyed by Israeli armed forces on March 22, 1971... The president of the ICRC, Mr. Naville, has recently sent a letter to Mrs. Golda Meir in which he expresses the ICRC's grave concern about the destruction of buildings in the occupied territories. In this letter, which was transmitted at the end of May, he underlines the negative effect of these destructions on families and reaffirms the ICRC's position - already expressed many times before - as to the serious violation of humanitarian principles that they represent."¹²

The displaced residents were then forced to move to the abandoned homes and structures of those who had fled the village in 1967, a few hundred meters east of the mosque.

8 See Request for Jewish Settlement in the Area of Ramallah - Nabi Samwil, 31 August 1969, and Letter from the Minister of Justice to the Prime Minister's Office, 6 January 1970, Akevot's CRDR.

9 Memo of Yisrael Galili on Settlement of Nabi Samwil, 4 March 1971, Akevot's CRDR document 6623.

10 The Mayor of Jerusalem prior to June 1967, Rouhi El-Khatib, provided a memo to the UN in 1971, detailing that 52 houses were bulldozed. Supra at note 4, UN Report, para. 48(c)(i). Other resources have listed the demolition of 30 to 46 homes. See: Supra at note 4, Human Rights Watch Report; and Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, UN Secretary General, 14 September 2012, A/67/372, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/B2FB1B5B6E-9F663285257A9C004B5271>.

11 Supra at note 4, UN Report, para c(i). Current residents interviewed by Al-Haq also stated that approximately 200 residents were present in the village in 1971.

12 The letter was addressed to the Jordanian Red Crescent Society on 23 June 1971. Supra at note 4, UN Report, para. 58.



Eissa Barakat standing next to his former home in Nabi Samwil. Al-Haq © 2016

"I was born here in 1952. It was beautiful, and life was good. Our home was where the archeological area is now. We had four rooms... In 1971, I was leaving to go to work one morning. An Israeli told me not to go to work because they were going to demolish my house. Next thing I know, bulldozers started to come up... They started to demolish the houses. They moved us to the houses that were in the central part (belonging to people that had left to Amman)... They threw our things out of the house. One closet was thrown on top of a car... the conditions were really bad when we moved - the houses were rundown. We moved to one big house, and it was split between me and my brother."¹³

In May 1971, in a correspondence to Prime Minister Meir, Galili reported that the buildings surrounding the mosque were evacuated, the area was leveled, and the residents were moved to live in other buildings and were compensated.¹⁴ Residents interviewed by Al-Haq refute the contention that compensation was accepted at the time. Galili went on to affirm that the Ministerial Committee for Settlement recommended the establishment of an urban settlement in Nabi Samwil, which would house "elite" members of society as to minimize the level of investment needed by the government.¹⁵ The settlement would be constructed on the evacuated land.

Correspondences between Israeli officials throughout 1972 portray some disagreement as to how the land of Nabi Samwil should be used. Galili continued advocating for settlement of the area, as evidenced in a June 1972 letter to Jerusalem's Mayor Teddy Kollek.¹⁶ While

¹³ Interview with Eissa Eid Barakat on 25 June 2016.

¹⁴ Letter from Yisrael Galili to Prime Minister Golda Meir, 16 May 1971, Akevot's CRDR.

¹⁵ Id.

¹⁶ Galili wrote Kollek in June 1972 asserting the plan of the Israeli Land Authority to settle the village. Letter from Yisrael Galili to Teddy Kollek, 20 June 1972, Akevot's CRDR document 9168.



Israeli media reported an approved plan to build 8,000 apartments in Nabi Samwil on 26 September 1972,¹⁷ Kollek opposed such plans. On 27 September 1972, Kollek wrote to Israeli Minister of Justice Yakov Shapira and noted that while Nabi Samwil was not part of Jerusalem's municipal boundaries, the development of the area had serious impacts on the city.¹⁸ Kollek wanted the village to be part of a "green ring" around Jerusalem;¹⁹ this was rejected by Galili, who thought that leaving the area empty and unpopulated would subject it to political risk.²⁰

Shortly thereafter, in March 1973, then Israeli Defense Minister Moshe Dayan, "urged the acceleration of settlement in the territories" and reportedly expressed "indignation over the failure of the Government to implement its decision to establish an urban settlement in Nebi Samwil."²¹ Accordingly, the village lands continued to be targeted for land purchases and outright expropriation, including as part of an "October 1975 plan to 'thicken' Israeli settlement of Jerusalem by the construction of three big settlements and 10 new suburbs in the occupied territories outside of Jerusalem."²² In 1981, settlers even reportedly seized lands belonging to village residents.²³

The correspondences between various Israeli officials in the years immediately following the occupation, as well as UN records of the period, are not only critical to understanding the current policies of Israel towards the village, but also provide a likely blueprint for other areas in the occupied Palestinian territory (OPT). Irrespective of the pace, the overall objective of fully controlling the land of Nabi Samwil, emptied of its residents, persisted even if the means have changed. This is exemplified in the disparity between how the United Nations, the ICRC, and others recorded the razing of the village, while Israeli officials coldly discussed the removal of the Palestinian residents on the path to controlling the land. Moreover, the correspondences provide a clear motive for targeting the village: its proximity to Jerusalem and its position as the highest point in the area. Notably absent from the original letters exchanged between Israeli officials was any alleged religious significance of Nabi Samwil; a narrative that now is at the forefront of Israel's pretexts for control.

17 UN Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, 25 October 1973, A/9148, para. 59, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/A7003EE3E084582A85256C38006A49F5>.

18 Letter from Teddy Kollek to Justice Minister Shapira, 27 September 1972, Akevot's CRDR document 9168.

19 Id.

20 Supra at note 6.

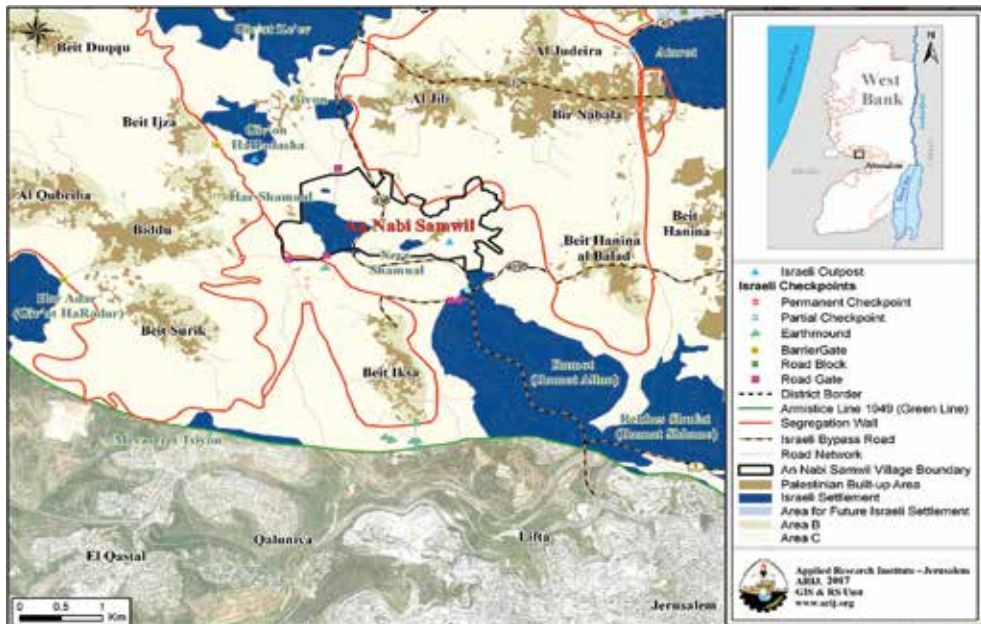
21 Supra at note 17, para. 52.

22 UN Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories, 1 October 1976, A/31/218, para. 37-38, and 330, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/99818751a6a4c9c6852560690077ef61/8bf5be1ebc256b43852569eb006c4022?OpenDocument>.

23 "It further reported on 26 January 1981 that the settlers of Giv'on had seized 150 dunams owned by inhabitants of the Palestinian Arab villages of Al-Jib and Al-Nabi Samuel." Letter dated 27 February 1981 from the Acting Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People to the Secretary-General, 27 February 1981, A/36/114, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/83DFD77B3F2FD65685256962006C59A4>; See also, An Nabi Samwil Village Profile, Applied Research Institute- Jerusalem (ARIJ), 2012, p.15, available at http://vprofile.arj.org/jerusalem/pdfs/vprofile/An%20Nabi%20Samwil_EN.pdf.

Current Context

In 1992, the Archeology Department of the Israel Civil Administration began excavating the area surrounding the mosque (and the alleged tomb), where the Palestinian homes once stood.²⁴ In 1995, Israel declared the village and its surrounding area, including the agricultural lands belonging to residents, a national park. This designation places extreme restrictions on land use. While the archeological site is approximately 7.5 acres, the national park encloses an area of 865 acres (3,500 dunums).²⁵ Notably, the Israeli settlements on the lands of the Palestinian village²⁶ were not included in the declaration of the park, allowing for continued building of settlement housing units.²⁷



Nabi Samwil village, currently inhabited by a population of about 302,²⁸ falls within the “J2” area of the Jerusalem governorate, which was occupied in 1967 by Israel but not included in the expanded municipal boundaries.²⁹ The Oslo Accords designated the village as Area C of the West Bank, and thus under full Israeli control. It is bordered by the village lands of Beit Hanina Al-Balad and Bir Nabala to the east, Al-Jeeb to the north, and Beit Iksa to the west and south. However, due to Israel’s land confiscation policies, Nabi Samwil is now surrounded to the north, south, and west by Israeli settlements.³⁰

24 Nabi Samwil – A Village Trapped in a National Park, Emek Shaveh, 13 September 2013, p.5, available at <http://alt-arch.org/en/nabi-samwil-national-park-2/>.

25 Id. at p.3.

26 Supra at note 23, ARIJ Village Profile, p.15.

27 “In contrast, the land designated for the development of the nearby settlement, Har Shmuel (administratively attached to Giv’at Ze’ev), was not included in the area of the national park and hundreds of housing units were built on it.” A Guide to Housing, Land and Property Law in Area C of the West Bank, Norwegian Refugee Council, February 2012, available at <https://www.nrc.no/globalassets/pdf/reports/a-guide-to-housing-land-and-property-law-in-area-c-of-the-west-bank.pdf>.

28 Localities in Jerusalem Governorate by Type of Locality and Population Estimates, 2007-2016, Palestinian Central Bureau of Statistics, available at http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/jerus.htm.

29 “J1” includes areas within Israel’s defined boundaries of the Jerusalem municipality that were illegally annexed in 1967. For the areas that compose J1 and J2, see Locality Profiles and Needs Assessment for Jerusalem Governorate, Applied Research Institute – Jerusalem (ARIJ), 2014, p. 10, available at http://www.arji.org/files/arjadmin/IDRC/publications/Jerusalem_VProfile_EN.pdf.

30 These include the settlements of Giv’at Ze’ev, Ramot, Giv’on and Har Shmu’el on the north, south, and west.

Israel's construction and establishment of the Annexation Wall in the area in 2005 further isolated Nabi Samwil, placing the village on the western side of the Annexation Wall and the eastern side of the Green Line. Access to the village is limited to the bypass road connecting the settlement of Giv'at Ze'ev in the north and the settlement of Ramot in the south. Although there are no physical barriers between the village and Jerusalem, the majority of Nabi Samwil residents, as West Bank ID-holders, are not permitted to enter Jerusalem without permits. A large Israeli security tower monitors the movement of residents, and those found in Jerusalem without permits are fined and/or detained. Although remnants of Palestinian homes are visible at the archeological site, materials issued by the Israeli National Parks Authority make no mention of the forced removal of village residents in 1971 or of their current presence a few hundred meters from the site.³¹

Applicable Legal Framework

Israel, as Occupying Power, is bound by international humanitarian law (IHL) in its administration of the OPT, including the Hague Convention of 1907, and its annex the Regulations Respecting the Laws and Customs of War (hereinafter "the Hague Regulations of 1907"), and the Fourth Geneva Convention. Israel is further bound by international human rights law (IHRL), and has ratified seven of the nine core human rights treaties.³² The applicability of these bodies of law to the OPT has been affirmed by the International Court of Justice,³³ the International Committee of the Red Cross,³⁴ and UN treaty bodies,³⁵ amongst others.

31 See: Nabi Samuel Park, Israel Nature and Parks Authority, available at <https://en.parks.org.il/sites/English/ParksAndReserves/nebisamuel/Pages/default.aspx>. Brochure: "Nebi Samuel Park, Mount Samuel, Mount of Joy (National Park), Israeli Nature and Parks Authority" provided during a visit on 6 March 2018. Also available at http://parks.org.il/sigalit/DAFDAFOT/nabi-samuel_eng.pdf.

32 Israel ratified the: International Convention on the Elimination of All Forms of Racial Discrimination; the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities.

33 Legal Consequences of the Construction of a Wall in Occupied Territory, International Court of Justice, 9 July 2004, paras. 90-113, available at <http://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>.

34 The International Committee of the Red Cross (ICRC) has affirmed the de jure applicability of the Fourth Geneva Convention. See Annex 2, December 2001, para. 2, available at <https://www.icrc.org/eng/resources/documents/article/other/5fldpj.htm>.

35 See for example: Concluding observations on the fourth periodic report of Israel, Human Rights Committee, 21 November 2014, CCPR/C/ISR/CO/4, para. 5.



