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B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

Not all it Seems

Preventing Palestinians Access to their Lands

West of the Separation Barrier in the Tulkarm-Qalqiliya Area

June 2004

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Introduction

In August 2003, Israel completed construction of Stage 1 of the separation barrier. This section runs for 125 kilometers from Sallem, a village in Israel, south to the Elqana settlement, southeast of Qalqiliya. The barrier is composed of an electronic fence, with roads, trenches, and barbed-wire fences on each side. The width of the barrier ranges from fifty to one hundred meters. In a few locations (a total of 7-8 kilometers), Israel has built an eight-foot-high concrete wall. More than eighty percent of the barrier along this 125-kilometer stretch is located east of the Green Line and isolates Palestinian villages and agricultural areas from the rest of the West Bank.

In September 2002, B'Tselem published a position paper in which it warned that construction of the barrier along this route would result in human rights violations and breaches of international law.¹ Now, ten months after the completion of Stage 1, it is clear that the fears were well founded.

The present report examines one result of constructing the barrier on land within the West Bank: the denial of access of Palestinians to their lands located on the western side of the barrier. The report focuses on the strip of land between Tulkarm and Qalqiliya. This strip covers an area of 27,000 dunams [4 dunams = 1 acre]. Three thousand dunams lie within the jurisdictional area of the settlements Sal'it and Zufin. This strip also includes the Palestinian village of Khirbet Jubara, which extends over 300-400 dunams. The rest of the area – more than 23,000 dunams – is mostly composed of cultivated farmland and grazing areas belonging to residents of Palestinian villages situated east of the barrier. The villages whose residents own the most land west of the barrier are Far'un (3,000 residents), a-Ras (500 residents), Kafr Sur (1,100), Kafr Jammal (2,300 residents), Falamyia (500 residents), and Jayyus (2,800 residents). Also, a number of individuals who own land in this strip live in Qalqiliya.²

The report describes the implementation of a permit system and the operation of crossing gates, which are the two main tools through which Israel restricts the entry of farmers from these villages to their lands lying west of the barrier. The report also examines the legality of these means in international law.

¹ B'Tselem, *Position Paper: The Separation Barrier*, September 2002. A more comprehensive position paper was subsequently published in April 2003 under the title *Behind the Barrier: Human Rights Violations as a Result of Israel's Separation Barrier*.

The barrier's route: The primary cause of human rights violations

These human rights violations result from Israel's choice of a route that deviates sharply from the Green Line and separates farmers from their land. State officials repeatedly state that the route has been set solely for security reasons, and that routes that would cause lesser harm to Palestinians do not meet the military-security needs for which the barrier is being built: prevention of terrorist attacks inside Israel.

However, a study of the route set by the government, and particularly the route of the area discussed in this report, shows that other considerations – unrelated to legitimate military-security necessity – were taken into account. According to international law, these extraneous reasons cannot justify the infringement of human rights.

First, in setting the route, the government wanted the route to run east of certain settlements. In the area discussed in this report, there are two such settlements: Sal'it and Zufin. Israel considers protection of the settlements part of its legitimate military needs. However, under international humanitarian law, the settlements are illegal and must be evacuated.³ This fact does not eliminate the right of settlers to life and does not render attacks on them less grievous. However, it requires that Israel protect them, until their evacuation,, in ways that do not infringe the human rights of Palestinians. Justifying the route on the basis of the need to defend the settlements simply aggravates the breach.

Second, study of the route near certain settlements indicates that West Bank land west of the barrier includes land that is not part of the settlements' jurisdictional area, but is intended for future expansion of the settlements. In Zufin for example, the route was set two kilometers east of the settlement's built-up area with the purpose of encompassing non-contiguous land that is included in the community's jurisdictional area (see the map). As a result, residents of Jayyus are separated from their vineyards. Furthermore, in a visit to the area, B'Tselem researchers found that part of the route runs along a dry river bed at the foot of Jayyus. In other words, not only is the route in this area based on

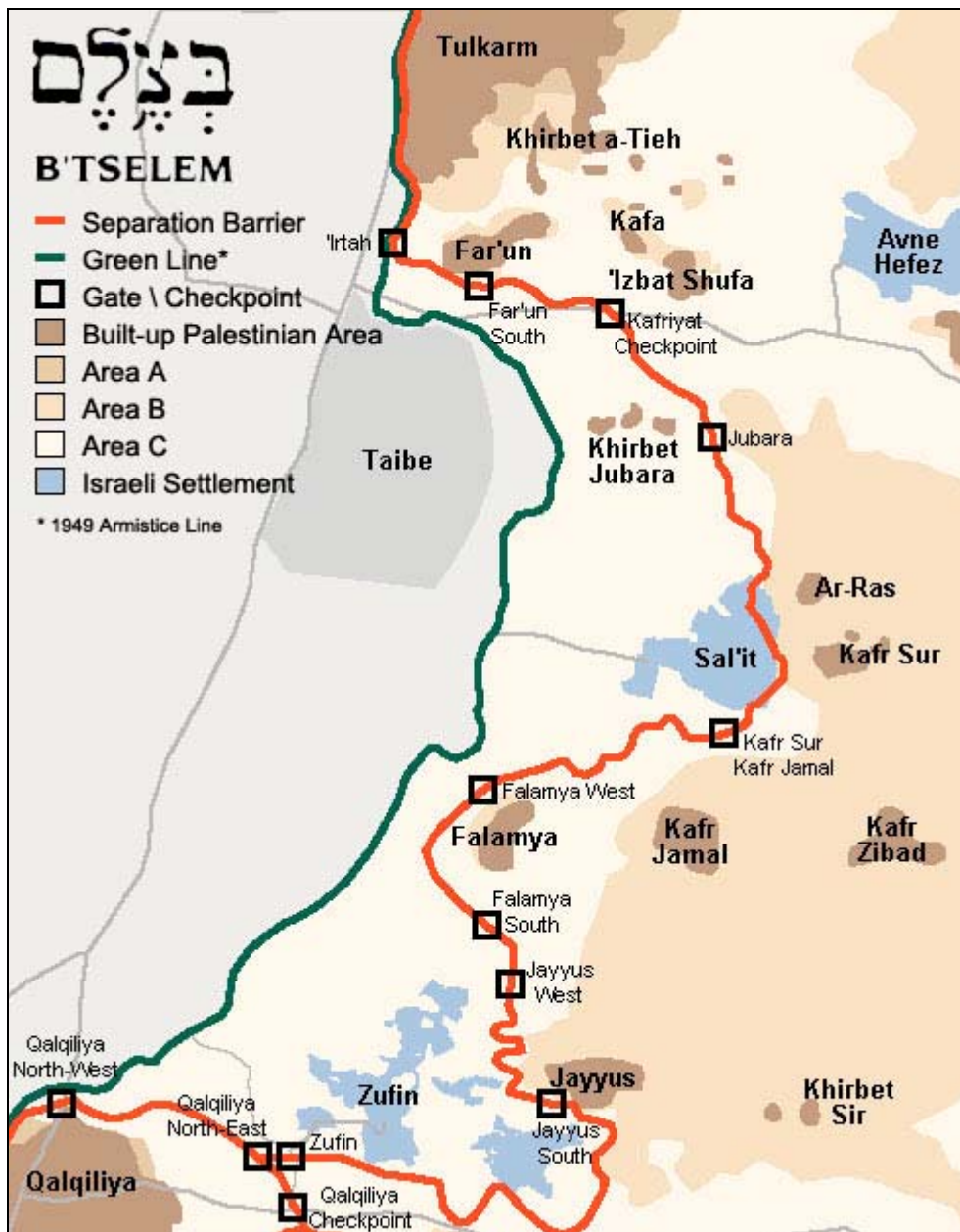
² The population figures relate to early 2004, and are extrapolated from the 1997 census taken by the Palestinian Authority. See www.pcbs.org.

