



**Alternative Report submitted by  
Al-Haq  
to the Human Rights Committee  
on the occasion of its  
consideration of Israel's Third Periodic Report**

**Israel's violations of the Covenant on Civil and Political Rights  
with respect to Freedom of Movement in the  
Occupied Palestinian Territory**

**Submitted June 2010**

**Al-Haq is an independent non-governmental organisation in ECOSOC special  
consultative status**

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# 1. INTRODUCTION

1. Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT), the organisation has special consultative status with the United Nations Economic and Social Council. Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. The organisation conducts research; prepares reports, studies and interventions on breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. The organisation has a specialized international law library for the use of its staff and the local community. For further information see [www.alhaq.org](http://www.alhaq.org).

2. Al-Haq respectfully submits this Alternative Report to the Human Rights Committee (Committee) to bring to its attention Israel's compliance with the Covenant in regard freedom of movement, enshrined in Article 12 of the International Covenant on Civil and Political Rights (the Covenant). In particular, this Alternative Report aims at assisting the Committee with regard to paragraphs 18-19 of the Committee's List of Issues.<sup>1</sup> In addition to constituting violations of freedom of movement, many of the issues below would amount to violations of several other articles of the Convention. In such cases, the articles violated are mentioned, but unaccompanied by an in-depth focused analysis of the violation.

3. Al-Haq affirms the applicability of the Covenant by Israel towards the Palestinians in the Occupied Palestinian Territory (OPT), encompassing the West Bank, the Gaza Strip and East Jerusalem.

4. The limitations of this report should not be understood to indicate that Israel complies with articles of the Covenant that are not mentioned here.

5. This report analyses Israel's compliance with the Covenant by presenting the legal obligations that Israel has violated with respect to the Covenant, substantiated by Al-Haq's field documentation, inter alia, in the form of client affidavits. This report addresses groups of persons whose freedom of movement has been seriously violated by Israel, namely; Human Rights

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<sup>1</sup> Human Rights Committee, List of Issues, CCPR/C/ISR/Q/3, 17 November 2009, paras. 18-19, available at <http://ods-dds-ny.un.org/doc/UNDOC/GEN/G09/467/92/PDF/G0946792.pdf?OpenElement> (accessed 11 May 2010).

Defenders, Palestinians with West Bank ID, Palestinians with Gaza ID, and Palestinians with East Jerusalem ID.

## 2. HUMAN RIGHTS DEFENDERS

6. Since the UN Fact-Finding Mission on the Gaza Conflict was made public in 2009, Al-Haq has noticed an intensification of Israeli attacks on human rights defenders (Palestinian, Israeli and internationals). Israel's intentional repression of human rights defenders is verified by Israeli Deputy Foreign Minister Danny Ayalon's address to the Israeli Council on Foreign Relations on 6 January 2010;

But once military tactics don't work and economic tactics don't work or terrorism doesn't work, now we see the brunt, which is political warfare - political and *legal warfare*. And this is where we are today, and this is where the Israel Foreign Ministry finds itself at the front. Today the trenches are in Geneva in the Council of Human Rights, or in New York in the General Assembly, or in the Security Council, or in The Hague, the ICJ. I specifically do not want to paint a face, but let's say our opponents, our enemies, are trying actually to take us down the road of South Africa by delegitimizing us, by demonizing us, by also really harming, in a very specific way, our foreign affairs and relations with other countries [emphasis added].<sup>2</sup>

7. As will be made clear, Israel has chosen to fight this 'threat' to its image by increasing and broadening the scale of restrictions on the right to freedom of movement of human rights defenders. These restrictions shall be discussed below and contextualized by reference to the occupation's policies and practices concerning restrictions on movement and violations of rights resulting from – and central to – Israel's checkpoint and permit regime, the Annexation Wall, and Military Orders providing for deportation and forcible transfer.

### 2.1 TRAVEL BANS

#### 2.1.1 Factual Background

8. At the time of this report, Al-Haq is able to verify Israel's imposition of travel bans on human rights defenders Mr. Shawan Jabarin, and Mr. Khalil Tafakji. Similarly, Mr. Amer Makhoul (Palestinian citizen of Israel), General Director of NGO network Ittijah and chairman of the Public Committee for the Defense of political Freedom, was subjected to a two month travel ban on 22 April 2010. At that time, no charges were brought against him. Following a raid on his house on May 6, 2010, Mr. Makhoul was detained and denied access to his lawyers for 12 days whilst being tortured

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<sup>2</sup> Deputy Minister Danny Ayalon, Address to Israeli Council on Foreign Relations "*Challenges for Israeli Foreign Policy*", Jerusalem, 6 January 2010, available at [http://www.mfa.gov.il/MFA/About+the+Ministry/Deputy\\_Foreign\\_Minister/Speeches/DepFM\\_Ayalon\\_Challenges\\_Israeli\\_Foreign\\_Policy\\_6-Jan-2010](http://www.mfa.gov.il/MFA/About+the+Ministry/Deputy_Foreign_Minister/Speeches/DepFM_Ayalon_Challenges_Israeli_Foreign_Policy_6-Jan-2010) (accessed 11 May 2010).

by Israeli General Security Services. On 27 May 2010 Israeli authorities charged Mr. Makhoul with providing assistance to the enemy in a time of war, conspiracy to assist an enemy, aggravated espionage, and contact with foreign agent. Mr. Makhoul denies the charges brought against him.<sup>3</sup>

9. With the exception of Mr. Jabarin, all were issued with time limited travel bans in 2010.

10. Upon his appointment as General Director of Al-Haq in 2006, Mr. Jabarin (a Palestinian with West Bank residence permit) was subjected to a travel ban severely curtailing his ability to raise awareness internationally about the ongoing violations of Palestinian human rights in the OPT. The ban, imposed for an indefinite period, punishes Mr. Jabarin for his human rights advocacy, and is justified by the Israeli military and judicial authorities on the basis of ostensibly 'secret evidence'. Mr. Jabarin was first made aware of the travel ban upon his attempt to cross to Jordan via the Allenby Bridge on 23 June 2006 and today the ban remains enforced by the Military Commander of the occupying forces in the OPT.

11. Mr. Jabarin unsuccessfully challenged the imposition of the travel ban at the Israeli High Court of Justice on three separate occasions in 2007, 2008 and in 2009. The Israeli High Court of Justice, the highest Israeli judicial body available for Palestinians, dismissed Mr. Jabarin's petition on each occasion by referring to 'secret evidence' which is not provided to Mr. Jabarin or his legal representatives, by holding parts of court proceedings ex parte and without having charged Mr. Jabarin with any offence. The case of Mr. Jabarin differs from that of other human rights defenders as he has to date not been provided a formal travel ban document informing him of the imposition of the travel ban, nor the reasons behind it or providing a time limit to the ban.

12. Mr. Jabarin attempted to travel abroad in May 2010 in order to attend an International Workshop on "Enhancing cooperation between the International Human Rights System and Regional Human Rights mechanisms". Mr. Jabarin was invited by the United Nations Office of the High Commissioner for Human Rights to attend the workshop, but was nevertheless denied to travel by Israel. Previously, Mr. Jabarin was refused exit via the Allenby bridge on 28 March 2010,

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<sup>3</sup> Adalah, *Ameer Makhoul and Omar Saeed Vehemently Deny Charges against Them*, Adalah: "Trumped-up accusations made in indictments have become alarmingly common practice in security cases in Israel. They aim to justify the complete isolation and use of illegal methods of interrogation against detainees, and the imposition of gag orders on their cases.", 27 May 2010, available at [http://www.adalah.org/eng/pressreleases/pr.php?file=27\\_05\\_10](http://www.adalah.org/eng/pressreleases/pr.php?file=27_05_10) (accessed 10 June 2010).

when he attempted to travel to Cairo in order to attend, in his capacity as a member of the board of advisors, a regional meeting at the Cairo Centre for Human Rights on human rights protection.<sup>4</sup>

13. Khalil Tafakji (Palestinian resident of occupied East Jerusalem) was subjected to a six-month travel ban by the Israeli Interior Ministry on 3 February 2010. As the PLO's chief cartographer and an expert on the issues of borders, settlements, and Jerusalem, Mr. Tafakji accompanied numerous Palestinian delegations to peace talks between 1992 and 2001. Moreover, Mr. Tafakji travels extensively to lecture on the situation in the OPT. His work is crucial in promoting Palestinian human rights and the Palestinian right to self-determination. As recently as 2007 he had received a written assurance by Israel's Ministry of Interior that as he had no security-related issues against him, he was entitled to travel freely. Notwithstanding the fact that his activities have remained the same since that time, his travel ban now cites 'security reasons' as its basis - a catch-all phrase which, because it contains no specific charge, is almost impossible to challenge.<sup>5</sup>

### 2.1.2 Legal Analysis

14. Article 12 of the Covenant provides to everyone residing in the OPT the right to freedom of movement. Of particular interest, Article 12(2) entitles residents the legal right to "be free to leave any country, including his own". Article 12 of the Covenant must be read with Articles 9 and 13 of the Universal Declaration on Human Rights, Articles 2-4 of the fourth additional and Article 1 of the seventh additional, protocols to the European Convention on Human Rights, Article 22 of the American Convention on Human Rights, and Article 12 of the African Charter on Human and Peoples' Rights, which together guarantee a set of liberal rights relevant to the freedom of movement.

15. Permissible restrictions on these fundamental rights must be provided by law and be necessary for reasons of national security, public order, public health or morals, or the rights and freedoms of others. Furthermore, to be legitimate, restrictions on this right must be necessary and consistent with other rights in the Covenant. Restrictions on the right to freedom of movement must not "nullify the principle of liberty of movement" and "the relation between right and restriction, between norm and exception, must not be reversed".<sup>6</sup>

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<sup>4</sup> For further detailed information and legal analysis on the case of Mr. Jabarin, please see Al-Haq's Report *The Continued Travel Ban against Al-Haq's General Director, Mr. Jabarin*, 8 April 2010, available at <http://www.alhaq.org/pdfs/a.pdf> (accessed 12 May 2010).

<sup>5</sup> Al-Haq, *Israeli Attacks on Human Rights Defenders Must End*, 16 February 2010, available at <http://www.alhaq.org/pdfs/IsraeliAttacks16-2-10.pdf> (accessed 16 May 2010).

<sup>6</sup> General Comment 27 of the Human Rights Committee, (CCPR/C/21/Rev.1/Add.9, General Comment No. 27), 2 November 1999.

16. Through the issuance of travel bans, Israel is seriously violating this right without permissible justification. Indeed, Israel has failed to demonstrate at any time since the bans on Mr. Jabarin and Mr. Tafakji were issued that the restriction on their right to freedom of movement was necessary. Although Israel claims that these individuals pose a threat to national security were they to travel abroad, no evidence has ever been presented to this effect. Neither has any charge been brought against them. The severe restriction on Mr. Jabarin's freedom of movement cannot either be justified on national security grounds since his travels abroad pertain to his work as human rights defender.

17. In any case, while Israel's restriction of the freedom of movement of Mr. Jabarin and Mr. Tafakji is illegal in and of itself, the process by which the Israeli judicial system has upheld the ban in the case of Mr. Jabarin and has dismissed his petitions has been undertaken in blatant violation of his rights to freedom of association, and the right to due process and fair trial. Furthermore, the travel bans restrict human rights defenders from exercising their freedom of expression and opinion as enshrined in the Covenant.

18. Without any charge being made against Mr. Jabarin, by denying him access to any information or evidence held against him, and by holding the court proceedings *ex parte*, Israel has made it impossible for Mr. Jabarin to effectively challenge the imposition of the travel ban and exercise his rights to due process and fair trial. The Covenant compels Israel to ensure that judicial hearings are fair and public, yet by the use of 'secret evidence' and without charging Mr. Jabarin and Mr. Tafakji with an offence, the Occupying Power is certainly not fulfilling the standards applicable to a fair trial.