The entrance of Nabi Samwil. Al-Haq © 2017

2. Living Conditions for Residents of Nabi Samwil

Every aspect of life for Palestinians in Nabi Samwil is shaped and impacted by an array of Israeli policies and practices that target the land and its people. As described by one resident, living in Nabi Samwil is like being confined to “an invisible cage.”³⁶ This section will examine Israel’s administration of the village and treatment of residents in light of international law.

A. Movement of People and Goods

The residents of Nabi Samwil face severe restrictions on their freedom of movement due to the village’s imposed position between the Annexation Wall and the Green Line. There is, however, no physical barrier between the village and Jerusalem or Jerusalem-area settlements. Because the majority of residents in Nabi Samwil hold West Bank IDs, they are not allowed to enter Jerusalem without a permit, and are subject to fines and possible detention if found without one. The barriers that exist, the Annexation Wall and the nearest checkpoint at Al-Jeeb village, operate to sever Nabi Samwil village from the rest of the West Bank.

³⁶ Nabi Samwil: Balancing Historical Heritage and Human Rights, Elise Hannaford, Palestine-Israel Journal, 12 March 2014, available at <http://www.pij.org/details.php?blog=1&id=266>.

Irrespective of its isolation, the village is highly dependent on other areas of the West Bank. Given Israel's policies directed towards the village, Nabi Samwil residents are obliged to seek services ranging from health care to education, find employment, shop, and conduct almost every other activity in other villages of the West Bank. Alarming, there have even been instances where the village itself or Al-Jeeb checkpoint were closed. In 2016 for example, residents were stuck in the village for three days due to a Jewish holiday.³⁷ In another instance, a woman was unable to seek medical attention for the delivery of her baby due to the closure of Al-Jeeb checkpoint.³⁸



Al-Jeeb Checkpoint. Al-Haq © 2017

Coordination: Residents of Nabi Samwil must receive “coordination” from the ICA Liaison office in order to receive visitors, including family members, that hold West Bank IDs and in order to bring in goods that are deemed as commercial quantities or larger items such as furniture. According to residents, the process entails first calling the village council contact on the same day that they would like the people or goods to cross. The village council liaison then must call the Israeli Border Police Office in the Atarot settlement, who then calls the Israeli Occupying Forces (IOF) at Al-Jeeb checkpoint. There are two (one to two hour) periods when the people/goods may then cross. Residents stated that even if there is “coordination,” the matter ultimately remains at the discretion of the IOF at the checkpoint.

37 Public celebration of Samuel the prophet turns the Nabi Samuel into an ultra-Orthodox ancient site, while locking in the Palestinian village for three days, Emek Shaveh, 9 June 2016, available at <http://alt-arch.org/en/nebi-samuel-celebration-june-2016/>.

38 Al-Haq Field Report, “A review of the most important obstacles to the provision of medical services in Nabi Samwil by the occupation,” February 2017.

a. Entry of Palestinians, including Residents, into the Village

The names and ID numbers of residents from Nabi Samwil are listed at Al-Jeeb checkpoint, to permit their re-entry to their village upon returning from other areas of the West Bank. According to one resident:

"Registration is based on a census conducted by the Israeli occupying authorities of the population of Nabi Samwil almost 10 years ago. At the time, the Israeli troops raided the village and counted all residents. Residents who were outside the village at the time were not included in the census."³⁹

The private cars of residents, including those with West Bank license plates, are also registered at the checkpoint. Israel has limited public transportation for residents to one West Bank licensed-bus, one minivan, and one taxi for emergencies.⁴⁰ Residents may call for and use Israeli-licensed taxis, however, they are costly and many drivers are hesitant to service residents due to the residents' West Bank ID.

Residents may lose entry to their village by having their names removed from Al-Jeeb checkpoint if they relocate. They would then only be able to visit after "coordination" with the Israeli Civil Administration (ICA). One resident stated, "I have siblings that live in Beit Iksa, and now they have to do coordination even though they lived here and grew up here."⁴¹ Palestinians who hold West Bank IDs and have not "coordinated" their visit beforehand, in order to ensure that their name appears on the checkpoint's list for a specific day, may not cross the checkpoint and enter the village.

Residents of the village repeatedly emphasized the burden of coordination for friends and relatives that live outside the village. Nour, who is originally from the Nablus governorate and moved to Nabi Samwil upon marriage stated:

"As much as I want my family to come to visit, it is a huge hassle... everyone needs coordination to come in. It takes too much time. A lot of them are not permitted because of 'security' reasons... they used to come more often, but everyone got tired of all the hassle."⁴²

Conversely, Palestinians with Jerusalem IDs and Israeli citizens can freely enter the village, using the same settler bypass road Nabi Samwil residents must take to Al-Jeeb. In order to monitor where cars are headed (i.e. either towards Jerusalem or to the checkpoint), a large security tower with cameras near the Nabi Samwil mosque monitors the movement of residents.⁴³

³⁹ Interview on 28 August 2017 in Nabi Samwil. Name withheld.

⁴⁰ Interview with Nawal Barakat on 9 December 2017.

⁴¹ Interview on 27 August 2016 in Nabi Samwil. Name withheld.

⁴² Interview with Nour Ellayan on 4 June 2016.

⁴³ The expansive surveillance by the IOF by virtue of the tower was highlighted in an account of an Israeli biker. He recounted being stopped by a soldier who said, "You know, we thought you were a Palestinian coming from Beit Iksa, that's why we stopped you... they cannot enter Israel... Oh, the security cameras at Nebi Samuel tracked you coming from the direction of Beit Iksa, and we were dispatched to detain you." See: The Politics of the Trail - Reflexive Mountain Biking along the Frontier of Jerusalem, Oded Löwenheim, University of Michigan Press, p.97-98.



Picture taken from the roof of the Nabi Samwil mosque in July 2017. The area in front of the security tower is part of the archeological site, while the area beyond the tower leads to the residents' current homes. Al-Haq © 2017

b. Coordination for Goods

In addition to controlling the entry and exit of residents and visitors to Nabi Samwil, Israeli authorities also impose restrictions on goods that are allowed to enter the village. According to residents, commercial quantities of goods and large items, such as furniture and appliances, are not allowed to pass Al-Jeeb checkpoint without prior coordination. Residents affirmed that the threshold for what is considered personal consumption is very low and at the discretion of the IOF at the checkpoint. Al-Haq was told of one incident where two cartons of eggs were considered an “illegal” quantity to pass through the checkpoint: the IOF proceeded to break all of them. In another incident, the village council coordinated the entry of a bedroom furniture set for a resident; however, once the truck arrived at Al-Jeeb the IOF refused to let it pass.

Aida Barakat helps run a small store in the village, which is owned by a relative. She described the process of coordination, and the difficulty in planning inventory for the store.

“There are two time periods during the day when goods can be brought in with coordination... Sometimes the person in the village council responsible for coordination answers, and sometimes he is busy. For coordination, we need to provide our name, our ID number, and the items that we want to enter. It is the same kind of coordination for people that are visiting.

We are not allowed to do coordination without him (the council liaison). We cannot just get in touch with the IOF liaison. Sometimes if I really need items for the store, I just go and put things in my purse. I get these goods from Al-Jeeb. There are a few stores that I go to. I get the boxes from these places too.

Sometimes you do coordination, and you end up getting more goods than you had planned, or something else, and then they will not let you enter with it. If there are five boxes of Coca-Cola on the list, and we get six because we had extra money left, sometimes the person (soldier) lets you pass, but usually they will not let us enter. Sometimes just depending on the mood of the soldier, they make you wait four to five hours to bring in things, even if there is coordination. They do it just to bother us.

A lot of times we get a taxi, and the coordination has not reached yet, so the driver has to wait and he would take 200 shekels. We end up losing money.”⁴⁴

c. Right to Freedom of Movement

The right to freedom of movement is guaranteed under international human rights law and international humanitarian law, although it may be subject to restriction under limited circumstances. Article 12 of the International Covenant on Civil and Political Rights (ICCPR) holds the right of everyone lawfully within the territory to “liberty of movement and freedom to choose his residence.” Any restrictions on this right must be “provided by law... 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.”⁴⁵ The Human Rights Committee has affirmed that restrictions are exceptional, and must be proportional, appropriate, and the least intrusive method for the desired result.⁴⁶ Restrictions must also conform to the principles of equality and non-discrimination.⁴⁷

The Fourth Geneva Convention includes similar restrictions that may be imposed on the right to movement. The Commentary to Article 27 of the Fourth Geneva Convention details the “measures of control and security” which may be undertaken, and affirms “the right to liberty, and in particular, the right to move about freely, can naturally be made subject to certain restrictions made necessary by circumstances.”⁴⁸ This is also affirmed in the Hague Regulations, where an Occupying Power may take measures to “restore and ensure... public order and safety.”⁴⁹ However, as noted by the Commentary, the right to liberty cannot be “suspended in a general manner.”⁵⁰

In its Advisory Opinion in the case concerning the Legal Consequences of the Construction of a Wall in the OPT, the International Court of Justice examined the impact of the Wall on

⁴⁴ Interview with Aida Muhammad Barakat on 27 August 2016.

⁴⁵ Article 12(3) of the International Covenant on Civil and Political Rights (ICCPR). Israel ratified the ICCPR in 1991.

⁴⁶ CCPR General Comment No. 27: Article 12 (Freedom of Movement), UN Human Rights Committee (HRC), 2 November 1999, CCPR/C/21/Rev.1/Add.9, para. 14.

⁴⁷ Id. para. 18.

⁴⁸ Commentary of 1958, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Commentary to Article 27, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=25179A620578AD49C12563CD0042B949>.

⁴⁹ Article 43 of the Hague Regulations

⁵⁰ Supra at note 48, Commentary to Article 27.

freedom of movement. The Court noted “the establishment of a closed area between the Green Line and the wall itself and the creation of enclaves” which imposed “substantial restrictions on the freedom of movement of the inhabitants of the OPT (with the exception of Israeli citizens and those assimilated thereto). Such restrictions are most marked in urban areas, such as the Qalqilya enclave or the City of Jerusalem and its suburbs.”⁵¹ The Court affirmed that the Wall and its associated regime impeded the freedom of movement of Palestinians in the OPT, but acknowledged that there could be exceptions to this right.⁵² The Court referred to Article 12(3) of the ICCPR, and found such exceptional conditions, as outlined by the Human Rights Committee, were not met.⁵³ In summation, the Court affirmed that it was “not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives.”⁵⁴

Nabi Samwil is one such enclave in the suburbs of Jerusalem as described by the Court, whose residents face extreme limitations on their freedom of movement. The restrictions placed on the residents of Nabi Samwil do not meet the permissible exceptions to freedom of movement under international human rights law or international humanitarian law. Indeed, no reasonable exception based on “national security, public order (*ordre public*), public health or morals” as provided for under the ICCPR for the restrictions, can be made when Israeli settlers, tourists, and Palestinians from East Jerusalem readily access the village without barriers. Restrictions on movement specifically target residents of Nabi Samwil, in violation of international law and the principles of equality and non-discrimination.

The only purpose for the movement restrictions is to isolate and place pressure on residents of Nabi Samwil, and to further Israel’s unlawful colonization of the territory. The village of Nabi Samwil exemplifies Israel’s policy of fragmentation, and the physical and invisible barriers that divide Palestinian land and people. Palestinians, as the protected population, should be able to access all areas of the OPT as “a single territorial unit.”⁵⁵ The Oslo Accords similarly provides:

“[w]ithout derogating from Israel’s security powers and responsibilities in accordance with this Agreement, movement of people, vehicles and goods in the West Bank, between cities, towns, villages and refugee camps, will be free and normal, and shall not need to be effected through checkpoints or roadblocks.”⁵⁶

As will be highlighted, the right to freedom of movement is a prerequisite for the attainment of Nabi Samwil residents, as with all other Palestinians, to an array of other

⁵¹ Supra at note 33, para. 133.

⁵² Id. at para. 134.

⁵³ Id. at para. 136.

⁵⁴ Id. at para. 137.

⁵⁵ “The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.” Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Washington, D.C., September 28, 1995, Article XI(1).

⁵⁶ Id. at Annex 1, Article 9(2)(a).

economic and social rights, including the right to work, education, and health.⁵⁷ As noted by the UN, restrictions on freedom of movement impact these and other rights, and cumulatively “undermine the right of Palestinians to self-determination and to an adequate standard of living.”⁵⁸

B. Planning and Building in Nabi Samwil

Following the demolition of their homes in 1971, residents of Nabi Samwil were forced to move into the abandoned homes and other structures belonging to Palestinians who fled in 1967, located in an area a few hundred meters from the mosque. One resident stated that some individuals took over the homes abandoned by close relatives; others were forced to use animal barracks for shelter.

Nabi Samwil residents face extreme limitations on building due to its location in Area C. Nearly 60 per cent of the West Bank is designated as Area C, and accordingly, under full Israeli control. Only one per cent of Area C is planned for Palestinian use; as a result, between 2010-2014, only 1.5 per cent of Palestinian permit applications were approved by the ICA in Area C.⁵⁹ Residents of Nabi Samwil face similar multiple layers of obstacles, which obstruct their ability to build. First, Nabi Samwil lacks a village outline plan. Although one was submitted to the ICA in 2011, and the plan was “developed to comply with ICA planning criteria,” the ICA has neither moved forward with nor rejected the plan.⁶⁰

Proving ownership over land is another impediment to building permit applications.⁶¹ The majority of residents of Nabi Samwil do not have title to the homes that they were forced to move in to.⁶² Even in other areas of the village where residents may have title, construction is restricted due to the village’s designation as a national park.⁶³ The Israeli law on national parks prohibits any “building activity or any other activity that could in the opinion of the Authority hinder the designation of the area as a national park or as a nature reserve... other than with the approval of the Authority.”⁶⁴

57 Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, Report by the Secretary-General, 20 January 2016, A/HRC/31/44, para. 6, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/F5FDF4FCEC5C722985257F62006D2E2F>.