³ For extensive discussion on the issue of the human rights violations resulting from establishment of the settlements, see B'Tselem, *Land Grab*.

illegitimate considerations, it is even contrary to military needs, which dictate that the route run along high areas to the greatest extent possible.

Third, defense officials and politicians have recently expressed a willingness to make significant changes in the route. In one area – Baqa a-Sharqiya – the route was changed and the barrier was torn down. In the area discussed in this report, the state informed the High Court of Justice that it intended to move the route in the Khirbet Jubara area to run west of the village.⁴ This willingness to make changes, which resulted from the sharp worldwide criticism relating to the barrier, undermines Israel’s official position that no less harmful routes exist that would meet security needs.

⁴ *Faiz Salim*, cited above, response of the State Attorney’s Office.



The Permit System

Establishing the system

On 2 October 2003, about one month after the construction work was completed, the commander of Central Command forces, Maj. Gen. Moshe Kaplinsky, declared the area between the first section of the barrier to be constructed and the Green Line a closed military area.⁵ The declaration refers to this area as the “seam area,” and states that “No person shall enter or stay in the seam area” and that “A person found in the seam area shall be obligated to leave it immediately.”⁶

The declaration specifies that the prohibition on entry and staying in the seam area does not apply to Israeli citizens and residents, including settlers living in the West Bank, or persons entitled to immigrate to Israel pursuant to the Law of Return, even if they are not Israeli citizens (i.e. Jews from elsewhere in the world).⁷

Since the military commander issued this declaration, Palestinian residents of the West Bank have been subject to a permit system in order to reach their land west of the barrier. The new permit arrangement is set forth in two compilations of directives published on 7 October 2003 and signed by the head of the Civil Administration, Brig. Gen. Ilan Paz, pursuant to the authority given him by the OC Central Command’s declaration. One of the compilations deals with the permit that residents residing in the villages will have to obtain to enable them to continue to live in their homes. This permit is referred to as a “permanent resident permit.”⁸

The second book regulates the entry and stay of Palestinians living outside the closed military area.⁹ The directives require every Palestinian over the age of 12 who wants to enter the seam area for whatever purpose, to submit a request for an entry permit at the

⁵ Order Regarding Defense Regulations (Judea and Samaria) (No. 378) 5730 – 1970, Declaration Regarding Closure of Area No. 2D/03 (Seam Area).

⁶ Sections 3(a) and (b) of the declaration, respectively.

⁷ See Sections 1 and 4(1) of the declaration.

⁸ Order Regarding Defense Regulations (Judea and Samaria) (No. 378) 5730 – 1970, Directives Regarding Permit of Permanent Resident for the Seam Area. For details and illustrations of the permit system on Palestinian life in closed military areas, see www.btselem.org/english/separation_barrier/index.asp.

⁹ Order Regarding Defense Regulations (Judea and Samaria) (No. 378) 5730 – 1970. Directives Regarding Permit to Enter and Stay in the Seam Area.

District Coordination Office, which is operated by the Civil Administration.¹⁰ The applicant must comply with numerous demands, as will be explained below, but the directives contain no criteria for approving or rejecting the requests. Nor do the directives mention how long the permit will remain in effect in the event it is approved.¹¹ The Civil Administration is given total discretion in making its decision on each and every request. When a request has been denied, the resident may appeal to a committee established by the Civil Administration.¹² However, the committee hearing the appeal is the same body that rejected the original application (the Civil Administration). Thus, it appears that appeal is not a genuine option for remedying an injustice, but is offered solely for appearance's sake.

An annex to the book of directives contains twelve categories of persons entitled to request an entry permit. These classifications are based on the purpose for which the person wishes to enter the area. Each category has its own application form and requirements regarding the specific documents that have to be provided. The two types of permits relevant to this report are those for individuals who own farmland and those for individuals employed in agriculture.¹³ The policy regarding entry of vehicles into the seam area varies. In the Tulkarm area, a regular entry permit entitles the holder to bring in farm vehicles. In the Qalqiliya area, on the other hand, a separate permit is required for each vehicle.¹⁴ The permits generally allow the holder to stay in the seam area only during the daytime. Special permission, noted in a separate section of the permit, is required to stay overnight. Also, the permit is valid only for entry through the particular gate stated on the permit.

