



Three Years Later: The Humanitarian Impact of the Barrier Since the International Court of Justice Opinion

Abstract

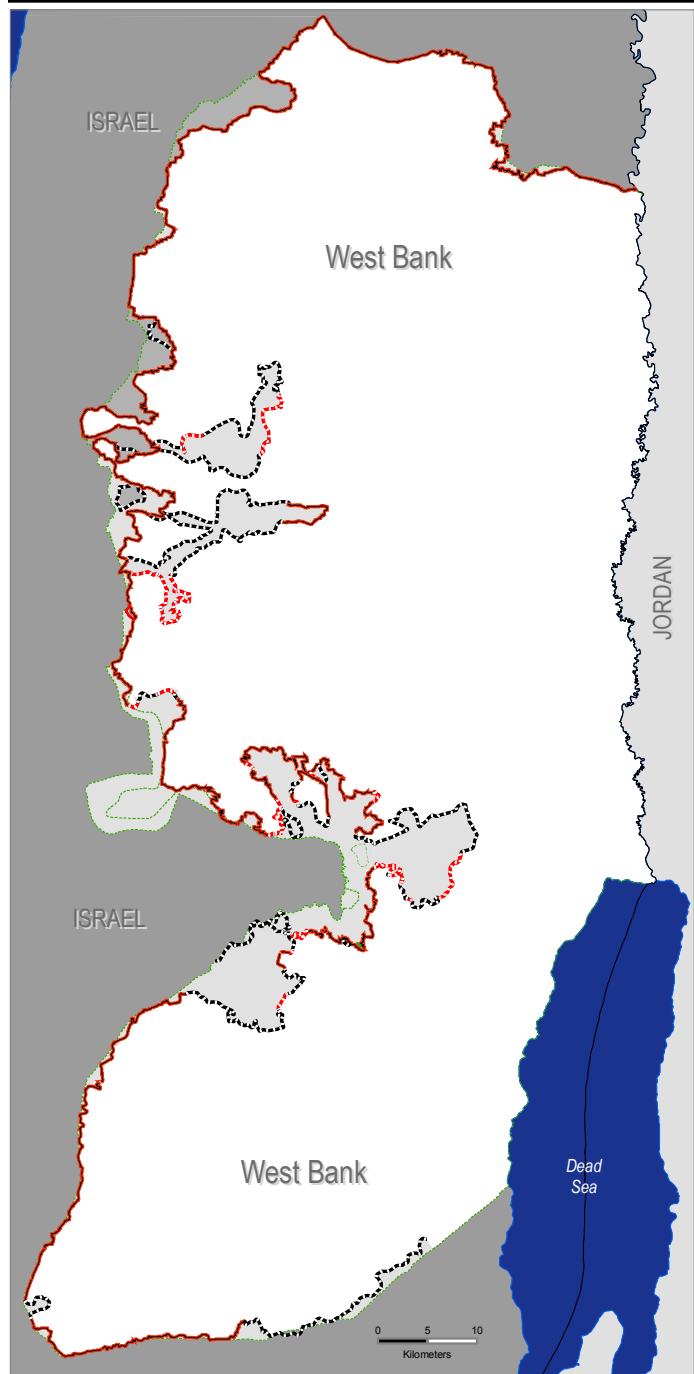
Three years ago (9 July 2004), the International Court of Justice (ICJ) issued an advisory opinion stating that the route of Israel's Barrier in the West Bank, and its associated regime of permits and restrictions, constitute a serious breach of international law. In this special focus, OCHA looks at several communities of the northern West Bank, severed by the Barrier from their neighbouring communities, from agricultural lands and livelihoods.

Palestinian Livelihoods and Fabric of Life in the Closed Areas of the Barrier

In October 2003, the area between the Barrier and the Green Line in the northern West Bank was declared closed by military order and all Palestinians living there or wanting to enter were required to obtain a permit from the Israeli authorities. Fifteen Palestinian communities are enclosed in these areas. They are physically separated by the Barrier from the rest of the West Bank and the majority of the people require 'long term' or 'permanent resident' permits to continue to reside in their homes on their lands. Approximately 50,000 Palestinians will be located between the Barrier and the Green Line when construction is completed.

In 2006, an OCHA and UNRWA survey of 57 communities impacted by the Barrier in the northern West Bank, found that 94 individuals - mostly women and children - had not received these 'permanent resident' permits, resulting in their inability to leave their own community for fear of not being allowed back.

