

Rights without Remedy

The impact of Israel's illegal Wall in the occupied Palestinian territory on the human rights of the Palestinian people, five years after the Advisory Opinion of the International Court of Justice

9 July 2009



CENTRE ON
HOUSING RIGHTS
AND EVICTIONS



Executive Summary

This report is released on the occasion of the fifth anniversary of the issuing of the Advisory Opinion of the International Court of Justice (ICJ) on the legal consequences of the construction of the Wall being built by Israel in the occupied Palestinian territory. In its Advisory Opinion the ICJ highlighted the serious violations of both international humanitarian law and international human rights law, caused by the construction of the Wall. The ICJ therefore ruled that Israel's construction of the Wall in the occupied Palestinian territory, including in and around East Jerusalem, is contrary to international law and Israel is obliged to cease all construction, to dismantle the Wall and to make reparation for all damages caused by the construction of the Wall. Yet, five years later, Israel has not implemented the decision of the ICJ, and the construction of the illegal Wall continues with a corresponding and continuing negative impact on the rights of the Palestinian people.

Partially due to lack of international political will to implement the ICJ decision, Palestinian communities have continued to protest against the Wall and exercise their rights to assembly, association and freedom of expression. The Israeli military's brutal repression of such protests has caused significant additional damage for individuals who are victims of permanent injuries, killings, arrests and threats. Israel has also used collective punishment against entire communities where protests are held, including through implementing closures, curfews and the wanton destruction of property.

In its Advisory Opinion the ICJ called upon the United Nations to 'consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion'. In line with the ICJ decision, UN General Assembly Resolution ES-10/15 requested the UN Secretary General to establish a register of damages for all natural and legal persons having suffered damages from the construction of the Wall. The establishment of this UN Register of Damages (UNRoD) has so far been the only measure enacted by the UN towards the implementation of the ICJ decision.

While the establishment of UNRoD is in principle a positive step, this report underlines a number of concerns regarding UN measures to comply with the requirements of the ICJ decision and the implementation of UNRoD. In particular, the lack of transparency regarding UNRoD with relation to appointment of board and staff as well as access to information regarding its field presence; criteria and methodology for claims collection; and lack of participation of both Palestinian and international organisations in the process.

The primary recommendations of this report are:

1. Israel should comply with the Advisory Opinion of the International Court of Justice and related UN resolutions by immediately ceasing construction of the Wall, dismantling the Wall and providing reparation for victims of damages caused by the Wall.
2. Israel should end the illegal occupation of Palestine and enable Palestinians to enjoy their right to self-determination. Until that time, Israel should ensure that human rights law and the Fourth Geneva Convention are upheld and applied in the occupied Palestinian territory.

3. The United Nations, international community and 194 States that have ratified the Fourth Geneva Convention should develop concrete mechanisms to enforce the ICJ Advisory Opinion and hold Israel accountable for violations of international law.
4. Targeted economic sanctions should be applied upon Israel to pressure it to comply with its international legal commitments specifically, the suspension of the EU-Israel Association Agreement and non-ratification of the Mercosur-Israel Free Trade Agreement.
5. The United Nations Register of Damages should carry out its work on the basis of a participatory and transparent process and ensure the inclusion of all damages incurred by the Wall. A methodology and framework for full restitution for the victims of damages caused by the Wall should be established and guided by international legal principles. In particular it should:
 - Allow Palestinian and international organisations full access to information regarding its field presence and criteria and methodology for claims collection.
 - Address persisting concerns as to whether all damage suffered by Palestinians as individuals and a collective, including damages through repression of popular protests, are registered through the mechanism.
 - Develop, in broad consultation with relevant civil society organisations, a methodology of verification and quantification of losses in order to ensure that the information necessary to allow restitution and remedy is effectively collected, for once the unlawful situation has ended and the Wall is dismantled.

A full list of recommendations can be found at the end of the report.

