

Submission of Information by Nord Sud XXI, a Stakeholder in the UPR process concerning Israel and specifically addressing the issue of the illegal wall that Israel is building through Palestine

Keywords: Israeli, Palestine, international human rights law, UPR, wall, International Court of Justice, apartheid, genocide.

Introduction:

1. Nord Sud XXI wishes to focus its submission of stakeholder information to the UPR process concerning Israel on the human rights violation arising from Israel's construction of the Wall through Palestine in violation of international law.

General information:

2. By its decision of 23 June 2002 the Israeli Cabinet decide to build a wall through Palestine under the alleged pretext of providing for its security.
3. As of May 2008, although behind schedule, an estimated 409 kilometers or 57% of the almost 720 planned kilometers of the wall have been built, according to the United Nations (UN).¹ Another 66 kilometers or 9% is under construction, and construction has not yet begun on approximate 248 kilometers or 34% of the wall.²
4. According to the Israeli human rights organization B'Tselem, when completed, the barrier will *de facto* annex at least an estimated 12% of the Occupied Territories in the West Bank, including East Jerusalem.³ The UN reports that “[t]he majority of the route, approximately 87%, runs inside the West Bank and East Jerusalem, rather than along the 1949 Armistice Line (Green Line).”⁴
5. Almost a half million Palestinians live in these areas, according to B'Tselem and they include parts of almost 100 cities, towns or villages.⁵ The wall will also *de facto* annexe 60 settlements in Palestine to Israel to which 381,000 Israelis have been transferred.⁶
6. The wall has caused significant injury and inflicted widespread inhumane conditions of life on the Palestinian people. The conditions of life imposed on Palestinians by the construction of the wall are so widespread and/or serious and so pervasive that appear to be part of a calculated policy to completely, or, at least partially, destroy the Palestinian people and their identity.
7. Between 1 January 2005 and 30 June 2008, 7702 Palestinians were injured by the Israeli occupying power in occupied Palestine.⁷ The first six months of 2008 are on track to be twice as bloody as 2007 with already over 1400 Palestinians injured. Many of these injuries are due to the building of the Wall. For example, between only 2 and 18 July 2008, 62 persons were injured in Nilan alone because of attacks by the Israeli soldiers on unarmed demonstrators.⁸ On Sunday, 21 July 2008, a

1 OCHA Closure Update of May 2008 at 2.

2 *Id.*

3 See <http://www.btselem.org> where testimonies of people affected by the wall are also collected and available. B'Tselem has also produced a reliable and independent map of the wall's route that is available online at <http://www.mideastweb.org/thefence.htm>.

4 United Nations, *The Humanitarian Impact of the Barrier: Four Years After the Advisory Opinion of the International Court of Justice on the Barrier*, Update No. 8 (July 2008) at p. 4. (hereinafter *The Humanitarian Impact of the Barrier*).

5 See <http://www.btselem.org>.

6 *Id.*

7 OCHA Protection of Civilians Database (June 2008).

8 See <http://www.btselem.org>.

video of one such attack by an Israeli soldier who shot, for no apparent reason, a Palestinian man, who had been arrested handcuffed and blindfolded, was released on the internet.⁹

8. The hardships inflicted by the wall are so pervasive that they affect even the most basic functions of life. A study supported by the German Friedrich Ebert Stiftung and conducted by several respected academics concluded that in the metropolis of Jerusalem alone, the overwhelming majority of the Palestinians were adversely affected by the wall.¹⁰ According to the study 67.6% of the households had difficulties visiting relatives, more than 70 % suffered limitations of their cultural rights, more 40% suffered violations of their right to education, over 50% suffered violations of their right to health, almost 80% had higher transportations costs, and more than 40% suffered limitations on their right to work and provide for their families.¹¹
9. In addition, even the agriculture upon which many Palestinians rely for their livelihood has been destroyed. For example, thousands of olive trees upon which many of Palestinian families depend for their survival have been destroyed in connection with the construction of the wall. Their destruction has been recorded by the Applied Research Institute in Jerusalem (ARIJ).¹²
10. On 9 July 2004 the International Court of Justice (ICJ) held that the Wall that Israel is building through Palestine is illegal because it violates international human rights law, as well as general public international law and international humanitarian law.¹³ The Court also found that Israel's alleged justifications of necessity based on security concerns and self-defense are not legitimate justifications under international law.¹⁴ And the Court also found that Israel was under an obligation to end its violations, dismantle the wall, revoke laws allowing for the wall to be constructed and pay compensation for all damages caused by the construction of the wall.¹⁵ The Court also opined that all states are bound not to recognize or support the illegal wall.¹⁶
11. Even parts of the wall found to be illegal by Israel's own High Court¹⁷ have not yet been dismantled.¹⁸
12. Four years after the decision of the Court, Israel has not demolished any significant part of the wall, has not paid compensation for the damages caused, and continues to build the wall in clear violation of international law. The UN has recently concluded that “[f]our years on, Barrier construction continues This has a major impact on Palestinian villages, towns and cities, isolating communities and separating tens of thousands of people from services, lands and livelihoods.

