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National Public Prosecutors' Office
Rotterdam Unit Team
Attn Mr. W. Ferdinandusse, LL.M., and Ms.
H. Verbruggen, LL.M.
Posthumalaan 74
3000 AJ Rotterdam

Amsterdam, 15 March 2010
Our ref. 20091115.LZ

Re: Al-Haq / report of war crimes and crimes against humanity by Riwal

Dear Mr. Ferdinandusse, dear Ms. Verbruggen

This is to inform you that I will act as counsel of Al-Haq,¹ a non-governmental organisation established in Ramallah (Occupied Palestinian Territories). My client dedicates itself to terminate the violations of the individual and collective rights of the Palestinian population.²

On behalf of my client, I hereby report war crimes and crimes against humanity committed in the Netherlands and/or the Occupied Palestinian Territories during the period of 2004 to present by the company Lima Holding B.V. and other companies of the Ri-

¹ The Bylaw of Al Haq, "Law in the Service of Man" (**appendix 1**).

² Al Haq, 'About Al Haq', available on <http://www.alhaq.org/etemplate.php?id=3> <most recently visited on 23 September 2009>. ("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." And: "To see the rule of law and standards of international human rights and humanitarian law implemented and adhered to, so that Palestinians can enjoy equal treatment with respect to their human dignity, free from occupation and with the full realisation of their right to self-determination.")

wal Group. In particular, this report refers to contributions by these Riwal companies to the construction of the Wall and settlements by Israel in the West Bank.

Below, you will find an explanation to the report, which gives additional information about the facts and the evidence on which the report is based.

Natural and legal persons whose prosecution is required

This report is directed to, among others, the following natural and legal persons, who, in my client's opinion, are/were involved in the facts described in this report in a way that is culpable under criminal law:

- Lima Holding B.V., with its official seat in Rotterdam (the Netherlands);³
- ProDelta Investments B.V., with its official seat in Rotterdam (the Netherlands)⁴ (up to 21 November 2006 MDN Holding B.V in Spijkenisse (the Netherlands))⁵;
- D. Schalekamp Holding B.V., with its official seat in Dordrecht (the Netherlands);⁶
- Doron Livnat, residing in Hekelingen (the Netherlands);
- Dick Schalekamp Jr, residing in the Netherlands.

The abovementioned companies and persons are hereinafter jointly referred to as "Riwal".

Riwal is a Dutch company. In Europe, the company is the largest private rental company in the field of vertical transport. The company rents access equipment and mobile cranes to builders, installation companies, maintenance companies and government institutions. According to Riwal's own website, the company is the market leader in access equipment rental in the Netherlands, Denmark, Slovenia and Israel. In the field

³ Extract from the Chamber of Commerce (10 March 2010) (**appendix 2**).

⁴ Extract from the Chamber of Commerce (10 March 2010) (**appendix 3**).

⁵ Amendment to the Articles of Association of ProDelta Investments B.V. (22 November 2006) (**appendix 3a**)

⁶ Extract from the Chamber of Commerce (10 March 2010) (**appendix 2**).

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of mobile crane rental, Riwal belongs to the top 10 in the Netherlands and Israel, according to its own website.⁷

The activities of Riwal in Israel were transferred to Lima Holding B.V. Lima Holding is a Dutch company, with its official seat in Rotterdam.⁸

Owners of Riwal⁹

Riwal was established in 1968 as a Dutch branch of the British company Richards & Wallington. In 1980, Riwal was taken over by Dick Schalekamp Sr and transferred to Schalekamp Beheer B.V. This was followed in 1989 by a transfer to his sons Dick Jr and Jaap Schalekamp.¹⁰

In 2000, Dick Jr and Jaap Schalekamp sold one-third of the shares of Schalekamp Beheer B.V. to MDN Holding B.V., in their own words, an “Active Venture Capitalist in the Cranes and Lifting Industry”.¹¹ Since 2006, Schalekamp Beheer B.V. is called Riwal Holding Group. On 21 November 2006, the name of the company MDN Holding B.V. was changed into ProDelta Investments B.V.

ProDelta Investments B.V. sells and rents out access equipment and mobile cranes. ProDelta Investments B.V. is a Dutch holding company which is wholly or largely owned by the Israeli businessman Doron Livnat,¹² the president of ProDelta Investments B.V. Doron Livnat owns a majority of the shares of ProDelta Investments B.V.¹³ On Riwal's own website, he is described as the third owner of Riwal, alongside Dick

⁷ Profundo report, ‘Riwal and the Israeli Separation Wall’ (12 September 2006) drawn up by Profundo and commissioned by United Civilians for Peace (hereinafter referred to as the “Profundo report”) (**appendix 4**), pp. 2 and 3.

⁸ Profundo report (**appendix 4**), pp. 3-4. See also the extensive Report by Profundo, ‘*Nederlandse economische relaties die de Israëlische bezetting van Palestijnse en/of Syrische gebieden ondersteunen*’ (September 2006) (**appendix 5**), p. 40. See also Update of “Dutch economic links in support of the Israeli occupation of Palestinian and/or Syrian territories” by Profundo (February 2010) (**appendix 5a**), pp. 1-5 and 16-17.

⁹ The following text about Riwal has been reproduced almost verbatim from the Profundo report (**appendix 4**).

¹⁰ Profundo report (**appendix 4**), p. 2.

¹¹ Profundo report (**appendix 4**), p. 2.

¹² Profundo report (**appendix 4**), p. 3.

¹³ Profundo report (**appendix 4**), p. 2, reference is made to Annual report 2005, MDN Holding B.V. (Spijkenisse, August 2006).

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and Jaap Schalekamp, while ProDelta Investments B.V. officially owns one-third of the shares of the Riwal Holding Group.¹⁴

Background of Doron Livnat

Doron Livnat – one of the three owners of Riwal – comes from an Israeli family of entrepreneurs.¹⁵ Around 1950, his father Yitzhak Livnat and uncle Avraham Livnat established the building company Taavura.¹⁶ Together with the Dankner family, Avraham Livnat and his sons manage the company IDB Holding, the largest holding company in Israel.¹⁷

As from 1980, Doron Livnat worked for Taavura, until he emigrated to the Netherlands in 1986.¹⁸ Here, he established Hovago, a company which rents and sells mobile cranes.¹⁹ Hovago is now a subsidiary company of ProDelta Investments B.V. ProDelta Investments B.V. also has a share in Riwal Holding Group (33.3%), Lima Holding (50%) and various joint ventures. In 2005, ProDelta Investments B.V. (at the time still MDN Holding B.V.) achieved a turnover of € 37.2 million, which resulted in a net profit of € 6.6 million.²⁰

Doron Livnat provides support to Israel by participating in various Dutch initiatives. He is a board member of the CIDI (*Centrum Informatie en Documentatie Israël* or Centre for Information and Documentation on Israel)²¹ and is also chairman of the Advisory Council of *Collectieve Israël Actie* [Collective Action for Israel].²²

¹⁴ Profundo report (**appendix 4**), p. 2, reference is made to the Internet address of Riwal: www.riwal.nl (visited in September 2006). The text referred to can no longer be found at the Internet address of Riwal.