Distribution of permits at Israel's initiative

In October 2003, after the permit system took effect, the Civil Administration began to distribute permits to landowners in the seam area. The list of recipients showed that the Population Registry maintained by the Civil Administration contained many errors.

¹⁰ Ibid., Section 3(a).

¹¹ Ibid., Section 2(b), which states: "The permit shall be issued for a period of time that the competent authority shall set, in accordance with procedures that will be established."

¹² Ibid., Section 4(b).

¹³ Ibid., Parts 5 and 4, respectively.

¹⁴ Letter from the Civil Administration to B'Tselem, 22 March 2004. Also, HCJ 11344/03, *Faiz et al. v. Commander of IDF Forces in Judea and Samaria*, response by the State Attorney's Office, Section 39(3).

Permits were issued to infants, deceased individuals, and individuals residing abroad. On the other hand, many farmers owning land in the seam area and residents employed in farming were not on the list. The permits were valid for a period ranging from one month to three months.

This active distribution of permits by the DCO was only a one-time event. Individuals who did not receive a permit and persons who wanted to renew permits had to go to the local DCO and apply for a permit. The DCO responsible for the area discussed in this report is located near the Qedumim settlement, which is situated around thirty kilometers from Qalqiliya.

Certification of land registration

A Palestinian owning land west of the barrier who seeks a permit must file a request at the DCO. The applicant must provide a photo of himself, a photocopy of his identity card, and a document testifying to his rights in the land.¹⁵ According to the Civil Administration's directives, the relevant document proving ownership is the Certification of Land Registration, which is issued by the Israeli DCOs.¹⁶ To obtain the document, in addition to paying a fee of NIS 38, the applicant must provide the old certificate of registration, and the following documents, as appropriate:¹⁷

1. identity card of the landowner;
2. photocopy of the Order of Inheritance, if the registered owner is deceased;
3. affidavit made before a Palestinian Magistrate' Court stating that the plot has not been sold to, or attached by, any third person, and is in the complete possession of the purchasers or heirs;

¹⁵ Persons employed in agriculture who seek a permit must provide a personal photo and a photocopy of their identity card, and confirmation from his employer. The Civil Administration directives refer to landowners as "farmers." Individuals employed in agriculture are classified as "Persons Employed in the Seam Area."

¹⁶ Land was registered for tax purposes during the time of Jordanian rule in the West Bank. The registration serves in legal matters, as proof of possession of the land, but not ownership. For further discussion on this matter, see B'Tselem, *Land Grab: Israel's Settlement Policy in the West Bank*, May 2002.

¹⁷ The documents required to obtain each of the various types of permits are posted at the DCO.

4. if the name of the purchaser or heir in the identity card is different than the name on the document certifying ownership of the land, the applicant must submit a sworn affidavit explaining the difference;
5. certification by the local council or municipality verifying the above-mentioned documents.

According to the Civil Administration's directives, a current certification of land registration is required. Thus, requests that do not contain current certification are returned to the applicants, and they are told that they must provide certification from 2004.

Until February 2004, DCO officials in Qedumim conditioned issuance of the certification of land registration on payment of all outstanding real estate taxes that had accrued from 1967 to the present. Palestinians who did not have the financial resources to pay the back taxes were not entitled to a permit. Israel subsequently eliminated this requirement, and Palestinians are now able to obtain certification of registration regardless of whether they paid their taxes.

Length of validity of permits

The permits are valid for varying lengths of time, depending on the kind of crop grown by the applicant. For example, olive growers receive permits for October-November, the picking season, while owners of hothouses, which require care throughout the year, are issued permits for a longer period of time.

Testimonies given to B'Tselem by farmers in the area indicate that the authorities have constantly ignored the kind of crop being grown on the land. Some farmers, among them olive growers, received permits for periods ranging from three to six months, while farmers who grew crops requiring care throughout the year received permits for shorter periods. In some cases, the permits were issued for only two weeks.

The Civil Administration's assumption that olive groves require access to the orchards only during the olive-picking season is inaccurate. Cultivation of the orchards throughout the year, such as plowing, pruning, and weeding, greatly affect the yield and quality of the olives and the oil.

Farmers' testimonies indicate that the Civil Administration clearly seeks to shorten the period of validity of permits on renewal. In many instances, farmers who were given three-month permits when the authorities initiated the system, received permits for one month, or in some cases only two weeks, when they renewed them.

Twenty-five percent of requests are rejected

According to figures of the Civil Administration, as of March 2004, 2,240 Palestinian residents of Far'un, a-Ras, Kafr Sur, Falameya, and Jayyus held permits to enter the seam area. In 708 cases, the residents' requests for a permit were rejected.¹⁸ Thus, about twenty-five percent of the requests for permits to enter the seam area were denied.

Although the figures provided by the Civil Administration do not break down the permits that were granted and denied by type, we can assume from the nature of the area that most requests relate to agriculture. We can also assume that a small portion of the permits were issued to enable the applicants to visit relatives living in Khirbet Jubara.

The Civil Administration has not issued fixed instructions regarding the permits, nor have they established criteria for approval. The Civil Administration contends that there are three reasons that requests for permits are rejected: 1) failure to prove ownership of the land, 2) failure to prove that the applicant works in agriculture, and 3) security considerations.¹⁹ B'Tselem's research indicates that most of the rejections were based on "security reasons." The applicant is given the response verbally or by means of a stamp of denial on the original request. The Civil Administration provides no reason or proof of any kind for its denial.

Refusing to allow a substantial portion of the farmers in the area to earn a livelihood is especially grave in light of the harsh economic situation in the Occupied Territories since the beginning of the intifada, in September 2000. As a result, many Palestinians in the Occupied Territories have become dependent on international aid organizations. In December 2003, the poverty rate in the West Bank (defined as income of less than \$2.00 a day per person) was 31 percent, whereas the poverty rate in the rural sector was even higher, 38.5 percent. In 2003, the average rate of unemployment in the West

¹⁸ Letter from the Civil Administration to B'Tselem, 22 March 2004.

