



# ARRESTED DEVELOPMENT

The Long Term Impact of Israel's Separation  
Barrier in the West Bank

October 2012

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Barrier in the West Bank**

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**Cover** Abandoned buildings near the barrier in the town of Bir Nabala, 24 September 2012. **Photo** Anne Paq, [activestills.org](http://activestills.org)

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# Introduction

This report deals with the Separation Barrier—the largest and costliest infrastructure project Israel has undertaken since the construction of the national water carrier during the 1950s and '60s. In June 2002, when Palestinian attacks against Israeli citizens were at their peak, the Israeli government decided to build the barrier and termed it a temporary security measure intended to protect Israel from terrorist attacks from the West Bank. All the decisions and documents on this subject have emphasized that the barrier does not signify a future political border.

Yet the Separation Barrier was erected primarily within the occupied West Bank, and in a way to function as a border. The barrier's route, determined in part by the location of many of Israel's West Bank settlements, creates the infrastructure for de facto annexation of most of the settlements and settlers. And the barrier, like the settlements, leads to numerous infringements of the human rights of Palestinians, over and above the direct damage inflicted by its construction – including violations of property rights, the right to free movement, the right to an adequate standard of living and the collective right to self-determination.

This report examines the ramifications of the Separation Barrier on nearby Palestinian communities on either side of it, ten years after its construction commenced. The report details and critiques the permit regime instituted by Israel in what is known as the "Seam Zone," West Bank lands on the "Israeli" side of the barrier. The devastating impact of the barrier on the individual and collective rights of Palestinians is demonstrated through four case studies. This report does not address the impact of the Separation Barrier in the Jerusalem area, which will be addressed separately in a future B'Tselem report.

The first section of this report examines the question of whether the Separation Barrier is indeed a temporary security measure, as the Israeli government claims. The second section provides current data about the barrier and its impact. The third section deals with the Seam Zone areas and the permit regime through which Israel places restrictions on Palestinian access to and presence in these areas. The fourth section surveys the long term effects of the barrier on four Palestinian communities: the village of Barta'ah a-Sharqiyah, which is isolated on the Israeli side of the barrier; the village of Jayus, whose lands are also on the Israeli side of the barrier; the city of Qalqilyah, which is entirely encircled by the barrier; and the town of Bir Nabala, which is trapped by the barrier in an enclave. The fifth section surveys the infringements of Palestinians' human rights caused by the Separation Barrier.



# Part I:

## The Barrier – A Temporary Security Measure?

### 1. Israeli Government Decisions

In April 2002, following a series of attacks carried out by Palestinians within Israeli territory, the Israeli government's Ministerial Committee on National Security Affairs decided to construct a barrier "to hinder, disrupt, and prevent the penetration of terrorist activity from Judea and Samaria into Israel."<sup>1</sup>

Two months later, in June 2002, the government approved the construction of the first phase of the barrier – from Salem in the northwestern West Bank to the settlement of Elkana in the west. This decision, like further government decisions on this subject in subsequent years, described the Separation Barrier as "a temporary security measure for the prevention of terror attacks and [it] does not designate a border, political or otherwise."<sup>2</sup> Israel's State Attorney even argued before the High Court in February 2004 that it would be possible to dismantle the Separation Barrier "when the sides agree on a border, or when other circumstances come about that would justify doing so."<sup>3</sup>

Contrary to these explicit declarations, it appears that the considerations addressed by decision-makers when determining the route of the barrier were not solely security-related. An examination of the barrier's route shows that the aim was to encompass as many settlements and settlers as possible, so as to enable their de facto annexation to Israel. A report published by B'Tselem and Bimkom in 2005 demonstrated that in at least 12 cases, the main consideration in determining the route of the Separation Barrier was to accommodate the future expansion plans of settlements, including plans for which the approval process by the Civil Administration's Supreme Planning Council had not even commenced.<sup>4</sup> In four High Court petitions submitted by Palestinians and human rights organizations – addressing the barrier's route near the settlements of Zufin, Alfei Menashe, Sal'it and Modi'in Illit – the judges reached a similar conclusion and instructed that the route be modified after having clarified

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1 Ministerial Committee on National Security Affairs, Decision No. 64/B dated 14 April 2002.