¹⁵ Profundo report (**appendix 4**), p. 3.

¹⁶ Profundo report (**appendix 4**), p. 3.

¹⁷ Profundo report (**appendix 4**), p. 3.

¹⁸ Profundo report (**appendix 4**), p. 3.

¹⁹ Profundo report (**appendix 4**), p. 3.

²⁰ Profundo report (**appendix 4**), p. 3, reference is made to the Annual report 2005, MDN Holding B.V. (Spijkenisse, August 2006).

²¹ The CIDI is an organisation which “asserts the right to safety of the Jewish people, wherever it finds itself” (Profundo report (**appendix 4**), p. 3).

²² *Collectieve Israël Actie* is an organisation which collects money for Keren Hayesod-United Israel Appeal in Jerusalem and for other humanitarian, social and educational purposes within the recognised borders of Israel (Profundo report (**appendix 4**), p. 3).

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Riwal in Israel

According to Riwal's own website, the company has had a branch in Israel since 2003. In addition, the website says that this branch is now the market leader in the field of access equipment rental in Israel.²³

“The good contacts which the Dutch owners of Riwal had with an Israeli businessman gave them the idea to open a Riwal branch in Tel Aviv together. This has been done now and under the name of Lima Holding, we now supply the same high-quality building materials which you can also find at Riwal in other places in Europe. Lima’s well-maintained rental fleet, which has every type of crane and access equipment, helps Israel to complete its ambitious projects in the building sector.”²⁴

The owner of the Israeli branch of the Riwal Group is Lima Holding B.V. in Rotterdam.²⁵

“Riwal Israel trades under the name of Lima Holding. In the economic heart of Israel, Tel Aviv, Lima Holding offers the usual collection of access equipment and cranes to companies in the various branches of industry. For instance, the materials of Riwal Israel are often used in the building industry due to the large influx of immigrants. With a rental fleet that is never older than three years, preventive maintenance and a workplace of its own, Lima Holding is a logical choice for the industrious building sector that benefits from efficient and safe machinery.”²⁶

The data from the commercial register of the Chambers of Commerce show that 50% of the shares of Lima Holding are owned by ProDelta Investments B.V. and the other 50% are owned by D. Schalekamp Holding B.V.²⁷ In practice, Riwal Israel functions as the Dutch branch of Riwal. Riwal Israel is also referred to as such on the website of Riwal and in interviews with the management of Riwal.²⁸

²³ Profundo report (**appendix 4**), pp. 2 and 3.

²⁴ See ‘KlaagMuur 2.0 Made in Holland’ (**appendix 6**). The quotation referred to can no longer be found at the Internet address of Riwal.

²⁵ Profundo report (**appendix 4**), p. 3.

²⁶ See ‘KlaagMuur 2.0 Made in Holland’ (**appendix 6**). The quotation referred to can no longer be found at the Internet address of Riwal.

²⁷ Profundo report (**appendix 4**), p. 3.

²⁸ Profundo report (**appendix 4**), p. 4, reference is made to Riwal, ‘Success based on People, Cranes & Access’ (January/February 2006).

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ProDelta Investments B.V. is – wholly or largely – owned by Doron Livnat.²⁹ He also owns 33.3% of the Riwal Holding Group.³⁰ D. Schalekamp Holding B.V. and J.J. Schalekamp Holding B.V. also own 33.3% of the Riwal Holding Group.³¹ This company is the personal holding of Dick Schalekamp Jr. The figure below shows the ownership structure of the Riwal Group, in which respect the comment is made that since 2006, Schalekamp Beheer is called Riwal Holding Group and since 21 November 2006, MDN Holding is called ProDelta Investments B.V.³²

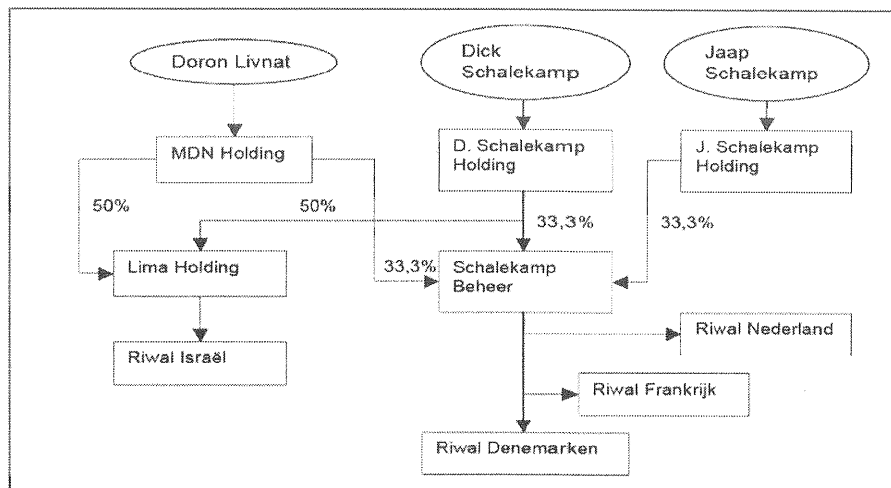


Figure 1 - Ownership structure of Riwal

Since 8 December 2009, the activities performed by Riwal Israel, up until then a wholly owned subsidiary of Lima Holding B.V., are carried out by the company Rom.³³ As a result, Riwal Israel has also become an Israeli company³⁴ and is no longer (a subsidiary of) a Dutch company. This legal change in the structure of the Riwal Group is, however, not relevant to this report, as this report deals with acts committed prior to this date and the de facto directors have not changed.

²⁹ Profundo report (appendix 4), p. 4.

³⁰ Profundo report (appendix 4), p. 4.

³¹ Profundo report (appendix 4), p. 4.

³² Figure 1 comes from the Profundo report (appendix 4), p. 4.

³³ www.rom.co.il.

³⁴ Appendix, Hebrew document about Rom (appendix 7).

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Construction of the Wall and the settlements

Before explaining the construction of the Wall and settlements by Israel in the Occupied Palestinian Territories and the help in this from Riwal, some information about the history of Israel and Palestine is significant.

History of Israel and Occupied Palestinian Territories

Prior to World War One, Palestine was part of the Ottoman Empire.³⁵ After World War One, Great Britain was given the mandate over this Palestinian territory. This mandate:

“was created in the interest of the inhabitants of the territory, and of humanity in general, as an international institution with an international object – a sacred trust of civilization.”