West Bank Barrier Route - June 2007



	Constructed		Declared closed area
	Under Construction		Other areas between the Green Line and the Barrier
	Projected		



Barrier Closed Areas: Closed for the Night

In closed area communities, services are generally located on the east side of the Barrier, so children, patients and workers have to pass through Barrier gates to reach schools, health services and workplaces. Gates are not open around the clock, nor are ambulances allowed free access. The OCHA-UNRWA survey found that none of the ten closed area communities surveyed enjoys 24-hour access to emergency health services, which poses problems in the case of medical emergencies and for expectant mothers. (See 'Azzun 'Atma case study).

Barrier Closed Areas: Reduced Access to Education and Family Relations

The Barrier cuts off residents in closed areas from schools and universities. In response, the Israeli authorities have provided buses to transport children to school, although in some enclaves children cross on foot. Customary social and familial life is also affected: relatives and friends who wish to visit closed area communities require 'visitors' permits', with the result that religious holidays, weddings and funerals take place without the attendance of extended families.

Closed area status is clearly having an impact on traditional wedding patterns. Women traditionally move to their husband's locality on marriage. Parents are reluctant to approve of matches that will lead to their daughters' isolation in a closed area.

Barrier Closed Areas: Reduced Access to Land and Water Resources

The Barrier isolates the land and water resources of a large number of Palestinians. Although the gate and permit system was declared illegal by the ICJ, since October 2003 those residing on the east side of the Barrier require 'visitor' permits to access their own land. Eligibility requirements for such permits have been tightening. Those who are unable to prove direct ownership of the land - for example, relatives to landowners such as nephews, uncles, cousins and grandchildren, landless labourers, sharecroppers and leaseholders - find it increasingly difficult to work the land. The OCHA and UNRWA survey found that only 40 percent

of farming families had been issued with permits, leaving the majority with no access to their land.

Israeli-controlled Gates: No Guarantee of Access to Land and Livelihoods

For the minority who are granted permits, access is restricted to a specific gate. Gates open and shut irregularly, and can be totally shut without warning. The OCHA-UNRWA survey found that only 26 gates in the northern West Bank are open to Palestinians on a regular basis, typically for short periods in the early morning, noon and late afternoon, and 'visitors' are prohibited from staying on their land overnight. Many gates are 'seasonal', open only for a limited period during the olive harvest. This regime prevents the ploughing, pruning, spraying and weeding required throughout the year for optimum yields. Tractors and other agricultural equipment and materials may not be allowed through, and an individual's land may be located a long distance from the gate over difficult terrain.

Restrictive gate openings and permit allocations are already having a negative impact on agricultural practices and on rural livelihoods. Many farmers cultivate their land infrequently or not at all, or have changed to lower maintenance and lower yield crops. The longer term consequences for these communities is uncertain, as they lose contact with the land on which they depend both for their present livelihood and for their future survival.

The West Bank Barrier (June 2007):

Total Length of the Barrier Route:	721km
Construction currently completed:	408km or 56.5%
Amount constructed following the ICJ opinion	200km
Under construction:	71km or 10%
Planned:	242km or 33.5%
Land between the Green Line and the Barrier:	10.17%
Length of planned Barrier around Jerusalem.....	168km
Length of the Barrier on the Green Line:.....	140km or 20%
Length of the Barrier in the West Bank:.....	581km or 80%
Number of gates open to Palestinians with appropriate permits.....	45 (out of 84)

Background

On 9 July 2004, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, gave an advisory opinion that Israel's construction of the Barrier in the West Bank and East Jerusalem, and its associated gate and permit regime, violated international law. The ICJ called on Israel to: cease construction of the Barrier 'including in and around East Jerusalem', dismantle the sections already completed, and 'repeal or render ineffective forthwith all legislative and regulatory acts relating thereto.' Though this is an advisory, non-binding legal opinion, on 20 July 2004, an overwhelming majority of UN member states voted for General Assembly Resolution ES-10/15, which called on Israel to comply with the ICJ opinion.

Israel has not complied with the ICJ opinion and Barrier construction continues. A further 200km of the Barrier has been constructed since the ICJ opinion. Israel claims that the Barrier is solely for security purposes, in particular to prevent suicide bombings. The ICJ recognised the right - indeed the duty - of Israel 'to protect the life of its citizens [but] the measures taken are bound nonetheless to remain in conformity with applicable international law.'

The current route of the Barrier was approved by the Israeli cabinet in April 2006. When complete, approximately 10.2 percent of West Bank territory, including East Jerusalem, will be isolated by the Barrier and connected to Israel. The areas affected include some of the most agriculturally productive lands and richest water resources in the West Bank:

- In the Salfit district, construction of the Ariel 'Finger' and a portion of the Qedumim 'Finger' will isolate almost fifty percent of the district's land.
- Completion of the Barrier around the Ma'ale Adummim bloc will separate East Jerusalem from the rest of the West Bank, restricting access to workplaces, health, education, and to places of worship.
- Further south, the route of the Barrier around the Gush 'Etzion settlement bloc will sever the last route between Bethlehem and Jerusalem and isolate the majority of Bethlehem's agricultural hinterland.

