

Anti-Apartheid Wall Campaign Fact Sheet

The Wall and International Law

Israel's construction of the Apartheid Wall in the West Bank constitutes a grave violation of human rights and international law. The Wall is being built within the context of the illegal Israeli occupation of the West Bank and Gaza which, since 1967, has led to numerous violations of international law. Its route is designed to include Jewish settlements -that are themselves illegal - which are located deep inside the West Bank, thus de facto making them part of the State of Israel. Israel has continuously exhibited its contempt for international agreements, beginning with Israel's violation of the 1947 United Nations Partition Plan for Palestine.



Children play in the shadow of the Wall, Qalqiliya.

The Apartheid Wall will result in the unilateral demarcation of a new border in the West Bank and the effective annexation of occupied land. Other violations of international law include collective punishment of the civilian population, the seizing of private property by an occupying power, the demolition of houses and property, and the violation of such basic human rights as the right to work and freedom of movement. In this fact sheet the impact of the Wall will be analyzed in the context of international humanitarian and human rights law as embodied by the Hague Regulations (1907), the IV Geneva Convention (GC IV, 1949)¹, the Universal Declaration of Human Rights (UDHR, 1948), the International Covenant on Civil and Political Rights (ICCPR, 1966), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the Convention on the Rights of the Child (CRC, 1989), the Convention on the Elimination of Racial Discrimination (1966), and

the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). The following charts list the main breaches of Israel's obligations under international law and provide examples of violations resulting from the construction of the Apartheid Wall.

The building of the Wall is illegal under international law in that it constitutes a permanent change of arrangements prevailing in an occupied territory, in violation of the administrative authorities vested in the occupying power. The most serious effect of the Wall is the annexation of occupied land, which is prohibited under the laws of war (humanitarian law). A basic principle of the laws of belligerent occupation is that legal rights to land are not acquired by way of military occupation. Israel's unilateral decision to build the Wall in the Occupied Territories represents the creation of "facts on the ground" designed to impede the realization of the right of the Palestinian people to self-determination by preventing the territorial contiguity necessary for the establishment of an independent Palestinian state.

1. THE CONSTRUCTION OF THE WALL IS A VIOLATION OF INTERNATIONAL LAW

States' Obligation under International Humanitarian Law	Examples of Violations
"Private property cannot be confiscated". ² This prohibition applies without exception, not even for security needs.	At various points, the Wall is built 20 km inside the West Bank, cutting into over 1/10 of the West Bank width, leading to massive land annexations. In the Wall's "first phase" some 121,455 dunums ³ of land —2% of the West Bank—have been de facto annexed.
"Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited". ⁴	In the Wall's "first phase" some 14,680 dunums have been confiscated and razed for the path of the Wall; over 102,000 trees have been uprooted; tens of wells, kilometers of irrigation networks have been destroyed, and over 200 shops and homes have been demolished. ⁵
"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited...Reprisals against protected persons and their property are prohibited". ⁶	"The Wall will directly harm at least 210,000 Palestinians, who live in 67 villages, towns, and cities...Palestinians between the Wall and the Green Line will effectively be cut off from their land and workplaces, schools, health clinics and other social services". ⁷
"The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". ⁸	The Wall intrudes into the West Bank in order to include settlements which have had the Wall's path altered to suit "their demands". It is estimated that approximately 98% of the settler population will be incorporated on the "Israeli side" of the Wall.



2. CONSEQUENCES OF THE WALL: VIOLATIONS OF PALESTINIAN HUMAN RIGHTS

The Wall is already directly violating the rights of hundreds of thousands of protected Palestinian civilians, while its impact extends to the entire population of the Occupied Palestinian Territories (OPT). It is clear that as future sections of the Wall are built more communities will be directly affected. The closures, sieges, curfews and checkpoints that have been used to severely curtail freedom of movement during the current intifada have already deprived whole communities of access to health, education and work, and the right to freedom of movement and property. The Wall is institutionalizing the stranglehold on these communities and solidifying the denial of basic human rights.