While Great Britain was about to leave the territory, Resolution 181 (II) was adopted on 29 November 1947 by the General Assembly of the UN. This Resolution announced a so-called Plan of Partition, based on which the territory would be divided into an Arab part and a Jewish part. A special international regime would be applied with regard to Jerusalem. On 14 May 1947, Israel – relying on the UN Resolution – proclaimed its independence, after which war broke out with several Arab States. In the end, the Plan was not implemented.

In 1949, an armistice followed through the intermediary of the UN. In an agreement concluded on this occasion between Jordan and Israel, a so-called armistice demarcation line (which was later called the Green Line) was established between Israel and the Arab countries. In case of concurrence between the parties, this line could still be altered.

In 1967, Israel conquered (among other things) the Palestinian territories at the other side of the Green Line in a six-day war. In vain, a unanimously adopted Resolution (242 (1967)) of the UN Security Council called Israel to withdraw from the territories and to cease hostilities. From that moment onwards, Israel took steps to change the status of Jerusalem. Despite several calls from the UN Security Council saying “the principle that acquisition of territory by military conquest is inadmissible”, Israel did not change its policy on this point.

³⁵ This general background is largely based on the description in paragraphs 70 to 85 of the Advice of the International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories* (Advisory Opinion dated 9 July 2004) (hereinafter referred to as: ‘IGH Wall case’) (**appendix 8**).

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Since 1967, Israel has been the Occupying Power, as referred to in Article 42 of the Regulations Respecting the Laws and Customs of War on Land (Annex to the Fourth Hague Convention of 18 October 1907), of the Palestinian territories.

In Resolution 298 (1971), the UN Security Council established that:

“all legislative and administrative actions taken by Israel to change the status of the City of Jerusalem, including expropriation of land and properties, transfer of populations and legislation aimed at the incorporation of the occupied section, are totally invalid and cannot change that status.”

On 26 October 1994, a peace treaty was again concluded between Israel and Jordan, reconfirming the original Green Line.³⁶

Construction of the Wall in the Occupied Palestinian Territories

As from 1996, the Israeli government has taken (safety) measures in order to counter infiltration from the central and northern part of the West Bank.

In July 2001, the Israeli government approved of the plan to build a Wall in order to keep away alleged terrorists from Israeli cities and villages. On 14 April 2002, the Israeli government decided to build a construction in three areas in the West Bank consisting of roads, fences, barbed wire, walls, trenches, towers and gates, a security fence, of a total length of 80 km. The Israeli Ministry of Defence was given the responsibility to execute the project, according to the Ministry:

“the biggest infrastructure project in Israel and as such it uses a lot of the existing infrastructure resources in the State of Israel”.³⁷

Phase A, meaning the construction of a continuous fence of 123 km in the West Bank (including East Jerusalem), was approved by the government on 23 June 2002. Approval of Phase B (another construction of 40 km in the north of the area) followed in December 2002. On 1 October 2003, the government approved of an entire route (Phase C), which would form one continuous line stretching 720 kilometres along the West Bank. In March 2005, Israel announced that a temporary fence would be built between Jerusalem and the West Bank, pending the outcome of several lawsuits about the

³⁶ Moreover, several agreements between the Palestine Liberation Organisation (PLO) and Israel which, among other things, relate to the transfer of several powers from the Israeli authorities to the Palestinian authorities were concluded as of 1993.

³⁷ The Israeli Ministry of Defence about the Wall (**appendix 9**).

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placement of the permanent Wall. Phase D aims to build the southern part of the West Bank.

In its Advisory Opinion of 2004, the International Court of Justice stated the consequences of the Wall for the Palestinian population as follows:

“On the basis of that route, approximately 975 square kilometres (or 16.6 per cent of the West Bank) would, according to the report of the Secretary-General, lie between the Green Line and the wall. This area is stated to be home to 237,000 Palestinians. If the full wall were completed as planned, another 160,000 Palestinians would live in almost completely encircled communities, described as enclaves in the report.”³⁸

Phase A was completed on 31 July 2003. As a result, 56,000 Palestinians came to live in enclaves. On 25 January 2004, 190 kilometres of the construction were completed, as a result of which Phase B was also partly completed. The rest of Phase B was completed in 2004. At present, Phase C is still in progress; about one-third of the fence is still not completed due to pending lawsuits and a shortage of funds. Phase D has not yet been started. In total, about 60 percent of the Wall has been completed.³⁹

In its Advisory Opinion, the International Court of Justice ruled that the construction by Israel of the Wall and the settlements in the occupied Palestinian territories is unlawful. The Court of Justice found that the Israeli occupier violated the following provisions of

³⁸ IGH *Wall case* (appendix 8), para. 84.

³⁹ Statement of the UN High Commissioner for Human Rights (9 July 2009) (appendix 10). According to the website of the Israeli Ministry of Defence, a judgment dated 30 June 2004 by the Israeli Supreme Court in the case of *Almadani v. IDF Commander in Judea and Samaria* – calling for better balance between security and humanitarian considerations – resulted in an intensive reassessment of the route. As a result, the necessary changes were made to the route of the Wall. This judgment also held that the Israeli Defence Forces (hereinafter referred to as 'IDF') need to make an effort to protect Palestinian farmers against violence of the inhabitants of Jewish settlements. *Almadani v. IDF Commander in Judea and Samaria*. In short, the Supreme Court ruled that: “the IDF Commander did not exercise his discretion proportionately. Although he took account of the grave security considerations at stake, he did not take adequate account of the Fence’s infringement on the lives of 35,000 local inhabitants. Building the Fence requires seizing thousands of dunams of land. The Fence’s current path would separate landowners from tens of thousands of dunams of land, and the planned regime of authorizations to access that land would not substantially reduce the harm. The Fence’s current path would generally burden the entire way of life in petitioners’ villages. Both petitioners and the Council offered alternative paths. Respondents claimed that those paths would exact substantial costs in terms of national security. The Court held that this reduction in security must be endured for the sake of humanitarian considerations. The additional margin of security achieved by the current path of the Fence is not equal to the current path’s additional infringement on the local inhabitants’ rights and interests. The current balance between security considerations and humanitarian considerations is disproportionate. The Court ruled that the IDF Commander should reduce the infringement upon the local inhabitants, even if it cannot be totally avoided, by altering the path of the Fence in most areas complained of in the petition.” Source: The Israeli Ministry of Defence about the Wall (appendix 9).

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the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949), insofar as relevant to this report: Article 49, prohibiting the transfer of its own civilian population by Israel as an occupier into the occupied Palestinian territory,⁴⁰ and Article 53, prohibiting the destruction of property, unless absolutely necessary by military operations.⁴¹ The International Court of Justice ruled that the destruction of properties of Palestinians as a result of the construction of the Wall was not necessary by military operations.⁴²

In addition, the International Court of Justice found that Israel violated Article 12 of the International Covenant on Civil and Political Rights (right to freedom of movement).⁴³

Violation of Article 49 of the Fourth Geneva Convention (prohibition of transferring the population of the occupier into occupied territory) is made punishable by Article 85(4)(a) of the First Additional Protocol of 1977. Article 53 of the Fourth Geneva Convention (prohibition of the destruction of property, unless absolutely necessary by military operations) is made punishable by Article 147 of the Fourth Geneva Convention.