¹⁹ Ibid.

Bank stood at 33 percent. More than 15 percent of those who were employed worked in agriculture.²⁰

²⁰ The figures are taken from press releases of the Palestinian Central Bureau of Statistics. See www.pcbs.org.

Criticism

The permit system instituted following the construction of the barrier grossly infringes freedom of movement. All persons have the right to move about in their country as they wish and according to their needs. A state is entitled to deny this right only if it has proper justification. As we have seen, the permit system operates on the opposite premise: Palestinians are forbidden to move about freely in their villages and on their land unless they supply sufficient justification to warrant their movement.

Regardless of the number of persons whose requests are rejected, the permit system results in the intolerable violation of the right to freedom of movement, which is enshrined in the Universal Declaration of Human Rights (Section 14) and the International Covenant of Civil and Political Rights (Section 12). This violation is especially grave because it flagrantly discriminates on the basis of national origin, which itself violates international law.²¹ All Palestinians, whether or not suspicions against them exist, must have a permit, whereas settlers living in the area or Jews from anywhere in the world are allowed to move about in the seam area freely and without the need for a permit of any kind.

The permit system has turned the lives of Palestinians living near the separation barrier, and those who make a living from farming, in particular, into a bureaucratic nightmare. Study of the system raises the grave suspicion that harassment of the residents is intentional, with the objective being to cause despair among the landowners in the hope that they will cease working their land in the seam area.

Palestinians wanting to continue to farm their land must go to the DCO offices and other offices, time after time, to obtain certification of land registration, to submit a request for permit, and to check on the status of the request. Every time they have to go to the DCO means a day's work lost, in addition to the travel costs entailed in going back and forth. The short length of the permit's validity, often only a few weeks, requires the residents to undergo this harassment at frequent intervals.

The suspicion that the harassment is deliberate is evident in the requirement that applicants prove ownership of the land. Even assuming the security need in ensuring that the resident wishes to enter the seam area for farming purposes, that need does not

²¹ See, for example, Section 2 of the International Covenant on Civil and Political Rights, and Section 2 of the International Covenant on Economic, Social and Cultural Rights.

warrant the heavy burden of proof that the Civil Administration imposes on the resident, including the demand that the certification be for the current year. Worse still is the Civil Administration's attempt to threaten the landowner in order to collect taxes owed to the Civil Administration.

The permits system has resulted in hundreds of Palestinians being prohibited from enjoying the benefits of their private property or from their right to work and support their families. These rights are enshrined in the Universal Declaration of Human Rights (Sections 17 and 23) and in the International Covenant of Economic, Social and Cultural Rights (Section 6).

The violation of these rights is especially unacceptable because of the arbitrary conduct of the Israeli authorities, as reflected first and foremost, in the failure of the authorities to explain why a person's request is rejected for "security reasons," and even more so in their failure to prove that the applicant is indeed a security risk. For example, a farmer from Jayyus stated in his testimony to B'Tselem that, after his request was rejected for "security reasons," he retained an Israeli attorney, which ultimately enabled him to obtain the desired permit.²² Indeed, it is very common for rejections to be reversed when attorneys or human rights organizations intervene.²³

Finally, Palestinians who are denied access to their land are not entitled to any compensation for the resulting loss of income. This situation differs from that of landowners whose property is expropriated ("requisitioned" in the language of the military orders) to build the barrier itself, who are allowed to file claims for "usage fees." Denial of compensation is another form of arbitrary action by the authorities. Also, it breaches Section 39 of the Fourth Geneva Convention, which requires the occupying state to "ensure the support" of protected persons whose ability to find paid employment is harmed because of actions taken for reasons of security.

²² See the testimony of 'Abd al-Karim Khaled, below.

²³ For example, from September 2003 to May 2004, HaMoked: Center for the Defence of the Individual handled sixty-nine cases of Palestinians who had been prohibited to go abroad. HaMoked succeeded in reversing the decision in fifty of the cases.

The crossing points

Having undergone the bureaucratic tribulations and obtained the longed-for permit, Palestinian farmers can expect further difficulties in crossing the barrier. The declaration making the seam area a closed military area states that movement of permit holders into the area, to and from the West Bank, is to be done “through the crossing points set forth in Part B of the annex to this declaration.” Part B of the annex contains a list of forty-seven gates, twelve of which lie within the area discussed in this report. These twelve gates, which are listed by number on the map, are as follows:

1. Irtakh
2. Far’un South
3. al-Kafriat checkpoint
4. West Khirbet Jubara
5. Kafr Sur/Kafr Jammal
6. Falamyia West
7. Falamyia South
8. Jayyus West
9. Jayyus South
10. Zufin South
11. Qalqiliya Northeast
12. Qalqiliya Northwest

State officials have said that these gates provide a suitable solution for the problems of farmers separated from their land as a result of the barrier.²⁴ However, the facts on the ground belie this claim. In practice, there are fewer crossing points than stated in the declaration. In addition, the hours in which the gates are operational are problematic, making it difficult for the farmers to work their land properly.

²⁴ See, for example, the Ministry of Defense’s Website dealing with the barrier, www.seamzone.mod.gov.il.

Four of the twelve gates – Far'un South, Falamyia South, Qalqiliya Northeast, and Qalqiliya Northwest – have never been opened to Palestinians, or were opened for a short period of time and then closed. .

Three other gates, referred to as “earmarked gates” are used for non-farming needs: Irtakh is used for the passage of merchandise and for entry into Israel, the Khirbet Jubara gate is used for village students to get to school, and the Jayyus South gate is intended for use by occupants of one isolated house that lies west of the barrier.

The other five gates are intended to enable access of farmers to the seam area. “Al Kafriat” checkpoint serves farmers from Far'un and to a lesser degree farmers from a-Ras; the Kafr Sur/Kafr Jammal gate serves farmers from a-Ras, Kafr Sur, and Kafr Jammal; Falamyia West primarily serves farmers from Falamyia and to a lesser degree farmers from Kafr Jammal; Jayyus North primarily serves farmers from Jayyus; and Zufin South is used for farmers from Qalqiliya and residents of the Zufin settlement.

