



**Lawyers for Palestinian Human Rights' briefing:
International Court of Justice Advisory Opinion on the
Separation Barrier/Wall**

July 2014



About Lawyers for Palestinian Human Rights (LPHR)

LPHR is a lawyer-based charity in the UK that works on projects to protect and promote Palestinian human rights. We distinctly provide a legal and human rights perspective on issues affecting Palestinians. Our trustees include leading human rights lawyers, Sir Geoffrey Bindman QC and Tessa Gregory.

Author of this LPHR briefing:

Tareq Shrourou is the director of LPHR. Before becoming LPHR's first director in 2013, he worked as a human rights solicitor in London representing asylum claimants, unaccompanied children and survivors of human trafficking, and led the public legal advice service of the human rights organisation, Liberty. He holds a master's degree in Public International Law from King's College London.

Contact

Tareq Shrourou
Director of LPHR
Email: contact@lphr.org.uk



1. 10 years to this day, on 9 July 2004, the International Court of Justice (**the ICJ/Court**) issued a non-binding [Advisory Opinion](#) concerning the legal aspects of Israel's construction of a barrier (**the Wall**) separating part of the occupied West Bank and East Jerusalem from Israel.
2. The ICJ's Advisory Opinion found that the *“construction of the Wall being built by Israel, the occupied power, in the occupied Palestinian territory, including in and around East Jerusalem, and its associated regime, are **contrary to international law**”*. (para 163)
3. The Wall's construction has continued despite the ICJ's authoritative ruling. This briefing therefore presents a reminder of the Court's central findings, and also outlines key facts to underscore the powerfully adverse human rights impact of the Wall on Palestinians.
4. The ICJ was concerned with the legality of the actual route of the Wall, rather than whether Israel has the right under international law to build a 'security barrier' to protect its sovereign territory and inhabitants. Had Israel's building of the Wall been on its own territory along the 1949 Armistice “Green Line” – the line that is internationally recognised as the Israeli border pending a final negotiated settlement of the Israel-Palestine problem - the question of its conformity with applicable international law would not have arisen, and there would have been no ICJ Advisory Opinion.
5. After considering submissions that the route of the wall would prejudice the future frontier between Israel and Palestine, the Court observed, *“the construction of the wall and its associated régime create a “fait accompli” on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation.”* (para. 121)
6. The Court further noted that the route chosen for the wall gave expression to the illegal measures taken by Israel with regard to East Jerusalem, entailing further alterations to the demographic composition of the occupied Palestinian territory. It further concluded that the construction of the wall, along with measures taken previously, *“severely impeded the exercise by the Palestinian people of its right to self-determination, and was thus a breach of Israel’s obligation to respect that right”*. (para. 122)
7. The Court recognised that the Wall encompassed a regime of restrictive measures affecting the Palestinian population (paras. 85, 133, 142 of ICJ ruling). It found that the route of the Wall, and its associated regime, *“gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel.”* (para. 137)
8. In addition to the ICJ, the leading Israeli human rights organisation, B'Tselem, has highlighted the adverse human rights impact of the Wall, whilst also asserting what it



considers to be the "*major aim*" for the construction of the Wall: "*In setting the Barrier's route, Israeli officials almost entirely disregarded the severe infringement of Palestinian human rights. The route was based on irrelevant considerations completely unrelated to the security of Israeli civilians. A major aim in planning the route was de facto annexation of part of the West Bank: when the Barrier is completed, 9.5 percent of the West Bank, containing 60 settlements, will be situated on its western, "Israeli" side. Israeli politicians already consider the Barrier's route as Israel's future border.*"

9. Apart from the significant issue of the Wall's exact route, Israel's [claim](#) that "[t]he fence is a non-violent security measure and it saves lives" is not supported by facts or the law. The ICJ was not convinced that the specific course chosen by Israel for the Wall was necessary to attain its security objectives. After weighing all the arguments, including arguments that Israel chose not to plead before the ICJ, it concluded that "*the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order.*" (para. 137)
10. The Wall has resulted in widespread property destruction. Moreover, it has taken lives. Palestinian civilians have been killed as a consequence of the security administered by Israel in connection with the Wall. On 19 March - in an incident documented by [LPHR](#) - Israeli soldiers killed a 14 year old Palestinian boy, Yousef al-Shawamrah, with live ammunition after he crossed the Wall in order to pick wild fruit plants.
11. The scale of adverse humanitarian consequences for Palestinians caused by the construction of the Wall can be determined by reference to the following key facts taken from the [United Nations Office for the Coordination of Humanitarian Affairs](#):
 - The Barrier consists of concrete walls, fences, ditches, razor wire, groomed sand paths, an electronic monitoring system, patrol roads, and a buffer zone.
 - The Barrier's total length (constructed and projected) is approximately 712 km, more than twice the length of the 1949 Armistice ("Green") Line.
 - Approximately 62% of the Barrier's approved route is complete, a further 10% is under construction and 28% is planned but not yet constructed.
 - Some 85% of the Barrier's route runs inside the West Bank, rather than along the Green Line; if completed as planned, the Barrier will isolate 9.4% of the West Bank, including East Jerusalem.
 - Nearly half of the Israeli settlements in the West Bank (71 out of 150) and over 85% of the settler population are located in the area between the Green Line and the Barrier's route.



- Around 11,000 Palestinians living in 32 communities located between the Barrier and the Green Line, depend on the granting of permits or special arrangements to live in their own homes.
 - In 2013, a rerouting of a section the Barrier near Tulkarm was completed, allowing 350 people in the Khirbet Jubara community free access to the rest of the West Bank.
 - Palestinians with West Bank ID cards who are granted special permits can enter East Jerusalem through four of the 14 Barrier checkpoints around the city.
 - Approximately 150 Palestinian communities have land located behind the Barrier, forcing residents to seek special permits or 'prior coordination' to access it.
 - Access to agricultural land through the Barrier is channelled through 74 gates, the majority of which (52) only open during the olive harvest (October-December).
 - Despite the presence of the Barrier, between January and March 2013 at least 14,000 Palestinians without the required permits smuggled themselves every day into Israel to look for employment (PCBS).
 - The Barrier also adversely affects urban centres, particularly East Jerusalem, where it has transformed the geography, economy and social life of Palestinian residents.
12. The substantial freedom of movement restrictions, leading to a broad range of adverse human rights impacts, encountered on a daily basis by Palestinians due to the illegal imposition of the Wall, is a stark reminder of the substantial real-life consequences that are likely to result when a State chooses to deliberately defy international law.
13. The 2004 Advisory Opinion by the ICJ can be viewed as a symbolic marker for measuring Israel's compliance with, and respect for, international law. The ICJ's ruling finds, at paragraph 163, that Israel is under an obligation "*to dismantle forthwith the structure*" of the Wall.
14. However, despite this authoritative finding by the ICJ, Israel has continued to unlawfully construct the Wall within the occupied Palestinian territory. Furthermore, Israel's courts have not enforced the ICJ's ruling.
15. Ten years on, the onus primarily remains on Israel to end its serious violation of international law in relation to its construction and maintenance of the Wall, by fully complying with the findings of the world's principal legal forum. As long as this remains the case, the international community must carefully consider whether it is doing enough to persuade Israel to meet its fundamental international legal obligations.