Introduction

Israel began constructing the Wall in the occupied West Bank, including in and around East Jerusalem in 2002. Once complete, the Wall will be over 725km in length and currently construction has been completed on some 59% of the Wall. Only around 20% of the Wall follows the path of the 1949 armistice line ‘the Green Line’, with the majority deviating significantly into West Bank territory, *de facto* annexing over 10% of West Bank land. In some areas, the Wall reaches as far as 22km into West Bank land. The Wall incorporates around 83% of the West Bank settler population into Israel, and isolates the vast majority of occupied East Jerusalem’s 250,000 Palestinian residents from the West Bank. It further expropriates prime agricultural lands and water resources. The Wall, together with settlements, their road infrastructure, military zones and nature reserves, effectively prevents Palestinians from accessing 49% of the West Bank.

In July 2004, the International Court of Justice (ICJ), the primary judicial organ for the United Nations, issued an Advisory Opinion on the legal consequences of the construction of the Wall being built by Israel in the occupied Palestinian territory (oPt). The primary finding of the ICJ was that Israel’s construction of the Wall in the oPt, including in and around East Jerusalem, is contrary to international law and Israel is obliged to cease all construction, to dismantle the Wall and to make reparation for all damages caused by the construction of the Wall. The ICJ further affirmed that both international humanitarian law, including the Fourth Geneva Convention and international human rights law are applicable in the oPt and Israel is obliged to comply with their provisions. It further stated high contracting parties to Fourth Geneva Convention are obliged to ensure compliance by Israel with international humanitarian law and cease in any actions which aid or assist the maintenance of the Wall and its regime. Whilst the parties are not legally bound to enforce the judgement, it constitutes an authoritative interpretation of international law as it applies to this issue. Since 2004, both the United Nations General Assembly and the United Nations Human Rights Council have issued a number of resolutions calling upon Israel to comply with the ICJ’s Opinion.

The ICJ noted violations of Palestinian human rights resulting from the construction of the Wall as including the right to self determination; right to freedom of movement; right to work; right to an adequate standard of living; right to education and right to health. The ICJ also noted violations of international humanitarian law and the Fourth Geneva Convention resulting from the Wall’s construction including Israel’s transfer of its own civilian population into the territory it occupies, the confiscation and destruction of property, annexation of land and the forcible population transfer and displacement of protected persons. In the absence of Israel’s compliance with the Advisory Opinion these serious violations of international law are ongoing. Over 200km of the Wall has been built since the ICJ ruled that the Wall was illegal, and a further 113km is currently under construction.

The impact of the Wall on Palestinian human rights

The Wall has had a wide ranging negative impact the human rights of the Palestinian population. More than 500,000 Palestinians located on the eastern side of the Wall are cut off from their land and livelihoods.¹ Some 60 localities in 17 enclaves are enclosed from three sides by the Wall and settlements, and tightly controlled from the fourth side affecting 257,265 persons residing in these areas. Checkpoints or tunnels with gates that pass under settler roads are the typical access control to these villages, cities or clusters of small communities. A further 17 localities in ten enclaves are isolated between the Wall and the Green Line, impacting on 8,557 persons (excluding East Jerusalem).² For those living in these 77 localities, access to their land, places of employment, education and health care is highly restricted. Further the Wall impedes the ability of the affected population to maintain normal family and social relationships and visit sites of religious and cultural importance. In a survey conducted in 2006, The Palestinian Central Bureau of Statistics found that 30.5% of households affected by the Wall have been separated from relatives.³ In addition, 13 of the isolated localities as well as Ein Jweiza are under immediate threat of demolition as Israeli authorities do not recognize the villages or the title deeds of their properties. The demolition of the houses in these areas would cause the displacement of some 6,314 people.

Testimony of Mohammed Tahar Jabar, Governor of Jayyus

There are 4,000 people living in Jayyus and eighty per cent of the people in this area live from agriculture. Before 2002, the people's life was easy, the relations were good and there was social unity. They lived a very good life. After the Wall was built, their life changed to one of poverty. The Wall has been built on Jayyus's land; from the west it enters 4 km from the Green Line into Jayyus's land, from the south west it enters 6 km into Jayyus's land. Now around 9,200 dunums of our land are located behind the Wall. This land was used for growing fruit and vegetables and was where water resources were located for agriculture. After the Wall, the people were separated from the water and their agricultural lands.