During the first four months in which the permits system was in effect (October 2003 – January 2004), the agricultural gates were not open at fixed hours and were operated for a very few hours at a time. Farmers had to wait at the gates, often for long periods of time, before soldiers completed their patrols along the barrier and came to open the gates. After farmers waiting at the gate crossed, the gate was closed, and farmers who arrived later had to wait until the gate was next opened, which could be several hours later or even the next day.

For more than three weeks in October 2003, at the onset of the olive-picking season, Israel did not allow Palestinians to enter the seam area, and closed the agricultural gates. The decision was made in response to a Palestinian attack on Israeli civilians at a restaurant in Haifa on 4 October. The closing of the gates greatly harmed some of the farmers in the area.

The Association for Civil Rights in Israel petitioned the High Court of Justice to order the IDF to keep the agricultural gates opened all day long, and to enable farm vehicles to cross.²⁵ In its response, the state admitted that, “Indeed, there were occasional problems in implementing the orders on opening some of the gates,” such as opening them on time. These problems, the state contended, resulted primarily from lack of sufficient personnel, and from the procedure in which the soldiers opened the gates one

²⁵ *Faiz Salim*, cited above.

after the other.²⁶ In its response, the state promised to improve the procedures and increase the hours that the gates are open and ensure that the opening hours are more suitable for the residents. The state also promised that it would allow residents to cross during off-hours when necessary, through crossing points that are staffed around the clock.

Indeed, following the petition of the Association for Civil Rights in Israel, operation of the crossing points improved. The “al-Kafriat” checkpoint gate and the Zufin gate are now staffed around the clock and farmers are allowed to enter the seam area from dawn to dusk. However, farmers from Qalqiliya are not always able to reach these gates, or are subject to lengthy delays because of the checkpoint operated at times at the main entrance to the city.

In recent months, the Jayyus North and Falamyia West gates have been opened three times a day – morning, noon, and afternoon – as the state promised in the hearing on the petition before the High Court. However, the state did not carry out its promise to keep the gates open for a total of four hours a day. On average, the gates are open only ninety minutes a day (thirty minutes each time). The Kafr Sur/Kafr Jammal gate, which is not covered by the state’s promise, is opened only twice a day, in the morning and afternoon, and is closed immediately after the people in line pass through.

In addition, it appears that the policy of closing the gates following Palestinian attacks or “security incidents,” as occurred in October 2003, continues. For example, on 22 March 2004, following the assassination of Hamas leader Ahmad Yassin, the IDF did not open any of the agricultural gates.

In sum, Israel’s policy to limit the crossing points into the seam area and to restrict the time that Palestinians can cross the barrier causes substantial problems for Palestinian farmers. These problems have been especially grave during harvest time, when intensive labor is required and access is necessary throughout the daytime hours. Security considerations cannot justify the restrictions on access. The farmers wanting to go back and forth to their land hold entry permits and are not deemed security threats. In any event, the soldiers conduct body checks of everybody crossing through the gate.

²⁶ *Faiz Salim*, cited above, response by the State Attorney’s Office, Section 38.

Testimonies

Refusing to grant a permit on “security” grounds and then issuing the permit following intervention of an Israeli attorney

Testimony of ‘Abd al-Karim Muhammad Mahmud Khaled, 27, married with two children, farmer, resident of Jayyus²⁷

I have thirty-nine dunams [4 dunams = 1 acre] of land on which I grow wheat and barley. I also have greenhouses for growing vegetables, and orchards of olive and guava trees. From the time that Israel constructed the separation barrier, some of the residents have been separated from their land. To get to my land so that I can make a living, I need a permit to enter the seam area.

On 15 October 2003, an officer from the Israeli DCO [District Coordination Office], Rami Barkat, came to the fence by our village and gave the head of the Village Council 630 entry permits for residents whose land lies on the other side of the fence. The DCO took the initiative to issue the permits, which meant that the residents did not have to file a request.

A check of the permits indicated that some of the residents who had received permits were dead or were infants or lived abroad. For example, a permit was issued for Taher ‘Abd a-Rahim Qadumi, who died five years ago, and for the six-month old daughter of Burhan Hassan Khaled. I did not receive a permit, but my two brothers did. One of them lives in Saudi Arabia and the other lives and works in Ramallah. My mother, who is seventy years old, received a permit even though she is unable to work the land.

On 28 October 2003, I went to the Israeli DCO in Qedumim and submitted a request for a permit to enter the seam area. I submitted the request to the soldier at the reception counter. The same day, he told me that the Shabak [the GSS] had rejected the request. Two days later, I filed a new request, and this time, too, the soldier told me that it was rejected by the Shabak.

On 1 November 2003, I called Orit, a lawyer who lives in the Alfe Menashe settlement. She has an office in Tel Aviv. I have a friend in the village who once worked for her husband, and he told me about her. We agreed to meet on the main road leading to the

Israeli DCO in Qalqiliya. When we met, I signed a power of attorney to enable her to handle my request. On 16 November 2003, Orit gave me a request form that she had drafted. The next day, I submitted the request to the soldier at the reception counter at the DCO office in Qedumim. The request was rejected the same day.

On 25 November 2003, I returned to the DCO in Qedumim and submitted a new request. That, too, was rejected the same day. On 19 January 2004, Orit called and told me to go to the Israeli DCO in Qedumim and submit a new request. I submitted the request the next day and received an entry permit that took effect the same day and was good for six months. I paid Orit NIS 1,800 for her services.

Denial of request for permit without giving reasons

Testimony of Sami Ahmad Hussein Thaher, 31, married with two children, farmer, resident of Falamyia²⁸

My family has a 100-dunam plot of land that lies on the other side of the separation fence. Since the Israelis put up the fence, I have to go to the Israeli DCO to get an entry permit to enable me to reach my land. Our plot contains citrus and olive groves, wheat and barley fields, and greenhouses for growing vegetables.