2 Government Resolution No.4783 dated 30 April 2006, available in Hebrew at <http://www.pm.gov.il/PMO/Archive/Decisions/2006/04/des4783.htm> See also Resolution No. 2077 from 23 June 2002 (in which the term "temporary" is not used), Resolution No. 883 of 1 October 2003, Resolution No. 3283 from 20 February 2005. For a broader discussion see B'Tselem, **Under the Guise of Security – Routing the Security Barrier to Enable Israeli Settlement Expansion in the West Bank**, December 2005, pp.9-18, available at: [http://www.btselem.org/download/200512\\_under\\_the\\_guise\\_of\\_security\\_eng.pdf](http://www.btselem.org/download/200512_under_the_guise_of_security_eng.pdf)

3 State's response in HCJ 639/04, **The Association for Civil Rights in Israel v. Commander of IDF Forces in Judea and Samaria et al.** dated 4 February 2004.

4 **Under the Guise of Security – Routing the Security Barrier to Enable Israeli Settlement Expansion in the West Bank**, December 2005, pp. 19-76.

that future expansion plans are not a relevant consideration in determining the barrier's route.<sup>5</sup>

Over the years, prime ministers and other senior Israeli government ministers referred to the barrier as marking the future border of Israel. For example, former Prime Minister Ariel Sharon said that settlement blocks slated to remain in Israel and located to the west of the Separation Barrier would be "part of the State of Israel, territorially connected to Israel."<sup>6</sup> Former Justice Minister Tzipi Livni said that the Separation Barrier would serve as "the future border of the State of Israel."<sup>7</sup> And Defense Minister Ehud Barak stated that "when we build a barrier, clearly there are areas beyond the barrier, and it is clear that, under a permanent settlement agreement... these areas beyond the barrier will not be part of the State of Israel."<sup>8</sup>

From a technical standpoint as well, the Separation Barrier was built as a border. For example, the Defense Ministry's tender for construction of the barrier referred to "the technical requirements of the IDF's experiment with a border fence"<sup>9</sup> – and the same technological system for registration and border inspection that is used at Israel's airports and international border crossings was to be employed at the crossings and gates constructed along the Separation Barrier. For example, at the Rehan crossing, which leads to Barta'ah a-Sharqiyah, the checks conducted resemble those carried out at airports.<sup>10</sup> In a tour conducted by the State Control Committee of the Seam Zone – following a report from the State Comptroller about integrating technology at the Separation Barrier crossings – the head of the Seam Zone Authority, Maj. Gen. (ret.) Netzach Mashiach, said that "the significant component in controlling the information about those who enter and the identity of those entering will be using automated biometric identification systems for border crossings ("Rashbag 2000"). The day when this will happen is not far off."<sup>11</sup>

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5 Regarding the settlement of Alfei Menashe, see HCJ 7957/04, **Zaharan Yunis Muhammad Mara'aba et al. v. Prime Minister of Israel et al.** dated 15 September 2005. On 29 August 2007, the HCJ denied the petition of the Alfei Menashe Local Council opposing changes to the barrier route. HCJ 10309/06 and 10714/06, **Alfei Menashe Local Council and Yassin Yunis Muhammad Mara'aba et al. v. Prime Minister of Israel et al.** Regarding the settlement of Zufin see HCJ 2732/05 **Head of Azzun Municipal Council, Abd a-Latif Hussein et al. v. Government of Israel et al.** dated 15 June 2006. The route of the barrier was changed only after a further petition by HaMoked—Center for the Defence of the Individual pursuant to a contempt of court ruling from 5 October 2009. Regarding the Sal'it settlement, see HCJ 11344/03, 10905/05, 11765/05 and 8109/07, **Faiz Salim et al., Mayor of Jayus et al., Head of Khirbet Jabara Village Council et al. and Local Council of Kochav Yair v. Commander of IDF Forces in Judea and Samaria, Prime Minister et al.** dated 9 September 2009. Regarding the settlement of Modi'in Illit see HCJ 8414/05, **Ahmad Issa Abdallah Yassin, Head of Bil'in Village Council v. Government of Israel et al.** dated 4 September 2007.