19. In the contemporary context of the 'global war on terror' the use of secret evidence procedures have been held to be in violation of the right to a fair trial by judicial authorities such as the House of Lords<sup>7</sup> and the European Court of Human Rights.<sup>8</sup>

20. Another aspect which should not be neglected is the classification of the mentioned persons as human rights defenders. According to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms – "The Declaration on human rights defenders" – adopted by consensus by the UN General Assembly in 1998, human rights defenders are entitled to several forms of protection. Mr. Jabarin, in his role as the General Director of Al-Haq, a non-governmental human rights organisation dedicated to the promotion of human rights, undoubtedly falls within the definition of human rights defenders in this Declaration. Similarly, Mr. Tafakji, an expert on maps and on the issues of borders, settlements, and Jerusalem who travels extensively to lecture on the situation in the OPT, is a human rights defender.

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<sup>7</sup> *see, for example*, Secretary of State for the Home Department v. MB (2007) UKHL 46.

<sup>8</sup> *see, for example*, V. v Finland, ECHR 40 412/98, Judgment of 24 July 2007.

21. The Declaration reaffirms “the importance of the [...] the International Covenants on Human Rights as basic elements of international efforts to promote universal respect for and observance of human rights and fundamental freedoms and the importance of other human rights instruments adopted within the United Nations system, as well as those at the regional level”, yet by violating the rights of human rights defenders to travel freely Israel is seriously impairing their ability to exercise their right to “ individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” as enshrined in Article 1 of the Declaration.

## 2.2 DETENTION

### 2.2.1 Factual Background

22. Recently, several human rights defenders involved in peaceful activities, such as demonstrations against the Annexation Wall, have been detained by Israel without charge. Human rights activists who have been specifically targeted in Israeli violations are participants in the grassroots Stop the Wall campaign and the Popular Committee Against the Wall.

23. Over the past six months four human rights defenders active with the abovementioned groups were arbitrarily detained, and as such their freedom of movement was seriously violated. Jamal Juma’, the coordinator of the Stop the Wall campaign, was arrested on 16 December 2009 and held until 12 January 2010. He was not charged with any offence.<sup>9</sup> Similarly, Mohammed Othman, a volunteer with Stop the Wall was subject to administrative detention without charge from 22 September 2009 until his release almost four months later. He was detained as he was returning to the West Bank following an advocacy tour in Norway.<sup>10</sup>

24. Activists in the West Bank village of Bil’in, famous for its weekly protests against the Wall, have also been the subject of numerous arrests. Abdallah Abu Rahma, head of the Popular Committee Against the Wall, was arrested on 10 December 2009. He remains in custody.<sup>11</sup> On 3 February 2010, activist Ibrahim Abed El Fatah Bornat was arrested along with an American activist

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<sup>9</sup> Stop the Wall, *Jamal Juma’ has been Released*, 13 January, available at <http://stopthewall.org/latestnews/2158.shtml> (accessed 16 May 2010), see also Stop the Wall, *An attack against all those Standing Up Against the Wall*, 5 January 2010, available at <http://stopthewall.org/latestnews/2152.shtml> (accessed 16 May 2010).

<sup>10</sup> Stop the Wall, *Mohammad Othman has been Released*, 14 January 2010, available at <http://stopthewall.org/latestnews/2159.shtml> (accessed 16 May 2010); see also Stop the Wall, *Mohammad placed in Administrative Detention*, 25 November 2010, available at <http://stopthewall.org/latestnews/2118.shtml> (accessed 16 May 2010); also Stop the Wall, *Update on Mohammad’s Detention*, 19 November 2010 (accessed 16 May 2010).

<sup>11</sup> The Right to Stop the Wall, *Trial of Human Rights Defender Mr. Abdallah Abu Rahma*, 22 March 2010, available at <http://right2stopthewall.org/?p=263> (accessed 16 May 2010).

and a Palestinian journalist who attempted to photograph the incident.<sup>12</sup> A week earlier Mohammed al-Khatib, a member of the Popular Committee Against the Wall had also been arrested and detained. He was released four days later.<sup>13</sup>

25. In the wake of the detentions of its human rights defenders, Stop the Wall's Ramallah offices were raided on 7 February 2010. During the raid "[s]ome 10 military jeeps, hummers and an armoured bus surrounded the building as soldiers searched rooms, turning the office upside down and confiscating computer hard disks, laptops, and video cameras along with paper documents, CDs, and video cassettes.<sup>14</sup>

### 2.2.2 Legal Analysis

26. The right to freedom of movement enshrined in the Covenant applies to restrictions on personal liberty, in particular arrest and detention.<sup>15</sup> The application of the right to freedom of movement with respect to infringements on personal liberty is subjected to the permissible limitations set forth in Article 12(3) of the Covenant.

27. As has been pointed out with respect to the issuance of travel bans for human rights defenders, restrictions on the right to freedom of movement must be "consistent with the other rights recognized in the present Covenant".<sup>16</sup>

28. Article 9 of the Covenant prohibits arbitrary arrest or detention. Moreover, anyone detained or arrested must be "informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

29. Article 14 of the Covenant also guarantees a fair and public hearing, and the minimum guarantee of being informed of the charge brought against him. A fair trial would include the ability to carry out an adequate defense, otherwise compromising the principle of equality of arms. A denial of contact with one's lawyers would jeopardize this universal principle.

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<sup>12</sup> International Solidarity Movement, *Bilin, three arrested in night raid: Ibrahim Abed El Fatah Bornat, Hamde Abu Rahmah and an international journalist*, 3 February 2010, available at <http://palsolidarity.org/2010/02/11182> (accessed 16 May 2010).

<sup>13</sup> B'Tselem, *August 2009: Night Arrests in Bil'in*, available at [http://www.btselem.org/english/separation\\_barrier/20090818\\_night\\_arrests\\_in\\_bilin.asp](http://www.btselem.org/english/separation_barrier/20090818_night_arrests_in_bilin.asp) (accessed 16 May 2010).

<sup>14</sup> Stop the Wall, *Stop the Wall's offices hit in last night raid*, 8 February 2010, available at <http://stopthewall.org/latestnews/2177.shtml> (accessed 16 May 2010).

<sup>15</sup> Nowak, U.N. *Covenant on Civil and Political Rights, CCPR Commentary*, 2<sup>nd</sup> Revised edition, 2005, page. 265.

<sup>16</sup> Covenant, para. 12(3).

30. As such, it suffices to conclude that by failing to bring any charge against the detained human rights defenders, keeping evidence secret from the defense, and conducting hearings ex parte, Israel blatantly violated and continues to violate the right to personal liberty and fair trial. As a result, the freedom of movement of these human rights defenders is equally violated. Furthermore, Israel seriously violated the right of Mohammad Othman by subjecting him to administrative detention.

31. Administrative detention is a procedure employed by Israel by which “detainees are held without charge or trial. In the occupied Palestinian West Bank, the Israeli army carries out administrative detention on the basis of Military Order 1226 (1988). This order empowers military commanders to detain an individual for up to six months if they have “*reasonable grounds to presume that the security of the area or public security require the detention.*” On or just before the expiry date, the detention order is frequently renewed. This process can be continued indefinitely.”<sup>17</sup>

32. Equally important, detained human rights defenders’ rights to free association, and freedom of opinion and expression have been violated by Israel, *see supra*. The cases outlined above evidence a discernable pattern demonstrating that the underlying rationale for the employment of arbitrary detentions and travel bans is the attempt to silence the voices of human rights defenders by punishing them for their actions and deterring them, and others, from further human rights activism.

### **3. PALESTINIANS WITH WEST BANK IDENTIFICATION CARDS**

33. Israel has resorted to a wide range of measures restricting the freedom of movement for Palestinians in the West Bank, namely; checkpoints, earthmounds, road barriers, road blocks, earth walls, and the Annexation Wall and its associated regime. According to the United Nations Office for the Coordination of Humanitarian Affairs – occupied Palestinian territory (OCHA) a total of 578 closure obstacles exist inside the West Bank (excluding Green Line crossings).<sup>18</sup>

34. Israel claims that the restrictions on the freedom of movement of Palestinians are carried out for purposes of security of the State of Israel. The following sections will demonstrate that this claim is unjustifiable by presenting evidence on the disproportionate nature of the measures taken in violation of Palestinian human rights.

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<sup>17</sup> See for example, Addameer, *End the Occupation, Stop Administrative Detention*, available at <http://addameer.info/?p=712#more-712> (accessed 17 May 2010).

<sup>18</sup> OCHA, *West Bank Movement and Access Update*, November 2009, para. 11, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_movement\\_access\\_2009\\_november\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_movement_access_2009_november_english.pdf) (accessed 15 May 2010).

## 3.1 CHECKPOINTS

### 3.1.1 Factual Background

35. According to OCHA, 69 permanently staffed checkpoints and 21 ‘partial checkpoints’ were functioning in the West Bank at the end of October 2009. 37 of the permanently staffed checkpoints are located along the Annexation Wall for the purposes of 1) allowing Israelis to commute between settlements located in the West Bank to the east of the Annexation Wall and Israel, 2) to control access of limited numbers of Palestinians holding special permits to East Jerusalem and Israel, 3) to control access to and from small Palestinian communities isolated by the Annexation Wall, and 4) to control movement of commercial truckloads between the West Bank and Israel.<sup>19</sup>

36. Although the majority of the restrictions on freedom of movement employed by Israel are unstaffed roadblocks and earthmounds, they are designed to channel Palestinian traffic to staffed checkpoints.<sup>20</sup> Al-Haq also highlights the use of ‘flying checkpoints’ which are erected on temporary basis.

37. The number of checkpoints must be considered in light of their focused use in certain areas within the West Bank. Area C in the West Bank is, to a large extent, off-limits for Palestinians. Area C comprises 60 percent of the West Bank and holds the land reserves necessary for the development of the main population centers as well as a significant part of the agricultural and grazing land.<sup>21</sup>

38. Based on the aforementioned, it is clear that the number of checkpoints do not, on its own, reflect the situation on Palestinians’ freedom of movement in the OPT. In some instances, even the dismantlement of checkpoints leads to a deterioration in the freedom of movement as it may result in Palestinians having to take longer detours in order to access their destination into for example occupied East Jerusalem.<sup>22</sup>

### 3.1.2 Evidence

39. The evidence referred to in this section illustrates the impact of checkpoints on Palestinian access to education, health services and work places. Moreover, restrictions on freedom

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<sup>19</sup>*Ibid.*, para. 11.

<sup>20</sup>*Ibid.*

<sup>21</sup>*Ibid.*, para. 12.

<sup>22</sup>*Ibid.*, para. 11.

of movement are often coupled with beatings and harassment of Palestinians which may amount to violations of the prohibition of torture or cruel, inhuman or degrading treatment or punishment.

40. Lubna 'Isam Jamil Suleiman, a student at Al-Quds Open University, describes below the daily suffering she must endure on her way to university. Lubna is a resident of Kufr Jammal, a village located approximately 18 kilometres south of the city of Toulkarem. Similar to the inhabitants of al-Kafriyyat area (which includes the villages of Kufr Sour, Kufr Zibad, Kufr 'Abboush, al-Ras village and Falama village) she crosses the Jbara checkpoint on her way to the university:

Around five armed Israeli soldiers are constantly present at the barrier, along with a watchtower and a number of huge cement cubes. This checkpoint does not only facilitate a link between al-Kafriyyat area and the city of Toulkarem, but also facilitates a link between Toulkarem and the remaining Palestinian cities and villages in the West Bank. Everything that occurs at this checkpoint is subject to the mood of the Israeli soldiers manning it. All residents and vehicles are inspected when exiting and entering Toulkarem. The inspection of every vehicle lasts 10-15 minutes in normal circumstances, but it may take as long as half an hour, and sometimes even more than that. In cases of military closure, or other similar conditions, the inspecting soldiers force the passengers to step out of their vehicles and show their identity cards. Then the soldiers inspect the vehicles using one of their dogs, which they always keep at Jbara barrier.