58 “Movement restrictions undermine individuals’ rights to health care, work, education and family life, and result in the rupture of social, economic, cultural and family ties. Cumulatively, these violations undermine the right of Palestinians to self-determination and to an adequate standard of living.” Id. at para. 11.

59 Under Threat: Demolition Orders in Area C of the West Bank, UN OCHA, September 2015, available at http://data.ochaopt.org/demolitionorders/demolition_orders_in_area_c_of_the_west_bank_en.pdf.

60 Funding for the creation of the local outline plan came from the United Kingdom, the European Union and the State of Palestine. Spatial Plans for Palestinian Communities in Area C of the West Bank, Ministry of Local Government, State of Palestine, 2016, p.13, available at <http://geomolg.ps/Temp/Area%20C/Spatial%20Plans%20for%20Palestinian%20Communities%20in%20Area%20C.pdf>.

61 Factors influencing the possibility of attaining a permit in Area C include: “sufficient detailed plans for Palestinian villages, the ICA’s restrictive interpretation of the outdated plans that do exist and, in cases, difficulties Palestinians face in proving ownership of the land on which the proposed construction will take place.” Restricting Space: The Planning Regime Applied by Israel in Area C of the West Bank, UN OCHA, December 2009, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/1ce874ab1832a53e852570bb006dfaf6/b136572e8ee41fba8525768d00514356?OpenDocument>

62 Interview with Eid Muhammad Eid Barakat on July 16, 2017.

63 Supra at note 4, Human Rights Watch Report

64 National Parks, Nature Reserves, National Sites and Memorial Sites Law, 5758-1998, Israel, Article 25(a), unofficial translation available at <http://www.sviva.gov.il/English/Legislation/Documents/National%20Parks,%20Nature%20Reserves,%20National%20Sites,%20Memorial%20Sites%20Laws%20and%20Regulations/NationalParksNatureReservesNationalSitesAndMemorialSitesLaw1998.pdf>.

As throughout Area C, residents of Nabi Samwil are thus forced to build “illegally” and face possible demolition.⁶⁵ Moreover, given the village’s small size and the persistent surveillance by the IOF, wholly new buildings or structures would be quickly noticed and issued a demolition order. The head of the village council, Amir Obeid, told Al-Haq that demolitions against the residents have been continuous since the start of the occupation.⁶⁶



Picture of Amir Obeid, head of the village council, and Ahmed Abu Dahouk, council member, outside of the village council building. The building has a demolition order against it.

Al-Haq © 2017

Obeid further noted the impact of the lack of a village outline plan and Nabi Samwil’s designation as a national park on the village as a whole. While residents have long called for improved infrastructure, Obeid stated that Israeli authorities only recently offered to allow for the update of the village’s sewage infrastructure, which the residents would have to pay for themselves, at approximately \$500,000 USD.⁶⁷ Obeid believes that the only reason for the “offer” was because of the desire of Israeli authorities to extend infrastructure from the village’s archeological site to the settlement of Ramot. He believes that Israel intends to eventually remove all Palestinians from the village, and the presence of infrastructure would facilitate Israeli settlement in the long run.



Demolition of a small animal barracks in Nabi Samwil in October 2010 by the IOF. Picture provided by Nawal Barakat, the owner of the demolished structure. Nawal stated that tear gas was used against residents during the demolition operation.

⁶⁵ Nabi Samwil has reportedly received 34 demolition orders against residents, as of 2016. Supra at note 60, p. 24.

⁶⁶ Interview with Amir Obeid on 9 December 2017.

⁶⁷ Id.

Women's Association of Nabi Samwil

On August 3, 2016 the IOF entered Nabi Samwil, surrounded the Women's Association of Nabi Samwil building, closed off the area, and proceeded to bulldoze the building. The Women's Association provided a space for women and children to meet, study, and participate in workshops and training courses. France, who financed the building, condemned the demolition and affirmed that it was contrary to international law.⁶⁸

Demolition of Women's Association of Nabi Samwil on 3 August 2016



Israeli soldiers standing outside the Women's Association of Nabi Samwil prior to demolition



Israeli bulldozers about to demolish the Nabi Samwil Women's Association building



Demolished building of the Nabi Samwil Women's Association

Nawal Barakat was instrumental in the establishment of the Association and stated that it was her proudest accomplishment. She provided the above pictures of the demolition which took place in 2016. She is pictured below, sometime after the demolition, with the Association's sign.



68 Point de presse du 11 août 2016, France Diplomatie, available at <http://basedoc.diplomatie.gouv.fr/vues/Kiosque/FranceDiplomatie/kiosque.php?fichier=ppfr2016-08-11.html>.

a. Housing in Nabi Samwil

Due to restrictions on building, and in order to accommodate growing families, homes are often divided and continue to be subdivided as needed. One 2011 UN report cited that the average number of individuals per unit in Nabi Samwil was 8.1, whereas the average in the West Bank as a whole was 5.5.⁶⁹

One resident, whose home was destroyed in 1971 moved into the home belonging to his uncle, who had fled to Jordan in 1967.

"The house consisted of two small rooms. It was at a distance of almost 500 meters from our old house, which the Israeli occupying forces pulled to the ground... [I]n 1971, my family comprised of five members, including my father, mother, two brothers and myself. Over time, our family expanded. My brother and I were each married and had children who also grew up. Every time one of us got married, we had no choice but to add a new room to the existing house. There are now almost 16 additions to the house. The Israeli occupying authorities issued notices for the demolition of these additions, under the pretext that they were built without the required construction licenses.

In 2002, my father died. Fourteen days later, my mother died too. I inherited and joined my parents' room and bathroom to my house. How painful it was to solve my crisis by losing the dearest people to me. At the time, I remember my children saying: 'We used to walk sideways, now we can walk straight ahead at home.'"⁷⁰

Similar living conditions are standard in Nabi Samwil. Individuals from separate households told Al-Haq:

- *"I sleep in the hallway to give my son and his new wife my room."⁷¹*
- *"They have probably demolished (parts of my home) four to five times. I do not listen to them. They demolish and I rebuild. I had to build extensions for my sons."⁷²*
- *"My house was divided from the home of my parents-in-law... There are no windows in the place, because we are surrounded by extensions. There is a lot of humidity."⁷³*

⁶⁹ The International Peace and Cooperation Center (IPCC) established this figure. See Endnote 14 in Displacement and Insecurity in Area C of the West Bank, UN OCHA, August 2011, available at <http://www.refworld.org/pdfid/4e4e05192.pdf>.

⁷⁰ Al-Haq field interview in Nabi Samwil, August 2017. Name withheld.

⁷¹ Supra at note 44.

⁷² Supra at note 13.

⁷³ Supra at note 42.

b. Building and Planning under International Law

Prior to Israel's occupation of the West Bank, the Jordanian planning law included a High Planning Council, and District and Local Planning Committees, which provided for local Palestinian representation at each of these levels.⁷⁴ In 1971, Israel implemented Military Order 418, which amended the planning law and eliminated Palestinian representation.⁷⁵ Decision-making then became centralized under a High Planning Council appointed by the Israeli Military Commander.⁷⁶ The High Planning Council, within the ICA, must approve all plans in Area C.⁷⁷ The ICA retains full authority over zoning, construction, and infrastructure matters in Area C.⁷⁸

The ICA has thus total control over the manner in which land is used in Nabi Samwil, and it was the ICA itself that declared Nabi Samwil as a national park. The manner in which Israel uses this control breaches its obligations under international law. Israel, as the Occupying Power is required to "restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."⁷⁹ Laws in place prior to the start of the occupation may only be changed if they are a threat to security, an obstacle to the application of the law of occupation or for humanitarian purposes.⁸⁰ More broadly, a planning regime should serve the interest and address the needs of the occupied population. In the case of the OPT, changes to laws via Israeli military orders that removed all Palestinian participation from the planning process were undertaken in order to appropriate land, control its use, and force the transfer of the Palestinian population.

This is further demonstrated in the discriminatory planning regime in the OPT, which leads to the demolition and/or appropriation of Palestinian homes, structures, and infrastructure. The practice of so-called administrative demolitions violates Israel's duties as an occupying power. Both the Hague Regulations and the Fourth Geneva Convention prohibit the destruction of property, except in cases of military necessity.⁸¹ In such cases, there must be an imperative need to destroy the public or private property for a military objective, and the destruction must be proportional to the military advantage gained.⁸² Israeli demolitions in Nabi Samwil do not satisfy this exception. The extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly amounts to a grave breach of the Fourth Geneva Convention.

⁷⁴ Planning to Fail, The Planning Regime in Area C of the West Bank: An International Law Perspective, Diakonia, September 2013, p.14.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Review – Zoning in Judea & Samaria, IDF MAG Corps, available at <http://www.law.idf.il/602-6944-en/Patzar.aspx>.

⁷⁸ Separate and Unequal, Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories, Human Rights Watch, 2010, p. 11, available at https://www.hrw.org/sites/default/files/reports/iopt1210webwcover_0.pdf.

⁷⁹ Article 43 of the Hague Convention (IV) Respecting the Laws and Customs of War on Land (Hague Regulations), 18 October 1907.

⁸⁰ "The occupying power must respect the laws in force in the occupied territory, unless they constitute a threat to its security or an obstacle to the application of the international law of occupation." Occupation and international humanitarian law: questions and answers, International Committee for the Red Cross, available at <https://www.icrc.org/eng/resources/documents/misc/634kfc.htm>.

⁸¹ Article 53 of the Fourth Geneva Convention prohibits the destruction 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." Convention (IV) Relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949.

⁸² Supra at note 48, Commentary to Article 53.

c. The Right to Choose One's Residence and the Right to Adequate Housing

Israel's unlawful planning regime in the OPT deeply impacts the right of housing of Palestinians, in violation of Israel's duties under international law. Article 12 of the ICCPR affirms the freedom of individuals lawfully within a territory to choose his or her residence, which also includes "*protection against all forms of forced internal displacement*."⁸³

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) also includes "*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*."⁸⁴ In its General Comment, the UN Committee on Economic, Social and Cultural Rights (CESCR) interpreted the right to housing as "*the right to live somewhere in security, peace and dignity*."⁸⁵ Moreover, in determining whether housing is adequate, a number of factors must be considered, including: legal security of tenure (which protects against forced eviction, harassment and other threats); availability of facilities and infrastructure; affordability; habitability (in terms of adequate space and protection against the elements); accessibility; location (which allows access to employment options, health care, schools, etc.); and, cultural adequacy.⁸⁶

Residents of Nabi Samwil have no genuine option for adequate housing in their village, as they can neither build new homes nor undertake significant construction to existing structures. Only recently have basic renovations to some homes been undertaken through a donor-funded project. Significantly, no "natural growth" of the village is permitted, and given the history of the village, its designation as a national park, and threats of demolition, amongst other factors, residents are not afforded the right to live in "*security, peace and dignity*."⁸⁷

⁸³ Supra at note 46, para. 7.

⁸⁴ Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Israel ratified the ICESCR in 1991.

⁸⁵ General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), UN Committee on Economic, Social and Cultural Rights (CESCR), adopted on 13 December 1991, E/1992/23, para. 7, available at <http://www.refworld.org/docid/47a7079a1.html>.

⁸⁶ Id. at para. 8.

⁸⁷ Id. at para. 7.

C. Family and Cultural Life

As detailed in the previous section, residents of Nabi Samwil face limited housing options within their village. The choice of where and how to live comes to the fore when individuals want to marry and expand their families.

One resident of Nabi Samwil told Al-Haq that, according to custom, she had begun looking for a suitable bride for her son. She discussed the reaction of families when finding out where her son is from.

"They refuse to marry their daughter because of his place of residence. They request that my son rent a house in a neighboring village, such as Al-Jeeb or Bir Nabala, so that they can approve the engagement. However, I do not want my son to leave the village. He wants to be close to his family and workplace. People give several excuses to refuse that their daughters move to Nabi Samwil. For example, they ask how they can visit their daughter in Nabi Samwil. They have to wait at the Israeli checkpoint of Al-Jeeb. They may wait for several hours, and still may be denied access. Some people told me they were already prevented from accessing Jerusalem on security grounds. How can they visit their daughter if she moves to Nabi Samwil? A girl who wanted to pursue her higher education at Bir Zeit University said "How can I go to the university if I live in Nabi Samwil?" Transportation to and from the village is limited to a tight schedule.

On one occasion, a family from a neighboring village agreed to marry their daughter to my son. When the girl's father came to see the house where his daughter would live, he had to wait from 8:00 am until 4:00 pm before they (IOF) allowed him to cross Al-Jeeb checkpoint to Nabi Samwil. He said it would be easier to marry his daughter to a man from Jordan than to marry her to a man from Nabi Samwil. Travelling from the West Bank to Jordan takes about four hours, not eight... Shortly afterwards, he told us he refused to marry his daughter to my son. This greatly affected my son. It made him very sad, because he loved the girl."⁸⁸

The mother added that her son lives on the balcony of their home, which he walled-in with bricks.

Another individual from Nabi Samwil made the decision to leave the village as his family continued to grow. He previously had lived with his parents, three brothers, and his wife in a two-bedroom home. He and his wife stayed in one small bedroom, which they later shared with their two children. He stated, "Because the room was so small, I could no longer lead a normal life."⁸⁹ In 2015, he moved to Bir Nabala.

⁸⁸ Al-Haq Field Report on Nabi Samwil, 16 August 2017. Monitoring and Documentation Department.

⁸⁹ Al-Haq Field Report on Nabi Samwil, 21 August 2017. Monitoring and Documentation Department.