9 This video can be accessed at <http://www.btselem.org>.

10 Brooks, R.D., (ed.), *The Wall: Fragmenting the Palestinian Fabric in Jerusalem* (2007).

11 *Id.* These statements are based on the information provided in the chart on page 34.

12 ARIJ, *Report on the Israeli Colonization Activities in the West Bank & the Gaza Strip*,

Vol. 119, June 2008 available online at <http://www.arij.org>

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13 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, *I. C.J. Reports* 2004, p. 136

(hereinafter cited as *Legal Consequences of Wall*).

14 *Id.* at paras. 138-141.

15 *Id.* at para. 163.

16 *Id.*

17 Initial decision of the Israeli High Court is from 30 June 2004. It has been implemented on paper by a decision of the Israeli government on 20 February 2005, but none of this decision has yet been implemented in practice.

18 These sections include the wall around the settlement of Alfe Menashe, which was found to violate Israeli law by the Israeli High Court on 15 September 2005, the wall through the Palestinian villages of Azzun and Nebi Alias, which was found to violate Israeli law by the Israeli High Court on 15 June 2006, and the wall through Bilin, which was found to violate Israeli law by the Israeli High Court on 6 September 2007.

13. It is in light of the serious, systematic, widespread, and ongoing violations of human rights that the responsibility of Israel for violations of human rights related to its construction of the wall must be considered.

Applicable law:

14. The law applicable for determining the legality of the wall, the state responsibility of the government of Israel, and the consequences of that state responsibility was authoritatively and unambiguously determined by the International Court of Justice in its Advisory Opinion.²⁰
15. This submission only considers the application and consequences of Israel's violation of some provisions of international human rights law. International humanitarian and general international law are not considered. Moreover, the focus in this submission is on Israel's obligations under the International Covenant of Civil and Political Rights (ICCPR),²¹ the International Covenant of Economic, Social and Cultural Rights (ICESCR),²² and the Convention on the Rights of the Child (CRC).²³ Israel has ratified all of these treaties.
16. The International Court of Justice found the following rights in each treaty to be violated by the construction of the wall:²⁴ (1) in both the ICCPR and ICESCR, the right to self-determination in common article 1,²⁵ (2) the right to freedom of movement in article 12 of the ICCPR, (3) the right to work in articles 6 and 7 of the ICESCR, (4) the duty to protect and assist the family, children and young persons in article 10 of the ICESCR, (5) the right to an adequate standard of living, including adequate food, clothing and housing in article 11 of the ICESCR, (6) the right to health in article 12 of the ICESCR, (7) the right to education in articles 13 and 14 of the ICESCR, and the comparable articles 16, 24, 27 and 28 of the CRC.
17. Nord Sud XXI hereby submits that the non-derogable rights to life (article 6 of the ICCPR) and the right to humane treatment (article 7 of the ICCPR) have also been violated by the conditions of life inflicted on the Palestinian people. Because these conditions of life appear to be serious, widespread, consistent and persistent for more than sixty years, they are evidence of a policy intended to destroy the Palestinian people in whole or in part that constitutes a violation of international human rights law and the international crime of genocide committed by Israel against the Palestinian people.

Report on action on the ground:

18. As indicated above several groups and the United Nations have documented over long periods of time the serious, systematic and widespread violations of Palestinians rights. Nord Sud XXI has merely attempted to verify these violations by observing examples and speaking with people on the ground.²⁶

19 *The Humanitarian Impact of the Barrier* at p. 4.

20 *Legal Consequences of Wall* at paras. 102-113.

21 999 UNTS 171 (1966).

22 993 UNTS 3 (1966).

23 1577 UNTS 3 (1989).

24 *Legal Consequences of Wall* at para. 134.

25 *Legal Consequences of Wall* at paras. 115-122 (although the ICJ focused on general public international law, this is the same right enshrined in common article 1 of the ICCPR and the ICESCR).

26 Nord Sud XXI has had an individual observer on the ground in Palestine from 21 June to 21 July 2008 who has witnessed the violations of human rights affected by the Wall and collected from individuals and organizations operating in Palestine the facts that constitute the basis of this report of action on the ground. The observer was able to visit Tulkarm, Qalqilya, Bethelam, Ramallah and Al-Quds during this time and witnessed the building of the wall and examples of the consequences on