The OCHA - UNRWA Survey (2006): Main Findings

In 57 communities:

- Only an estimated 40% of farming families have been issued with permits.
- There are approximately 26 gates open, out of a total of at least 61, for Palestinian use all year round.
- 30 out of 57 surveyed communities do not have direct, regular access to their land.
- The gates are only open for 64% of the officially stated time.
- 72% of surveyed communities complained of regular verbal abuse and humiliation by IDF soldiers at the gates; 24% reported damage or refusal of entry of agricultural produce.
- 85% (202 of 239) of rural roads and tracks have been severed by the Barrier.
- None of the ten communities lying in the closed areas, between the Green Line and the Barrier, have 24-hour access to emergency health services. At least three communities have experienced a life-threatening delay at the Barrier gate.



The sign that shows the regulations for using a gate. OCHA, 2007

'Azzun 'Atma - Case Study

Being an Expectant Mother in a Closed Area: 'Azzun 'Atma

The winding route of the Barrier in the 'Azzun 'Atma area allows for territorial contiguity to be maintained between four Israeli settlements - Etz Efrayim, Elqana, Sha'are Tikva, and Oranit - and between these settlements and Israel. These settlements and their connecting roads surround almost the entire village and come as close as 70 meters to Palestinian homes in other villages in the area.

The result is that 'Azzun 'Atma village has become an isolated enclave - enclosed by the Barrier on three sides and by Israeli-controlled roads on the fourth. The only way the 2,000 residents in this village can reach essential services in the West Bank is to pass through a security gate-crossing controlled by the Israel Defence Forces (IDF). The gate is closed from 10:00 pm to 6:00 am, which poses problems in the case of medical emergencies, and especially for expectant mothers in labour.

In an average year, fifty babies are born in 'Azzun 'Atma. There is no hospital or 24-hour medical service available in the enclave. There is only a basic primary health care clinic in the community which operates for 2 hours daily/ 2 days a week. To ensure access to proper medical care for deliveries, most women leave the village early in their ninth month and relocate to relatives' homes or other places outside the enclave. Between January and early June 2007, 33 babies were born: 20 were delivered outside the enclave. The remaining 13 babies were delivered at home: none of the home deliveries was attended by a trained midwife or a doctor.

Reaching Schools, Emergency Health Services and Agricultural Land:

Residents in 'Azzun 'Atma do not need permits to live in their homes or to cross the gate, unlike residents of other closed areas. They can use their ID cards if the registered address is the village itself. However, Palestinians from neighbouring villages, with land or businesses in 'Azzun 'Atma are required to apply for 'visitor' permits to enter the enclave.

Approximately 100 children from surrounding villages attend schools in 'Azzun 'Atma. These children and their teachers are exempted from obtaining a visitor permit – rather their names are checked on a list at the gate.

On a random basis, those entering the enclave have to pass through a 'checking room' at the entrance, which includes metal detector facilities. Residents complain of the potential health risks posed by regular exposure to the detector, especially for pregnant women.

In February 2007, a farmer was involved in a tractor accident after the gate closed. It took residents over an hour to negotiate with the IDF for emergency access by which time the man was dead: hospital authorities believe he would have survived had he been transferred immediately.

There are plans for an additional inner barrier which will isolate 'Azzun 'Atma from the surrounding settlements and cut off significantly more agricultural land.



'Azzun 'Atma Gate: A farmer waits for a settler's car to cross before he faces the gate and has his permit checked.

Living in a Closed Area: North Tulkarm villages affected by the Barrier

1- Zeita

Population: 3,500, including 725 refugees. Seven people (representing 3 families) have regular permits to cross the Barrier. Approximately 70 people receive permits for access during the olive harvest.

Land

The Barrier is constructed on 365 dunums (36,5 hectares) of village land; 287 dunums (28,7 hectares) of village land are located in the closed area. Hundreds of trees disappeared or were destroyed during construction of the Barrier. Some were sold by contractors to clients in Israel (see report in Yedioth Ahronoth, 22.11.02).

Gates Zeita can access

Zeita North Gate (Military): This gate is never open to Palestinians. 80 dunums (8 hectares) of village land are immediately behind this gate and cannot be legally accessed any other way. An unknown person has cut down trees located on 50 dunums (5 hectares) of land in this area.