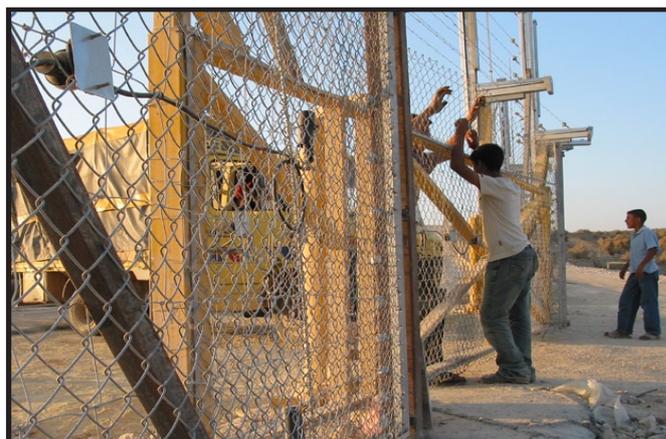


Residents in Jayyus throw food over the Wall to a family in the isolated area.

Human Rights Protected under International Law	How the Wall Violates these Rights
<p>Right to Freedom of Movement “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence”.⁹</p> <p>“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive”.¹⁰</p>	<ul style="list-style-type: none"> • Israeli soldiers individually determine who is “permitted” to cross gates in the Wall and whether or not and when the gates will open. There have already been documented instances of beatings, shooting and humiliation at the gates. • “Qalqiliya, a city with a population of 40,000, is completely surrounded by the Wall and residents can only enter or leave through a single military checkpoint open from 7 a.m. to 7 p.m.”¹¹ • Already, 10% of Qalqiliya’s population has been forced to leave the city in search of employment and/or subsistence.¹²
<p>Right to Property “Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property”.¹³</p>	<p>Farmers and families in over 65 villages in the northern West Bank, near the Wall’s “first phase”¹⁴ are deprived of their land which is isolated by the Wall and/or has been razed for the path of the Wall.</p>
<p>Right to Health “The Occupying Power has the duty of ensuring and maintaining, with the cooperation of national and local authorities, the medical and hospital establishments and services, public health and hygiene in the occupied territory... Medical personnel of all categories shall be allowed to carry out their duties”.¹⁵</p>	<ul style="list-style-type: none"> • Because of the Wall, the United Nations Relief and Works Agency (UNWRA) hospital in Qalqiliya is inaccessible to all refugees in the northern West Bank (except Qalqiliya residents) to whom it was supposed to provide medical assistance. • Numerous villages and houses in these areas are not accessible to doctors and isolated from hospitals or medical clinics.
<p>Right to Education “Education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms”.¹⁶</p> <p>The Occupying Power shall, with the cooperation of the “national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children”.¹⁷</p>	<ul style="list-style-type: none"> • Many children and teachers are isolated from their schools by the Wall, for instance, in Ad Dab’a students are prevented from reaching their secondary school that is located in the neighboring village and is now cut off by the Wall. • A primary school in Um Rehan is under threat of demolition due to construction of the Wall. • School children crossing the Wall’s “gates”, such as in Jubara and Wadi Rasha, are frequently delayed at the gates; there are several documented instances of Israeli soldiers not opening the gates for children to reach home after schools until several hours after school ended.



The market in Nazlat Isa after the demolition of some 85 shops in January 2003.



Farmers unable to cross the Wall to work on their lands in Jayyus.