On 15 October 2003, the Israeli DCO in Qedumim issued entry permits for all residents of the village who have land on the other side of the fence. The DCO officer, Rami Barkat, came and delivered the permits to the head of the Falamyia Village Council. They were good for three months and had been issued at the initiative of the DCO, such that the residents did not have to submit requests. I was one of the residents who received a three-month permit.

On 15 January 2004, I went to Jordan on family matters and returned on 8 February. A week later, on 15 February, at around 11:00 A.M., I went to the DCO and submitted a request for an entry permit. I attached a photocopy of my magnetic ID card and a document from the Palestinian Magistrate's Court that stated my family owns about 100

²⁷ The testimony was given to 'Abd al-Karim S'adi at the home of the witness on 30 January 2004.

²⁸ The testimony was given to 'Abd al-Karim S'adi in Falamyia on 17 March 2004.

dunams of land on the other side of the fence. I waited at the DCO, and at 2:30 P.M. or so, the soldier at the reception counter told me that my request had been rejected. He did not give me a reason.

From the time that my entry permit had expired, I have been unable to get to our farmland. As a result, the vegetables dried up and the citrus fruit was not picked. In order to support my family, I rented fifty dunams of land. I built a greenhouse and started growing cucumbers and tomatoes. I pay an annual rent of 500 Jordanian dinars [about \$725].²⁹

Conditioning approval on payment of property taxes

Testimony of ‘Adnan Mustafa Shaqed As’ad, 36, married with three children, clerk, resident of Kafr Jammal, Tulkarm District³⁰

I own land in the seam area, on the other side of the separation fence. In October [2003] the Village Council put out a notice that the Israeli DCO said that residents with land on the other side of the fence could obtain permits to enter the seam area. On 22 October, the Village Council provided the Palestinian DCO with a list of the landowners. My name appeared on the list. The Palestinian DCO forwarded the list to the Israeli DCO so that it could issue the permits. Some of the residents received permits, and some did not. I received a permit for three months.

On 13 January 2004, I went to the Israeli DCO in Qedumim and submitted a request to renew the permit. The request was denied the same day because I did not have a document proving that I owned the land. On 21 January 2004, I returned to the DCO and filed a new request. I attached a photocopy of my ID card and a document from 1987, issued by the Civil Administration, showing that I owned the land. This request, too, was rejected. The official at the DCO told me that I needed proof of ownership from 2004, and that I could obtain such a document from the Lands Registry Office of the Israeli DCO.

²⁹ After more than two months passed, As’ad received an entry permit valid for six months, beginning on 19 April 2004.

³⁰ The testimony was given to ‘Abd al-Karim S’adi at the Kafr Jammal community center on 2 March 2004.

On 29 January, a relative of mine went to the DCO in Qedumim. I gave him the documents necessary to obtain the 2004 document indicating that I own the land. The official at the Lands Registry Office told him that I owed NIS 3,700 for property tax on the land for the years 1994-2004. They said that if I wanted an entry permit, I would have to make an initial payment of NIS 674 to cover the debt for 2002-2004. My relative brought me a payment voucher, but I did not have the money to pay it. So, I did not get the new document of ownership and couldn't submit my request for an entry permit.

Forbidding farm vehicles to cross, bureaucratic harassment, and degrading treatment by IDF soldiers at the crossing points

Testimony of Muhammad Wahid Hussein Muhammad 'Abid, 45, married with nine children, farmer, resident of Kafr Sur³¹

I was born in Kafr Sur and have lived there all my life. My six brothers do not live in the village. I make a living from farming and support my wife, children, father, sister, and myself, a total of thirteen persons. I work a plot of land that is about 100 dunams, twenty of which I inherited from my mother. The rest belongs to my father and is registered in his name. The two plots are adjacent to each other and lie in what we refer to as the al-Kharja, or the a-Dawawir, area, which is west of the village, on the other side of the fence that Israel built in the summer of 2003. The fence is situated about 300 meters west of the industrial area of the Sal'it settlement. My father is 88 years old, so he is unable to work the land. I am responsible for the two plots, on which there are about 800 olive trees.

The Israeli authorities erected a fence with gates through which farmers with permits from the Israeli DCO could cross. The Sur Village Council made a list of the farmers and families with land on the other side of the fence and gave the list to the Palestinian DCO, which forwarded it to the Israeli DCO. On 21 October 2003, one of the village's residents told me to go to the agricultural gate located between our village and Kafr Jammal. He said that an officer from the Israeli DCO was there and was giving out the entry permits. I went to the gate and saw the officer, whom we know by the name Rabi'a. He gave me

³¹ The testimony was given to 'Abd al-Karim S'adi at the home of the witness on 28 March 2004.

permits for myself, my wife, and my three children: Hussein, 16, Tahani, 20, and Amani, 18. The permits were good for one month, to 21 November 2003. The permits enabled us access to our land from 5:00 A.M. to 7:00 P.M.

In mid-November, we were harvesting the olives. The soldiers at the gate did not let farmers cross with tractors, so every morning, I rode my donkey back and forth to the olive groves, and piled the sacks of olives that we picked onto the back of the donkey. During the olive-picking season, the soldiers only allowed one tractor driver from Kafr Sur and two tractor drivers from Kafr Jammal to cross. The tractor drivers demanded NIS 10 for transporting the farmer or crops to or from the fields. I should point out that about fifty families from Kafr Sur have land on the other side of the fence. Each family has from 5-8 members, so it costs a lot to go by tractor, and we prefer to use our donkeys and horses.

When our entry permits expired, I went to the Israeli DCO to renew them. I submitted requests for my wife, the children, and myself and attached a photocopy of our ID cards and the old permit. The soldier at the reception counter told me to come back the next day. I went back the next day, and he told me that the permit was not ready and that I should come back in four days. On 26 November, I went again to the DCO, and the soldier gave me permits for my wife and me that were good for one month. When they expired, I submitted a new request. Three days later, I received permits that were good for two weeks, until 31 January 2004. When these expired, I went back to the DCO and got new permits. These, too, were only good for two weeks.