*"For quite a long time, young men have had the impression that anyone who gets married needs to leave Nabi Samwil. I had my third child in Bir Nabala. Although I was so happy that I had my third child, his birth confirmed that I would never return to Nabi Samwil. My family is now big and we cannot live in that room in Nabi Samwil. I love my village and miss my family. My brother, who is 25 years old, lives in the same room I had in Nabi Samwil. He is engaged now. He decided to leave the village and rent a house when he gets married. He says he is not ready to live my experience, stay in a small room and use a bathroom that is jointly used by the rest of the family."*⁹⁰

Alongside family life, residents of Nabi Samwil face limitations on taking part in cultural and community activities. These limitations are primarily due to movement and access restrictions, both for residents and visitors. As previously noted, residents face numerous obstacles to receiving guests. As a result, Al-Haq was told, "residents prefer to organize their happy and sad events outside the village." One individual stated, "We do more things outside the village because it is easier for others... We can do coordination, but it is very difficult, and we have to keep going back and forth to get people from the checkpoint... During one funeral, the family had to keep going to (the checkpoint to) receive the mourners."⁹¹ One resident recounted another incident in 2015, when her aunt passed away:

*"When they were entering as part of the funeral procession, they had an argument (at the checkpoint). After, when there was the customary three-days of visitation, they (the IOF) did not let anyone in to pay condolences. They did it to mock us."*⁹²

Alongside these instances, numerous residents complained of difficulties in organizing Iftar during Ramadan, including cases of having to break their fast at the checkpoint due to guests not being allowed to enter.

⁹⁰ Id.

⁹¹ Interview with Eid Muhammad Eid Barakat, 52, on 25 June 2016.

⁹² Supra at note 44.

a. The Right to Family Life

Both the ICESCR and the ICCPR hold that the family is the “natural and fundamental group unit of society” and that it is entitled to protection by society and the state, “particularly for its establishment.”⁹³ A family unit may be nuclear, extended, or include other compositions as they exist within a state.⁹⁴ In its General Comment on the *Protection of the Family*, the UN Human Rights Committee affirmed:

“The right to found a family implies, in principle, the possibility to procreate and live together... Similarly, the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.”⁹⁵

Customary international humanitarian law further affirms the right to family life,⁹⁶ and the protection of “the family dwelling and home” which “cannot be the object of arbitrary interference.”⁹⁷

The family unit in Palestinian society at large, and as applicable to Nabi Samwil, should be understood to include both first and second-degree family members. Although the above testimonies focus on the difficult choices residents of Nabi Samwil face when deciding to marry or expand their families due to movement and building restrictions, the impact of these choices go beyond the nuclear family.

Any sort of “traditional” family life where children continue to live close to their parents after they establish their own families must be taken to the extreme in Nabi Samwil, with all family members forced to live under one roof. Individuals that marry Nabi Samwil residents must also consider potential consequences on their relationships with their own families, and the frequency and ease in which they can see each other.

Israel undermines the right of Palestinians to a family life in the OPT through a range of policies and practices including the isolation of the village from the rest of the West Bank, the system of “coordination,” building restrictions, and lack of basic services including health care and education. Rather than support the establishment of new family units and the ability of families to live together in Nabi Samwil, Israel has created conditions that drive individuals to seek housing in other villages in order to maintain a normal family life.

93 Article 10(1) of the ICESCR states “The States Parties to the present Covenant recognize that: (1) The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.” Article 23 of the ICCPR states in part: “1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized.”

94 CCPR General Comment No. 19: Article 23 (The Family) Protection of the Family, the Right to Marriage and Equality of the Spouses, UN Human Rights Committee (HRC), 27 July 1990, para. 2, available at <http://www.refworld.org/docid/45139bd74.html>.

95 Id at, para. 5.

96 Article 46 of the Hague Regulations “Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.” Supra at note 79. Article 27 of the Fourth Geneva Convention “Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs.” Supra at note 81.

97 Supra at note 48, Commentary to Article 27.



b. Right to Take Part in Cultural Life

Article 15 of the ICESCR includes the right of everyone to take part in cultural life. The UN CESCR affirmed that culture:

"encompasses, inter alia, ways of life, language, oral and written literature... religion or belief systems, rites and ceremonies... natural and man-made environments, food, clothing and shelter and the arts, customs and traditions through which individuals, groups of individuals and communities express their humanity and the meaning they give to their existence, and build their world view representing their encounter with the external forces affecting their lives."⁹⁸

Accessibility is a key element to the right to take part in cultural life, and includes "effective and concrete opportunities for individuals and communities to enjoy culture fully, within physical and financial reach for all in both urban and rural areas, without discrimination."⁹⁹ Similar to other rights, States must ensure the right to take part in cultural life without discrimination and on the basis of equal treatment.

More generally, Israel has obstructed the access of residents of Nabi Samwil to entering other areas of the West Bank due to the Annexation Wall and Al-Jeeb checkpoint, and may not enter East Jerusalem without a permit. These restrictions limit their access to cultural life throughout the OPT. Even when residents of Nabi Samwil try to hold cultural activities within the village, many of which are related to religious rites and ceremonies, including by inviting other Palestinians to visit them, they are often hindered from doing so.¹⁰⁰

Moreover, Palestinians with West Bank IDs who would like to enter Nabi Samwil independent of invitation from residents, including for prayer at the mosque, are also obstructed. Beyond Nabi Samwil, it is estimated that after the completion of the Annexation Wall, "more than 3,500 archeological sites and features, including circa 500 major archeological sites that constitute a significant part of Palestinian cultural resources" will be under Israeli control, limiting Palestinian access to their cultural heritage.¹⁰¹

⁹⁸ General Comment No. 21, Right of everyone to take part in cultural life (art. 15, para.1(a), of the International Covenant on Economic, Social and Cultural Rights, Committee on Economic, Social, and Cultural Rights, 21 December 2009, E/C.12/GC/21, para. 13, available at <http://www.refworld.org/docid/4ed35bae2.html>.

⁹⁹ Id. at para. 16(b).

¹⁰⁰ This consideration was repeated within the context of numerous field interviews in Nabi Samwil.

¹⁰¹ Archeological Heritage in Area C, Hamdan Taha, This Week in Palestine, November 2015, available at <https://thisweekinpalestine.com/wp-content/uploads/2014/07/Archeological-Heritage-in-Area-C.pdf>.



Children playing in Nabi Samwil with Israeli settlements in the backdrop. Al-Haq © 2016

D. Access to Education

The Nabi Samwil Co-Educational Primary School, run by the Palestinian Ministry of Education and Higher Education, is the only school in the village and accommodates students between the ages of 6 and 10 years old. There is no kindergarten in the village, and residents state that another school has not been built because it would likely be demolished. In a 2011 visit to the school, UN Under-Secretary-General for Humanitarian Affairs Valerie Amos noted the impact of the “highly restrictive planning regime.” She stated, “I visited a one-room school with no windows and very few facilities, which can’t be improved because the planning rules don’t allow it. This is unacceptable.”¹⁰² While additions have been made to the school since the 2011 visit, they were built without building permits have demolition orders.¹⁰³

The majority of children from Nabi Samwil are thus forced to attend schools in Al-Jeeb and other neighboring villages. The Annexation Wall and its associated regime inevitably impact students trying to reach their schools. A 12-year old student described his daily commute to Al-Haq:

¹⁰² Top UN humanitarian official hits out at forced displacement of Palestinians, UN Center, 14 May 2011, available at <http://www.un.org/apps/news/story.asp?NewsID=38383#.WYXAuhWGPiU>.

¹⁰³ “In September 2013, the village succeeded in installing a container on the school ground to serve as an additional classroom. However, the school is now in danger of losing one of its two rooms for lack of a building permit.” Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, 13 January 2014, A/HRC/25/67, para. 17, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/06AE69A80B959A3D85257C86006D89A7>; “The Israeli authorities have also prevented village residents from expanding their 16-meter-square school and issued demolition orders on the fence surrounding the school, the newly erected school caravan and the school’s sanitation unit.” Humanitarian Bulletin, Monthly Report March 2014, UN OCHA, available at https://www.ochaopt.org/sites/default/files/ocha_opt_the_humanitarian_monitor_2014_04_29_english.pdf.

"Sometimes we are late to school because of the traffic at the checkpoint. The teachers make exceptions for us when we are late because of the circumstances... I feel suffocated when there is traffic. I get to school stressed. I think that if there was not a checkpoint, I could go whenever I wanted... I finish school around 2:00 pm. As soon as I am done, I take the bus. At the checkpoint, sometimes they search us, sometimes they do not, sometimes they ask for our ID, sometimes they do not."¹⁰⁴

The arbitrariness of the actions of the IOF at checkpoints is a mainstay of the occupation. In 2015, Al-Haq interviewed Khaled Sa'adeh, a bus driver for school children in Nabi Samwil:

"I am a resident of Al-Jeeb, northwest of Jerusalem, and I am a bus driver for a line between the village of Bir Nabala and Al-Jeeb from one side, and the village of Nabi Samwil, where the Annexation Wall separates one from the other. Accordingly, I transport passengers at specific times. I transport students at two times – in the morning and in the evening to and from schools located in Bir Nabala and Al-Jeeb. The rest of residents, including workers and women, are transferred in two other shifts in the morning and afternoon to and from Nabi Samwil.

On Sunday, 5 April 2015, at around 2:00 pm while going to Nabi Samwil from Al-Jeeb, I crossed Al-Jeeb checkpoint. There were 14 passengers with me that were students, and a teacher named Nawal Barakat. An Israeli soldier told me to stop... she boarded the bus and asked seven of the female students, aged around 13-14 years old, to see their birth certificates. These students study at Fatima Zahra School in Al-Jeeb. Since this was the first time in two years that students were asked for their birth certificates, it was normal that they did not carry these documents... I then asked the soldier: "Is this a new law?" She said, "this is a new procedure that I am taking, and as a consequence, I am going to prevent this bus from passing." She then ordered me to go back, and I did so. After waiting for about 30 minutes, Nawal, the teacher, took the seven female students and the younger students towards the walkway. The Israeli military Border Guards allowed them to pass through the checkpoint (on foot) without asking for their birth certificates – this happened under the glare of the soldier who did not let us pass through initially. This confirmed to me that everything depends on the mood of the soldiers. After all the students passed through the checkpoint on foot... the Border Guards came on the bus, and made sure that the bus had no other passengers on it, and then I was allowed to pass through."¹⁰⁵

¹⁰⁴ Interview with student on 4 June 2016.

¹⁰⁵ Al-Haq Affidavit 10595/2015, taken on 11 April 2015.

a. The Right to Education

The right to education is an inalienable right, affirmed in the ICESCR and the Convention on the Rights of the Child (CRC).¹⁰⁶ The preamble of the Optional Protocol to the Convention on the involvement of children in armed conflict, which Israel is a party to, further calls for the “continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security.”¹⁰⁷ The CESCR has further elaborated on the right to education in General Comment No. 13, noting availability and accessibility as some of the “interrelated and essential features” which must be considered in light of “the best interests of the student.”¹⁰⁸ Accordingly, accessibility to education must be without discrimination, and “be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighborhood school) or via modern technology.”¹⁰⁹ States also have the duty to respect the right to education, including by avoiding “measures that hinder or prevent the enjoyment of the right to education.”¹¹⁰

Israel has similar positive obligations under international humanitarian law. Under Article 50 of the Fourth Geneva Convention, the Occupying Power must ensure the proper functioning of children’s institutions. This not only includes avoiding interference “with their activities, but also to support them actively and even encourage them if the responsible authorities of the country fail in their duty.”¹¹¹

Nabi Samwil’s school cannot accommodate all students in the village, as it cannot physically expand due to Israel’s discriminatory planning regime. An institution such as the Women’s Association, which also attempted to provide educational programs to youth, was demolished. Children in Nabi Samwil thus have no option but to continue their primary school education in neighboring villages. While it may not be exceptional for students to commute, the circumstances faced by Palestinian students generally, including those from Nabi Samwil, undoubtedly impedes their right to education. The “best interests” of the child are not being served by twice-daily checkpoint crossings, which include searches and arbitrary harassment by the IOF.

¹⁰⁶ Article 13 of the ICESCR and Article 28 of the Convention on the Rights of the Child (CRC). Israel ratified the CRC in October 1991.

¹⁰⁷ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, entry into force on 12 February 2002, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCR.aspx>. Israel ratified the Optional Protocol in July 2005.

¹⁰⁸ CESCR General Comment No. 13: The Right to Education (Art. 13), UN Committee on Economic, Social and Cultural Rights (CESCR), adopted on 8 December 1999, E/C.12/1999/10, para. 7, available at <http://www.refworld.org/docid/4538838c22.html>.

¹⁰⁹ *Id.* at para. 7(b).

¹¹⁰ *Id.* at para. 47.

¹¹¹ *Supra* at note 48, Commentary to Article 50.