I saw that dog several times. It is huge. The soldiers always put a metallic muzzle on its mouth to prevent it from attacking people passing through the barrier. The soldiers order the dog into vehicles passing through the checkpoint in order to search them. This act is problematic and harms us, especially since, as Muslims, we believe that dogs are defiled and unclean. Hence, we believe that anything they touch becomes filthy and tainted, especially when it comes to food and clothes. For example, when the dog enters the car and touches and plays with our foodstuff we are forced to throw it away because, from our point of view as Muslims, the food becomes contaminated and inedible after being touched by a dog.

Passing through Jbara checkpoint takes several hours when the Israeli soldiers impose military closures on Toulkarem. It takes at least two to three hours. This time is spent waiting and undergoing a thorough martial inspection, causing much suffering for the residents. A female Israeli soldier is consistently responsible for inspecting the cars using the above-mentioned dog.<sup>23</sup>

41. Illustrative of the beatings of Palestinians by the occupying forces that occur at checkpoints, is the severe beating of Anwar Muhammad Fawzi 'Awwad in 2009. Anwar, a resident of

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<sup>23</sup> Al-Haq Affidavit 4230/2008.

Salem in Nablus Governorate, received a phone call at about 13.30 concerning the detention of his brother at Al-Huwwara checkpoint. The Al-Huwwara checkpoint is located at the southern entrance of the city of Nablus. Upon receiving the call, Anwar headed to the checkpoint where he was informed that two of his brothers, Mahmoud and Na'im, were detained. These are Akram's words describing what happened next:

Mahmoud and I walked ahead to ask the soldiers why they were detaining and beating our brother. After we had walked for several metres and were almost five metres away from the soldiers positioned near the small room at the south-eastern area of the checkpoint, we saw Na'im. He was blindfolded and his hands shackled with plastic handcuffs. Four soldiers stood around him. They were in the standard military uniforms, had helmets on their heads, and carried long weapons. From time to time, some soldiers beat my brother with their fists and feet on all parts of his body. We approached the soldiers and my brother and were at a distance of only two metres away from them. Immediately then, seven soldiers, with long weapons and helmets on their heads, arrived. Speaking in both Arabic and Hebrew, I asked them why they were detaining my brother. They loaded their weapons, indicating that they would open fire if we did not move back, but we did not comply with their orders. We insisted on finding out why they were beating and detaining my brother.

Meanwhile, and without any prior notice, a soldier with a white complexion severely beat my brother Mahmoud with the rifle butt against his head. My brother screamed in pain. Blood streamed out of his head and he fell unconscious on his right side on the ground. I shouted for help, but soldiers did not care, they just left the area where we stood. Meanwhile, my brother Fawzi and I walked carrying Mahmoud for about 15 metres, where a taxi was parked in the parking lot north of the checkpoint. Having put him inside, the taxi drove fast and arrived at al-Rahma Health Care Centre in the city of Nablus in less than seven minutes. Physicians examined my brother Mahmoud for several minutes. Due to his critical health condition, he was transported by an ambulance to Rafidiya Hospital in the city of Nablus. For more than two hours, doctors offered medical first aid to my brother. However, we requested that Mahmoud be transferred to the Arab Specialist Hospital in Nablus. Having examined him, doctors discovered that Mahmoud had sustained a bone fracture on the left side of the skull and that he suffered from bleeding in his head. His health condition was critical and he could not talk. His treatment at the hospital would also take a long time.

In the evening, Mahmoud told me why he had been detained. While a soldier was examining Mahmoud's ID card, a person said that Mahmoud's ID was counterfeit. After the soldier heard that, he detained Mahmoud for two hours

at the checkpoint. After the Israeli Police arrived and checked his ID, it appeared that the claim was false. Two hours later, Mahmoud was released.<sup>24</sup>

42. Muhannad ‘Uthman al-‘Azza, resident of al-‘Azza camp in Betlehem governorate has been detained five times at checkpoints. These detentions lasted for over 2 hours, and during the last detention, Muhannad was subjected to severe beatings. As a student at Al-Quds University in Abu Dis, Muhannad crosses the Container-checkpoint on his way home. At the time of the beating, Muhannad had handed over his identification card to the soldiers at the checkpoint after which he was called out of the taxi he had hired and asked to go to a square located among cement blocks in which Palestinians are regularly held. That square is not visible to people passing by the checkpoint. Upon entering a room there used for verifying identity cards at the checkpoint, the following took place:

The soldier approached me and asked why I was standing there and started to beat me. First he pushed me with his hands, then he kicked me with his foot and hit me with his fist on my chest and abdomen. He then told me to lift my hands and open my legs and started inspecting me. He took my keys and wallet and asked me about my mobile phone. I told him that I do not have a mobile phone. He cuffed my hands to my back with plastic cuffs and threw me inside a very small cell located beside the square at the ‘Container’ checkpoint near Bethlehem.

The soldier closed the door of the cell and through a small window in its door, said “If you talk to anybody, I will fuck you.” I told him that there was nobody around to talk to. He started to yell at me, and in a threatening tone asked me for a mobile phone or land line number. I told him that I do not have any. Then he left, leaving me behind in the cell. Around two hours later the soldier came back, opened the cell and called another soldier who came and untied my hands. After a few moments, the same soldier who had captured me in the cell gave me my identity card and ordered me to go home. I went home without knowing the reason for my detention.<sup>25</sup>

43. Evidence that attests to the negative implications of checkpoints on the enjoyment of the right to education is the checkpoint erected adjacent to the Ibrahimiyya School in the Old City of Hebron. The checkpoint was erected in August 2005 to inspect students of the school on a daily basis. Like the checkpoint erected in front of the Ibrahim Mosque in Hebron city, the checkpoint has an electric inspection machine. Everyone who enters the Ibrahimiyya School, with the exception of pregnant women and persons who have heart diseases or hold special medical documents, are required to undergo the inspection.

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<sup>24</sup> Al-Haq Affidavit 4933/2009.

<sup>25</sup> Al-Haq Affidavit 4099/2008.

44. When this checkpoint was installed, Muhammad Maher Fahed Taleb al-Karaki, a teacher at the school, foresaw the following adverse effects on his students:

it will impede the students and the teachers, especially in the morning hours, and the school will suffer from the late arrival of students to school [...]

The difference here is that this machine is set up in a room which has an entrance and an exit, and the doors are closed whilst all the students are inside this room. This is stressful for female students and female teachers and I do not know if this type of inspection may have side effects, other than the psychological ones, on those who pass through it.<sup>26</sup>

45. Muhammad Younes Sidqi al-Atrash, in grade 9 at the time Al-Haq recorded his affidavit, is a student who has suffered the effects of the checkpoint at the Ibrahimiyya School in Hebron city. As the child explained to Al-Haq:

At 7:15 am on Saturday 29 April 2006, while I was going to school, the Israeli soldiers stopped me at the military check point located near my school and prevented me from passing through. I told the soldiers that I wanted to go to school. One of the soldiers told me that I would have to wait. He spoke in Hebrew, which I understand fairly well.

He wanted to make fun of me and ordered me to sit on the ground. The ground where I was standing was filthy with human urine and flies on it. I refused to sit on the ground and stay in that dirty place. He ordered me to follow him to a room, which was sometimes used for people who had been arrested. I agreed and followed him. There was a chair in the room and I tried to sit on it, but the soldier did not allow me to. 5 minutes later, more soldiers entered the room, including an officer that I had seen a number of times before. That officer came nearer to me and kicked my left leg. He accused me of throwing stones at the soldiers at night and said that he had seen me doing so. This was untrue, but he merely wanted something to accuse me of. Then he dragged me out and wanted to put me in the jeep after putting plastic cuffs around my hands.

Fortunately, the school principal Mr. 'Ata al-Froukh and a teacher Saleh Abu-Salima arrived and asked the officer to release me. After half an hour, the officer released me. I would like to mention that I have not thrown any stones or committed any violation that deserves punishment.<sup>27</sup>

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<sup>26</sup> Al-Haq Affidavit 2684/2005.

<sup>27</sup> Al-Haq Affidavit 2968/2006.

46. A student from a school in al-Jiftlek in Jericho Governorate, Shadiya Husein 'Abd 'Aydi, explains the difficulties of accessing the school due to time spent at Al-Hamra checkpoint.

I was studying in al-'Aqrabaniyya School which is 20 kilometres from our village. The problem is not the distance from the village, but the necessity of passing through al-Hamra barrier to reach my school. Every day, I start the journey from my home in al-Jiftlek at 6:00 am and reach the school by 8:00 or 8:30 am at the earliest. I remember that once I waited around two hours at the barrier for the Israeli soldiers to allow civilians to pass through. We are usually obliged to stay on the bus and are not allowed to get off. On that day, the other students (both males and female) and I arrived at school at approximately 10:30 am (the recess time).

Again this is not the problem; the problem is when we return from school. I normally finish school at 1:00 pm and reach home between 5:00 and 6:00 pm. My arrival at this time, especially in winter, often worries my family, especially my mother. For me, this time is wasted, although I can use it to study and read. This was particularly hard when I had exams on the following days. On such days I needed to study and stay awake late at night. This situation caused me additional fatigue and exhaustion, both physical and psychological.

Once, on my way home from school, al-Hamra barrier was fully closed and no one was permitted to pass through it in either direction. After waiting for two hours, the soldier at the barrier told us that the barrier was not going to open. I returned to al-Nasariyya and spent that night at one of my friend's houses. My family did not like this. As I was 18 years old and from a conservative Bedouin environment, not sleeping in my own home violated my traditions and habits.

As a result of the impact of that barrier on the movement of students, the Palestinian Ministry of Education established the Tents School for secondary school students.<sup>28</sup>

47. With respect to access to health, the death of 34-year old Muhammad Ahmad Younes illustrates how checkpoints create unnecessary delays that have had serious implications for Palestinians in need of medical attention. Muhammad, the son of Munira Younes, had suffered from cancer in his head since 2004. By July 2007, Muhammad had received a special permit that enabled him to cross Israeli checkpoints so that he could receive treatment at Augusta Victoria hospital in Jerusalem. His mother describes how he was transferred to hospital:

He used to be transferred from our house at Nour Shams via a civilian car with a yellow Israeli plate, belonging to another son's wife, Muntaha Radi Rifa'i, who holds Israeli nationality. She would take Muhammad to Jerusalem by crossing the Jbara military checkpoint south of Toulkarem, which separates the West Bank and the territories that were occupied in 1948. Muhammad's permit allowed him to cross at the Jbara checkpoint, and this happened several times.

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<sup>28</sup> Al-Haq Affidavit 2437/2005.

48. On 15 September 2007, the following events, which led to Muhammad's death, are recounted by his mother:

On 15 September 2007, my son Muhammad was at our house in the refugee camp, and said he felt weak and needed treatment. Therefore, Muntaha Rifa'i took him in her car and headed for the Jbara checkpoint, to drive him to the Augusta Victoria Hospital in Jerusalem for treatment. They left the house at around 10:20 am, accompanied by three of my sons, all holders of special permits which enable them to enter the territories occupied in 1948. When they arrived at the Jbara checkpoint a debate started between my sons and the Israeli soldiers, who refused to let them cross the checkpoint. I do not want to name my sons who were accompanying Muhammad. This debate continued for around 40 minutes, during which Muhammad was screaming in pain. Although this occurred in front of the Israeli soldiers, they would not allow him to cross the checkpoint for treatment.