Five years after the judgment of the International Court of Justice, in 2009, the UN High Commissioner for Human Rights expressed his concerns about the execution thereof by Israel:

“The Israeli Government claims that the Wall is a temporary security measure. However, the ICJ [International Court of Justice, attorneys-at-law] indicated that the specific route Israel has chosen for the wall is not necessary to attain its security objectives and that the construction of the wall constitutes “breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments”. The overwhelming majority of the planned route of the Wall – 86 percent, runs

⁴⁰ Article 49(6) of the Fourth Geneva Convention: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territories it occupies”.

⁴¹ Article 53 of the Fourth Geneva Convention: “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, except where such destruction is rendered absolutely necessary by military operations.”

⁴² IGH *Wall case* (**appendix 8**), para. 135.

⁴³ IGH *Wall case* (**appendix 8**), para. 136. Other international regulations violated by Israel according to the International Court of Justice were: Articles 9 (right to liberty and security of the person) and 17 (right to privacy) of the International Covenant on Civil and Political Rights, Articles 6 (right to work), 7 (right to just and favourable conditions of work), 10 (protection of the family), 11 (right to an adequate standard of living), 12 (right to health), 13 (right to education) and 14 (obligation to implement primary education free or charge) of the International Covenant on Economic, Social and Cultural Rights and Articles 16 (right to privacy), 24 (right to health), 27 (right to an adequate standard of living) and 28 (right to education) of the Convention on the Rights of the Child.

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inside the West Bank, not along the 1949 Armistice Line (the Green Line). The ICJ pointed out that the route of Wall had been planned to encompass the bulk of the Israeli settlements in the OPT – settlements which are illegal under international law.

Five years after the ICJ issued its Advisory Opinion, the situation has not improved. Israel continues to disregard the views of the ICJ, and the Wall remains under construction. Since the ICJ Advisory Opinion, about 200 kilometers have been constructed, bringing the total amount constructed to 413 kilometers – 60% of the planned 709 kilometre long route.”⁴⁴

The International Court of Justice refers to a new administrative regime resulting from the Wall.⁴⁵ Since October 2003, the Israeli Defence Forces (IDF) have been giving orders, causing the area between the Wall and the Green Line to become a Closed Area. Palestinian residents (over twelve years of age) of these territories may not stay here any longer and Palestinian non-residents are not allowed to come here, unless they have a permit or an identity card issued by the Israeli authorities. Also Palestinian means of transport must be registered. The permits mentioned are valid for six months and, in principle, only apply to one Access Gate to the Closed Area.⁴⁶

Israeli citizens, Israeli permanent residents and those who qualify for immigration to Israel pursuant to the Law of Return may stay in or move to the Closed Area without a permit. The Access Gates, which are open at irregular times and only for a short period, are the only way to enter or exit the Closed Area. As a result of this procedure:

“nearly 320,000 Israeli settlers (of whom 178,000 in East Jerusalem) would be living in the area between the Green Line and the wall.”⁴⁷

In his report of January 2007, professor John Dugard, Special Rapporteur on the Human Rights Situation in the 1967 Occupied Palestinian Territories, writes the following:

“Israelis are entitled to enter the closed zone between the Wall and the Green Line without permits while Palestinians require permits to enter the closed zone; house demolitions in the West Bank and East Jerusalem are carried out in a manner that discriminates against Palestinians; throughout the West Bank, and particularly in Hebron,

⁴⁴ Statement of the UN High Commissioner for Human Rights (9 July 2009) (**appendix 10**).

⁴⁵ IGH *Wall case* (**appendix 8**), para. 85

⁴⁶ See ‘Humanitarian Implications of Latest Wall Projections’ (18 April 2009) (**appendix 11**).

⁴⁷ IGH *Wall case* (**appendix 8**), para. 84.

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settlers are given preferential treatment over Palestinians in respect of movement (major roads are reserved exclusively for settlers), building rights and army protection.”⁴⁸

According to the Special Rapporteur, the objective of the Wall – appropriating the land surrounding the settlements in the West Bank and having the settlements in the West Bank fall within the Israeli borders – can no longer be denied. This is evidenced by the fact that 76 percent of the residents of these settlements now live on the Israeli side of the Wall.⁴⁹ Moreover, he believes that the Wall and the checkpoints are primarily meant to serve the safety, ease and comfort of colonists.⁵⁰

According to Israel, the Wall is a temporary measure that is necessary for security reasons. However, according to the International Court of Justice, the construction of the Wall and the related regime create a “*fait accompli* on the ground”.⁵¹

Construction of the settlements in the Occupied Palestinian Territories

About 460,000 colonists live in the West Bank and in East Jerusalem.⁵² Peace Now, an Israeli non-governmental organisation, established that nearly 40 percent of the land occupied by settlements in the West Bank is privately owned by Palestinian citizens.⁵³

The International Court of Justice ruled that the Jewish settlements in the West Bank are unlawful. They are in violation of Article 49(6) of the Fourth Geneva Convention (prohibition of transferring the civilian population of the occupier into occupied territory):

“The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”⁵⁴

⁴⁸ Report of John Dugard, Special Rapporteur on the Human Rights Situation in the 1967 Occupied Palestinian Territories (29 January 2007), UN Doc. A/HRC/4/17 (hereinafter referred to as the 'Report of Dugard') (**appendix 12**), para. 50.

⁴⁹ Report of Dugard (**appendix 12**), para. 24.

⁵⁰ Summary of the Report of Dugard (**appendix 12**).

⁵¹ IGH *Wall case* (**appendix 8**), para. 121.

⁵² See Report of Dugard (**appendix 12**), para. 60 and United Civilians for Peace, 'Infosheet Ned-erzettingen' [Settlements Infosheet] (March 2008), DC Index: 2008/03/002dc (**appendix 13**), p. 1.

⁵³ See report Peace Now, 'Breaking the law in the West Bank – One Violation Leads to Another: Israeli Settlements Building on Palestinian Property' (October 2006) (**appendix 14**).

⁵⁴ IGH *Wall case* (**appendix 8**), para. 120. The Israeli government argues that it respects the property of the Palestinian population in the West Bank, and that it only temporarily and legally – for security reasons – appropriates land, see Report of Dugard (**appendix 12**), para. 33. Report of Dugard (**appendix 12**), para. 34: “Many are ordinary Israelis who have been lured to the settlements by tax incentives and a better quality of life. Throughout the West Bank there is evi-

In addition, the Special Rapporteur on the Human Rights Situation in the 1967 Occupied Palestinian Territories determined that the settlements are in violation of Article 53 of the Fourth Geneva Convention of 1949 (prohibition of the destruction of property, unless absolutely necessary by military operations).