19. On several occasions an observer from Nord Sud XXI visited sites where the wall has been built or was being built. Speaking with persons affected by the wall, numerous anecdotal stories corroborated the information reported by other organizations and confirmed the serious, systematic and widespread violations of Palestinians' human rights due to the construction of the wall. The widespread and consistent nature of these violations also, in Nord Sud XXI opinion, is evidence of a policy by the government of Israel to destroy in whole or in part the Palestinian people.
20. Nord Sud XXI heard from eyewitnesses to the complete evacuation of villages around Qalqilya, where villagers reported that on 5 June 2008 three vehicles with Israeli soldiers demanded that they vacate their village.²⁷ They were told if they did not leave voluntarily they would eventually be displaced. The Israeli soldiers had met with leaders from several local villages that are being annexed to Israel by the wall after which some of the affected residents expressed the fear that violence or impossible conditions of life might be inflicted upon them. Many of these villagers indicated that they were suffering from the restrictions on their travel caused by the wall.
21. In Tulkarm, Qalqilya, Bethelam, Ramallah and Al-Quds (Jerusalem), Nord Sud XXI heard from individuals who suffered restrictions on freedom of movement that caused economic damage to their livelihood as well as evidence of restrictions that violated the rights to health, education and a minimum standard of living. For example, Nord Sud XXI witnessed how these restrictions created inhumane conditions for students attempting to attend universities and colleges by forcing them to wait in the scorching sun for hours and how ambulances were stopped and held for extended periods of time at checkpoints. Nord Sud XXI also witnessed workers and goods being turned away or delayed because they allegedly did not have adequate papers to cross the wall in Tulkarm and irregular gate opening and closing times reportedly prevented labourers from getting to work and severely disrupted the ability of many Palestinians to provide the basic necessities of life for their families.
22. Nord Sud XXI was also provided irrefutable evidence of attacks on Palestinians as a result of the building of the wall. One such example is already cited above where an Israeli soldier shot, for no apparent reason, a Palestinian who had been arrested handcuffed and blindfolded for peacefully protecting against the illegal wall.²⁸
23. These witnessed examples of violations of individuals' rights due to the construction of the wall confirm the reports that have been made over the past four years by Palestinian and international NGOs, the United Nations and other stakeholders.
24. Moreover these reports must be interpreted in light of the many reports of NGOs, IGOs, and especially, the reports of the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, the Special Committee to Investigate Israeli Human Rights Practices Affecting the Palestinian People and Other Arabs of the Occupied Territories, and the Committee on the Exercise of the Inalienable Rights of the Palestinian People, among others.

Conclusion:

25. As of 9 July 2008, the fourth anniversary of the ICJ's decision, no action has been taken to stop building the wall, to dismantle the parts of the wall that have been built, or to compensate those who have suffered from the construction of the wall. In other words, despite the decision of the ICJ and continued international condemnation, Israel continues to violate international law, including international human rights law by its building of the wall through Palestine.

the local and even distant populations.

²⁷ These villages had existed in Palestine—even within the temporary 1948 and 1967 armistice boundaries since the 1950s.

²⁸ This video can be accessed at <http://www.btselem.org>.

26. The widely reported human rights abuses caused by the wall continue to inflict suffering on Palestinians.
27. At the same time, the international community has been unable or unwilling to stop the serious and widespread violation of Palestinians human right, including those affected by the illegal wall.
28. It is in light of the serious and widespread violations of human rights, including those affected by the illegal wall that the following recommendations are made.

Recommendations:

29. States undertaking the UPR of Israel consider concrete steps that might be taken to ensure Israel acts in conformity with international law and ends its serious and widespread violations of international human rights law.
30. States undertaking the UPR of Israel question the government of Israel about why it has failed to abide by an authoritative determinations in Advisory Opinion of the International Court of Justice and even its own High Court's opinion.
31. States undertaking the UPR of Israel view the violations of international law affected by the wall as part of the serious and widespread violations of human rights that have been ongoing Palestine by Israelis for more than sixty years and in light of the fact that the violation of Palestinians human rights constitutes the longest outstanding serious human rights issue on the United Nations agenda.
32. States undertaking the UPR of Israel seek to ensure that the Registry that has been established to register claims for compensation, in accordance with international law and the Advisor Opinion of the ICJ, ensure that all claims for direct and indirect damage can be registered, including recommending steps that need to be taken to ensure a full and accurate registration of all claims. This may require revising the current claim forms that appear to exclude claims for indirect damages.
33. States undertaking the UPR of Israel consider carefully and in light of the information provided by all stakeholders whether the actions of the government of Israel taken as a whole constitute a violation of the international obligation prohibiting genocide. States are asked to have attention for the fact that the International Criminal Tribunal for Rwanda has held that the intention required for this most serious of human rights violations may be deduced from the cumulative actions of a state that are directed against a people who have been identified on the basis of their belonging to a national or ethnic group.²⁹ Even if a state or its officials have not expressly stated that they are committing genocide, the cumulative policies and practices of a state may indicate that the result of its actions and policies is to destroy the whole or part of a group.

Submitted by Nord Sud XXI on 21 July 2008.

²⁹ *Prosecutor v. Akayesu*, Judgment in Case No. ICTR-96-4-T (2 September 1998).