The Israelis don't allow the people to enter their land, except through a gate in the south and a gate in the north. These gates are operated according to a very fixed schedule, they open at 7.30 in the morning and close at 8:30 am; then they open again at 12:30 pm and close at 1:30 pm; then they open at 4:00 pm and close at 5:00 pm until the next day. Before 2002, everyone went to work on their land, but now eighty per cent of farmers cannot enter their land. This has created a lot of unemployment in Jayyus - around 75 per cent. There are around 670 families in Jayyus, but no more than 80 can work on their lands, and the rest are without work. They have to live from the help of others. A large number of people, especially the young men have left to Sweden, Germany and Norway and many of them are in Jordan or the Gulf countries. There are no opportunities here for them at the present time without their land, without their water, and without being able to work in Israel. What can they do? They want to leave. This is our problem.

¹ United Nations Human Rights Council, *Report of the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, UN Doc. A/HRC/4/17, January 2007.

² Stop the Wall Campaign and Ma'an Development Centre, *Palestinian Towns and Villages: Between Isolation and Expulsion*, June 2008. Available at: <http://stopthewall.org/activistresources/1583.shtml>

³ Palestinian Central Bureau of Statistics, *Survey on the impact of the Expansion and Annexation Wall on the Socio-Economic Conditions of Palestinian localities which the Wall passes through*, February 2007.

Those living in areas between the Wall and the Green Line must apply for permits from the Israeli authorities and enter through designated gates located along the Wall which are subject to strict times of opening and closing. Many Palestinians affected by the Wall are denied permits or permits are not given to the appropriate house hold member in order for them to carry out work on their lands. Furthermore, many Palestinians are subjected to harassment or humiliation at the gates at the hands of Israeli soldiers. Not only does the Wall severely impact upon Palestinian's right to freedom of movement, it also impedes their ability to enjoy their socio-economic rights such as right to livelihood, an adequate standard of living, education and health care.

The Wall has also had a devastating impact on the Palestinian economy, increasing unemployment, poverty and the dependence of once flourishing agricultural communities on humanitarian aid for survival. For example, there are 32 villages and population centres in the Qalqiliya Governorate with a combined population of over 96,000 Palestinians. The majority of the people in the Governorate reside in Qalqiliya city which is the economic centre of the area, providing daily services and markets. Prior to the erection of the Wall, which encloses the city on all sides, Qalqiliya boasted a vibrant economy with more than 85,000 shoppers flocking to the city each week, mainly Palestinians from Israel. Currently, due to the isolation of the city by the Wall, unemployment has soared to around 67 per cent of the working age population, with the result that many residents have moved abroad or to other West Bank towns.

The construction of the Wall has caused the demolition of thousands of Palestinian homes, as well as water and sanitation networks, greenhouses and olive trees. In 2005, the Palestinian Central Bureau of Statistics estimated that some 15,000 people had been displaced by the Wall's construction.⁴ Thousands more remain at risk of internal displacement not only due to the demolition of their homes, but also through making life increasingly impossible for those communities which are cut off from their means of subsistence and any ability to live a normal life in dignity.

The impact of the Wall on Jerusalem

The section of the Wall that separates occupied East Jerusalem from the rest of the West Bank is around 170km long restricting West Bank Palestinian ID holder's ability to enter their capital city for work or to access schools, universities and hospitals as well as important religious sites. The permits required by West Bank Palestinian ID holder's to enter Jerusalem are difficult to acquire and even for those who receive the permit, the security checks at the checkpoints are humiliating and journey's increasingly time consuming. The Office for the Coordination of Humanitarian Affairs (OCHA) has reported a severe decline in the number of West Bank Palestinians accessing hospitals in East Jerusalem that provide specialised, high quality treatment not available in the West Bank.⁵ OCHA further reports a decline in the number of students attending schools on the

⁴ Palestinian Central Bureau of Statistics, *Survey of the Impact of the Expansion and Annexation Wall on the Socio-Economic Conditions of Palestinian communities which the Wall passes through*, June 2005.