According to the Special Rapporteur, the settlements also violate Article 46 (order to respect private property and prohibition to confiscate it) of the Hague Convention respecting the Laws and Customs of War on Land (1907).⁵⁵

Violations of Article 49 and Article 53 of the Fourth Geneva Convention are made punishable by Article 85(4)(a) of the First Additional Protocol of 1977 and Article 147 of the Fourth Geneva Convention.

Despite the unlawfulness and international condemnation of these practises, the settlements continue to grow.⁵⁶

Alleged offences

My client accuses Riwal of having contributed to the construction of the Wall and the pertaining constructions and to the construction of a settlement in the West Bank. During the period of 2005-2008, Riwal participated in the construction of the Wall in the Palestinian village of Al-Khader. During the period of 2004-2006, Riwal participated in the construction of the Wall in the Palestinian village of Hizma. During the period of 2008 to present, Riwal has built the settlement near the Palestinian village of Bruqin. These three villages are indicated below on the map of the West Bank.

dence of settler violence, which often takes the form of destroying Palestinian olive groves or obstructing the olive harvest.”

⁵⁵ Report of Dugard (**appendix 12**), para. 33.

⁵⁶ Moreover, there are about 100 so-called settlement outposts in the West Bank, which are even forbidden under Israeli law. These are generally more recent, small settlements, which are not authorised like other settlements are. They are usually located in the vicinity of an authorised settlement, the so-called mother settlement. An official Israeli report shows, however, that Israeli politicians are involved in setting up these outposts. See the document of the UN Office for the Coordination of Humanitarian Affairs occupied Palestinian Territory, 'Israeli settler violence and the evacuation of outposts' (November 2009) (**appendix 15**), p. 1. Also when Israeli law opposes a certain (expansion of a) settlement, one turns a blind eye to it. See Report of Dugard (**appendix 12**), para. 32.

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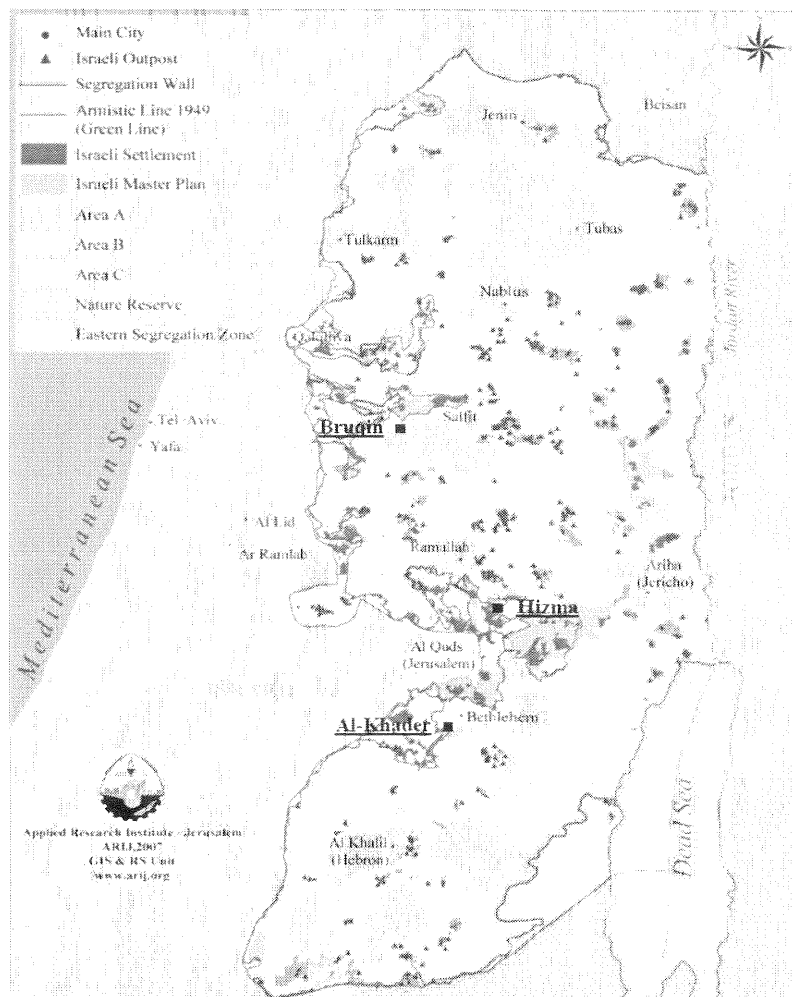


Figure 2 – The West Bank

As a result of these activities of Riwal, the properties of the Palestinian residents of said villages have been destroyed, they have been denied access to their lands, their freedom of movement has been restricted, the fundamental rights of the Palestinian residents have been violated, and Israeli settlements have been expanded.

The Wall should include, but not be limited to, the concrete Wall or the fence itself. The International Court of Justice ruled that the Wall built by Israel in the West Bank is a complex construction.⁵⁷ The Wall should therefore include: a fence with electronic sensors, a trench (up to 4 metres deep), an asphalt two-lane road for patrol purposes, barbed wire surrounding the complex.⁵⁸ The entire complex is 50 to 70 metres wide and, at some places, even 100 metres. The activities which Riwal is accused of by my client, have contributed to one or more of these parts of the Wall.

⁵⁷ See IGH *Wall case* (appendix 8), para. 67.

⁵⁸ See IGH *Wall case* (appendix 8), para. 82.

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Al-Khader

The village of Al-Khader is located 5 km southwest of Bethlehem. Al-Khader lies in the municipality of Bethlehem,⁵⁹ being largely under complete Israeli control (Area C).⁶⁰

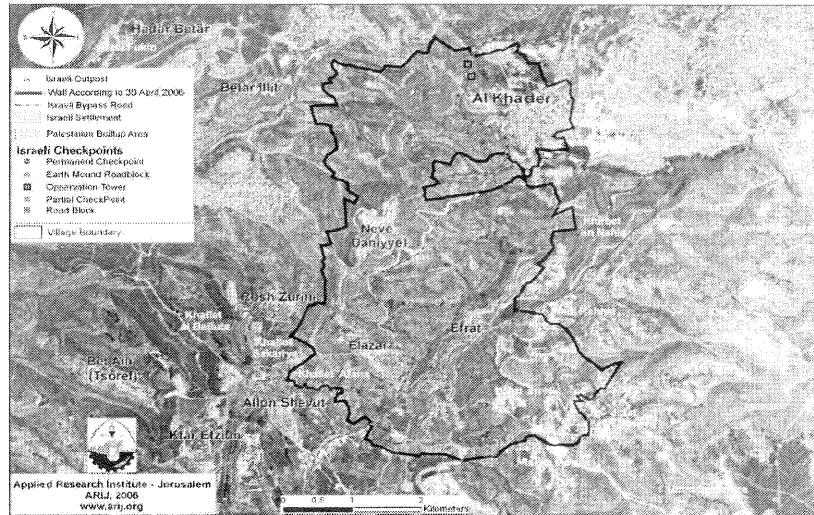


Figure 3 - Al-Khader

The village stretches out over more than 20,000 dunums (20 km²),⁶¹ as indicated above in figure 3 by the black line. The built-up area of the village takes up about 2,000 dunums (2 km²).⁶² This built-up area is partly under Palestinian/Jewish control (area B) and partly under complete Palestinian control (area A). The village has 10,000 residents. The territory of the village is mostly used for agriculture (grapes, olives and almonds). 65 percent of the residents are primarily or secondarily dependent on their income from

⁵⁹ 'Bethlehem Governorate'.