Muhammad passed away, inside the car, at about 11:15 am at the Jbara checkpoint, within sight of the Israeli soldiers. When the soldiers saw that he had died, they called a civilian Israeli ambulance whose men checked my son and confirmed his death. They then let a Palestinian Red Crescent ambulance move him from the military checkpoint to my house at the Nour Shams refugee camp.<sup>29</sup>

49. Muhammad left behind his wife and six boys and girls.

50. Albeit women giving birth at checkpoints have decreased significantly in the year of 2009, it has been a trend which indicates the particular hardships created by checkpoints for women. It is also worth noting that the decrease of child births at checkpoints is a result of measures taken by the Palestinian Authority such as setting up three maternity clinics in Qalqilya, Salfit and Yatha. The Palestinian Authority has also provided training of midwives to assist births in hard-to-reach places in cases of emergency.<sup>30</sup> In 2008, Mu'ayyad Mahmoud 'Abd-al-Rahman Abu-Rida and his wife lost their baby on the Huwwara checkpoint after have been denied to cross by Israeli soldiers. Seven-month pregnant, Mu'ayyad woke up on 4 September complaining from pains and bleeding. Mu'ayyad took her immediately in the direction to a nearby hospital by car. The following occurred at the checkpoint:

The checkpoint was lit up but in the middle of the street there was a plastic divider, which indicated that the checkpoint was closed.

I lifted my ID card along with those of my wife, mother and brother. I opened the front door of the car and got out, and I stood in front of the car. I looked

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<sup>29</sup> Al-Haq Affidavit 3867/2007.

<sup>30</sup> See High Commissioner for Human Rights, *Report of the High Commissioner for Human Rights on the Issue of Palestinian Pregnant Women giving Birth at Israeli Checkpoints*, 17 March 2010, page 2, available at [http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.68.Rev.1\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.68.Rev.1_en.pdf) (accessed 14 June 2010).

at the place where soldiers usually stood at the checkpoint. About 20 to 30 metres to the north, I saw a black soldier and talked to him in Hebrew, which I am fluent in.

"I have an emergency. My wife is suffering from a bleeding. I want you to open the checkpoint. I want to transport her to the hospital in Nablus," I shouted. For two minutes, the soldier did not comment, nor move from his place. "Wait. I will ask the officer." he replied later.

He went to a small cabin in the middle of the street to the west. While waiting, I continued to demand that the soldier open the checkpoint. My wife screamed from the pain. The black skinned soldier, who I estimate was 22 years of age, returned after about 15 minutes [...] Another soldier also came; he was in regular military uniform, blond, with a long weapon and without a helmet [...] The blond soldier asked me in Hebrew what the matter was. Replying in Hebrew, I explained to him that my wife was suffering from a bleeding and screamed from the pain.

"We want to access Rafidiya Hospital in Nablus," I said. "Do you have a permit?" he asked. "No I do not have a permit," I replied. "You cannot cross then," he said. "I have a permit to the Jordan Valley. I also have a vehicle permit to access the Jordan Valley," I said. "This does not work on this checkpoint," he responded.

At that point, my mother got out of the car and opened the back door, where my wife was lying, and pointed to her, but the soldier insisted that we were forbidden from crossing the checkpoint. "Look at my wife. She is dying. Allow us to cross. Detain me or any one of us or even all of us, except for my brother, who drove the car, so that he can transport her to the hospital," I continued. "Take our ID cards, but allow my brother to transport my wife to hospital," I went on. "No way," he insisted.

After 40 minutes of begging him to grant us access, three other soldiers from the checkpoint arrived from the western area, from the cabin which I mentioned earlier. Of these, a tall, blond soldier was carrying a wireless communications device on his back.

"Why are you making noise at the checkpoint?" the latter soldier asked. "We do not want to make noise. We are only requesting you to please allow us take my wife to hospital. Look at her; she might die at the checkpoint. She is bleeding. She is pregnant," I protested.

He did not show any interest. In the meantime, my wife screamed from pain. My brother had gotten out of the car and stood beside her. Instead of helping us, the soldier with the wireless communications device pushed my brother with his hands. At that time, my wife was in labour and screamed more and more. I watched her. Part of the baby was out her womb while another part

was still inside. We all shouted and we were in a dilemma. I was tormented by fear for my wife and baby's lives. What could I do?

The soldiers only stood looking at us. Then, I called the Red Crescent Society, the number is 101, from my mobile telephone and told them where we were and what happened to us. [...]

In less than 20 minutes, an ambulance belonging to the Red Crescent Society arrived and soldiers allowed it to approach us. Two medics stepped down, took my wife out of our car, and put her in the ambulance. At the checkpoint, they helped my wife deliver the baby. But it was too late.

The male baby was still-born. Had he lived, I would have named him Zeid but because of what happened to him I decided to name him 'Abdallah.<sup>31</sup>

51. Tawfiq Naji Ahmad Daraghma has been continuously harassed by Israeli soldiers stationed at the checkpoint erected about 500 metres from his agricultural land. Israel has also used his land as a training ground for soldiers. The checkpoint has prohibited Tawfiq from accessing his agricultural lands. Tawfiq describes the humiliation which he is subjected to:

The last time I was arrested was 13 March 2005. On that day, I reached Tayasir checkpoint at eight in the morning. When it was my turn to be inspected, the soldiers asked me for a permit to enter my land through the checkpoint. I told the soldier that I wanted to go to my land and that I didn't need a permit, but the soldier absolutely refused to let me pass through the checkpoint. Due to my insistence to pass through, the soldiers aimed their weapons at me and threatened to kill me. That continued for two hours, and after that I called Al-Haq and told them what had happened. After a short time, the soldier ordered me to come to him and when I did, he told me, "I don't want to see you near the checkpoint, hurry away from here". He said this while he was aiming his weapon at me. I returned back to Toubas with pain in my heart because I was unable to reach my land.

Several times I applied for a permit to cross the checkpoints, and on 18 April 2005, I obtained that permit. On Saturday, 14 May 2005, I went to my land through Tayasir checkpoint with my permit. I reached the checkpoint at 11 am, and there were three cars waiting to be inspected. At 11:30 I got out of my car and went on foot towards the two soldiers who were at the checkpoint. As I was approaching them, one of the soldiers aimed his weapon at me.

That soldier, approximately 20 years old, had a red beard, and was wearing the full military uniform. I gave him my ID card and the permit. He looked at

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<sup>31</sup> Al-Haq Affidavit 4371/2008.

these documents and started to laugh and speak Hebrew with me. Then he asked me, "Where are you going?" I told him that I was going to my land and pointed at it with my hand. The two soldiers started talking with each other and one of them said to the other, "This man is a liar". Meanwhile, one of the two soldiers threw my ID card on the ground between his feet and asked me to pick it up. I obliged myself and bent between the legs of that soldier and picked up my card while the two soldiers were laughing. After that, they permitted me to pass through the checkpoint.

I walked on foot a distance of six km while I was in a very bad state because of the humiliation I was subjected to. I returned to Toubas through the same checkpoint without entering my land because of this miserable state.<sup>32</sup>

### **3.1.3 Legal Analysis**

52. Freedom of movement may only be restricted for purposes enumerated in Article 12(3) of the Covenant and be necessary and proportional. National security is a purpose which may justify restrictions on the freedom of movement.

53. However, the imposition of checkpoints on all Palestinians in the West Bank and its adverse effects on access to health care, education, employment and work places is neither necessary nor proportional. Moreover, checkpoints are focal points for Israeli physical and psychological abuse of Palestinians. Indeed, Israel's security concerns should not be allowed to have a permanent, grave and all-encompassing effect on Palestinian life and dignity. Security concerns do not justify Israel's extensive and excessive imposition of obstacles to Palestinian freedom of movement.

54. Moreover the imposition of checkpoints in the West Bank facilitate the fragmentation of the Palestinian territory, severely impacting the ability of Palestinians to fully exercise their fundamental right to self-determination as enshrined in Article 1 of the Covenant.

## **3.2 ANNEXATION WALL AND ITS ASSOCIATED REGIME**

### **3.2.1 Factual Background**

55. As the single largest obstacle to Palestinian movement, the Annexation Wall has affected every aspect of Palestinian life since the commencement of its construction in 2002. The adverse effects of the Annexation Wall are the fragmentation of the OPT and the reduction of the territory available for Palestinians for their exercise of their right to self-determination, annexation of occupied East Jerusalem from rest of the OPT, loss of land and property through illegal

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<sup>32</sup> Al-Haq Affidavit 2415/2005.

confiscation, forced demographic redistribution, erasure of the Green Line, prevention of access to employment, restricted access to education and health care, as well as isolation of communities due to the erosion of the social roots of families and the social fabric.<sup>33</sup>

56. Upon its completion, Israel will have constructed 85 percent of the Annexation Wall inside the West Bank and a mere 15 per cent on the Green Line and in Israel. The Annexation Wall will also isolate 9.5 percent of the territory of the OPT including much of East Jerusalem and No-Man's Land.<sup>34</sup>

57. The composition of the Annexation Wall varies between locations, but is usually constructed of layered razor wire and electronic fences or 8-9 metre high concrete walls. About 37 kilometres of the Annexation Wall is made out of large concrete blocks, particularly in urban areas such as Jerusalem, Tulkarem and Qalqiliya.<sup>35</sup>

58. The majority of the approximately 225,000 Palestinians who hold East Jerusalem ID cards reside between the Annexation Wall and the Green Line. However, Palestinian communities inside the current municipal boundary, including Kafr Aqab and Shu'fat Camp, are separated from East Jerusalem by the Barrier, as are West Bank localities such as Ar Ram and Abu Dis, which were formerly suburbs of East Jerusalem.<sup>36</sup>

59. Palestinians living or accessing their lands between the Annexation Wall and the Green Line are required to attain special permits to pass through so called Wall gates and checkpoints which allow Palestinians to cross past the Annexation Wall on a daily, weekly or seasonal basis.<sup>37</sup> Al-Haq can verify that Wall gates are often opened only for the harvest season, which takes place mainly in the months of October and November, thereby denying many Palestinians access to cultivate their lands throughout the year.

60. Al-Haq documentation depicting the effects of the Annexation Wall on Palestinians is provided below.

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<sup>33</sup> Al-Haq, *The Annexation Wall and its Associated Regime*, June 2009.

<sup>34</sup> OCHA, *Five Years after the International Court of Justice Advisory Opinion, A Summary of the Humanitarian Impact of the Barrier*, July 2009, page. 8, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_barrier\\_report\\_july\\_2009\\_english\\_low\\_res.pdf](http://www.ochaopt.org/documents/ocha_opt_barrier_report_july_2009_english_low_res.pdf) (accessed 17 May 2010).

<sup>35</sup> Al-Haq, *The Annexation and its Associated Regime*, June 2009, page. 1.

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid.*

### 3.2.2 Evidence

61. In Masha village, in Salfit Governorate, a Palestinian mother of six is forced to endure the prison-like conditions created by Israel's Annexation Wall. Munira Ibrahim Yousef 'Amer lived in her home in Masha for 20 years, until Israel confiscated two dunums of the family's land and razed her nursery for the purpose of constructing the Annexation Wall. The construction of the Annexation Wall started on 5 August 2003 in her village. The Israeli illegal settlement al-Qanat had previously been established next to her home. Munira describes the location of the Annexation Wall around her house and its adverse effects on her family:

Imagine the Wall in front of us, from the east, it is six metres high and more than 20 metres long. We are also surrounded with barbed wire that is more than two metres high from the other three sides. On the eastern Wall, the Israeli occupying forces made a gate to enable us to enter and exit through it to and from our home. Ironically, eight metres away from this gate, there is another iron gate which is the width of the road leading to and from the house and which is controlled by Israeli soldiers. [...] My children Hisham, Asiya, Ishac and Maysa' are school students, Shaddad goes to kindergarten, Nidal works, and my husband is an employee in the Directorate of Agriculture. Often, my husband and children have to wait for several hours before the soldiers show mercy and open the gate for them. To date this takes place on a weekly basis when they go to work or school and upon their return to the house

As for me, I do not dare go out so that I will not be subjected to what the entire family suffers from. As for our relatives and friends, they avoid visiting us because of these gates, which has isolated us from our external environment. We now live under the mercy and injustice of the occupation.<sup>38</sup>

62. Al-Haq attests to the provision of a key to Munira's family after the completion of the Annexation Wall for their entry and exit through it.