⁵ Office for the Coordination of Humanitarian Affairs (OCHA), *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities: East Jerusalem*, June 2007.

western side of the Wall and a corresponding overcrowding in class rooms on the eastern side of the Wall.⁶

The construction of the Jerusalem section of the Wall has physically solidified Israel's unilateral annexation of Jerusalem and attempts to redefine the demographics and legal status of the city. The Wall incorporates large illegal settlements located outside of Jerusalem's municipal boundaries such as Ma'ale Adummim (pop. 28,000) and Giv'at Zeev (pop. 11,000) into Israel, and facilitates the ease of the settlers to access Jerusalem through a road network that the majority of Palestinians are prohibited from using. By contrast, the Wall seeks to exclude Palestinian communities that are located within Jerusalem's municipal boundaries such as Shu'fat Refugee Camp, Kafr 'Aqab and Samiramees with a combined population of over 30,000, preventing the residents of these areas from accessing the city.⁷

Palestinian residents of East Jerusalem risk losing their permanent residency status, due to Israel's 'centre of life policy'⁸ if they relocate to other areas of the West Bank for reasons of work, marriage,⁹ in search of more affordable property or due to their physical dislocation from the city as a result of the Wall. Due to such policies an estimated 70,000 Palestinian Jerusalem ID holders are at risk of having their residency revoked and losing access to the city of their birth.¹⁰ Such policies, along with the wide-spread demolitions of Palestinian homes in East Jerusalem; restrictions on planning and the expansion of Palestinian neighbourhoods; and rapid expansion of Jewish settlements are testimony to a policy of forced population transfer and the ethnic cleansing of Jerusalem's Palestinian residents: violations of human rights which are so egregious that they amount to both war crimes and crimes against humanity.

Israel's suppression of protest in opposition to the Wall

Palestinian communities and individuals affected by the Wall have continued to exercise their right to resist the unlawful occupation and its associated regime and protest against the Wall. Protests have been carried out since 2002 in dozens of villages across the West Bank, often on a daily basis. In the last year, protests have been staged on a weekly basis in the villages of Nil'in, Bil'in, Al Ma'sra and Jayyus where villagers have been joined by Palestinian, Israeli and international solidarity activists. Whilst youth from the villages regularly throw stones at the Israeli military presence on their lands, the demonstrations are by and large a peaceful form of popular resistance to the Wall and a means by which the local population, including children and the elderly of both sexes, can exercise their rights to assembly, association and freedom of expression.

⁶ Ibid.

⁷ Ibid.

⁸ Under the 'Centre of Life' policy, Israel may revoke the residency rights and social benefits of any Palestinian who has been 'abroad' for more than seven years or who cannot prove that Jerusalem is where his/her 'centre of life' is.

⁹ This is compounded by Israel's ban on family unification which prevents Palestinians from the oPt from acquiring Israeli residency permits if married to an Israeli citizen or Palestinian permanent resident of Israel.

¹⁰ BADIL Resource Centre for Palestinian Residency and Refugee Rights, *Submission to the United Nations Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and other Arabs in the Occupied Territories*, July 2007.

These demonstrations have however been met by a brutal and wholly disproportionate response by armed Israeli military forces. Excessive use of force including live ammunition fired on unarmed protesters has caused the death of 16 people since 2002. In Nil'in alone over 450 protesters have been injured, five people killed and over 53 imprisoned for a period of between one week and four and half months, with eight people still serving time in detention. Also of concern is the new high velocity teargas canister used by the Israeli army which can be fired at a range of over 400 meters. Upon firing, the canister emits no sound or smoke trail to warn demonstrators to flee. On 1 January 2009, during a funeral in Nil'in a tear gas canister broke the leg of someone attending the funeral. On the same day, a teargas canister entered someone's home through a window, exploding inside and setting fire to the furniture of the living room. American activist Tristan Anderson was critically injured following Israeli forces firing a tear gas canister at his head on 13 March 2009. On 18 April 2009, 30 year old Basem Abu Rahma was killed by a tear gas canister in Bil'in.