6 Aluf Benn and Nir Hasson, "Sharon: The Evacuation Will Begin in Mid-August," **Haaretz**, 10 May 2005 [Hebrew]. See also Aluf Benn, "Prime Minister Warns the Palestinians: What You Can Get Today – You Won't Get Tomorrow," **Haaretz**, 27 November 2003; Shaul Arieli and Michael Sfar, **Tower and Stockade: The Separation Barrier – Security or Avarice?**, Sifrei Aliyat Hagag, Yedioth Aharonoth and Sifrei Hemed, 2008, p.276 [Hebrew].

7 Yuval Yoaz, "Livni: The Separation Barrier – Israel's future border," **Haaretz**, 30 November 2005 [Hebrew].

8 Interview for IDF Army Radio, 4 December 2007 [Hebrew].

9 See details of implementation of the "Seam Zone" plan on the Ministry of Defense's Seam Zone web site [Hebrew]: <http://www.seamzone.mod.gov.il/Pages/Heb/bitzua.htm>

10 Further details of how this crossing is operated can be found in the case studies included in this report.

11 **Minutes of the State Control Committee tour of the Seam Zone—Jerusalem periphery**, Sunday, 11 December 2005, p.21 [Hebrew]. See also **Report of the State Comptroller 56A**, 31 August 2005, pp. 126 and 131-132 [Hebrew]; Appendix C – Data Systems of the Coordinator of Government Activities in the Territories, in **Report of the Committee for Arrangements, Supervision and Enforcement of Employment of Palestinian Workers in Israel**, submitted to the government on 12 May 2011, p.72 [Hebrew].



## 2. The High Court Rulings

The High Court was asked to rule on more than 150 petitions dealing with the legality of the barrier in general and the legality of certain sections in particular. Most of these petitions were denied after the justices accepted the State's position that the barrier is temporary and that the considerations used in planning the route were solely security-related. The judges ignored declarations by Israeli officials regarding the political purposes of the Separation Barrier as cited by the petitioners.

Two basic rulings written by then-President of the High Court, Justice Aharon Barak – the first issued in June 2004 regarding Beit Sourik, and the second from September 2005 which addressed Alfei Menashe – set the theoretical framework for judgments on this subject.

The Beit Sourik petition concerned a 40-kilometer stretch of the Separation Barrier in a rural area west of Ramallah, where construction work had already begun. Justice Barak delimited the deliberations on the case to two questions: First, the question of Israel's authority to build a barrier within the territory of the West Bank; and second, assuming that such authority exists – whether the route set in the Beit Sourik area is legal.

Justice Barak responded affirmatively to the first question, through clarifying that "a military commander is not authorized to order construction of a Separation Barrier if his grounds are political. The Separation Barrier cannot be for the purpose of 'annexation' by Israel of territories in the area." Yet the judge rejected the petitioners' argument that this was the aim of the barrier – and instead fully accepted the State's argument and ruled that "based on the factual foundation before us, the purpose of constructing the barrier is security-related."<sup>12</sup>

The core of the verdict was devoted to examining the legality of the route in the area addressed in the petition. Justice Barak explained that this question must be decided based on the principle of proportionality, pursuant to which "the liberty of the individual (in our case, the liberty of local residents living under belligerent occupation) may be restricted in order to achieve appropriate goals (in our case, the security of the State and its citizens and the security of the area) so long as the restriction is proportional."<sup>13</sup> In the case before him, Justice Barak determined that the injury to Palestinians due to the route of the barrier was severe:

The length of the [section of the] Separation Barrier that is the subject of the orders before us is about four kilometers. It harms the lives of thirty-five thousand local residents. Four thousand dunams [4 dunams = 1 acre] of their land are taken away by the route of the barrier itself, and thousands of olive trees growing along the route are being uprooted. The local residents from eight villages are cut off by the barrier from over thirty thousand dunams of their land. Most of this land is cultivated, and includes tens of thousands of olive trees, fruit trees, and various agricultural crops. The permit regime that the army seeks to put in place and which has been applied to many areas, cannot prevent or significantly reduce the extent of the serious harm to local farmers.<sup>14</sup>

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12 Paragraphs 27-28 of HCJ 2056/04, **Beit Sourik Local Council et al. v. Government of Israel et al.**, 30 June 2004 [Hebrew].