E. Employment and Livelihoods

The challenges faced by Palestinians throughout the OPT in accessing employment opportunities or exercising traditional means of livelihoods, such as farming, are compounded in Nabi Samwil due to Israeli restrictions. Residents not only have a difficult time accessing and maintaining jobs outside of the village, but are largely obstructed from creating income-generating activities within their village. Current unemployment figures for Nabi Samwil are unavailable. However, in 2010, the village council reported an unemployment rate of 60 per cent.¹¹² In contrast, unemployment in 2010 in Jerusalem was at 11.9 per cent, and 23.7 per cent in the West Bank as whole.¹¹³

a. Limitations on Employment Opportunities Due to Movement Restrictions

Movement and access restrictions are one of the main drivers for the high level of unemployment in Nabi Samwil. Although Jerusalem is nearby, residents of Nabi Samwil require a permit to work legally there, a criterion which disproportionately impacts youth. One resident stated, "They usually do not give permits except for people that are married and with kids. That means that people between the ages of 22-30 years old barely have a chance to get a permit."¹¹⁴ Some young men attempt to enter Jerusalem without permits in order to find work, and are often arrested and detained. Others attempt to obtain work in Ramallah or other areas of the West Bank, but sometimes find that transportation costs are greater than their daily salary.¹¹⁵

One resident described his employment history, and stated that he had been employed "illegally" at a restaurant in West Jerusalem for nearly seven years. After his fifth arrest, with detention for periods between 45 days to 11 months, he stopped entering Jerusalem for work. He stated:

"I have tried to apply for permits, but I was always refused. When I applied I was around 20. I did not have any issues and I had not been previously arrested, but they did not give it to me. The restaurant owner tried to get me a permit, but it did not work.

*I have not been doing anything since. I do not want to go there to work and get arrested... What can I do here? We started a car wash here, they [the IOF] destroyed it. I tried to open it again, and they destroyed it again... I went to Ramallah to work in a restaurant. I was going to get 120 shekels, by the time I get there and return, I did not think it was worth it."*¹¹⁶

There are just a few people with permits to work in settlements, I can count them on one hand. My father goes and works in the market in Israel. He has had a permit to work there for 40 years,

¹¹² Supra at note 23, p.7.

¹¹³ Unemployment Rate Among Labour Force Participants of Persons Aged 15 Years and Above in Palestine by Sex and Governorate, 2000-2015, Palestinian Bureau of Statistics, available at http://www.pcbs.gov.ps/Portals/_Rainbow/Documents/unemployment-2015-01e.htm

¹¹⁴ Interview with Nawal Barakat on 4 June 2016.

¹¹⁵ Due to the limited times when public transportation is available in the village, some residents stated that it was necessary to take a private taxi to reach an early morning shift. One resident estimated that it would cost at least 30 shekels to reach Ramallah with a private taxi.

¹¹⁶ Interview with Mahmoud Ellayan on 27 August 2016.

but he was never able to get me one. If I go work in the West Bank, and make 80 shekels, it is not enough... All of the young men meet every day, and we do not do anything. I sleep. We need something to keep us busy, even a gym. Any sort of project, to get permits, to get a job in the West Bank if not in Israel. We do not want a lot of money, we just want to live.”¹¹⁷

Another resident described a similar decision made by her husband to remain unemployed:

“My husband used to work in a garage in Bir Zeit, between the transport costs and everything else, it was not worth it for him to go... also he was expected to be there at 6:00 a.m. (but we do not even have transportation at that time)... for 12 hours he was paid 70 shekels... it is the same in Ramallah for construction.”¹¹⁸

b. Impact of Building Restrictions on the Right to Work



“We have a lot of land, but we cannot do anything with it.”¹¹⁹ Nabi Samwil on 15 July 2017. Al-Haq © 2017

Individuals from Nabi Samwil also face challenges when trying to create economic and work opportunities for themselves inside the village due to restrictions on building. Although agriculture was a traditional source of income for the village, Israel effectively bars the creation of conditions that would allow for successful farming. Fences used to

¹¹⁷ Id.

¹¹⁸ Supra at note 42.

¹¹⁹ Supra at note 114.

protect land and keep animals away from crops have been confiscated, while new fruit trees have been uprooted.¹²⁰

Small businesses in the village are also nearly impossible to establish. Further, while the archeological site continues to develop, residents are largely unable to develop income-generating activities linked to the influx of visitors because of their inability to build even simple structures.¹²¹ As mentioned above, residents tried to establish a carwash that was repeatedly demolished by the IOF.¹²²

c. Right to Work

The ICESCR affirms the “right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts.”¹²³ Where individuals are unable to attain work for themselves, States are obliged to fulfill the right.¹²⁴

In its General Comment on the Right to Work, the UN CESCR affirmed that the core obligations of states, including in part:

“(a) To ensure the right of access to employment, especially for disadvantaged and marginalized individuals and groups, permitting them to live a life of dignity;
(b) To avoid any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals and groups.”¹²⁵

Discrimination includes violations that may occur throughout one’s life - such as access to basic education - which would then have an impact on an individual’s work opportunities.¹²⁶

Israeli policies and practices place severe burdens on the residents of Nabi Samwil in the fulfillment of their right to work. Residents are unable to use their land for income generating activities, and have faced IOF demolitions when attempting to use their own land for farming or opening businesses. Permits to enter occupied East Jerusalem in order to seek and secure employment opportunities are rarely given, while entering into other areas of the West Bank for employment on a timely and cost-effective basis is also

120 “In 2002, she said, the Palestinian Authority gave her some olive trees. “I planted them and built a fence around them on eight dunams [0.8 hectares] of land I inherited from my parents,” she said. “The army destroyed the fence and uprooted the trees.” Supra at note 4, Human Rights Watch Report;

“[A] temporary goat pen, donated by the French government and erected on developed land, is today slated for demolition... and residents who planted olive and fruit trees on their private lands received written orders to uproot them.” Supra at note 24.

121 “[A] paid parking area that he established was also closed. The opening of stores and even vending carts selling food, souvenirs and drinks is forbidden. “Eid claims that he wants to apply for a business license, but past experience indicates that the Civil Administration and Nature and Parks Authority have no intention of allowing it. In other words, the opportunity to take advantage of the last remaining resource, i.e. tourism, is also denied to the residents.” Supra at note 24.

122 Supra at note 4, Human Rights Watch Report.

123 Article 6(1) of ICESCR.

124 The Right to Work, General Comment No. 18, Article 6 of the International Covenant on Economic, Social and Cultural Rights, 6 February 2006, E/C.12/GC/18, para. 26.

125 Id. at para. 31.

126 Id.

nearly impossible due to Israeli restrictions. Palestinians living in Nabi Samwil not only face discriminatory access to employment, but also an absence of a real choice in which employment opportunities can be pursued.

F. Access to Health Care and Underlying Determinants to Health

Nabi Samwil village does not have a healthcare center, and no medical professionals reside in the village. According to residents, basic healthcare services used to be provided during weekly visits by the United Nations Relief and Works Agency (UNRWA), but have been recently taken over by the Palestinian Ministry of Health. These visits used to take place in the Women's Association in Nabi Samwil. However, after the Association was demolished in August 2016, a room in a villager's home was equipped with a bed and medicine cabinet through the support of international donor states and agencies. Residents of Nabi Samwil also attend and receive immunizations from a clinic of the Palestinian Ministry of Health (MoH) in Al-Jeeb village.



Entrance to room used for medical services in Nabi Samwil. Al-Haq © 2017

Although the closest option, villagers are not allowed to freely access Palestinian hospitals in Jerusalem due to their West Bank ID status, unless they have received a permit. Accordingly, in emergency situations, residents usually go to Ramallah Public Hospital. It takes approximately 30 minutes to reach Ramallah if a car or public transport is available, and if the checkpoint is not crowded and open. According to residents, several years ago, one woman went into labour and was forced to have her baby delivered by women in the village. At the time, Al-Jeeb checkpoint was closed and vehicles registered at the checkpoint could not access the village. Residents were also unable to find a driver willing to risk taking the woman to a Jerusalem hospital. When the checkpoint reopened the following day, the new family went to a clinic in Al-Jeeb.¹²⁷

127 Supra at note 38.

Alongside emergency situations, individuals with chronic medical conditions also face obstacles in accessing health care.

"I discovered about 11 months ago that I had cancer, and I would need to go to the Augusta Victoria Hospital in Jerusalem for chemotherapy sessions. My son, Muhammad, was supposed to go with me, but he was arrested about a month before by the Israeli Occupying Police in Jerusalem. He was in Jerusalem to look for work, however, his permit to enter Jerusalem was only for accompanying a sick person and I was not with him at the time. Therefore, he was prohibited from entering without me.

Now I have chemotherapy every 15 days, and after I finish the treatment I need someone to help me get back home because I feel weak and cannot walk. The problem is that there is no one to accompany me to the hospital. All of my kids are busy with their work and cannot help. One solution would be for my daughters-in-law to accompany me, but the Occupying Authorities refuse to grant them permits because they are not 'first degree' relatives. I have two daughters, one of them lives in the village of Beit Iksa, and although it is on her ID card that she is a resident of Nabi Samwil, she was not included in the last census by the Occupation (because she was in Beit Iksa). Because of this, there needs to be 'coordination' each time she accompanies me to the hospital. This is not easy, because applying for coordination does not always mean there will be approval...

About a month ago, while I was going to the hospital alone with a taxi, the driver made sure that I had a permit to enter Jerusalem before I boarded the car. He was afraid to be penalized by the Israeli police if I did not have a permit, and this situation prevents anyone from accompanying me who does not have a permit to enter Jerusalem. I paid the driver 150 shekels to go back and forth. This is a very large sum that financially drains me. The problem is that after I receive the treatment, I feel dizzy and weak, and there is no one to help me after my chemotherapy session. The last time, the nurses helped me to reach the taxi that was taking me back to the village."¹²⁸

Alongside restrictions on access to healthcare facilities, residents of the village also stressed that the conditions that they live under negatively impact their health. Due to restrictions on building and renovating their homes, many families complained of the humidity in their homes and the resultant mold that grows inside. One mother of three stated that her children have respiratory issues, which she believes is due to the extreme humidity inside her home.¹²⁹



Ceiling of home in Nabi Samwil that has accumulated mold due to humidity. Al-Haq © 2017

a. Right to Health

Israel has the duty to ensure the right to health of the occupied Palestinian population under IHL and IHRL. Article 56 of the Fourth Geneva Convention affirms that the Occupying Power “has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory.” While Israel should cooperate with “national and local authorities,” given Nabi Samwil’s deliberate isolation from the rest of the West Bank, the role that can be played by the Palestinian Authority there is limited.

The ICESCR affirms “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹³⁰ Elements of the right to health include, but are not limited to: 1) the availability of health care facilities and services; and 2) the accessibility

¹²⁹ Supra at note 42.

¹³⁰ Article 12 of the ICESCR.

of such services to everyone without discrimination.¹³¹ Accordingly, states should create “conditions which would assure to all medical service and medical attention in the event of sickness.”¹³² The right to health further includes “underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.”¹³³

While States are obliged to refrain “from denying or limiting equal access for all persons” and abstain “from enforcing discriminatory practices as a State policy” in respecting the right to health, Israel has instead implemented policies which target specific communities, including Nabi Samwil.¹³⁴ Israel’s policies and practices have both direct and indirect impacts on the health of the Palestinian population. For example, the underlying determinants to health including housing, are targeted by Israel’s unlawful planning policies. Residents of Nabi Samwil are faced with the choice of living in overcrowded, often dilapidated homes, which as mentioned are extremely humid and acquire mold, or to “illegally” build and face possible demolition.

Similarly, Israel’s demolition of the Women’s Association building, which was used during the weekly visits by healthcare professionals, was demolished in violation of Article 53 of the Fourth Geneva Convention. Due to Israel’s movement restrictions and the absence of a healthcare facility in the village, residents of Nabi Samwil face numerous impediments to their right to health, including timely access to healthcare, which may be arbitrarily restricted at the Al-Jeeb checkpoint.

3. Systematic Transfer of Nabi Samwil Residents

As evidenced, residents of Nabi Samwil face severe restrictions on the fulfillment of their basic human rights. Due to these extreme conditions faced by residents, many have moved to other areas in the OPT. Importantly, the targeting of residents that has led to their relocation must be viewed in light of their initial displacement in 1971.

A. Direct Forcible Transfer

In March 1971, Israeli forces arrived to the homes of residents in Nabi Samwil, and demolished their homes without prior notice, forcing residents into abandoned homes and structures a few hundred meters away.

¹³¹ CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), UN Committee on Economic, Social and Cultural Rights (CESCR), adopted on 11 August 2000, E/C.12/2000/4, para. 12, available at <http://www.refworld.org/pdfid/4538838d0.pdf>.

¹³² Article 12(2)(d) of the ICESCR.

¹³³ *Supra* at note 131, para. 4.

¹³⁴ *Id.* at para. 34.

International humanitarian law prohibits Israel, the Occupying Power, from transferring the occupied Palestinian population regardless of motive.¹³⁵ Total or partial evacuations of the protected population may only be undertaken for “the security of the population or imperative military reasons.”¹³⁶ The Commentary to Article 49 of the Fourth Geneva Convention affirms that evacuations are only permitted “when overriding military considerations make it imperative; if it is not imperative, evacuation ceases to be legitimate.”¹³⁷

One resident, who was ten-years old at the time of his transfer in 1971, stated that Israel’s alleged reason for the removal of residents from their homes was that the homes were dilapidated due to the heavy bombardment they suffered during the 1967 war. He and other residents refute that the homes posed any danger to them. Moreover, given that there were neither active hostilities nor other pressing security issues in March 1971, nearly four years after the war, and that residents remain removed from their homes decades later, the exception of a “temporary evacuation” is irrelevant. As evident from Israeli archival documents, Nabi Samwil was targeted due to its proximity to Jerusalem, and were part of the nearly 4,000 Palestinians that were transferred from their homes in the Jerusalem area within the first few years of the occupation.¹³⁸ This initial displacement amounted to a direct forcible transfer of the protected population in Nabi Samwil. This transfer formed, and continues to form, part of Israel’s policy to enlarge and Judaize the Jerusalem area.