⁶⁰ This is the result of the Oslo II interim agreement (28 September 1995), which gives the outlines along which the further negotiations between Israel and the Palestinians should take place. It also (provisionally) determined the future status of the occupied territories: 'area A' (autonomous territory), in which civil administration and enforcement of security are in the hands of the Palestinian Authority; 'area B' (occupied autonomous territory), in which the Palestinian Authority is responsible for civil administration, but enforcement of security remains in the hands of Israel; 'area C' (occupied territory): Israeli administration and enforcement of security.

⁶¹ 1 'dunum' is 0.1 hectare (1000 m², 33m x 33m); see IGH *Wall case* (appendix 8), para. 133. Since the 1970s, around 6,000 dunums of Al Khader's land have been confiscated in favour of settlements (Efrat, El'azar, Neve Daniyyel, Tamara and the settlement of Hanan). 16,000 dunums (16 km²) of the total surface area of the village have remained.

⁶² Statement by Mahmoud Abdallah Muhammad Moussa (9 December 2009) (appendix 17), p. 2.

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agriculture.⁶³ Moreover, part of the land is destined for the future expansion of the village.

The Wall

As of 2004, the residents of Al-Khader received Israeli military orders, which informed them that the land of Al-Khader is expropriated for the construction of the Wall.⁶⁴ The route of the Wall is also displayed in figure 3 above. The land on which the Wall is constructed and which is cut off from the village by the Wall is owned by the residents of the village of Al-Khader.⁶⁵

⁶³ Statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 2. See also the statement by Hassan Yusuf Ahmad Subyah (4 November 2009) (**appendix 19**), p. 1.

⁶⁴ The expropriation order from the Israeli army dated 21 November 2005 – T/210/05 (**appendix 20**) – states: “order necessary for military purposes as a result of the unique security situation prevailing in this area”. In total, 85 dunums were expropriated for the construction of the Al-Khader Terminal. The expropriation order T/201/05 (2005) (**appendix 21**) also states that the expropriation is necessary in order to build a security wall along the route of road 60. This order expropriates 93 dunums of land in order to build the Wall. The expropriation orders T/21/99, T/93/01, T/135/05, T/24/06, T/69/06 (available in Arabic and Hebrew under the article 'Al Khader Village to lose its lands for the construction of the Israeli Segregation Wall' (6 May 2009) of the Applied Research Institute – Jerusalem (ARIJ) and the Land Research Center (LRC) (**appendix 22**)) and T/77/06 were issued between 2001 and 2006 in order to confiscate the land of Al-Khader and the surrounding Palestinian villages for the construction of the Wall. In total, about 1200 dunums of land were seized between 2001 and 2006 for the part of the Wall in and near Al-Khader. Also in 2007, a piece of land of 321 dunums was seized by means of order T/29/07 for imperative military purposes, to construct the wall in Kherbit 'Alia area on lands of Al Khader and Artas villages. See ARIJ and LRC 'New Israeli Military Order to confiscate additional area of Palestinians' Lands in the villages of Al Khader and Artas' (17 September 2007) (**appendix 23**). See also the statement by Mahmoud Abdallah Moussa (**appendix 17**), pp. 4-5: “One of those was the military order which came to the municipality dated 1/12/2005, number T/50/201, and declared the requisition of some Al-Khader land for military purposes in order to construct the Separation Wall along Highway 60. Those were: Block 1, location within the built up area of the village) and (Block 2, location: Al-Butmeh, Abu Sud, Khillat Al-ballout and Dahr Baqqoush. Then military order number T/05/201 was sent to the municipality on 8/1/2005 [sic] and declared the requisition of land in Al-Khader village. Those were in Block 2: Al-Butmeh land and Sahl Al-Dayr. They were requisitioned to build the Al-Khader Terminal according to the plans attached to the military order. (...) As for military order T77/06, dated in 2006, it requisitioned 102 dunums for the benefit of building the Wall on Al-Khader areas known as Baqqoush, Umm Rukbeh and Khirbet Alya.” See also the statement by Adnan Jowdah Ahmad Subyah (10 November 2009) (**appendix 24**), p. 2: “I recall that in 2005, we found an Israeli military order pertaining to the land, ordering the confiscation of the entire piece of land in order to build the ‘Separation Wall’ (...). It stated that objections over this would have to be made to the Israeli courts within 45 days. Of course, the Al-Khader Municipality put forward objections on behalf of all the people of the village whose land had been included in the confiscation orders. The lawyers were Usama Halabi and Ghayath Nasser and they followed up the matter but to no avail.”

⁶⁵ Statement by Hassan Subyah (**appendix 19**), p. 2: “There is a financial manifest which proves the ownership of all the confiscated land cut off behind the Wall. Part of the land is the property of the Orthodox monastery, the Dayr Al-Khader. The monastery has papers to prove its ownership of the land as a religious endowment that belongs to them.” Statement by Muhammed Omar
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In 2005/2006, a start was made with the actual construction of the Wall on the land of Al-Khader.⁶⁶ The Wall in Al-Khader stretches out from Beit Jala (the Tunnel check-point)⁶⁷ until the Schools Area in the old village of Al-Khader, and reaches the southern entrance to Bethlehem and the Efrat settlement in the south.⁶⁸ This part of the Wall is 3.5 km long. According to the expropriation orders, 102 dunums (0.1 km²) were expropriated for this part, with a width varying between 17 and 57 metres. According to the military orders, the entire area expropriated for said part of the Wall covers nearly 400 dunums (0.4 km²).⁶⁹

The building process started with uprooting trees and working the land with bulldozers, digging off the top layer of the soil. The Wall consists of prefabricated concrete plates