Zeita South Gate (Seasonal): Opened for the first time in November 2006. The IDF promises to open this gate on a weekly basis, but this promise has not yet been met.

Sahel Agricultural Gate: Open daily for permit holders. Tractors are allowed through the gate, but to get to the closed area land by tractor, farmers have to drive through Israel, which is not allowed. Consequently, they must proceed on foot, carrying their agricultural equipment.

2- 'Attil

Population: 11,000, including 650 refugees. 20 people have permits.

Land

The Barrier is constructed on 40 dunums (4 hectares) of village land. There are 286 dunums (28,6 hectares) of land in the closed area. 256 dunums (25,6 hectares) have allegedly been illegally cultivated by a resident of a nearby village in Israel.

Gates 'Attil can access

Al Karak Gate: Open daily for permit holders.

3- Deir al Ghusun

Population: 10,000, including 680 refugees. 300 people have permits.

Land

The Barrier is constructed on 300 dunums (30 hectares) of village land. 2200 dunums (220 hectares) of village land are located in the closed area. Limited opening hours cause problems. A farmer semi-severed some fingers while chain-sawing on his land in the closed area behind the Al Karak gate. It was several hours before the gate was due to re-open. The only way his brother could get attention was by climbing over the gate which set off an alarm and summoned an IDF jeep to the area. The soldiers opened the gate so that the injured brother could exit. However, climbing the gate as the brother did is illegal and he risked being shot.

Dr. Nassuah Badran, who has a company specializing in producing herbs for medicinal reasons, was forced to abandon his 12 dunums (1,2 hectare) plot in the closed area. Part of it was demolished for Barrier construction and the rest he abandoned because he could not be guaranteed regular access to it.

Gates Deir al Ghusun can access

Sahel Gate: Open daily, but only 3 families from Deir al Ghusun are allowed to use it.

Al Karak Gate: Open daily.

4- Al Jarushiya

Population: 1,000, including 100 refugees. 10 people have permits

Land

The Barrier is constructed on 180 dunums (18 hectares) of village land. This land was cultivated with olive trees, which were destroyed due to Barrier construction. 250 dunums (25 hectares) of village land are located in the closed area. In the closed area, which is still almost completely covered in olive trees, there used to be a lot of intercropping, especially with almond trees. However, some 70% of the almond trees have now died because of lack of regular maintenance. In the past, the land in the closed area produced about 10 tonnes of almonds, including 4 tonnes of fresh almonds and 6 tonnes of dried. The fresh almonds were worth 5 NIS per kilo and were a valuable asset to the village. The hilly land in the closed area near Al Jarushiya was also famous for herbs, especially za'atar (thyme), and many people used to come to collect wild herbs in the area in the past.

Gates Al Jarushiya can access

Al Karak Gate: Open daily.

Al Jarushiya Military Gate: Has never opened for Palestinians.

International Humanitarian Law and the Barrier

The International Court of Justice (ICJ) is the most senior legal setting in which conflicts between states can be judged. The legal tools referred to by the ICJ are the Hague Conventions and the various Geneva Conventions, including the Fourth Geneva Convention, which covers the responsibilities of an occupying power toward civilians under occupation.

In 2003, the UN General Assembly passed a resolution calling for Israel to cease construction of the Barrier. When Israel did not do so, the General Assembly called on the ICJ to advise them on the legality of the Barrier being constructed in the oPt. Israel did not recognise the Court's jurisdiction and did not make an oral presentation. In July 2004, the ICJ ruled that it had the jurisdiction, in response to the UNGA request, to rule on the legality of the Barrier. Israel claimed that the Barrier was required by 'military necessity', but the ICJ concluded that 'the infringements resulting from that route cannot be justified by military exigencies or by the requirements of security or public order'.

The ICJ also found, contrary to Israel's claim, that International Humanitarian Law, including the Fourth Geneva Convention applied and that 'all these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power'.

The Court concluded that the settlement of Israeli citizens in the oPt is illegal. The protection of these illegal settlements is one reason Israel provides for building the Barrier. The Court made clear that a barrier situated on the internationally acknowledged Green Line could be legal, but that 'along the route chosen, [the Barrier] and its associated regime [of passes, etc.] gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel' and that 'the construction of such a wall accordingly constitutes breaches by Israel of various obligations under the applicable international humanitarian law and human rights instruments'. The ICJ concluded that 'the construction of the wall and its associated regime are contrary to international law'.

Full text of the ICJ opinion can be found at: <http://www.icj-cij.org/docket/index.php?pl=3&p2=4&k=5a&case=131&code=mwp&p3=4>



Sahel gate, for access to agricultural land in the Seam Zone. OCHA, 2007