63. Similarly, in the village of 'Anin in Jenin Governorate, the family home of Mithal 'Oda Ibrahim Wishahiya was separated from the rest of the village. Mithal, a mother of four, has to pass an iron gate in order to access her home due to the isolation caused by the Annexation Wall. Mithal describes the difficulties in accessing her home:

We were living a natural and quiet life. However, the situation has changed since the Israeli occupying authorities began constructing what is called the

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<sup>38</sup> Al-Haq Affidavit 2056/2004.

Separation Wall in 2002. They finished building the section in our village in 2003. The Wall was built one kilometre north of our home and isolated us from our village 'Anin. We were isolated west of the Wall and became separated from the village. When the occupation authorities finished building the Wall, we were given permits to pass through an iron gate located about two kilometres north of our home. At that point, the suffering of my family began. This Gate is numbered 214 and it is a seasonal gate. It opens only on Monday and Thursday during the olive harvest season (four months) each year. We tried to pass through this gate many times so as to go to the village, but the Israeli soldiers prevented us from passing and so we were obliged to walk very long distances to reach the village. Currently, we have to go from our isolated home beyond the Wall to Barta'a village located 22 kilometres southwest of our village. From there we pass through Barta'a gate No. 356 to Jenin and from Jenin we go to 'Anin.

To sum up, we have to go a distance of about 60 kilometres to go from our isolated house to our village, 'Anin, compared to two to three kilometres before the construction of the Wall or 'Anin Gate number 214. Imagine that the travel from our home to our village costs us 150 shekels. Furthermore, the Israeli soldiers continuously raid our house, search it and harass us with the aim of forcing us to leave our home for good.<sup>39</sup>

64. Mithal explains the lack of easy access to health care, essential goods, and education as well as the effects on the family's social life:

We buy our essentials, including vegetables, fruit, milk and all other daily requirements from Um al-Rihan village, which is also completely isolated west of the Wall and is located five kilometres southwest of our home. Imagine that I have to walk three hours in each direction every day in order to buy our essentials from Um al-Rihan. Our life has become a real disaster and hell as a result of the Israeli practices against us. We live without electricity. As for water, we used to get it from several springs in our vicinity but when the occupation authorities constructed the Wall, the wells were isolated from us because they are east of the Wall and we are west of it. Currently we buy water from tankers and that is very expensive because we are far from other localities isolated west of the Wall. Every tanker of three cubic metres costs us 70 shekels and we need a tanker every four days. Imagine the costs and the suffering.

All of my husband's relatives and my relatives (my father, mother, four brothers and four sisters) live in 'Anin. Before the construction of the Wall, we were continuously communicating, sharing our joys and sorrows. My family visited me and I visited them and my children used to play with my sisters' and brothers' children, but now we are deprived of social communication with relatives and friends. On 28 August 2007, my cousin Muhammad 'Awad

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<sup>39</sup> Al-Haq Affidavit 3788/2007.

Mansour had his wedding in 'Anin and I could not participate for many reasons including the far distance, cost and the fact that I am prevented from passing through the iron gate. This means that the Wall deprived us of sharing joy with the family.

We basically depend on breeding ten sheep for our livelihood. The return from these sheep hardly covers the essentials for me and my four daughters. Since the construction of the Wall, our economic situation has constantly deteriorated. My family and my husband's family used to support us in the past, but since we were isolated from them it has become very difficult for them to reach us and provide us with their support. Now, we are suffering from deep poverty.

Our families applied to obtain permits to visit us on occasions but they were denied. Since the beginning of the construction of the Wall in our village four years ago we have not received visitors in our home. This situation affects everything about our life and we are suffering psychologically and feel that we are living in another world. We live alone in a world and the people surrounding us cannot visit us due to the construction of the Wall and the Israeli expansion.

We are suffering from the lack of health services. Even the villages surrounding us such as Um al-Rihan and Barta'a lack such services. When a member of the family is sick, especially if it is one of the children, we have to go to Jenin city for treatment. Whatever I say about our concerns and our suffering will not be able to describe our suffering. As for education and schools, at the beginning of the 2007/2008 academic year I left my husband alone in our home and got a very simple home in 'Anin to live with my four daughters, so that three of them would be able to go to school. They are currently studying in 'Anin Basic Girls' School. The school started on 1 September 2007 and until now (10 September) I have not seen my husband who is still living in our home to take care of the sheep.

I can say that this Wall has confiscated my right to continuously live with my husband. It deprived me of my family and husband and I don't know what will come next. I cannot deprive my daughters from their right to education and for that reason I was obliged to leave him alone to realise my dream of educating my daughters. Despite speaking up about our sufferings to many PA official institutions and local and international humanitarian and human rights NGOs, we have not received any assistance that helps us to continue our life in our home west of the Wall. We are resisting all these difficult circumstances and insisting on our right to our home and to all of our property. It is our right and we will not concede under any pressure from the Israeli occupation.<sup>40</sup>

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<sup>40</sup> *Ibid.*

65. In 2002, the Annexation Wall was built on three sides of the Zbouba village, also in Jenin Governorate. Its resident, ‘Imad ‘Aref Bayer Jaradat describes how the village is completely isolated from the outside world whenever Israel erects a flying checkpoint at the side of Zbouba that so far has been spared from closure by the Annexation Wall. ‘Imad describes the Annexation Wall around his village:

The total area of the village lands comprises 1000 dunums of which the occupation forces have confiscated around 200 for the construction of the Wall, which led to the isolation of parts of the village land behind the Wall. This Wall consists of electronic barbed wires, an asphalt street and a sand street. In addition, cameras, which are installed all over the Wall, make it difficult for any citizen to approach the Wall or try to surpass it.

The Israeli military camp “Salem” is located west of Zbouba, one kilometre from the village. To reach their lands isolated behind the Wall, people have to pass through an iron gate. This iron gate, numbered 100, is the only way for people to reach their lands and crossing it requires special permits. The Israeli occupying forces only grant very few of these required permits to Zbouba citizens.

I own 21 dunums of agricultural land. This land is located in the vicinity of Salem military camp west of the village. My land is planted with almond trees and was formerly also cultivated with different kinds of crops. Before the construction of the Wall, I could easily reach my land every day. But the construction of parts of the Wall on my land has deprived me from reaching it. Now, 17 dunums of my land are completely isolated behind the Wall and only four dunums of land remain in its close vicinity.

During the construction process, Israeli bulldozers uprooted around 300 almond trees from my land. Since the construction of the Wall, I have never gone back to my land because its trees are uprooted and destroyed. As for the other land adjacent to the Wall, I rarely reach it or check on it because Israeli military patrols are continuously present all along the Wall and prevent us from approaching nearby lands.<sup>41</sup>

66. ‘Imad goes on to explain the impact of the Annexation Wall, including its effects on employment:

The impact of the construction of the Separation Wall does not only amount to agricultural concerns and the confiscation of lands. The construction of the

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<sup>41</sup> Al-Haq Affidavit 4031/2008.

Wall has deprived hundreds of workers of Zbouba village from reaching their work places inside the Green Line. This, in turn, has denied hundreds of Palestinian households in Zbouba village their sources of livelihood. As a result, poverty and unemployment rates in the village have significantly increased since the construction of the Wall, not to mention the continuous harassment carried out by the Israeli patrols deployed along the Wall on a daily basis. This harassment includes soldiers making annoying noises and insults, as well as unethical and dirty words uttered at night through the loudspeakers of the army. In short, Zbouba citizens continuously suffer because of the construction of the Israeli Separation Wall.<sup>42</sup>

### 3.2.3 Legal Analysis

67. Israel has argued that the Annexation Wall is of temporary nature and will be dismantled when it has served its purpose; to ostensibly end terror attacks against the State of Israel.

68. Having reaffirmed Israel's legal obligations towards the OPT with respect to the Covenant,<sup>43</sup> the International Court of Justice in its Advisory Opinion on the Annexation Wall, however, concluded that

To sum up, the Court, from the material available to it, is not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives. The wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order. The construction of such a wall accordingly constitutes breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments.<sup>44</sup>

69. With regard to freedom of movement, the International Court of Justice declared that

To sum up, the Court is of the opinion that the construction of the wall and its associated régime impede the liberty of movement of the inhabitants of the Occupied Palestinian Territory (with the exception of Israeli citizens and those assimilated thereto) as guaranteed under Article 12, paragraph 1, of the

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<sup>42</sup> Al-Haq Affidavit 4031/2008.

<sup>43</sup> International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, paras. 106-111, available at <http://www.icj-cij.org/docket/files/131/1671.pdf?PHPSESSID=55f94c600f6366ce5f6b665e48755309> (accessed 17 May 2010).

<sup>44</sup> *Ibid.*, para. 137.

International Covenant on Civil and Political Rights. They also impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the United Nations Convention on the Rights of the Child.<sup>45</sup>

70. The Advisory Opinion of the International Court of Justice was acknowledged by the UN General Assembly on 20 July 2004 by an overwhelmingly endorsed resolution, and called upon Israel to comply with its legal obligations as set forth in therein.<sup>46</sup>

71. In defiance of the International Court of Justice and the UN General Assembly, Israel has continued its illegal actions in contravention of international human rights law as enshrined in the Covenant without any effective opposition from the wider international community.

## **4. PALESTINIANS WITH GAZA IDENTIFICATION CARDS**

### **4.1 FACTUAL BACKGROUND**

72. The Gaza Strip, an inseparable part of the OPT, has been subjected to numerous attacks by Israel, effectively suffocating Palestinian residents of the area. The illegal blockade on the Gaza Strip has been maintained by Israel for over 1000 days, and its effects have been seriously exacerbated by Israel's offensive attack on the Gaza Strip between 27 December 2008 and 18 January 2009.

73. According to, inter alia, the report by the UN Fact-finding Mission on the Gaza Conflict, the Israel's illegal blockade amounts to collective punishment.<sup>47</sup> In addition to prohibiting the passing of goods (including food essentials), fuel and electricity, Israel has barred Palestinians from entering or exiting the Gaza Strip. In other words, Palestinians in the Gaza Strip are forced to live confined, without any possibility of respite from Israeli control. Moreover, the offensive attack on the Gaza Strip that resulted in devastating destruction of Gaza's infrastructure is aggravated due to the prohibition of intake of building materials into the Strip for reconstruction.<sup>48</sup>

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<sup>45</sup> *Ibid.*, para. 134.

<sup>46</sup> UN General Assembly, *Resolution ES-10/15 Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, including in and around East Jerusalem*, A/RES/ES-10/15, 20 July 2004, available at

<http://unispal.un.org/UNISPAL.NSF/0/F3B95E613518A0AC85256EEB00683444> (accessed 18 May 2010).

<sup>47</sup> United Nations Fact-Finding Mission on the Gaza Conflict, *Report by the United Nations Fact-Finding Mission on the Gaza Conflict*, 25 September 2009, para. 1878, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf> (accessed 11 June 2010).

<sup>48</sup> For example, *ibid.*

74. The grave infringements on Palestinians' freedom of movement and the impact of the illegal blockade on access to health care, education and employment is demonstrated by sworn witness affidavits below.