<p>Right to Work “The right of everyone to the opportunity to gain his living by work”.¹⁸</p> <p>“Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.”¹⁹</p>	<ul style="list-style-type: none"> • “It is reported that already some 600 shops and enterprises have closed in Qalqiliya as a result of the construction of the Wall.”²⁰ • The land confiscation, destruction, and restriction of movement will mean the loss of at least 6,500 jobs. • Israeli closures and the Wall around the communities in the Tulkarem district prevent residents from traveling for employment, which has caused the unemployment rate to swell from 18% in 2000 to 78% in the spring of 2003.²¹
<p>Rights to Food and Water “The right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions... The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food”.²²</p>	<ul style="list-style-type: none"> • Particularly in the northern West Bank, land de facto annexed by the Wall consists of prime agricultural land, providing families with both direct subsistence and income. • Approximately 20,000 individuals along the “first phase” are located east of the Wall but their agricultural lands are located to the west, which means they are losing their main source of income and sustenance. • At least 34 groundwater wells and over 200 cisterns are isolated from their communities by the Wall with an additional 14 wells threatened for demolition in the Wall’s “buffer zone”.
<p>Right to Freedom of Religion “Everyone shall have the right to freedom of thought, conscience and religion”.²³</p> <p>“The Occupying Power shall permit ministers of religion to give spiritual assistance to the members of their religious communities”.²⁴</p>	<ul style="list-style-type: none"> • The Wall renders Rachel’s Tomb inaccessible to Palestinians in Bethlehem while Jewish worshipers are permitted entry. • The Wall is completely isolating Jerusalem, the Holy City with its places of worship such as Al Aqsa Mosque and Dome of the Rock, from all Palestinians in the West Bank.
<p>Right of the Child to their Identity “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference”.²⁵</p>	<p>In the de facto annexed village of Ad Dab’a, newborn children are not recognized as born there if their parents originated from other villages—this was not the case prior to the Wall.</p>

3. THE WALL ESTABLISHES AN APARTHEID REGIME

Using the pretext of security, Israel is creating a regime of apartheid. The indigenous Palestinian population is being oppressed for the benefit of non-Palestinians, most of whom settled in the area since 1947-48. The regulations designed to administer the area which lies between the Wall and the Green Line create, in practice, two types of inhabitants: (1) “Israelis,” who are defined in the Declaration Closing Territory in the Seam Zone²⁶ as citizens or residents of Israel and those entitled to citizenship by the Israeli Law of Return, to whom the restrictive regulations do not apply and who are free to move about the zone and to freely enter and exit it; and (2) others – in practice, Palestinians, who require all sorts of permits to enter and exit the zone.²⁷ The Seam Zone is a closed military area for Palestinians who have been living there for generations, and an open area without any restriction on freedom of movement for any Jew, including those of the Diaspora who do not even reside in Israel. A discriminatory structure has thus been established in which one community is a detention camp for powerless inhabitants, adjacent to settlements inhabited by free people whose civil and legal rights are equal to those of citizens of Israel. Such segregation and unequal treatment on the basis of national origin is legal apartheid, which is both illegal and immoral. Such a regime constitutes an international crime in itself.²⁸



The Wall weaving through homes in East Jerusalem.



Demonstration against the Wall, November 2002.

4. THE WALL IS A WAR CRIME

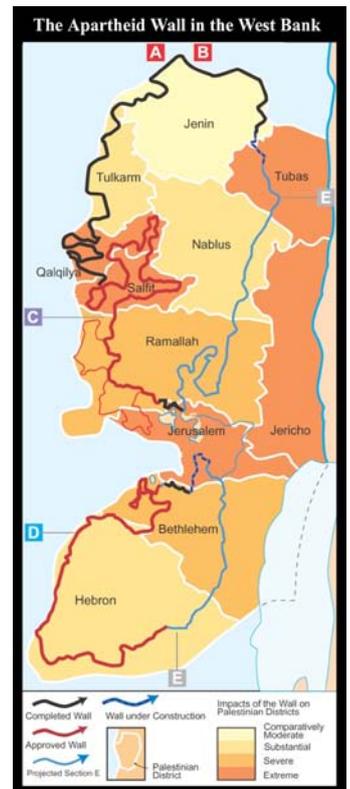
The Wall is clearly a war crime subject to criminal sanction under international humanitarian law which states that “extensive destruction and appropriation of property”²⁹ is to be considered a “grave breach” of the IV Geneva Convention and thus a war crime. Already, the Wall has resulted in the destruction of hundreds of buildings in the northern West Bank as well as in the Bethlehem, Jerusalem, and, more recently, Hebron areas. Furthermore, a number of small villages and hamlets near the Wall have been told that most of their community will be destroyed.