Moussa (**appendix 18**), p. 1: “My father, Omar Muhammad Moussa, is deceased and I am one of his heirs. (...) He owned a piece of land at the high end/edge [satih] of the village, also known as the Schools Area. The area of the land is 4 dunums. (...) We have owned and used this land for several generations.” See also the statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 4: “In Al-Khader we suffer from the absence of official records to prove the ownership of the land. We have six Turkish property deeds which cover the total area of the village and those were of course registered under the names of people who lived in Al-Khader during the Ottoman period. Because of the complex political history of Palestine, the heirs did not receive official deeds [tabo] in their own names, so they obtained official record papers [ikhraj qayd] from the Jordanian Land Survey Department. This is the only way any Palestinian can prove their ownership if they are not able to get property deeds.” See also the statement by Adnan Subayh (**appendix 24**), p. 1: “My father, Jowdah Ahmad Subayh, and my deceased uncle, Muhammad Ahmad Subayh owned a piece of land called Al-Buqay’ (behind the Schools Area). (...) The area of that piece of land is 6 dunums, registered in the Treasury of Bethlehem (official record). Of course, my father owns 3 dunums while the heirs of my deceased uncle, Muhammad Ahmad Subayh, own 3 dunums.” Moreover, the military orders show that the land belongs to (the residents of) the village: “‘The land’ – the pieces of land (...) which are part of the land of the village: Al-Khader.” (Military order T/210/05, p. 1 (**appendix 20**).)

⁶⁶ See the statement by Hassan Subayh (**appendix 19**), p. 1: “Actual work on the wall began in early 2005”; statement by Adnan Subayh (**appendix 24**), p. 2: “At the beginning of 2006, the construction work of the Wall began”.

⁶⁷ See the statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 6: “Before that tunnel was built, there was a road that connected Al-Khader with Al-Arqoub villages, or the western villages of Bethlehem (Bateer, Nahhaleen, Husan, and Wadi Fukin). But with the construction of the Wall, this road was closed, so they dug the tunnel under Highway 60 as an alternative. Some of the old road’s edges were dug up to build the tunnel which caused the bulldozing of 85 dunums of agricultural land belonging to Al-Khader. Work on this tunnel has not been completed and it was closed until the end of November 2009 when the Israeli authorities removed the sand bags that were blocking it. This gave the people of Al-Khader the chance to cross it to go to their land which the Wall cuts them off from. Before that, the people of Al-Khader had to go 8 km round the Wall to enter their land from areas where construction had not been completed instead of walking for a few meters to reach their land directly.”

⁶⁸ See figure 3 above, aerial photographs of 2009 of Al-Khader (indicated with a red arrow, **appendix 25**) and the maps belonging to the military orders T/201/05 (**appendix 21**) and T/210/05 (**appendix 20**).

⁶⁹ Statement by Hassan Subayh (**appendix 19**), pp. 1-2.

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with a height varying between 6 and 15 metres.⁷⁰ During the construction of the Wall, a ring road (security road) was also constructed, connecting the Wall and the village. Because of the construction of the Wall, the ring road and the road running along the Wall (Highway 60), the landscape is changed. Before the construction of the Wall and the roads, the land was level, but due to the construction of the Wall and the roads, a difference in level was created.⁷¹

In 2008, the work on the wall was completed.⁷²

Due to the Wall, 14,000 dunums (14 km²) of land are cut off from the village of Al-Khader,⁷³ separating the village and its residents from their lands. This is clearly visible in figure 3: the land west of the red line (the Wall) and within the black line (the territory of Al-Khader). Only around 2,000 dunums (2 km²) remain of Al-Khader.

Riwal

In June 2007, Kareem Issa Muhammed Jibrán photographed some pieces of Riwal access equipment, which machines contributed to the construction of the Wall in the village of Al-Khader.⁷⁴ He states the following:

“On 13/6/2007 I headed for Highway 60 in the south of the West Bank, specifically to the section that is adjacent to the Palestinian village of Al-Khader, which is in the south of the West Bank, specifically within the district of Bethlehem. The section of Highway 60 that I visited is close to the Tunnels checkpoint. My boss at Btselem had asked me to carry out an investigation there of the activities of a company called RIWAL in building that section of the Wall around the village of Al-Khader. Indeed I went to that area in the morning on

⁷⁰ See the statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 5; see also the statement by Hassan Subayh (**appendix 19**), p. 1.

⁷¹ See also the statement by Muhammed Omar Moussa (**appendix 18**), p. 2: “Our land was terraced and had supporting walls” and p. 2: “I say that photograph number W14 [aerial photograph 1 (**appendix 25**), lawyers] is a photograph of my land. The researcher from Al-Haq has also shown me an aerial photograph of the Schools Area in Al-Khader. I have shown on that picture the location of my house, the boundaries of my land, the area that was bulldozed and the path of the Wall over my land.”. Evidence: aerial photographs of Al-Khader (**appendix 25**), in particular, compare the photographs from 2006 when the Wall was not yet built to those from 2009; Al-Khader expropriation orders T/201/05 (**appendix 21**) and T/210/05 (**appendix 20**).

⁷² See the statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 7: “I cannot recall exactly when work on the last part of the Wall was completed, but it was probably in 2008.”

⁷³ Statement by Hassan Subayh (**appendix 19**).

⁷⁴ Evidence: photographs 1-7 (**appendix 29**) taken by order of the Israeli human rights organisation Btselem.

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13/6/2007. As soon as I arrived, I could see that a section of the Wall had been built on the land of the Palestinians from Al-Khader, along Highway 60 and to the east of it.”

“While giving this affidavit to Al-Haq’s field researcher, Manaf Abbas, he showed me an aerial photograph of that area. I pointed out the area I am talking about in this affidavit, putting a mark over it. I also pointed out where on Highway 60 I had been that day. I have also given him photographs that I had taken that day, some of which show the machines of the company RIWAL working on preparing the area for the construction of the Wall. I have pointed out the locations of the machines belonging to the aforementioned company on the aerial photograph that was shown to me. In location number 1, there were two machines belonging to that company working on bolstering the support wall because of a slope that had come about as a result of cutting through some of Al-Khader’s agricultural land. In location number 2, there was a third machine belonging to the same company working there and a fourth one in location number 3. I have attached the photographs I took that day to this affidavit and these are labelled Btselem Photographs 1-7.”⁷⁵

These observations show that Riwal access equipment was used to prepare the area where the Wall is built and to strengthen the foundations of the Wall.

Residents of Al-Khader have confirmed that it is their houses that stand behind the Wall on the photograph.⁷⁶ The construction of the Wall is now complete.

Consequences for the residents of Al-Khader

The consequences of the construction of the Wall for the residents of Al-Khader are serious.

⁷⁵ Statement by Kareem Jibrán (**appendix 27**), pp. 1-3. See the photographs taken by order of Btselem 1-7 (**appendix 29**).