B. Indirect Forcible Transfer

The targeting of residents of Nabi Samwil by Israeli policies and practices did not end in 1971. Nabi Samwil residents face severe access and movement restrictions due to the Annexation Wall, Al-Jeeb checkpoint, and other settlement infrastructure, which isolate them from the rest of the West Bank, as well as restrictions placed on West Bank ID holders from entering East Jerusalem. The Advisory Opinion of the International Court of Justice highlighted:

“the route chosen for the wall gives expression in loco to the illegal measures taken by Israel with regard to Jerusalem and the settlements, as deplored by the Security Council... There is also a risk of further alterations to the demographic composition of the Occupied Palestinian Territory resulting from the construction of the wall inasmuch as it is contributing... to the departure of Palestinian populations from certain areas.”¹³⁹

The Court went on to note that the presence of the Wall cuts communities off from access to resources,¹⁴⁰ and from their “workplaces, schools, health clinics and other social services.”¹⁴¹

¹³⁵ Article 49 of Fourth Geneva Convention.

¹³⁶ *Id.*

¹³⁷ *Supra* at note 48, Commentary to Article 49.

¹³⁸ *Supra* at note 4, UN Report, para c(i).

¹³⁹ *Supra* at note 33, para. 122.

¹⁴⁰ “The Special Rapporteur on the Right to Food of the United Nations Commission on Human Rights has also observed that “With the fence/wall cutting communities off from their land and water without other means of subsistence, many of the Palestinians living in these areas will be forced to leave.” (E/CN.41 2004/10/Add.2, 31 October 2003, para. 51.) In this respect also the construction of the wall would effectively deprive a significant number of Palestinians of the ‘freedom to choose [their] residence.’” *Id.* at para. 133.

¹⁴¹ *Id.*

Similarly, the Wall cuts off Nabi Samwil residents from the West Bank. Israel's permit system further prohibits the majority of residents, as West Bank ID holders, from accessing what should be the most accessible city to them: Jerusalem. In total, residents of Nabi Samwil, as with countless other communities in the OPT, are cut off from an array of services, access to resources, and cumulatively obstructed from their right to self-determination.¹⁴² Indeed, movement and access restrictions compounded by building restrictions within the village, serve to make every aspect of daily life in Nabi Samwil difficult. In 2014, the Nabi Samwil village council, as reported by UN OCHA, affirmed that "24 households comprising 125 people" moved out of the village in the preceding seven years "as a result of restrictions on movement, access and the building of new homes."¹⁴³ In an interview conducted in August 2017 by Al-Haq, one resident recalled six families who left Nabi Samwil since June 2014 due to inadequate housing and the inability of residents to build and make use of land in their village.¹⁴⁴

The decision to move is not taken lightly; as expressed by one former village resident:

*"Currently, I visit Nabi Samwil almost every day... However, when I think of the future, I feel my children and I have no place there if the policies of the Israeli occupying authorities in Nabi Samwil continue as they are."*¹⁴⁵

International humanitarian law prohibits the individual or mass forcible transfer of the protected population. Forcible transfer can be identified as the forced displacement of persons from the area in which they are lawfully present by expulsion or other coercive measures, and without grounds permitted under international law.¹⁴⁶ As noted above, there are two restricted grounds upon which forcible transfer is permitted: instances where the security and safety of the population are at stake, as well as absolute military necessity.¹⁴⁷

Jurisprudence provides that "forcible" is a broad concept and should not be restricted to physical force, rather it encompasses "threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power... or by taking advantage of a coercive environment."¹⁴⁸ A coercive environment leading to forcible transfer may be created through various methods, such as depriving the population from water, electricity and other services, carrying out house searches, and other measures of targeted discrimination making it impossible for individuals to remain in their houses.¹⁴⁹

¹⁴² Supra at note 57, para. 11.

¹⁴³ New access restrictions impact a Barrier-affected community in the Jerusalem area, 31 October 2014, UN OCHA, Footnote 1, available at <https://www.ochaopt.org/content/new-access-restrictions-impact-barrier-affected-community-jerusalem-area>.

¹⁴⁴ Al-Haq Field Report, August 2017. Monitoring and Documentation Department.

¹⁴⁵ Interview conducted on 21 August 2017. Name withheld.

¹⁴⁶ See International Criminal Tribunal for the former Yugoslavia (ICTY), Prosecutor v. Popović et al. 2010. Case Number IT-05-88 -T, Trial Judgment, para. 891 and ICTY, Prosecutor v. Krajisnik Momcilo 2009. Case Number IT-00-39-A, Appeals Chamber Judgment, para 308.

¹⁴⁷ Article 49 of the Fourth Geneva Convention.

¹⁴⁸ The Rome Statute Elements of Crimes, International Criminal Court, Article 6(e).

¹⁴⁹ ICTY, Prosecutor v. Krajisnik. 2006. Case number IT-00-39-T. Trial Judgment, para 727 – 732.

In relation to the OPT, the UN has identified relocation plans and evictions, demolitions, restrictions on freedom of movement and access to essential services, the confiscation of Palestinian land and restrictions on access to and control over natural resources, including water, and other Israeli policies and practices as contributing to a coercive environment.¹⁵⁰ Where the relocation and displacement of residents has been against their genuine will and without a real choice, it constitutes indirect forcible transfer.

As seen throughout this report, residents of Nabi Samwil are subject to a variety of obstacles and forms of coercion, leaving them unable to freely and willingly determine the day-to-day proceedings of their lives, such as their movement in and out of the village or attending to the needs of the natural growth in population. While it is essential to determine the absence of genuine choice for the residents to relocate on a case-by-case basis,¹⁵¹ the manifested living conditions for residents in Nabi Samwil can be easily characterized as a coercive environment. Indeed, in 2011, UN OCHA documented “clear patterns of displacement occurring” in 13 Area C communities, including Nabi Samwil, “with residents being forced to move in order to meet their basic needs.”¹⁵²

The direct and indirect transfer of the protected Palestinian population in Nabi Samwil, including the removal of residents from their homes in 1971 and families that have left since due to the coercive environment created by Israeli policies and practices that target the village and its residents, violates Article 49 of the Fourth Geneva Convention. Unlawful transfer is a grave breach of the Fourth Geneva Convention, and a war crime under Article 8(2)(b)(viii) of the Rome Statute.

Israel’s systematic targeting of Palestinians in Nabi Samwil, which has led to the severe deprivation of their fundamental rights, and ultimately to their forcible transfer, may further amount to the crime of persecution under the Rome Statute.¹⁵³

150 Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan, Report of the Secretary-General, 16 March 2017, A/HRC/34/39, paras 40-57, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/71A1FD027B82B40D852580EA0064468F>.

151 ICTY, Prosecutor v. Naletilic and Vinko Martinovic, IT- 98-34-T, Trial Chamber, Judgment (2003), para 519.

152 Displacement and Insecurity in Area C of the West Bank, UN OCHA, August 2011, p.2, available at https://www.ochaopt.org/sites/default/files/ocha_opt_area_c_report_august_2011_english.pdf

153 Article 7(1)(h) of the Rome Statute, International Criminal Court.



Entrance to the mosque and current excavation site of Nabi Samwil. Al-Haq © 2017

Part II. Turning Nabi Samwil into a National Park

Israel uses archeological sites and national parks to confiscate and control Palestinian land, and to perpetuate narratives that suit their national interest.¹⁵⁴ This is mainly done by focusing on possible, and often disputed, claims that an area has some sort of religious or historical significance. As a narrative is developed, a sterile account of the location is put forth, devoid of Palestinian presence. Nabi Samwil is one of many Palestinian communities where Israel's control over the land also serves to command the account of that land. Parsing through projected narratives and disputed claims, while examining Israel's aims, and importantly, its duties as occupying power becomes critical to understanding the reality on the ground. The following section examines Israel's creation of a "national park" in Nabi Samwil, the destruction of Palestinian homes surrounding the mosque, and continued excavations in the village.

¹⁵⁴ Also see: "Although the first of two mission goals of the ASO is the 'care, development, and preservation of archaeological sites and antiquities in the region', the ASO's activities seem to reinforce the connection between the "Land of Israel" and artifacts found in the West Bank, aiming particularly towards advancing Israeli "national tourism." Occupation Remains, A Legal Analysis of the Israeli Archeology Policies in the West Bank: An International Law Perspective, Diakonia International Humanitarian Law Resource Centre, December 2015, p.29, available at <https://www.diakonia.se/globalassets/documents/ihl/ihl-resources-center/archeology-report-report.pdf>.

1. Context

Following Israel's occupation in 1967, the Israeli military commander controlled issues concerning archeology in the OPT. In 1982, the Staff Officer for Archeology (SOA) was established within the ICA. In 1995, pursuant to the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Interim Agreement),¹⁵⁵ the powers and responsibilities in Areas A and B in the sphere of archeology were transferred to the Palestinian Department of Antiquities and Cultural Heritage (DACH), which had been re-established in 1994.¹⁵⁶ The Interim Agreement also intended that similar powers and responsibilities in Area C would be transferred gradually to Palestinian jurisdiction by the 1999 conclusion of the five-year interim period. However, this transfer never occurred, and Israel retains full control over Area C.

The ICA declared duties of the Archeology Unit, include but are not limited to: "Granting licenses to execute archeological excavations and conduct scientific surveys; Executing standard excavations and rescue excavations at archeological sites; Developing sites, maintaining them and preparing them for visitors; and Coordinating and collaborating with the Palestinian Authority in subjects of archeology in Areas A and B."¹⁵⁷

2. Shaping the "Park"

In 1971, Israel demolished the village of Nabi Samwil, which was built surrounding the mosque. Israel's policies and practices that have targeted the village since then have remained consistent, while its pretext for doing so now focuses on the archeological site and maintaining the national park.

Excavations of the archeological site by the Archeology Unit of the Israeli Civil Administration started in 1992,¹⁵⁸ which coincided with a general increase in activities by the SOA throughout the West Bank.¹⁵⁹ In 1995, Israel declared the entire village and its surroundings, including the agricultural lands belonging to residents, a national park.¹⁶⁰ One study speculated that the rise in excavations during that period was "designed to 'strengthen' Jewish Jerusalem ahead of final status negotiations;" similarly, the Nabi Samwil national park declaration served to create more "facts on the ground" to fortify

155 Supra at note 55, Appendix 1 of Interim Agreement, Protocol concerning Civil Affairs, Article 2.

156 "[T]he Department of Antiquities of Palestine, which was first established in 1920 under the British Mandate. The authority was then terminated due to the political events of 1948 when Israel was established, while Jordan assumed those responsibilities for the West Bank and Egypt for the Gaza strip." The Current State of Archeology in Palestine, Hamdan Taha, available at <https://www.presentpasts.info/articles/10.5334/pp.17/print/>.

157 Archeology, Coordination of Government Activities in the Territories, available at, http://www.cogat.mod.gov.il/en/Judea_and_Samaria/Pages/archeologysectionjs.aspx

158 Supra at note 24, p. 5.

159 "Most remarkable is the huge rise in Staff Officer activities after 1992: these are largely related to large-scale unilateral 'operations' that characterize Israeli policy of the last decade and more." See: The Present Past of the Israeli-Palestinian Conflict: Israeli Archeology in the West Bank and East Jerusalem Since 1967, Raphael Greenberg, Adi Keinan, July 2007, Tel Aviv University, p. 25 available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.503.8840&rep=rep1&type=pdf>

160 Supra at note 24, p.3.



Israel's hold on the area and create a contiguous ring of settlements around Jerusalem.¹⁶¹ This is similar to the notion of the "green ring" surrounding Jerusalem encouraged in the aforementioned Kollek letter.¹⁶²

The public justification for the declaration by the Israel Nature and Parks Authority (INPA), as currently found on the INPA's website, include:

*"-The site is sacred to Jews, Muslims and Christians
 -Archeological remains dating to First Temple times and on
 -Traditional mountain agriculture landscapes
 -A battle heritage site from the War of Independence"*¹⁶³

INPA and tourism materials for the site mainly focus on its religious importance, as a biblical town and as the burial place for Samuel. The brochure provided by the INPA at the site quotes numerous passages of the bible, and claims the village "is identified as the biblical Mizpah" but also goes on to state that "Nebi Samuel is also identified with Rama."¹⁶⁴ The Israeli Ministry of Foreign Affairs site also states "Tradition associates Nebi Samwil with biblical Ramah, the burial place of the prophet Samuel... But modern studies have identified Nebi Samwil with biblical Mitzpa [...]."¹⁶⁵

Given the contradictory information provided by Israeli authorities themselves, it is unsurprising that the claims are disputed. While Yitzhak Magen, who headed the excavations between approximately 1992 – 2000 as the Israeli SOA for the ICA,¹⁶⁶ identifies Nabi Samwil as the biblical town of Mitzpah, other archeologists have found that the identification is inconclusive.¹⁶⁷ Similarly, the site of the village as biblical Rama has also been challenged, with Rama often attributed to the Palestinian village of Al-Ram.¹⁶⁸

In regards to "Nabi Samuel Park," the Israel Nature and Parks Authority highlights that "[S]ince the Byzantine period, Christian tradition has identified this site with Ramah, the place where the prophet Samuel was buried. This is a tradition accepted by Jews and Muslims alike."¹⁶⁹ The site for the Israeli Ministry of Foreign Affairs, however, admits that: "According to accounts by Hieronymous (beginning of 5th century) the bones of the

¹⁶¹ Supra at note 160, p.25.

¹⁶² Supra at note 18.

¹⁶³ Nabi Samuel Park, Israel Nature and Parks Authority, available at <https://en.parks.org.il/sites/English/parksandreserves/nebisamuel/Pages/default.aspx>. This site was last accessed on 7 March 2018, and included the "reasons for declaration."

¹⁶⁴ Supra at note 31, Brochure.