5. INTERNATIONAL INTERVENTION TO STOP THE APARTHEID WALL

All High Contracting Parties of the Geneva Conventions (1949), including Israel, have the duty to ensure the application of international humanitarian law in accordance with Article 1 Common which states: “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.” The information and facts presented in this fact sheet establish the Wall’s illegality; thus all of the states which are signatories to the Geneva Conventions have a responsibility to intervene to demand that its construction be stopped and reversed, which is the only way to end its countless violations of international law.



The Wall around Qalqiliya city.



¹ The Fourth Geneva Convention has been called a bill of rights for occupied people, as its catalogue of fundamental rights becomes applicable immediately upon occupation.

² Art. 46, Convention IV, Respecting the Laws and Customs of War on Land (Hague, 1907).

³ One dunum = 1,000 square meters = ¼ acre

⁴ Art.53, GC IV. Also protected under art. 23 (g), Convention IV, Respecting the Laws and Customs of War on Land (Hague, 1907). An exception is provided if such destruction is “rendered absolutely necessary by military operations,” but not for political considerations. Military necessity does not extend to the defense of inhabitants of the occupier who live in the occupied territory.

⁵ PENGON, *The Wall in Palestine: Facts Testimonies, Analysis, and Call to Action, Palestine*, July 2003.

⁶ Art. 33, GC IV

⁷ Dugard, John: “Question of the violation of Human Rights in the Occupied Arab Territories, including Palestine” Report of the Special Rapporteur of the Commission on Human Rights, E/CN.4/2004/6, 8 September 2003

⁸ Art.49, GC IV

⁹ Art. 12, ICCPR Also protected under art. 13, UDHR

¹⁰ Art. 49, GC IV

¹¹ Dugard, *Ibid*

¹² PENGON, *Ibid*

¹³ Art. 17, UDHR. Also protected under art. 1, ICESCR and art. 1, ICCPR.

¹⁴ For more information see the Anti-Apartheid Wall Campaign Fact Sheet: The Wall’s “First Phase”

¹⁵ Art.56, GC IV. Also protected under art. 12, ICESCR.

¹⁶ Art. 17, ICESCR. Also protected under art. 1A, CRC, and art. 11, UDHR

¹⁷ Art. 50, GC IV

¹⁸ Art. 6, ICESCR

¹⁹ Art. 23, UDHR

²⁰ Dugard, *Ibid*

²¹ PENGON, *Ibid*

²² Art. 11, ICESCR. Also art. 25, UDHR

²³ Art. 18, ICCPR

²⁴ Art. 58, GC IV

²⁵ Art. 8, CRC

²⁶ No. S/2/03

²⁷ According to “Order on Security Instructions (Judea and Samaria) (No. 378), 5730-1970, General Permit to Enter and Stay in the Seam Zone,” tourists from all over the world, are entitled to enter into and stay in the zone as they please, without applying for a permit, while Palestinians who have been living there for hundreds of years must go to the Civil Administration to request a permit to stay on their land and in their homes.

²⁸ International Convention on the Suppression and Punishment of the Crime of Apartheid of November 30, 1973, which defines, in art. II © and (d) as a crime of apartheid the imposition of various legislative measures on different racial groups while injuring the rights of one. See also the Convention on the Elimination of Racial Discrimination, arts. 2, 3, 5.

²⁹ Art. 147, GC IV