Testimony of Abdullah Abu Rahma, coordinator for the Popular Committee in Bil'in

On the death of Basem Abu Rahma, killed during a protest against the Wall in Bil'in on 17 April 2009

We arrived at the Wall, and we were using iron shields that resemble those used by the police, and entered the gate. Basem was standing to the right, at the top of the hill, where he always stood. A group of youth went inside the Wall, carrying the shields and yelling that they wanted to enter their lands, and at that moment the army opened fire with gas bombs. Basem began to yell at the soldiers in Arabic to stop firing, he yelled more than once and we heard his voice.

The soldiers had barely finished firing when we heard a yell and saw him Basem fall to the ground. He rolled over four times and then remained on the ground. Firing then continued as his friends tried to help him. He was dying and couldn't make a sound.

The bomb which wounded him was fired from a high-powered launcher and had dug a hole in the middle of his chest, some 10cm above his lung. He was bleeding heavily and tear gas continued to fill the area. It was difficult for people trying to help him to get close because of the gas. There was no ambulance, so we put him in a private car. We tried to save him and drove to the village of Dir Ibzi' (between Bil'in and Ramallah) where the medics would transport him to the hospital. We knew that he was dead, but we did what we could.

These tactics of physical attack on unarmed civilians are complemented by threat and intimidation against individuals as well as entire villages. Methods of collective punishment employed by Israel to repress the villagers and their protests include the closure of gates, curfews, destruction of water tanks and other property.¹¹

The United Nations Register of Damages (UNRoD)

In its Advisory Opinion, the ICJ stated that "Israel has the obligation to make reparation for the damage caused to all the natural and legal persons concerned."¹² It further stated:

¹¹ Stop the Wall and Adameer, *Repression allowed, resistance denied: Israel's suppression of the popular movement against the Apartheid Wall*, July 2009.

¹² Advisory Opinion of the International Court of Justice, para. 152.

*Israel is accordingly under an obligation to return the land, orchards, olive groves and other immovable property seized from any natural or legal person for purposes of construction of the wall in the Occupied Palestinian Territory. In the event that such restitution should prove to be materially impossible, Israel has an obligation to compensate the persons in question for the damage suffered. The Court considers that Israel also has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall's construction.*¹³

The UN General Assembly in Resolution ES-10/15 (August 2004) requested the UN Secretary General to establish a register of damages for all natural and legal persons having suffered damages from the construction of the Wall. On 17 October 2006, the UN Secretary General released a report containing a proposal for the institutional framework for the implementation of the register called for in the above named resolution.

The Register of Damage was not envisioned as being a compensation commission or claims resolution facility. It was, instead, to be a body that would gather and document submissions relating to “the fact and type of damage caused as a result of the construction of the wall.”¹⁴ Further the Register of Damage would “not entail an evaluation or assessment of the loss or damage claimed.”¹⁵ The register’s mandate was therefore limited to the documentation of damage or loss suffered as a result of the construction of the Wall

On 15 December 2006, the UNRoD was established with the adoption by the UN General Assembly of resolution A/ES-10/L.20. Following the appointment of a three member board, an executive director and eighteen staff members, UNRoD became fully operational in June 2008, based at the United Nations Office in Vienna. A few locally recruited staff members, to collect claim forms of registration of damage, were based with the United Nations Office for Project Services in Ramallah. A pilot project began in November 2008 in four villages affected by the Wall, located in Jenin Governorate, northern West Bank. As of April 2009, more than 1,000 claims forms were collected and delivered to UNRoD in Vienna. By the end of April 2009, the Board had met and reviewed 270 claims forms which had been translated, reviewed and processed by the UNRoD staff and included the losses in the register. Only two claims forms were rejected for not meeting the eligibility criteria.¹⁶ A complementary Palestinian National Committee on the Register of Damage was also established by Palestinian Authority to assist both the Palestinian people affected by the Wall in making claims, and to coordinate with UNRoD to ensure that it reaches realistic and accurate estimates regarding damages. Israel has consistently refused to cooperate with the office of UNRoD.

The establishment of the register is an important first step in the process of ensuring restitution to Palestinians who have suffered damage due to the construction of the Wall, as important evidence of losses may be lost if documentation is left to a later date. However, international and

¹³ Advisory Opinion of the International Court of Justice, para 153.