¹⁶⁵ Nebi Samwil- Site of a Biblical Town and a Crusader Fortress, 8 September 2001, Israel Ministry of Foreign Affairs, available at <http://mfa.gov.il/MFA/IsraelExperience/History/Pages/Nebi%20Samwil%20-%20Site%20of%20a%20Biblical%20Town%20and%20a%20Crusad.aspx>.

¹⁶⁶ "Excavations were conducted here from 1992 to 2000, headed by Dr. Yitzhak Magen." Nebi Samuel, BibleWalks.com, available at <http://www.biblewalks.com/Sites/NebiSamuel.html>.

¹⁶⁷ In countering Magen, Jeffrey Zorn wrote, "Borrowing from Magen's words about Tell en-Nasbeh: Based on the available archeological data, 'not a single bit of evidence unequivocally proves' Nebi Samwil's identification as Mizpah." Mizpah, Mizpah Wherefore Art Thou Mizpah? 15 August 2008, available at <https://www.biblicalarchaeology.org/daily/biblical-sites-places/biblical-archaeology-places/biblical-mizpah/>.

¹⁶⁸ See for example: Ramah, al-Ram, West-bank, Israel, Biblical Geographic, available at <https://biblicalgeographic.com/tag/ramah/>; Ramah, Bible Hub, available <http://bibleatlas.org/ramah.htm>

¹⁶⁹ Supra at note 163.

prophet Samuel were brought from their place of burial in the Holy Land to the city of Chalcedon (in Asia Minor).¹⁷⁰ A variety of sources also assert that Emperor Arcadius, who ruled from 383 to 395 AD during the Byzantine period,¹⁷¹ ordered the transportation of the alleged bones of Samuel from Palestine.¹⁷²

While it is unclear from where the alleged bones of Samuel were moved from, there is further limited evidence linking Samuel to the site altogether. According to a report by the Israeli archeological organization Emek Shaveh, “remnants from the 11th century BCE, the time of the prophet Samuel, have not been found at the site.”¹⁷³ Others have affirmed this contention as well.¹⁷⁴ As noted by Israeli researchers:

“Paradoxically, the very studies intended to establish the archeological basis for Early Israel probably contributed most to the destruction of this concept... surveys may be said to have made a major contribution to the critique of the very concepts of Biblical archeology from which they originated.”¹⁷⁵

The site, however, appears to have been used as a shrine for Samuel during the Byzantine period;¹⁷⁶ a practice that seems to have been discontinued during the Early Muslim Period.¹⁷⁷ Its prominence was renewed during the Crusader period, when a church was built on the site.¹⁷⁸ The remains of the Crusader period are among the main findings at the site according to Emek Shaveh, which included:

170 Supra note 165.

171 Arcadius, Roman Emperor, Encyclopedia Britannica, available at <https://www.britannica.com/biography/Arcadius>.

172 “The remains of the prophet Samuel arrived in 406, and were conducted to their new home by an enthusiastic procession which stretched, says St Jerome, all the way back to the Jewish sage’s former resting-place in Palestine [...]” *The Making of Christian Communities in Late Antiquity and the Middle Ages*, Mark F Williams, Anthem Press London, p.33. The practice of relics was also critiqued generally, and in relation to Samuel. In 1765, the Encyclopedia of Diderot & d’Alembert passage on Relics states, “Can one really believe, without being strangely blinkered, that more than fourteen centuries after the death of Samuel and after so many upheavals in Palestine, the site of the prophet’s tomb could be located in Rama (Samuel 26)? Yet we are told that the Emperor Arcadius had Samuel’s bones transferred from Judea to Constantinople, that bishops carried them wrapped inside a silk cloth in a golden vase, followed by a cortege of people from all the churches, who, as joyful as if they were in the presence of the living prophet, walked before the relics, accompanying them from Palestine to Chalcedon while singing the praises of Jesus Christ. This is enough to show how far deceit and gullibility had already gone, and how Vigilantius was right in saying that by worshipping relics, people were worshipping I know not what.” Jaucourt, Louis, chevalier de. “Relic.” *The Encyclopedia of Diderot & d’Alembert Collaborative Translation Project*. Translated by Malcolm Eden. Ann Arbor: Michigan Publishing, University of Michigan Library, 2007. Web. Available at <http://hdl.handle.net/2027/spo.did222.0000.764>. Trans. of “Rèlique,” *Encyclopédie ou Dictionnaire raisonné des sciences, des arts et des métiers*, vol. 14. Paris, 1765.

173 Supra at note 24, p. 5.

174 “A survey of Nebi Samwil yielded no Iron Age I pottery. Moreover, the recent excavation of Nebi Samwil, though still unpublished, does not seem to have produced Iron Age I remains or even any substantial material from the Iron Age II through the Persian period, when according to the Bible, Mizpah was flourishing.” Mizpah: Newly Discovered Stratum Reveals Judah’s Other Capital, Jeffrey R. Zorn, September, October 1997. Notably, an archeologist who had previously worked on the site concluded the same during a phone interview with Al-Haq on 5 November 2017.

Also see: “As important as the archeological findings linking the site to various periods are, they do not confirm that the site can be positively associated with the Prophet Samuel.” *Sacred Sites in the Holy Land: Historical and Religious Perspectives*, Institute for Historical Justice and Reconciliation, p. 86, available at <http://www.ihjr.org/wp-content/uploads/2017/06/Sacred-Sites-English-version-final.pdf>.

175 Supra at note 159, p. 88.

176 One researcher alleges that “ancient pagan rituals performed at the site became institutionalized during the Byzantine period, and later became sanctified in honor of the Prophet Samuel.” Supra at note 174, *Sacred Sites in the Holy Land*, p.87. See also: Supra at note 24, p.7; Supra note 166.

177 “Al-Muqaddasi, a 10th-century Arab geographer, notes a high place called Dayr Samu’il, located one parasang (about 4 miles) from Jerusalem. He does not cite this as a place of worship for any particular religion, nor does he indicate that it may hold Samuel’s tomb. It is thus unclear if the site was a place of worship during this period.” Id. at p.87.

178 It should be further noted that Israeli Nature and Parks Authority website boasts “a large building from the Crusader period, containing the tomb of the prophet Samuel,” while the Israeli MFA notes “the traditional tomb of the prophet Samuel is the crusader crypt.” Supra at notes 163 and 165.

"a fortress and trench from the Crusader period (12th c). During the Mamluk Period (13-16th c) and the Ottoman period (16-20 c) the site continued serving the Muslim residents. A mosque was built there, and the village developed around it. The remains of the Palestinian village are built upon the earlier layers."¹⁷⁹

Israeli authorities, including the SOA, however, both ignore and seek to erase the connection of Palestinians to the site. This objective is implemented and met by creating and emphasizing a religious narrative, and more violently, by Israeli excavations. The method in which Nabi Samwil was excavated and more recent remains were disposed of, and indeed destroyed, falls in line with an ICA practice, as described by one archaeologist, to "pay attention to certain layers at some archaeological sites and neglect or destroy others." He went on to state:

*"I have witnessed this pattern during my involvement at the 1993 and 1994 seasons of excavations at the site of Nabi Samuel, north of Jerusalem. In the northern part of the site, thick layers of almost 1000 years of Islamic remains were bulldozed in order to uncover the Crusader era stable area. In the south-eastern part of the site, the same approach was applied. Substantial layers containing almost 2000 years of Islamic and Christian remains were bulldozed, in order to reach the pre-Christian levels before the excavation's budget ran out."*¹⁸⁰

It must be emphasized that even if Nabi Samwil was proven to be a biblical city, the tomb of Samuel was actually present, and bulldozers were not used to excavate the site, Israel's actions would still be in violation of its duties as occupying power.



Individuals working on site in June 2017. Al-Haq © 2017.

¹⁷⁹ Supra at note 24, p.6.

¹⁸⁰ Palestinian Archeology: Knowledge, Awareness and Cultural Heritage, Ghattas J. Sayej, 2 Present Pasts, 58, 64 (2010), p. 61.

3. International Law Violations related to the “National Park”

A. Land Appropriation and the Declaration of the Village as a National Park

Nabi Samwil's proximity to Jerusalem and designation as Area C has made it a susceptible target to Israel's policies since 1967. The case of Nabi Samwil is not an isolated incident of land appropriation under the pretext of historical or natural significance. Fourteen percent of land in Area C has been declared a national park by Israel.¹⁸¹ Jerusalem similarly contains an “unusually large number of national parks” with some “located in areas devoid of any significant archeological findings or natural treasures.”¹⁸² The UN has observed:

“The Government of Israel has continued the practice of declaring and developing archaeological sites and parks as a means to expand control over land in the West Bank, including East Jerusalem. In several cases, the sites selected for development were located in close proximity to existing settlements, enabling either the expansion of lands under settlement control, or located in such a way that contiguous areas under settlement control could be made areas of strategic significance.”¹⁸³

The proximity of Nabi Samwil to Jerusalem and its geographical allure in having the highest peak in the greater Jerusalem area are significant factors in this respect. As noted earlier, the lands of and residents in Nabi Samwil were immediately targeted by Israel following the start of the occupation in 1967. Even after the demolition of their homes in 1971, the residents nonetheless remained. At the same time, the intent of the Israeli government toward the village also remained; Israel merely adapted the manner in which it could again transfer residents by creating a coercive environment and territorial link between settlements. By declaring Nabi Samwil as a national park, and confiscating land and establishing settler bypass Road 436, neighboring settlements were physically and territorially connected to Jerusalem.

As noted in section 2.B. *Planning and Building in Nabi Samwil*, Israel's discriminatory planning regime serves to establish, maintain, and expand its unlawful settlement enterprise. The key feature of the national park, the archeological site, was taken in violation of prohibitions against the confiscation of private property.¹⁸⁴

181 Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan, Report of the Secretary-General, 16 March 2017, A/HRC/34/39, para 21, available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/71A1FD027B82B40D852580EA0064468F>.

182 National parks as a tool for constraining Palestinian neighborhoods in East Jerusalem, B'Tselem, 16 September 2014, available http://www.btselem.org/jerusalem/national_parks.

183 Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan, Report of the Secretary-General, 20 January 2016, A/HRC/31/43, para. 16.

184 Article 46 of Hague Regulations.

B. Destruction of Homes of Residents in 1971

In March 1971, Israel's military arrived at Nabi Samwil to demolish the homes surrounding the mosque. Residents claim that the pretext used was that the homes were in poor condition and posed a danger to them. Residents deny this claim, and further assert that no prior notice was provided and only token compensation was offered yet not accepted.¹⁸⁵ Residents were provided with a minimal amount of time to collect their personal belongings before the houses were bulldozed; most belongings were buried under the remains of the houses.¹⁸⁶

Article 53 of the Fourth Geneva Convention holds that the destruction of any "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." In determining whether destruction is necessary, the occupying authorities must operate in good faith and proportionally balance the military advantages with the damage done.¹⁸⁷ The Hague Regulations also prohibit the confiscation of private property.

Given that there were neither active hostilities nor any other military imperative in March 1971 in Nabi Samwil to justify the destruction, and given that residents have had their property effectively confiscated, Israel's actions were in violation of its duties as occupying power. Article 147 of the Fourth Geneva Convention delineates the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" as a grave breach; it is also a war crime under the Rome Statute of the International Criminal Court.¹⁸⁸

C. Excavations and Destruction of Cultural Property

Israel has signed and ratified the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (Hague Convention), and ratified the Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (Hague Protocol I).¹⁸⁹ Both international legal instruments are particularly relevant to the antiquities site at Nabi Samwil. In 1999, the Second Hague Protocol for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Protocol II) was introduced, which sought to create greater protection of cultural property in light of a review of the 1954 Convention and deficiencies in its implementation.¹⁹⁰ Although Israel has neither

¹⁸⁵ Supra at note 62.

¹⁸⁶ Interviews with village residents on 4 June 2016.

¹⁸⁷ Supra at note 48, Commentary to Article 53.

¹⁸⁸ Article 8(2)(iv) of the Rome Statute of the International Criminal Court.

¹⁸⁹ The Hague Protocol seeks to prevent the exportation of cultural property and to provide for the restitution of illegally exported objects. According to the ICRC, it was set out as a separate legal instrument given the difficulties of a number of governments in adopting provisions on the restitution of property. Israel has ratified Hague Protocol.

¹⁹⁰ Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 1999, available at <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/convention-and-protocols/1999-second-protocol/>.

signed nor ratified the Hague Protocol II, it is relevant to the extent that it incorporates customary international law. Furthermore, the United Nations Educational, Scientific and Cultural Organization (UNESCO) introduced the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in 1970, and in 1986 issued the Recommendation on International Principles Applicable to Archeological Excavations. Again, Israel neither accepted nor ratified the Convention and the Recommendation is nonbinding, but these instruments are helpful in providing a framework for international consensus on the treatment of cultural property.

The Hague Convention sets out protection for cultural property, which it defines to include any archeological site.¹⁹¹ It calls on High Contracting Parties to protect cultural property from “destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property.”¹⁹² An attack on cultural property can only be justified in a situation of military necessity.¹⁹³ While the Hague Convention does not explicitly prohibit a Contracting Party from conducting excavations in occupied territory, the Second Protocol sets out more stringent requirements for an Occupying Power, including prohibiting excavations except where “required to safeguard, record or preserve cultural property.”¹⁹⁴ The Second Protocol requires that any archeological excavation be “carried out in close cooperation with the competent national authorities” unless not permitted by the circumstances.¹⁹⁵

There is no indication that the historic area of Nabi Samwil in 1971 was either required for military necessity or needed to be safeguarded. Indeed, through the demolition of homes and the later excavation of the site, beginning in 1992, which included bulldozing of layers of history, the Israeli occupying forces and authorities did not aim to safeguard, record, or preserve the cultural property of the occupied Palestinian people.