On 11 February 2004, around 6:30 A.M., I got on my donkey to go to my fields. When I got to the agricultural gate, one of the soldiers ordered me to stop. Four soldiers were at the gate. Two checked the ID cards and permits, the third soldier was supervising, and the fourth soldier sat in an army jeep. One of the two soldiers who checked the documents told me that I could go through the gate, but that the donkey could not, and if I wanted to take the donkey through, I would have to get a DCO permit for it. "What?", I said, "you want to make a laughing stock of me at the DCO. Please, search me and let me and the donkey cross." The soldier spoke in Hebrew, which I understand well. I told him that the donkey and I pass through the gate every day, and that I use it to carry water and supplies, and that I also use it for the plowing. I told him that the soldiers at the other gates let farmers pass with donkeys, horses, and even tractors. The soldier told me that that was my problem, and pointed to the section in the entry permit that says

it is forbidden to cross through the gate with any vehicle. I argued with him for fifteen minutes, but he refused to let me cross with the donkey. I went home because I could not plow the field without the donkey. The soldier I am talking about had three stars on his shoulder. I think he was the commander of the gate.

The next day, the other farmers told me that when they had gone to the gate with their donkeys, the soldiers let them pass. They said that the soldiers even let a farmer , Ahmad Hamdan from Kafr Jammal, cross with a tractor even though he did not have a permit for the tractor. I arranged to meet a tractor driver from Falamyra at the gate the following day [13 February]. I wanted him to plow my land. I met him as scheduled. The soldier who had prevented my donkey from crossing two days earlier was there. The tractor driver did not have a permit to bring in the tractor, so the soldier did not let him pass through. Like before, I was unable to plow my land, so I turned around and went home.

When my permit expired, I went to the Israeli DCO to renew it. At the DCO, I saw a sign saying it was closed to visitors from 12 February to 13 April 2004. That being the case, I submitted my request through the Village Council. I attached a photocopy of my ID card and a letter from the Village Council indicating that I had land on the other side of the fence. The Council forwarded the request to the Palestinian DCO, which returned it, saying that proof of ownership of the land had to be attached. I attached a document proving ownership that the Civil Administration had issued to my mother in 1993. Also, I attached a power of attorney from my mother that empowered me to do whatever I wished with the land.

This time too the request was returned. An official at the Palestinian DCO told me that I had to obtain a new proof of ownership certificate from the Palestinian Lands Registry Office. To do that, I needed a letter from the Kafr Sur Village Council indicating where the land was located and its lot and block number, and a document from the governor of Tulkarm certifying the Village Council's letter. Also, I needed a power of attorney from my father regarding the land. Then I had to take the documents to the Palestinian Magistrate's Court and swear before the judge that all the documents were genuine. My father's name was listed as Hussein Muhammad Salah 'Abid on his ID card, while on the books at the Palestinian Lands Registry Office, his name was listed as Hussein Muhammad Salah. So I also had to swear before the judge that the two names listed

were the same person. I took care of all these things, and the Palestinian Lands Registry Office ultimately issued a confirmation of ownership for the year 2004.

I submitted a new request for an entry permit and attached the new document proving ownership, but the Palestinian DCO returned it and said that I needed a proof of ownership issued by the Israeli DCO in Qedumim. I drove to the Lands Registry Office at the Israeli DCO in Qedumim, paid NIS 38, and obtained the ownership document. On 27 March, I submitted a new request at the Palestinian DCO and am now waiting for an answer.

I do not know why the Israeli DCO issued me a permit for only two weeks. Other villagers were given permits for longer periods. I wasted a lot of time in going back and forth to renew the permits. The trips were exhausting and expensive. All that just so I could get a permit to enter my land.

Conclusions

Construction of the barrier has severely infringed the human rights of tens of thousands of Palestinians in the West Bank. This report discussed the restrictions on movement of Palestinians living in villages situated close to the eastern side of the barrier in the area between Tulkarm and Qalqiliya. These restrictions make it difficult for them to reach their farmland and impair their ability to make a living. To summarize the primary findings of the report:

- The current route of the separation barrier is the primary cause of human rights violations in the area. Although the route was ostensibly based on security considerations, extraneous reasons, among them the desire to route the barrier east of the settlements and land intended for their expansion, also played a role. These extraneous considerations are improper and cannot justify the violation of Palestinian human rights.
- Since October 2003, Israel has implemented a new system of permits, through which it restricts Palestinians' access to their farmland situated west of the barrier. This system flagrantly discriminates between Palestinians and Jews and breaches Israel's obligations pursuant to the International Covenant on Civil and Political Rights to respect the right of residents of the Occupied Territories to freedom of movement (Section 12) and not to discriminate against them (Section 2).
- The permits system created a bureaucratic nightmare for Palestinian farmers. These farmers have no option but to spend long hours at the offices of the Civil Administration, time after time, to receive or renew permits to enter their land. The harassment raises the suspicion that the policy is intended to create despair among the farmers, hoping that they will cease working their land west of the barrier.
- Israel rejects about twenty-five percent of the applications to obtain entry permits into the Seam Area, in most cases for "security reasons." In denying access, Israel violates the International Covenant on Economic, Social and Cultural Rights in not respecting the right of residents of the Occupied Territories to work and to gain a living (Section 6). Israel arbitrarily refuses to grant permits, giving no reason or proof warranting rejection of requests for permits.

- Israel refuses to compensate Palestinians who are refused access to their lands for their loss of income. In failing to do so, Israel breaches the Fourth Geneva Convention (Section 39), pursuant to which the occupying state must “ensure his [the Palestinian farmer in this instance] support and that of his dependents” in cases in which they are prevented from earning a living on security grounds..
- Israel restricts the freedom of movement of farmers holding permits to enter their land. It has done this by reducing the number of gates through which they can enter their land from twelve gates, as stated in the order setting up the permits system, to the five gates that are operational. Israel places further restrictions on movement by opening the gates only two or three times a day and for short periods (up to ninety minutes total). Clearly, operation of the gates in this manner severely impairs the farming sector among Palestinians in this area of the West Bank.
- The restrictions and their economic effects on a substantial portion of the farmers in the area aggravate the economic hardship that has prevailed in the Occupied Territories since the beginning of the intifada, in late September 2000.