¹⁴ United Nations General Assembly, *Report of the Secretary-General pursuant to General Assembly resolution ES-10/15*, UN Doc. A/ES-10/361, para. 4.

¹⁵ Ibid.

¹⁶ Letter dated 30 April 2009 from the Secretary-General addressed to the President of the General Assembly.

Palestinian organisations have expressed concern at the lack of transparency regarding the establishment of the UN register, particularly with relation to appointment of board and staff members; the implementation of the Register and its field presence; and the opportunities for Palestinian organisations, international organisations and UN agencies to participate in the Register.¹⁷ Another well-founded concern is the lack of transparency and access to information regarding the content of the claim form and pilot project currently being conducted in Jenin. At this formative stage of the register it is essential that full public participation and debate occurs around the operation of the register, eligibility criteria for claimants and scope of damages. Potential beneficiaries also need adequate access to information in order to prepare their claims. Independent verification of the claims forms should be carried out by an appropriate Palestinian or independent organisation with the relevant expertise.

It currently remains unclear as to whether the claimants can claim for the full range of material and non-material damage caused by the Wall listed by the ICJ Advisory Opinion as well as whether claims can be submitted individually or collectively. The Advisory Opinion lists losses as including confiscation of land, destruction of property and water wells, destruction of olive and fruit trees as well as impeded access to health clinics, educational establishments and other social services, urban centres, land and means of subsistence and water resources.¹⁸ Non-material damage caused by the construction of the Wall would include the effect of the Wall on psychosocial well being and family life. The question also remains as to whether people can claim for personal injury as a result of opposing the Wall in demonstrations.

Most importantly it is essential that UNRoD not only documents information but establishes specific criteria for restitution as called for by the ICJ in its Advisory Opinion. It is vital that claims are immediately verified and evaluated, in order to ensure due process is carried out and a methodology is established by which losses and continuing losses can be quantified, bearing in mind that a human rights violation occurs until there is a remedy. Ultimately, the establishment of UNRoD does not absolve the UN or the international community of their responsibilities to hold Israel accountable for gross violations of human rights law, serious breaches of international humanitarian law and ensure that Israel swiftly implements the ICJ Advisory Opinion and full scope of its recommendations.

The right to remedy and reparation

According to the universal principle of *pacta sunt servanda*, “every treaty in force is binding upon the parties to it and must be performed by them in good faith.”¹⁹ Treaties binding upon Israel, many of which were explicitly mentioned in the ICJ opinion, require that victims of violations of human rights law and breaches of humanitarian law have the right to remedy and reparation.²⁰ Essentially the right to remedy means that victims of violations have 1) equal and effective access to justice; 2) adequate, effective and prompt reparation for harm suffered; and 3) access to

¹⁷ Letter by the Technical Working Group on the UN Register of Damage (comprising Palestinian and international NGOs) to the UN Secretary General ahead of his visit to the oPt, 24 March 2007.

¹⁸ Advisory Opinion of the International Court of Justice, para. 133.

¹⁹ Vienna Convention on the Law of Treaties, Article. 26, 1155 U.N.T.S. 331, *entered into force* 27 January 1980.

²⁰ See for example, the Universal Declaration of Human Rights (article 8); the International Covenant on Civil and Political Rights (article 2); the International Convention on the Elimination of All Forms of Racial Discrimination (article 6); the Convention Against Torture (article 14). See also Protocol Additional to the Geneva Conventions (article 91) and Rome Statute of the International Criminal Court (articles 68 & 75).

relevant information concerning violations and reparation mechanisms.²¹ The right to reparation includes: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.²²

International law recognizes that the proper effective remedy for violations of human rights and humanitarian law should be *restitution in integrum* when possible. The remedy of *restitutio in integrum* requires the victims to be placed in the position they would have been in had the unlawful act not occurred. The European Court of Human Rights, for instance, affirmed that the remedy of *restitution in integrum* should be prioritized, holding that “if the nature of the breach allows for *restitution in integrum*, it is for the respondent State to effect it...”²³ Likewise, the Inter-American Court of Human Rights has held that reparation of harm brought about by the violation of an international obligation consists of full restitution (*restitution in integrum*), which includes the restoration of the prior situation and the reparation of the consequences of the violation.²⁴ This principal has also been reaffirmed in the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* adopted unanimously by the United Nations General Assembly in 2006. The *Basic Principles and Guidelines* require that “restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law ... occurred.”²⁵