Alongside international law, the demolition of homes and excavations in Nabi Samwil also violates local laws. According to Israeli military orders and Jordanian antiquities law any structure built before 1700 and additions to such structures are considered an antiquities site, protected from demolition.¹⁹⁶ As noted by an archeologist who worked on the site in the early 1990s, Israel bulldozed layers some up to 2000 years old.¹⁹⁷ This was done in clear violation of local law.

191 “[M]ovable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above.” Article 1, Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954 (Hague Convention), available at http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html.

192 Id. at Article 4(1).

193 Id. at Article 4(1) and (2).

194 Supra at note 190, Article 9(1)(b); Paragraph 32 of UNESCO’s Recommendation on International Principles Applicable to archeological Excavations also call on occupying powers to “refrain from carrying out archeological excavations in the occupied territory.” Available at http://portal.unesco.org/en/ev.php-URL_ID=13062&URL_DO=DO_TOPIC&URL_SECTION=201.html

195 Supra at note 190, Article 9(2).

196 Fact Sheet for Landowners: How to Protect Your Rights when Antiquities are Discovered on Your Property, Emek Shaveh, 5 December 2016, available at <http://alt-arch.org/en/antiquities-fact-sheet/>.

197 Supra at note 180, p. 61.

The destruction of Palestinian cultural property in Nabi Samwil may amount to a war crime. UN Security Council Resolution 2347 (2017) most recently noted the unlawful destruction of cultural heritage in armed conflict and “attempts to deny historical roots and cultural diversity.”¹⁹⁸ The Resolution reaffirmed “that directing unlawful attacks against sites and buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments may constitute, under certain circumstances and pursuant to international law a war crime and that perpetrators of such attacks must be brought to justice.”¹⁹⁹

Importantly, the International Criminal Court convicted a defendant for the first time in September 2016 for intentionally directing attacks against buildings of a religious and historical nature in Mali.²⁰⁰ In its judgment, the Court noted there was no distinction as to whether the attack occurred within “the conduct of hostilities or after the object had fallen under the control of an armed group.”²⁰¹ Further relevant to how Israel conducts excavations in the OPT, the Court found the defendant’s “recommendation not to use a bulldozer” for the destruction of sites as a mitigating circumstance.²⁰²

D. Right to Cultural Life

Alongside the destruction of homes and layers of history, Israel’s management of the artifacts found at Nabi Samwil further diminishes any pretense of operating in good faith. Artifacts found during excavations at Nabi Samwil include “four pottery kilns with dozens of storage jars bearing seal impressions in Arabic with the inscription ‘Deir Samwil.’”²⁰³ However, it is not possible to assess the full scope of artifacts that have been removed from the site or where all artifacts from the village are currently held. This is symptomatic of Israel’s practice throughout the West Bank, where the results of excavations largely remain unpublished.²⁰⁴ Moreover, no artifacts are publicly displayed at the site, and Al-Haq did not observe any notice informing the public of the location or use of such artifacts. Israel has previously removed large amounts of cultural property from the OPT in clear contravention of its legal obligations, and it is uncertain as to whether Nabi Samwil is another example of this practice.²⁰⁵

Notably, Contracting Parties to the Hague Convention must prohibit, prevent and, if necessary, put a stop to, any form of theft, pillage or misappropriation of cultural property

198 UN Security Council Resolution 2347 (2017), Adopted 24 March 2017, S/RES/2347(2017), preamble.

199 Id. at para. 4.

200 Trial Chamber VIII, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, 27 September 2016, ICC-01/12-01/15, available at https://www.icc-cpi.int/Court-Records/CR2016_07244.PDF

201 Id. at para 15.

202 Id. at para. 93.

203 *The Byzantine-Islamic Transition in Palestine: An Archeological Approach*, Gideon Avni, Oxford Studies in Byzantium, 2014, page 148.; See also *Israeli Archeological Activity in the West Bank 1967-2007 A Sourcebook*, Raphael Greenberg and Adi Keinan, p.74 available at http://alt-arch.org/he/wp-content/uploads/2013/09/WBADB_sourcebook1.pdf.

204 In 2007, it was affirmed that the SAO report on Nabi Samwil had not been published. *Supra* at note 159, p. 20. Al-Haq research has also not found a published excavation report as of 2017.

205 *Plunder, Destruction and Despoliation: An Analysis of Israel’s Violations of the International Law of Cultural Property in the Occupied West Bank and Gaza Strip*, Al-Haq, 1997, page 54, available at <http://www.alhaq.org/publications/publications-index/item/plunder-destruction-and-despoliation>.

and to refrain from requisitioning movable cultural property.²⁰⁶ Article 1 of the Hague Protocol also specifically requires that the occupying power not export cultural property from the occupied territories. Again, given the lack of transparency related to the ICA and SAO's operations in the OPT, it is impossible to assess the full scope of violations of international law committed by Israeli authorities.

Without a doubt, however, the actions of Israeli authorities serve to violate the right of Palestinians to their cultural life. General Comment 21 of the IESCR affirms:

"cultural life is an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future... culture must be seen not as a series of isolated manifestations or hermetic compartments, but as an interactive process whereby individuals and communities, while preserving their specificities and purposes, give expression to the culture of humanity."²⁰⁷

Israeli authorities, instead, seek to find, manipulate, and emphasize, these "isolated manifestations" in the OPT. In doing so, many Israeli excavations across the West Bank, including Nabi Samwil, have resulted "in the destruction of the site, resulting in loss of context."²⁰⁸ Tragically, it is impossible for Palestinians and Palestinian authorities to know the level of loss to their cultural heritage given the lack of oversight over the SAO's activities,²⁰⁹ lack of reporting by the SAO, and the fact that countless archeological sites in the OPT are currently off limits to Palestinians due to their location 'behind' the Annexation Wall and/or inside of Israeli settlements.

Given the gravity of the situation, which includes the damage and destruction of immovable cultural heritage to the loss of movable cultural heritage, one author affirmed that if left unaddressed, "the emerging Palestinian state and the Palestinian people will lose an important link to their history and heritage, and will, unlike other sovereign states, be stripped of the historic context and attachment to their state."²¹⁰

206 Article 4(3) of the Hague Convention.

207 Supra at note 98, paras. 11-12.

208 Supra at note 154, p.18.

209 "In practice, however, there are several blank patches and ethically gray areas in Israel's Archeological activity in the West Bank that must be recognized: There is no public oversight of the Staff Officer's activities, nor any regular report on the many excavations that his unit conducts." Supra at note 159, p.43.

210 Repatriating Palestinian Patrimony: An Overview of Palestinian Preparations for Negotiations on Archeology; Gabriel Fahel, available at <https://www.presentpasts.info/articles/10.5334/pp.19/>.

Conclusion

Nabi Samwil exemplifies the importance of narratives in Israel's settler-colonial enterprise, and how easily the reality of the situation can not only be obscured, but willfully ignored. Immediately following the start of the occupation in 1967, Israeli officials began planning the takeover of Nabi Samwil. Viewed as a strategic piece of real estate, with correspondences devoid of asserting any religious ties to the area, the main concern appeared to be how the land would be used – as a residential settlement or a park. The Palestinians living there were perceived to be merely incidental, who would be emptied from the area by one means or another.

Since 1967, Israel has continued to adapt and implement a variety of methods to ensure this transfer, including: the destruction of residents homes in 1971; a discriminatory planning regime facilitated by the village's designation as Area C and as a national park, which effectively prohibits any sort of construction; and the establishment of the Annexation Wall beginning in 2005, leaving residents isolated from all other parts of the West Bank. Every aspect of the lives of residents is thus impacted. In total, a coercive environment is created that has led, and will likely continue to lead to the transfer of Palestinians from Nabi Samwil.

The reality of the village's mere presence and the treatment of Palestinians there is hidden in plain sight, subsumed by the Israeli narrative of its significance as the alleged burial place of Samuel and as a national park with attractive views of Jerusalem. Similar practices have been repeated throughout the OPT, with Israeli authorities prioritizing, including via excavations, one tale or period of history to further their own narrative, while ignoring the larger context.²¹¹ By doing so, Israel aims to simultaneously disassociate Palestinians from the land,²¹² while emphasizing purported traditions over reality. However, just as the treatment of residents of Nabi Samwil is apparent if a small detour is taken from the "archeological" site, so too is the contradictory information on the "national park" provided by Israeli authorities.

Again, irrespective of these realities, through control over land, Israel also controls how the land is portrayed and commonly perceived: Nabi Samwil as an "Israeli national park" rather than a Palestinian village historically targeted by Israeli colonization policies remains a primary example. While the international community, including the United Nations and third states, have documented and condemned Israel's violations of international law related to Nabi Samwil, Israeli authorities, including the SAO, have not been held accountable. In total, Nabi Samwil is a microcosm of Israel's occupation at-large, but also demonstrative of Palestinians' resolve. As stated by the head of Nabi Samwil's council, "we have been occupied for 70 years. We will remain no matter what the circumstances are."²¹³

211 Interviews with Palestinian archeologist Ghattas Sayej, 5 November 2017, and former Deputy Minister of the Ministry of Tourism, Hamdan Taha, 21 November 2017.

212 One study noted "few sites were excavated with the intent of studying Islamic remains, but the latter are prominent in the most recent levels at many sites." Supra at note 159, p. 28.

213 Supra at note 66.

Recommendations

In light of the above, Al-Haq calls on Israel to:

- Abide by its obligations under international human rights law and international humanitarian law;
- Dismantle all settlements and the Annexation Wall within the OPT, and provide reparations to all natural or legal persons who suffered damage due to the Wall's construction, in line with the 2004 ICJ Advisory Opinion;
- Immediately make public a list of all sites in the OPT that have been excavated by Israel since 1967, all artifacts that have been removed from these sites, and where these artifacts are currently located; and
- End its prolonged occupation of Palestinian territory.

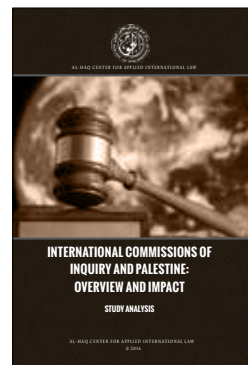
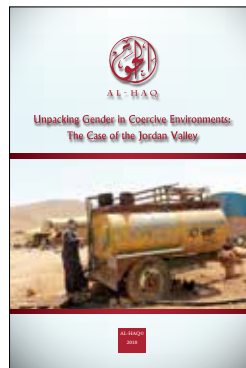
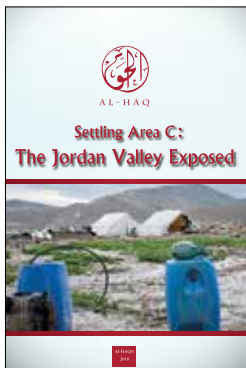
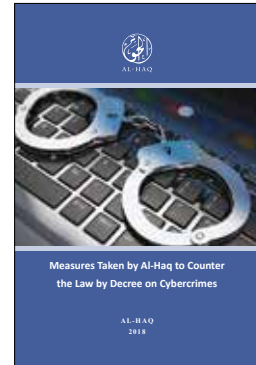
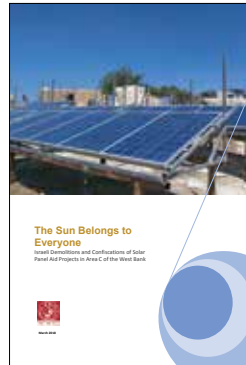
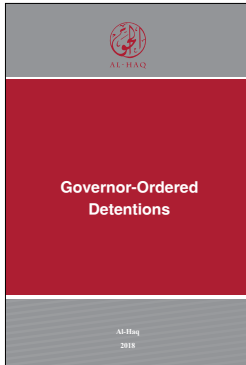
The international community has an important role to play in ensuring that Israel fulfills its duties as occupying power. Accordingly, third states must:

- Prohibit tourism services, including pilgrimages, to Israeli settlement sites;
- Refrain from acquiring, either temporarily or permanently, any artifacts from the OPT. Where such artifacts are already in museums or in private institutions, due to Israel's unlawful transfer of them, States should take action to repatriate the artifacts to the relevant Palestinian authority;
- Fully cooperate with the preliminary examination of the International Criminal Court; and
- Take all measures to ensure an immediate end to Israel's occupation.

Al-Haq further recommends that the State of Palestine should:

- Support vulnerable communities in Area C, including Nabi Samwil, through all possible means;
- Ensure excavations in the OPT which are under the control of Palestinian authorities do not perpetuate the illegal sale of artifacts; and
- Take all possible measures to preserve Palestinian cultural heritage in the OPT.

READ ALSO...





NOTES

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NOTES



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About Al-Haq



Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT), the organisation has special consultative status with the UN Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, regardless of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. The organisation conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. The organisation has a specialised international law library for the use of its staff and the local community.

Al-Haq is also committed to facilitating the transfer and exchange of knowledge and experience in international humanitarian and human rights law on the local, regional and international levels through its Al-Haq Center for Applied International Law. The Center conducts training courses, workshops, seminars and conferences on international humanitarian law and human rights for students, lawyers, journalists and NGO staff. The Center also hosts regional and international researchers to conduct field research and analysis of aspects of human rights and IHL as they apply in the OPT. The Center focuses on building sustainable, professional relationships with local, regional and international institutions associated with international humanitarian law and human rights law in order to exchange experiences and develop mutual capacity.

Al-Haq is the West Bank affiliate of the International Commission of Jurists – Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), the Palestinian Human Rights Organizations Council (PHROC), and the Palestinian NGO Network (PNGO).



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