In light of the above, B’Tselem urges the government of Israel to tear down the sections of the barrier that have been built within the West Bank and move them, if Israel continues to think the barrier is necessary in those areas, to the Green Line or inside Israel itself. Until that time, the government should revoke the declaration of the seam area as a closed military area, eliminate the requirement for permits, and keep the agricultural gates open from morning to night. Also, in cases where the state denies persons access to their land for whatever reason, the authorities must state their reasons in detail and in writing, allow the persons to argue their case, and compensate them for their present and future losses.

Response of the IDF Spokespersons

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To
Mr. Shlomi Swisa
B'Tselem

Re: Questions concerning the Security Fence

Following the savage terrorist attacks carried out by Palestinians against Israelis since the beginning of "Ebb and Flow" (September 2000), the Israeli Government took the decision to erect the "Security Fence" as protection against terrorist attacks. The decision to erect the "Security Fence" was based on the concept that without a defensive mechanism, achieved through the creation of a physical barrier, it will be impossible to defend against suicide-bombers and other acts of violence. The "Security Fence" is a key element in the struggle against terrorism routed in Judea and Samaria. The delineation of the "Fence" is determined by a number of considerations, foremost of which are those related to national security.

The declaration of the "Seam Zone" as a "closed military area" creates limitations for the crossing of the "Security Fence" from east to west and on the entrance into the area west of the "Seam Zone", stretching to Israeli territory. In the present situation where there are no barriers to the west, there is nothing to prevent the entrance of individuals into Israel from the "Seam Zone", so that without these restrictions, any terrorist can cross from the local Palestinian villages and reach, very quickly, Israeli population centers and carry out massive attacks. This, in fact, is the rationale that lies behind the erection of the "Security Fence".

The existence of the "Security Fence" no doubt influences the daily routine of Palestinians living in the "Seam Zone". It is important to remember however that these inconveniences are the result of the combat environment existing throughout this area – one in which many lives have been tragically lost. One of Israel's guiding principles in planning the path of the fence, since the very beginning of the project, was to give maximum consideration to the effects of the fence on the Palestinian civilian population living in the "Seam Zone" with the aim of reducing the unnecessary inconveniences while at the same time balancing the Israeli security considerations. In the spirit of this principle, the IDF defined for itself the mission of making efforts to allow the Palestinian population living in the "Seam Zone" to continue to enjoy their daily routine while at the same time protecting the personal security of Israeli citizens and residents.

In the framework of this mission, the Civil Administration has begun mapping the "life links" of the Palestinian population for the purpose of analyzing the implications of the routing of the fence on the local residents and supplying solutions that will allow for the continuation of their daily routine. The Civil Administration strives to allow residents of the "Seam Zone" to maintain their links in the fields of employment, agriculture, trade, education, health and family relations with family members in Yehuda and Shomron while at the same time preserving personal security for the Israeli population.

The Declaration and Regulations

Once the "Seam Zone" was declared a "closed military zone", the Civil Administration began to issue special identification documents for the "zone". In the first stage, the Civil Administration's DCO's requested from the Palestinian liaison and local civil servants, preliminary lists on the basis of which the documents would be issued. Distribution of the first permits was conducted solely on the basis of these lists. All accusations against Israel of disorder in this matter are misleading and should be directed at the Palestinians.

The process for issuing permits is clear and well organized. Any person proving his connection to the "Seam Zone" is issued a permit. The permit is issued on the basis of professional considerations including documentation of ownership, as well as other types of documentation from the local authorities. There are today a total of 11,317 valid permits. Moreover, any individual who feels that his request was dealt with unjustly may resubmit his request which will then be discussed by a committee made up by representatives from the Civil Administration and other arms of the defense establishment. Till now, 246 cases have been dealt with in this committee, 103 of which were ultimately approved. It should also be added that anyone who's second request was denied and continues to feel that justice has not been done is permitted to exercise his right to submit his request to the High Court of Justice.

Documentation of land ownership

In the framework of the existing procedures for receiving permits, a farmer requesting permission to till his land found west of the "security fence" must prove ownership of the given land. This is in order to verify that the request is indeed the owner of the land and not someone else trying to take advantage of the permit for hostile, or other, purposes.

It should be mentioned that the Civil Administration has stopped conditioning the issuance of title deed on the payment of land taxes since the intention is not of making the process of receiving the permit more difficult, but rather one of helping the local residents. As a general rule, valid title deeds are valid from the day the "Seam Zone" was declared. In the Kalkilya area, due to the widespread use of counterfeiting, title deed have been valid since 2004.

Permit Validity

First, it should be pointed out that anyone living in the "Seam Zone" receives a document certifying him as a "permanent resident". Regarding permits issued to residents of Judea and Samaria with links to the "Seam Zone", the permits are issued on the basis of the necessities of the resident and the existing security limitations. In cases where doubt exists with regard to proof of land ownership or due to security considerations, the resident will receive a temporary permit until his request has been decided. Permit requests by individuals considered to pose a security threat by Israeli security forces will be denied.

Passages

The IDF and the Civil Administration have come a long way since the initial opening of the passages. In coordination with the local residents, lessons were learned and today, operation of the passages has improved significantly, as mentioned in the report. It should be pointed out that alternative solutions have been found for all the gates that are not yet operational and that any farmer that needs to till his lands west of the "Security Fence" can do so via alternative gates.

Furthermore, the issue of agricultural passages is presently being deliberated by the Israeli High Court of Justice (11344/03 – **Faiz Salim vs. the IDF in Judea and Samaria**), while at the same time, efforts are being made to reach a compromise solution acceptable to both the Israeli security forces as well as the local residents.

In conclusion, it is important to emphasize that the IDF is amidst a process of learning the humanitarian facets of the “Security Fence” and is making every effort to find creative and effective solutions which aim to ease the inconveniences suffered by the local Palestinian residents without jeopardizing the essential security of Israelis.

Sincerely,

**Sam Wiedermann, Major
Head of the International
Organizations Desk**