## 4.2 EVIDENCE

75. In addition to causing electricity shortages in hospitals, lack of medicines, medical equipment and specialist medical doctors, Israel denies the exit of seriously ill Palestinian patients who depend on medical treatment for life threatening situations.<sup>49</sup>

76. Israel exploits the situation it has created by predicating the ability of sick Palestinians to receive exit permits on their willingness to act as collaborators for the Israeli Intelligence Service. 'Ammar 'Abd-al-Rahman Rajab Abu-Warda describes the ordeal he endured unsuccessfully trying to exit the Gaza Strip several times. 'Ammar was diagnosed with cancer in his testicle and has to undergo chemotherapy. However, hospitals in Gaza did not have the necessary equipment to detect the spread of the cancer and provide the appropriate treatment. His doctor recommended his transfer to Israel for treatment but Israel refused him permission to leave Gaza:

I attended three chemotherapy sessions, but my health deteriorated further. Doctors decided to transfer me abroad for medical treatment due to the shortages of medicine and medical equipment in Gaza hospitals – a result of the Israeli siege imposed on the Gaza Strip for almost two years.

On 30 November 2008, I received a transfer for medical treatment at the Tal Hashomer Hospital inside Israel. The Tal Hashomer Hospital agreed to receive me on 29 December 2008. However, due to the Israeli war and aggression on the Gaza Strip, which lasted for 22 days, I could not travel to the hospital as the Israeli army had closed all entry points to the Gaza Strip. Meanwhile, I continued to receive medical treatment at al-Shifa' Hospital in Gaza. Starting from 5 January 2009, I received three provisional chemotherapy sessions. As the devices that detect the spread of cancer tumours were unavailable in Gaza, I could not conduct the necessary examinations and analyses in order to identify how much the tumour had spread. Again, my health deteriorated further and I stayed at the hospital for medical attention.

With help of some persons and institutions, I received another transfer for medical treatment at Tal Hashomer Hospital on 4 June 2009. I was scheduled to start my treatment on 10 June 2009. However, I was not able to go to the hospital because the Israeli occupying authorities refused to allow me to travel to Israel. According to the Civil Affairs Coordination Office at the Palestinian Ministry of Health, the Israeli authorities refused to grant me a permit to access Israel and resume my treatment at Tal Hashomer Hospital. The Civil

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<sup>49</sup> See Al-Haq Affidavits 3955/2007, 5150/2009, 5054/2009.

Affairs Coordination Office is the only Palestinian authority that is competent to apply for permits and to carry out the relevant coordination with the Israeli authorities. Having reported to the Office, I received a paper on which the word “Denied” was written in Hebrew. Employees at the Office informed me that Israeli Intelligence officers at Erez Crossing Point wanted to see me on 10 July 2009 to decide whether to grant me a permit to enter Israel to continue my medical treatment. [...]

Later, I received a call on my personal cellular telephone from an Israeli Intelligence officer, who claimed that his name was Moshe. He requested that I give him information about the area where I lived as well as information about what was going on in the area. He asked me about what people talked about. Before I attended the scheduled interview with the Israeli Intelligence, “Moshe” called me four additional times on my telephone, on various days. He demanded that I cooperate with the Israeli Intelligence and provide information in return for helping me obtain a permit to access Israel and receive medical treatment. He said that the best physicians in Israel would follow up on my condition and provide all services necessary for my treatment at the expense of the Israeli Intelligence. The last time he called me, he demanded that I take the initiative and make telephone calls.

“I will not call you, I will wait for your call to ask me for help.” He said.

I refused, and I told him “If you provide me with information about Israel, I will give you information about Gaza strip” [...]

Having coordinated with the Coordination Office at the Palestinian Ministry of Health, I travelled to Erez Crossing to report to the Israeli Intelligence on the morning of 10 July 2009. An Israeli Intelligence officer interrogated me. He inquired about the illness I suffer from, the doctors who supervised my health conditions, and the treatment methods I underwent. The Interrogator, however, accused me of counterfeiting all medical papers and reports in collaboration with physicians in Gaza, so that I could enter Israel for a job opportunity.

“Report to the Coordination Office.” He said and told me to leave.

A week later, I reported to the Coordination Office at the Ministry of Health in Gaza. The employees told me to renew the appointment at Tal Hashomer Hospital. Accordingly, I made a new appointment for 11 August 2009. I submitted an application to the Coordination Office at the Ministry of Health for a permit to access Israel and receive treatment. Two days later, I reported to the Coordination Office. Again, employees said that the Israeli occupying authorities refused to grant me a permit without stating any reasons. They handed me a paper, on which the word “Denied” was typed in Hebrew.<sup>50</sup>

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<sup>50</sup> Al-Haq Affidavit 5054/2009.

77. Ahmad Ibrahim Husein Naser, father of sixteen, was subjected to similar treatment by the Israelis upon his attempt to exit the Gaza Strip in order to receive medical treatment. Ahmad had previously underwent surgery to remove his kidney and spleen after he had been shot by Israeli soldiers, and now needed to undergo an operation to install an artificial valve to control urine. At the location where he had gone to receive the permit from the Israel authorities that would allow him to exit the Gaza Strip the following took place:

The Intelligence officer demanded that I collaborate with the Israeli Intelligence agency and provide information about persons in Gaza in return for helping me obtain a permit to enter Israel and travel to Jordan. As I refused to be subjected to blackmail, he threatened that if I did not cooperate he would not grant me the permit. He also demanded that I not respond immediately to the offer and said he would call me later to ask for my reply about his request to collaborate with the Israeli Intelligence. Still, I completely rejected the offer.

“If this is the case, I do not want to travel or enter Israel and I do not want the treatment.” I affirmed.

The Intelligence officer told me to report to the Coordination Office at the Ministry of Civil Affairs in Gaza to learn about the response to my application for a permit to access Israel. Later, the same two Intelligence officers came and led me to a neighbouring room, in which there was a television screen and a DVD device. Having demanded that I sit down, they locked the door from the outside. The television screen began to show a video and pictures of members of the Hamas Movement and Police officers of the Gaza government while they were beating participants in mass parades and wedding parties throughout governorates of the Gaza Strip. Pictures of them assaulting people during the military takeover in Gaza were also presented. After I was left in that place for about two hours, I started to shout because I wanted to go to the toilet and urinate. Later, an Intelligence officer came in, put a white paper with numbers and Hebrew writing, which I did not understand, on my chest and took several photographs of me with a small camera. Then, they led me to the waiting hall, where I sat down for about two hours. Then, an Intelligence officer arrived, gave me my ID card and personal belongings and demanded that I leave the area in the same way I had got in. I then returned to my home.<sup>51</sup>

78. Ahmad was afterwards informed by Israeli authorities that he had been denied a permit to enter Jordan to undergo the surgery.

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<sup>51</sup> Al-Haq Affidavit 5159/2009.

79. Tharifa Rashid ‘Abd-al-Fattah al-Katnani, a mother of six, had to have a magnetic resonance image of her neck and back before undergoing surgery. Because the only machine of this kind was out of order in the Gaza Strip, she was referred to a hospital in Jerusalem. The following occurred during her visit to the Israeli authorities to receive her permit:

Thereafter, the officers took me with them to a small room, where a television screen and a DVD machine were inside. After they closed the door from the outside, they demanded that I sit down. I sat down in front of the television screen, which showed pictures and shots of members of the Hamas Movement, as well as security officers of the Gaza government, while they were assaulting wedding parties in areas north of the Gaza Strip and beating children and civilians in the Gaza Strip following the military takeover. The television screen also showed pictures of Shalit, the abducted soldier. I remained in that position for about two hours, after which the same Intelligence officers came back and led me to a room, where a person wearing the civil uniform sat at a desk with a laptop on. This person requested that I sit down and said that he was an Israeli Intelligence officer and his name was Moti.

“We know everything about you. I will ask you. If you do not speak the truth, I will arrest you.” He went on.

Having inquired why I would leave the Gaza Strip to Israel, I said I was sick and wanted to leave for Jerusalem, not for Israel, in order to receive medical treatment. I presented my medical papers and patient transfer report. However, the officer accused me of paying a bribe to obtain the patient transfer report in order to enter Israel. He then asked me about the doctors who supervised my health condition and showed me pictures of famous doctors in Gaza on the computer, which was in front of him. He demanded that I point to the physician who followed up on my condition. He was Dr. Khamis al-Sheikh Deeb, a neurologist, and I recognised him in a picture. Later, the officer inquired as to why my husband was present in the West Bank. I said he suffered from a heart attack and that he has been subject to ongoing treatment for some time at the Nablus Specialist Hospital.

“Everything you have said is a lie. You will not obtain the permit and I will return you to Gaza. When your husband comes back to Gaza, you can enter Israel and receive medical treatment. Now, get out of this place.” The officer said.<sup>52</sup>

### 4.3 LEGAL ANALYSIS

80. Article 12(2) of the Covenant provides everyone with the right to leave any country, including their own. Israel has, by the imposition of the blockade on the Gaza Strip, completely denied Palestinians of this right. Furthermore, Israel has denied Palestinian residents of the Gaza

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<sup>52</sup> Al-Haq Affidavit 5150/2009.

Strip their right to move freely within their territory, including into the occupied West Bank and East Jerusalem.

81. Israel justifies the blockade on the basis of national security, claiming it is a necessary response to attacks by Hamas against the State of Israel. In September 2007, following the Hamas takeover of power in the Gaza Strip, Israel's Security Cabinet declared the Gaza Strip as hostile territory. In the same declaration, Israel stated that the entrance of goods would only be allowed to avoid a humanitarian crisis.<sup>53</sup> It is now, however, widely acknowledged that Israel is responsible for causing a humanitarian crisis in the Gaza Strip.<sup>54</sup>

82. The justification on the basis of national security is not legally valid. The blockade, denial of entry of essential goods, and exit of innocent Palestinian medical patients and students cannot be linked to the attacks of Hamas and other Palestinian armed groups on Israel. Already in 2008, the UN Special Coordinator for the Middle East Peace Process termed the Israeli treatment of Palestinians and the blockade as collective punishment,

It is also **wrong for Israel to punish a civilian population** for such attacks. I call on Israel to restore fuel supplies to Gaza, and to allow the passage of humanitarian assistance and commercial supplies, sufficient to allow the functioning of all basic services and for Palestinians to live their daily lives. **The collective punishment of the population of Gaza, which has been instituted for months now, has failed** [bold added].<sup>55</sup>

83. In any event, it is most certainly not a proportional or necessary measure to entrap an entire population in a small area for over 1,000 days, denying them any ability to move in or out of their territory, and even their ability to exercise their right to take refuge from a territory which is in a state of war.

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<sup>53</sup> Israeli Security Cabinet decision, 19 September 2007, available at <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm> (accessed 19 May 2010); see also Gisha, *Restrictions on the transfer of Goods to Gaza: Obstruction and Obfuscation*, January 2010, available at <http://www.gisha.org/index.php?intLanguage=2&intSiteSN=15&OldMenu=165> (accessed 19 May 2010).

<sup>54</sup> See for example, UN Humanitarian Coordinator and Association of International Development Agencies (AIDA), *The Closure of the Gaza Strip puts at risk the health of people in Gaza and undermines the functioning of the health care system*, 20 January 2010, available at [http://www.ochaopt.org/documents/ochaopt\\_UN-AIDA\\_Gaza\\_health\\_statement\\_20100120\\_english.pdf](http://www.ochaopt.org/documents/ochaopt_UN-AIDA_Gaza_health_statement_20100120_english.pdf) (accessed 19 May 2010); OCHA, *Field Update on Gaza from the Humanitarian Coordinator 24 – 30 March*, 31 March 2009, available at [http://www.ochaopt.org/documents/ocha\\_opt\\_gaza\\_humanitarian\\_situation\\_report\\_2009\\_03\\_30\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_gaza_humanitarian_situation_report_2009_03_30_english.pdf) (accessed 19 May 2010).