13 Ibid., paragraph 36.

14 Ibid., paragraph 82.

Justice Barak ruled that the balancing of security needs and the harm to the residents was inappropriate – and thus the route in this section is not proportional. As such, Barak ordered the State to revoke six of the eight land expropriation orders addressed in the petition, and to re-examine one additional one.<sup>15</sup> Following the Beit Sourik verdict, Israel's defense establishment reviewed the entire route of the Separation Barrier and made changes in many sections. Thus, for example, it changed the route in the area of Bil'in and Kharbatha Bani Harith, to reduce the amount of the land belonging to these villages that would have been left to the west of the barrier in an attempt to enable building of the Matityahu North neighborhood of the Modi'in Illit settlement.<sup>16</sup>

Ten days after the verdict was handed down in the Beit Sourik case, the International Court of Justice (ICJ) in the Hague announced its advisory opinion on the legality of the Separation Barrier and its route. The court held that building the barrier within the West Bank is illegal, inter alia because it harms the human rights of the Palestinians, and since the barrier is intended to contribute to the preserving and annexing of settlements that were built in violation of international humanitarian law.<sup>17</sup>

More than a year later, in September 2005, a panel of nine justices of Israel's High Court of Justice (HCJ) rendered a verdict on the route of the Separation Barrier near the Alfei Menashe settlement. The verdict dealt with a section of the barrier that encircled the settlement while imprisoning within an enclave five Palestinian villages – Arab a-Ramadin al-Janubi, Arab Abu Farda, Wadi a-Rasha, a-Daba and Ras a-Tira. This section of the barrier separated the residents of the villages from their land and isolated them from nearby communities and from the rest of the West Bank. Justice Barak again ruled that the barrier was constructed for security-related needs and rejected the opinion of the ICJ that the entire barrier is illegal.

In this ruling, Barak addressed for the first time the authority of the military to take steps intended to protect settlers and ruled that the Separation Barrier is a legal means of attaining that goal, regardless of the legality of the settlements themselves:

The authority to construct a Separation Barrier to protect the lives and the security of the Israeli settlers is derived from the need to protect 'public order and security' (Article 43 of the Hague Convention). It is necessary for the human dignity of every person, no matter who they are. It is meant to protect the life of every person created in the image of God. The life of someone who lives in an area illegally cannot be forfeited. Even someone present in the area in violation of the law does not thereby become someone outside the law.<sup>18</sup>

Nevertheless, Justice Barak ruled that the route in this area was not proportional and ordered the State to dismantle this section of the barrier.<sup>19</sup> This was the first time that

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15 Ibid., paragraphs 49-81 and 86. For more on the subject of expropriation for military purposes see p. 13 of **Behind the Barrier: Human Rights Violations As a Result of Israel's Separation Barrier**, B'Tselem, English version published April 2003. See also the items on "Legal Aspects" of the "Security Fence" on the Ministry of Defense Seam Zone web site, at <http://www.securityfence.mod.gov.il/Pages/ENG/execution.htm>

16 For more on the barrier route in this area, see **Under the Guise of Security**, pp. 53-64, footnote 4.

17 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Authority (Request for advisory opinion), The International Court of Justice, 9 July 2004, para. 114-142.

18 Paragraph 19 in HCJ 7957/04, **Zaharan Yunis Muhammad Mara'aba et al. v. Prime Minister of Israel et al.** dated 15 September 2009.

19 Ibid., paragraph 114.