For those that have lost land and housing or been forcibly displaced as a result of the Wall, international law on housing and property restitution provides important guidelines for remedy, particularly the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005). These guidelines, known as the ‘Pinheiro Principles’ declare that everyone who is displaced due to conflict, or natural disaster is entitled to return to, recover and reside in their original homes, lands and properties. Compensation is therefore only an option in cases where restitution is factually impossible (for example for olive trees that have been destroyed by the Wall’s construction). Examples where restitution has had some success include Bosnia and East Timor. The United Nations Compensation Commission that was established following Iraq’s unlawful invasion of Kuwait also sets an important precedent which could provide guidelines for remedy and reparation for Palestinian’s affected by the Wall. It is however, important to note that the above examples occurred under post-conflict situations, whereas Israel’s illegal occupation of Palestine, the construction of the Wall and corresponding violations of Palestinian human rights remain ongoing.

²¹ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN General Assembly Resolution 60/147 of 16 December 2005, para. 11.

²² *Ibid.* para.18.

²³ *Mebemi v. France*, Eur.Ct.H.R., judgment of 26 September 1997, (1997-VI) 51 Reports of Judgments and Decisions at 1959.

²⁴ *Velasquez Rodriguez Case (Compensatory Damages)*, 7 Inter-Am.Ct.H.R. (ser.C), at paras. 6, 25026 (1989).

²⁵ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, As above, Sec. IX, para. 19.

Recommendations

The Centre on Housing Rights and Evictions and The Grassroots Palestinian Anti-Apartheid Wall Campaign issue the following recommendations:

- Israel should immediately comply with the Advisory Opinion of the International Court of Justice and related UN resolutions by immediately ceasing construction of the Wall, dismantling the Wall and providing reparation for victims of damages caused by the Wall.
- Israel should end the illegal occupation of Palestine and enable Palestinians to enjoy their right to self-determination. Until that time, Israel should ensure that human rights law and the Fourth Geneva Convention are upheld and applied in the occupied Palestinian territory.
- Israel must immediately cease all actions designed to alter the ethnic composition of occupied East Jerusalem, including *inter alia*, the construction of the Wall, expansion of settlements, house demolitions and any other actions which lead to the displacement of the Palestinian population.
- The United Nations, international community and 194 States that have ratified the Fourth Geneva Convention should develop concrete mechanisms to enforce the ICJ Advisory Opinion; including using targeted economic sanctions upon Israel to pressure it to comply with its international legal commitments. In particular:
 - The European Union should immediately suspend the EU-Israel Association Agreement in line with Article 2 of the Agreement which states that the continuation of the agreement is dependent on the parties respect for human rights and fundamental freedoms.
 - The Mercosur countries should refuse to ratify the Mercosur-Israel Free Trade Agreement in line with Mercosur's understanding that development and trade relations should advance the values of democracy, human rights and fundamental freedoms.
 - States should hold companies registered or operating in their territory accountable for aid given to, or profits deriving from, the illegal Wall and its associated regime.
- The Organization for Economic Development and Cooperation (OECD) should suspend Israel's planned accession to the organisation, in line with its previous decision stating that Israel is required to demonstrate its commitment to the rule of law and respect of human rights.
- The United Nations Register of Damages should carry out its work on the basis of a participatory and transparent process and ensure the inclusion of all damages incurred by the Wall. A methodology and framework for full restitution for the victims of damages caused by the Wall should be established and guided by international legal principles. In particular it should:
 - Allow Palestinian and international organisations full access to information regarding its field presence and criteria and methodology for claims collection.

- Address persisting concerns as to whether all damage suffered by Palestinians as individuals and a collective, including damages through repression of popular protests, are registered through the mechanism.
- Develop, in broad consultation with relevant civil society organisations, a methodology of verification and quantification of losses in order to ensure that the information necessary to allow restitution and remedy is effectively collected, for once the unlawful situation has ended and the Wall is dismantled.