<sup>55</sup> Robert H. Serry, UN Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the PLO and the PA, *Statement to the Press*, 28 April 2008, available at <http://www.unsco.org/Documents/Statements/SC/2008/Statement%20to%20the%20press%20in%20Gaza%2023.04.08.pdf> (accessed 19 May 2010).

84. As with the other unjustifiable restrictions on the freedom of movement of Palestinians, Israel is effectively denying Palestinians their human right to self-determination due to maintenance of the blockade.

## **5. PALESTINIANS IN OCCUPIED PALESTINIAN TERRITORY, INCLUDING EAST JERUSALEM**

85. The right to freedom of movement includes the right to move freely within one's territory. The OPT is to be considered one, united entity wherein Palestinians have the right to move freely. Israel is attempting to fragment the OPT by resorting to several restrictions which prohibit the movement of Palestinians from the West Bank and the Gaza Strip into East Jerusalem, and from the West Bank into the Gaza Strip and the other way around.

86. With respect to the Gaza Strip, Al-Haq would like to highlight the blockade on the Gaza Strip which makes it impossible for Palestinians there to move to the West Bank and East Jerusalem. Two issues of concern; the permit system which prohibits Palestinians from the West Bank to enter East Jerusalem, and the deportation of Gaza residents from the West Bank, are discussed below.

### **5.1 THE PERMIT SYSTEM AND IDENTIFICATION IN THE OPT**

#### **5.1.1 Factual Background**

87. Since the beginning of the occupation of the OPT in 1967, military orders have been issued that declare Gaza and the West Bank a closed military zone, requiring Palestinian inhabitants of the OPT to have special permits to enter certain areas. For instance, Palestinians must hold permits to enter East Jerusalem, the Jordan Valley, areas behind the Annexation Wall – the “seam zone” - and for movement between Gaza and the West Bank. Permits are even required to enter Area C, and although that requirement is often not enforced, it remains an arbitrary power of the Israeli occupying forces.<sup>56</sup>

88. The permit system creates a situation of constant uncertainty in relation to freedom of movement since it is selectively and inconsistently enforced. In times of ‘heightened security’, it is enforced in its fullest manifestation, causing Palestinian society to come to a virtual standstill. During

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<sup>56</sup> Al-Haq, *Al-Haq's Legal Analysis of Israeli Military Orders 1649 & 1650: Deportation and Forcible Transfer as International Crimes*, 22 April 2010, available at <http://www.alhaq.org/pdfs/legal-analysis-of-new-israeli-military%20Orders.pdf> (accessed 19 May 2010).

the Second Intifada for instance, Palestinians were required to possess permits even to travel between cities within the West Bank. At other times the requirement is loosely imposed, and Palestinians find that they can travel to many areas of the OPT without hindrance, yet not without fear that they will be subject to arrest.<sup>57</sup>

89. The issuance of ID documents, whilst primarily related to residency rights, also affects freedom of movement and the ability of Palestinians to be lawfully present in certain areas of the OPT. The ID card system came about as result of a military order passed shortly after the start of the occupation. It required all Palestinian residents of the West Bank and Gaza to carry Israeli-issued ID cards as a condition of their permanent residency. However, the question of who was given an ID document was determined on the basis of a population census conducted by the Israeli authorities at the start of the occupation. The census contained the names of all those present in the OPT at the time, but excluded those who had fled to neighbouring countries as a result of the war, and those who happened to be living in other countries at the time.<sup>58</sup>

90. Following the Israeli-Palestinian Interim Agreements in 1995, responsibility over the population registry – which had been established as a result of the census – was ostensibly transferred to the Palestinian Authority, but the granting of permanent residency required the prior approval of Israel. Changes to the population registry can be made by the Palestinian Authority but there is no guarantee that Israel will make the same changes to its copy of the register. Since the Israeli army relies on the Israeli copy of the registry in order to determine persons' status in the West Bank, changes the Palestinian side makes to the registry will not necessarily translate into the granting of rights to persons on the ground.<sup>59</sup> The significance of this, in relation to persons registered with Gazan addresses, will become apparent in the section below.

91. In practice, ID documents, as well as the regularization of residency in the OPT, have been used to place restrictions on the 'lawfulness' - in Israeli terms - of Palestinian presence and freedom of movement within the OPT. During times in which the permit system is being stringently enforced, ID documents essentially legalize the presence of the ID holder to the location of the address registered on the document and no more. Therefore during the Second Intifada, Palestinians often found themselves confined to the area registered in their ID document, and were unable to more outside of it to other parts of the West Bank without a special permit. Similarly, persons that live in the West Bank but whose ID documents contain Gazan addresses are, according to the Israeli authorities, not legally permitted to be in the West Bank without an additional permit.<sup>60</sup>

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<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

92. The permit and identification system has severe effects on the ability of Palestinian residents in the Gaza Strip and the West Bank to access East Jerusalem. Unfortunately, the findings of the former Special Rapporteur, John Dugard, in 2006 still apply. He reported that:

A sharp distinction is made between Palestinians with blue Jerusalem ID cards and those with green West Bank ID cards living in East Jerusalem neighbourhoods. West Bank ID cardholders, and in due course Jerusalem ID cardholders living to the east of the wall, will no longer be able to access hospitals and schools in Jerusalem or to work in Jerusalem without special permits to enter Jerusalem. The differences in ID cards will also have a profound effect on family life, as many spouses hold different ID cards. They will be forced to live separately on different sides of the wall under Israeli law, which prohibits family unification. If one spouse elects to move east of the wall, he or she will lose his or her rights (such as medical insurance and social security) attached to the Jerusalem ID. In this way Israel hopes to further reduce the Palestinian population of East Jerusalem by compelling spouses to move to the West Bank side of the wall.<sup>61</sup>

93. The following Al-Haq documentation demonstrates the effects of the permit and identification system imposed on Palestinians, especially in regard to occupied East Jerusalem.

### 5.1.2 Evidence

94. Ayman 'Izat Muhammad Awlad Muhammad from Hebron Governorate illustrates next the perversity of the permit system which severely restricts Palestinian access to occupied East Jerusalem, even to access health care. Ayman had obtained a special permit to enter East Jerusalem in order to work at al-Maqased Hospital. He would enter Jerusalem with the permit through the Gilo/Bethlehem checkpoint, referred to as the 300 Checkpoint. On 3 June 2009, Ayman was in a car accident and had part of his face torn off, including his eyebrow. Doctors at al-Ahli hospital advised Ayman to seek treatment at the hospital at which he works since he needed to undergo plastic surgery. The following occurred when Ayman tried to cross into East Jerusalem:

On my way to Jerusalem, namely as I was approaching the settlement of Kfar 'Etzion, an employee from the insurance company called and told me that they had located the missing part of my eyebrow. I asked him to keep my eyebrow, put it on ice and send it to me. At around 9:00 pm, my brother Yousef arrived in his car. He had brought me the container with my eyebrow and gave it to me at the Tunnel Checkpoint south of the city of Jerusalem. I had arrived at the checkpoint 15 minutes earlier. On my way to the checkpoint, I called al-

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<sup>61</sup> Special Rapporteur on the Situation on Human Rights in the Palestinian territories occupied since 1967, John Dugard, *Question of the violation of Human Rights in the Occupied Arab Territories, including Palestine*, 17 January 2006, para. 34, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/102/18/PDF/G0610218.pdf?OpenElement> (accessed 19 May 2010).

Maqased Hospital. Doctors had sent an ambulance to the said checkpoint in order to pick me up.

At the Tunnel Checkpoint, however, Israeli Border Guard officers refused to allow me to cross to the ambulance. They only allowed me to get a special salty liquid in which to store the ripped piece of flesh. One of the Border Guard officers had a name written in Hebrew on his shoulder. It read Feisal Qablan, as far as I remember. When I addressed him with that name, he claimed that the name inscribed on his shoulder was not his real name. He showed me his ID card, which stated that his name was Tamer Shahin.

Although I presented my permit allowing me access to the city of Jerusalem, the Border Guard officer said that my permit entitled me to access Jerusalem only through the 300 Checkpoint. To get into Jerusalem through the Tunnel Checkpoint would require coordination with the Israeli Civil Administration. Using my mobile telephone, I called Dalia Bassa, the Israeli Liaison Officer for Health Issues at the Israeli Civil Administration. She said she would follow up on the issue. While waiting, I was very anxious. Time was crucial in order to replant the part of my eyebrow that had been ripped off. All my efforts to convince the Border Guard officer at the checkpoint to let me pass were in vain and so was my conversation with Officer Bassa.

About one hour later, another Border Guard officer told me that they had still not received any feedback. Then, I decided to go to the 300 Checkpoint and access the city of Jerusalem from there. As I had to walk through a long lane to reach the checkpoint, I feared I would fall unconscious. I drove to the 300 checkpoint with my brother Yousef, in his personal car. At around 10:15 pm, we arrived at the checkpoint. There were no fellow residents there. I walked for a distance of about 150 metres before I reached the metal detector.

For about five minutes, a soldier who was in charge of searching people passing through the checkpoint sat in an adjacent room. First he ignored me and then he started to laugh. I asked him in Hebrew why he was laughing and explained my situation to him.

However, he continued to laugh. Then, an employee from the private company administrating the checkpoint arrived. I heard him tell others to close all doors at the checkpoint. Before the employee's arrival, a Palestinian lady had also arrived. I requested that the soldier allow me to give her the container of salty liquid that held part of my eyebrow until I pass the metal detector and until my belongings were examined, but he rejected. I then started speaking loudly to the soldier, demanding that he allow me to pass.

An officer at the checkpoint heard me and asked through a loudspeaker whether I was injured. "Yes." I answered. He requested that I look at a camera installed at the checkpoint so that he could verify my injury, and I did. Then, he ordered the door to be opened. An employee from the private security

company accompanied me as I crossed the metal detector. Meanwhile, a Border Guard officer arrived and talked to me in Arabic.

Recognising his voice, I realised that he was the person who talked to me through the loudspeaker. “What is this disdain for? Why have you impeded my access knowing that I am wounded?” I asked the Border Guard officer. “Usually, it takes me much less time to cross the checkpoint to my workplace.” I continued. “You say that you don’t have time and yet you’re quarrelling with me! Why don’t you complete the procedures and leave?” The officer replied. After I was delayed for another fifteen minutes, my permit was examined and I finally crossed the checkpoint. Under normal circumstances, it takes me an average of three minutes to cross the checkpoint.

At around 10:40 pm, I arrived at al-Maqased Hospital where I was immediately admitted to the operations room. I was taken to the hospital by an ambulance that had picked me up at the 300 checkpoint. I received medical care for two days at the hospital. During my surgery, doctors fixed the part of my eyebrow that had been ripped off.<sup>62</sup>

95. The following case demonstrates the impact of the ID and permit system with respect to employment. Employment opportunities in the West Bank are scarce because of the combined impact of the illegal Annexation Wall and the ID and permit system<sup>63</sup> The following is an excerpt from the sworn affidavit provided by 22 year-old Tha’er Bader ‘Isa Jaradat:

I am a student at al-‘Arroub Technical College north of the city of Hebron. In light of my family’s deteriorating financial situation, I have postponed this academic semester in order to work.

At around 8:00 pm on Saturday, 8 August 2009, I arrived at the area of al-Ram, north of the city of Jerusalem, in order to clandestinely enter the city and reach my workplace. I do not have an access permit because the Israeli occupying authorities do not issue such permits to allow people my age to enter Jerusalem and Israel. I stayed in the area of al-Ram for about two hours, during which time I visited relatives and friends of mine. At around 10:00 pm, I travelled to an area west of the town of al-Ram, where a gate in the wall is located. Situated opposite the Palestine Commercial Bank, the gate is constantly closed. When I arrived there, I met with six other workers who were also attempting to clandestinely enter Jerusalem from the area. They had brought a ladder and fixed it against the Wall. After they climbed up, they lowered themselves down on the other side using a plastic pipe, which was fastened onto the Wall. The

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<sup>62</sup> Al-Haq Affidavit 4921/2009.

<sup>63</sup> See Al-Haq Affidavits 5021/2009, 5092/2009, and 4384/2008.

gate is approximately eight metres high. A barbed wire fence is installed on top of the gate.

Three workers managed to climb to the other side of the Wall. I was the fourth. When I was climbing down, an Israeli border guard jeep arrived and stopped approximately 20 metres south of the area where I was climbing down on the plastic pipe.<sup>64</sup>

96. When caught, Tha'er was severely beaten by the Israeli soldiers and afterwards dropped off at Qalandiya checkpoint where he is picked up by a Palestinian ambulance and brought to Ramallah Governmental Hospital. Tha'er sustained several fractures in his legs.<sup>65</sup>

### 5.1.3 Legal Analysis

97. Although the right to freedom of movement may be restricted, the discriminatory nature of the permit system put in place by Israel reveals that Israel does not only act for reasons of 'national security'. National security is the purpose enshrined in Article 12(3) of the Covenant which Israel may claim justifies its restriction of freedom of movement in this instance. The illegality of the permit and identification system applied to Palestinians in the OPT is further highlighted by Israel's position as an Occupying Power, seeking to take over Palestinian lands and the illegal annexation of occupied East Jerusalem.

98. Indeed, the permit and identification system must be seen in light of the intensification of land confiscation in areas of the OPT such as occupied East Jerusalem and Area C. In this regard, please be referred to the Joint Alternative Report submitted by COHRE and Al-Haq to the Committee in June 2010 for the review of Israel's third periodic report on the implementation of the Covenant.

99. Article 12(3) of the Covenant also requires that restrictions on the freedom of movement be compatible with other provisions of the Covenant. It is clear that the fragmentation of the Palestinian people by the use of the permit and identification system hinders their ability to enjoy and exercise their right to self-determination as protected in the Covenant and therefore is a violation of not only Article 1 but also of Article 12.

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<sup>64</sup> Al-Haq Affidavit 5021/2009.

<sup>65</sup> *Ibid.*

## 5.2 NEW MILITARY ORDERS FACILITATING THE DEPORTATION OF GAZANS FROM WEST BANK AND EAST JERUSALEM

### 5.2.1 Factual Background

100. On 13 April 2010, military orders 1649 ‘Order regarding Security provisions’ and 1650 ‘Order regarding Prevention of Infiltration’, issued by the General Officer Commander of the Israeli Occupation Forces Central Command, entered into force. These military orders dramatically broaden the existing definition of infiltration in the occupied West Bank, criminalizing and subjecting to deportation any person present in the area who does not hold a permit issued by the Commander of the IDF. If implemented, these orders would facilitate the mass deportation or transfer of Palestinians and other protected persons from the West Bank, in clear violation of international law.<sup>66</sup>

101. Military order 1650 amends military order 329 “Order regarding Prevention of Infiltration”, dating from 1969. According to that order, an infiltrator was a person who entered the West Bank from Jordan, Syria, Lebanon and Egypt, without a permit from the military commander of the area, or who stayed in the area after the expiration of such a permit. The aim of the order was mainly to prevent Palestinian refugees from returning to their homes, and to prevent armed combatants from entering occupied territory. The meaning of “unlawful” entry into the area was defined by reference to the opposite term “lawful” which meant “as per permit by the military commander”. Punishment for infiltration included imprisonment or a fine, and possible deportation. Recently issued military order 1650 radically widens the definition of infiltration to include all those who (i) enter the area “unlawfully” and (ii) who are present in the area without lawfully holding a permit. A permit is defined as a: “document or permit issued by the commander of the IDF forces or someone acting on his behalf under the provisions of security legislation, or issued by the authorities of the State of Israel under the Entry into Israel Law...which permit the presence of a person in the Area.”<sup>67</sup>

102. The new definition of “permit” is very vague. A technical reading seems to exclude Palestinian IDs from the scope of documents which might be considered permits under the order. Palestinian IDs, although ultimately approved by Israel, are in fact issued by the Palestinian Authority under the provisions of the Israel-Palestinian Interim Agreements, and therefore do not fit the requirements of the definition. It would appear that the “lawful document or permit” which permits presence in the area, referred to above, does not include Palestinian ID documents. Significantly, the order also deletes the definition of “resident of the Area”, and fails to redefine the

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<sup>66</sup> Al-Haq, *Al-Haq’s Legal Analysis of Israeli Military Orders 1649 & 1950: Deportation and Forcible Transfer as International Crimes*, 22 April 2010, available at <http://www.alhaq.org/pdfs/legal-analysis-of-new-israeli-military%20Orders.pdf> (accessed 21 May 2010).

<sup>67</sup> *Ibid.*

term. Previously, any person not in possession of documents identifying him as a *resident* of the Area had to prove he was not an infiltrator. The presumption, therefore, was that those in possession of residency documents were not infiltrators. By contrast, the new order contains no such provision: section 5, which sets out those presumed to be infiltrators, states that: “a person is presumed to be an infiltrator if he is present in the Area without a document or permit which attest to his lawful presence in the Area without reasonable justification.” In other words, all persons present in the West Bank are presumed to be infiltrators, irrespective of whether they are Palestinians holding a West Bank ID card that establishes their status as a permanent resident of the area.<sup>68</sup>

103. Furthermore, the new order criminalizes those who are considered infiltrators. Whereas in the old order, infiltrators would be deported, under the new order, not only can they be deported but they can also be sentenced to up to seven years imprisonment if they have entered the area unlawfully, and three years imprisonment if they are present without a lawful permit. The term “infiltration” is ambiguous, but on a literal reading it includes all those present in the occupied West Bank, including those who were born and are legally resident there. The concept of infiltration is not limited to persons who have entered the territory unlawfully, or whose entry permits have expired, but to those present in the West Bank, whether they entered the territory or have always been there. Thus, according to the new definition, the presence of all the current inhabitants of the West Bank is criminalized and all are subject to potential deportation.<sup>69</sup>

104. In addition, the new order removes any definition of the term “lawful”. The meaning of “unlawful entry” is therefore unclear, and could include circumstances other than those relating to having the correct entry permit. Moreover, in stating that infiltrators will be presumed to be those present in the area without the necessary permit and without “reasonable justification”, the order introduces arbitrariness. The inclusion of the exception of “reasonable justification”, without a definition, allows the military commander to apply it as per political convenience.

105. Finally, the mechanisms available to challenge deportation orders are inadequate. Order 1649 creates a committee which will oversee deportations. Persons subject to deportation orders, however, cannot initiate appeals to the committee. Instead, they are meant to be brought before the committee within eight days of receiving the order, at which stage a challenge can be heard. At the same time, the order allows the military commander to deport persons within 72 hours. As a result, it is perfectly possible that persons could be deported without having had the opportunity to challenge the deportation before the committee. In any event, the committee is comprised of military judges appointed by the commander of the Israeli Occupation Forces – the same authority that orders deportations in the first place. It is unclear the extent to which the residual jurisdiction of the Israeli High Court to hear judicial reviews of deportation orders will be available, given the possibility that the committee procedure will be viewed as an “alternative

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<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

remedy.” Even in the event that an appeal to the High Court is available, the court is notoriously prone, in deportation cases, to accept the arguments of the Israeli military, without proper scrutiny.<sup>70</sup>

106. An Israeli spokesperson has stated that order 1650 “is not intended to apply to Israelis, but to illegal sojourners in Judea and Samaria,” and that it relates to “the deportation procedure of Palestinians illegally in the West Bank”. This Israeli position was confirmed in the official response to a letter by Hamoked – center for the defence of the individual.<sup>71</sup> According to Hussein Al Sheikh, PA Minister for Civil Affairs, Israeli officials have also stated that the orders will restrict the entry of “internationals” into the West Bank whose visas will not be considered permission to enter the West Bank. Whilst on a literal reading the order could apply to all persons, it would appear that several groups of persons are therefore most at risk.<sup>72</sup>

107. The primary at-risk group is the thousands of Palestinians who live in the West Bank but are registered in the Palestinian population registry with Gazan addresses. Many were born in the West Bank or have lived there for years with their families. As stated above, although the population registry is maintained by the P.A., Israel has final approval over changes to it. In 2000, Israel froze any changes to its copy of the population registry, meaning it no longer recognised any changes Palestinians made to their addresses from Gaza to the West Bank. Moreover, in 2007, Israel instituted a policy by which all 'residents' of the Gaza Strip (those registered with Gazan addresses) were required to hold a permit to remain in the West Bank. The policy is essentially an internal Israeli decision. It was never published, nor was it based on any particular legislation.<sup>73</sup>

108. The process of acquiring such a permit is extremely difficult. The applicant has to prove they have lived in the West Bank for eight years continuously, are married with children, have security and policy clearance and have satisfied additional “humanitarian” grounds. As a result, many applications for permits have been refused, and hundreds of persons have already been deported to Gaza.<sup>74</sup>

109. It is possible that the recently issued order will effectively serve to formalise the process, already begun, of transferring Palestinians registered with Gazan addresses from the West Bank to Gaza, and that in the wider context of the severe restrictions that already exist in relation to

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<sup>70</sup> *Ibid.*

<sup>71</sup> Al-Haq and Hamoked – Center for the Defence of the Individual are in possession of the Israeli official response letter, dated 16 May 2010.

<sup>72</sup> Al-Haq, *Al-Haq's Legal Analysis of Israeli Military Orders 1649 & 1950: Deportation and Forcible Transfer as International Crimes*, 22 April 2010, available at <http://www.alhaq.org/pdfs/legal-analysis-of-new-israeli-military%20Orders.pdf> (accessed 21 May 2010).

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.*

freedom of movement between the West Bank and Gaza, the order is intended to consolidate a wider Israeli policy of separating Gaza and its inhabitants from the West Bank.<sup>75</sup>

### 5.2.2 Legal Analysis

110. Article 12 of the Covenant guarantees the right of everyone to “lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”. The military orders contravene this right of Palestinians as it prohibits Gaza addressees from choosing to reside in the West Bank and to move freely within the OPT and the West Bank without repercussions such as deportations being taken by Israel.

111. Israel also fails to justify its restrictions on the freedom of movement with respect to the military orders. In Israel’s official response letter of 16 May 2010 to a letter from Hamoked – Center for the Defence of the Individual, Israel claims that the military orders were amended and came into force in order to enhance the judicial review process.<sup>76</sup> However, as has been discussed and concluded above, the military orders do not provide adequate judicial review as it is possible for a deportation to be carried out without a review. Israel also affirmed in their official response letter that there will be no higher body to which deportees can turn for a second review before having to resort to petitioning the final body – the Israeli High Court of Justice, which is notoriously prone, in deportation cases, to accept the arguments of the Israeli military, without proper scrutiny. Israel can therefore not justify their restriction on the freedom of movement.

112. It also needs to be emphasized that the prohibition on Palestinians to move between the entirety of the Palestinian territory violates Palestinian right to self-determination as the military order provides another means of separating the Palestinian territory and divides the Palestinian people.

## 6. CONTACTS

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<sup>75</sup> *Ibid.*

<sup>76</sup> Al-Haq and Hamoked – Center for the Defence of the Individual are in possession of the Israeli official response letter, dated 16 May 2010.