⁷⁶ See the statement by Muhammed Omar Moussa (**appendix 18**): “I say that photograph number W14 [(see **appendix 25**), lawyers] is a photograph of my land. The researcher from Al-Haq has also shown me an aerial photograph of the Schools Area in Al-Khader. I have shown on that picture the location of my house, the boundaries of my land, the area that was bulldozed and the path of the Wall over my land.” See also the statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 8: “Seeing the Btselem photographs W11, W12, W13, W14 [(see **appendix 29**), lawyers], I can confirm that they are photographs taken during the process of the construction of the Wall on the land belonging to the village of Al-Khader close to its houses and schools which I know well.”

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The agricultural land seized has been flattened and the trees and crops have been destroyed.⁷⁷ As a result, the pieces of land are hardly worth anything.⁷⁸ Moreover, houses have been demolished for the construction of the Wall.⁷⁹

Due to the Wall, an area of 14,000 dunums (14 km²) has been cut off from Al-Khader. One passage was built in the Wall (Tunnel checkpoint), but it was closed until the end of November 2009.⁸⁰ Before the construction of the Wall, it was difficult to reach the land outside the built-up area of Al-Khader, but not impossible. The construction of the Wall has made it almost impossible for the farmers to reach their lands in order to maintain and water it. Before the opening of the Tunnel Checkpoint in November 2009, the farmers had to travel about 8 kilometres to reach their lands, instead of 200 to 500 metres.⁸¹ Most residents do not have a car. As a result, many farmers have stopped looking after their lands.⁸²

⁷⁷ Statement by Muhammed Omar Moussa (**appendix 18**), pp. 1-2: "I cannot recall exactly when the bulldozing operations began, but it was in 2006 on our land which was terraced and had supporting walls. The bulldozing changed the topography of the land. Twenty five trees were uprooted in addition to the well being completely destroyed. The machines were digging from underneath the land which added a severe camber to the land. (...) There was a width of around 10 metres between the Wall and the fence and that was on our land. There was less than 2 dunums left of it including the house." The Al-Ghureyab family has also been deprived of their land and valuable trees, statement by Adnan Subayh (**appendix 24**), pp. 1-3: "The whole plot of land was cultivated with olive trees. I estimate that it had 120 olive trees as well almond and fig trees. It has an ancient well (of archaeological [interest]) which dates back more than 150 years and has the capacity to hold more than 120 cups of water.. (...) Of course, now the land has been destroyed because of the bulldozing operation." See also the statement by Hassan Subayh (**appendix 19**), p. 2; and also see: ARIJ and LRC 'The Israeli Segregation Wall hits Al-Khader village lands' (16 April 2005) (**appendix 26**).

⁷⁸ See the statement by Kareem Issa Muhammad Jibrán (12 January 2010) (**appendix 27**), p. 2; see also the statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 3.

⁷⁹ See, for example, ARIJ and LRC 'Al Khader village epitomize Israeli belligerent acts against Palestinian communities' (2 August 2007) (**appendix 28**): "25 April 2005, Demolishing a Palestinian house. Uprooting dozens of fruitful trees. Israeli Army, to set foundations for parts-sections of the Segregation Wall." Moreover, as is evidenced by the overview, many houses are destroyed without a permit, on the pretence of construction.

⁸⁰ Statement by Hassan Subayh (**appendix 19**), p. 1; see also the statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 6. See the statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 6: "Work on this tunnel has not been completed and it was closed until the end of November 2009 when the Israeli authorities removed the sand bags that were blocking it." See also p. 5: "Indeed, this crossing or tunnel was built but was not completed, however passage through it is possible."

⁸¹ Statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 7.

⁸² Statement by Hassan Subayh (**appendix 19**), p. 2; see also the statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 7. The village tried to reopen the agricultural roads, but the Israeli authorities refused this under the pretext of security. Unemployment in the village is also one of the negative effects of the construction of the Wall; see the statement by Hassan Subayh (**appendix 19**), p. 2. For the consequences of the construction of the Wall for the agriculture of the Palestinians, also see the International Court of Justice in the *Wall case* (**appendix 8**), para. 133: CERTIFIED TRANSLATION

The Wall has also made it impossible to expand the village.⁸³

As the Schools Area is near the Wall, problems often arise between the students and the soldiers supervising the Wall and the Israeli colonists. The schools are often closed due to these skirmishes.⁸⁴ The construction of the Wall therefore also leads to restrictions of the right of the residents of Al-Khader to education.

Hizma

The once prosperous Palestinian village of Hizma is located about half a kilometre northeast of Jerusalem.⁸⁵ The village is part of the municipality of Jerusalem.⁸⁶ In the

“That construction, the establishment of a closed area between the Green Line and the wall itself and the creation of enclaves have moreover imposed substantial restrictions on the freedom of movement of the inhabitants of the Occupied Palestinian Territory (with the exception of Israeli citizens and those assimilated thereto). Such restrictions are most marked in urban areas, such as the Qalqiliya enclave or the City of Jerusalem and its suburbs. They are aggravated by the fact that the access gates are few in number in certain sectors and opening hours appear to be restricted and unpredictably applied.”

⁸³ See the statement by Muhammed Omar Moussa (**appendix 18**), p. 2: “They have bulldozed and uprooted the old olive trees and built the Wall over more than 2 dunums. Meanwhile, we cannot build on the rest of the land because it is adjacent to the Wall. The Israelis now do not allow building near the Wall according to the orders confiscating the land.” See also the statement by Adnan Subayh (**appendix 24**), p. 3: “Of course, now the land has been destroyed because of the bulldozing operation. The top soil has been dug up so it cannot be cultivated again unless it is reclaimed. But land reclamation is very expensive and it also depends on whether the Israelis will allow us to do so. Also we cannot build on any part of the ‘six dunums’ because of the construction of the Wall and the entrance to the tunnel which were done either next to or on our land. This is because the Israeli authorities do not allow building near the Wall or the tunnel and consider land tens if not hundreds of metres away as part of the Wall. For security reasons, building is not allowed and we know this from experience.” See also the statement by Mahmoud Abdallah Moussa (**appendix 17**), p. 7.

⁸⁴ Statement by Hassan Subayh (**appendix 19**), p. 2. See, for example, ARIJ and LRC ‘Al Khader village Epitomize Israeli belligerent acts against Palestinian communities’ (2 August 2007) (**appendix 28**): “1 November 2000; Temporary closing four Palestinian schools located in Area ‘C’ [by the] Israeli Army to prevent confrontations between school children and Israeli settlers”.

⁸⁵ Statement by Muwaffaq Saeed Ayed Al Khateeb (20 December 2009) (**appendix 30**), p. 4. Muwaffaq Al-Khateeb was born and bred in Hizma. He was head of the village council of Hizma from 2003 to 2005. Since then, he has been working for the present head of the village council. His work includes, among other things: infrastructure and representing the interests of the villagers with regard to health, education, agriculture, and other infrastructural facilities. Moreover, he archives expropriation orders, and is aware of and has access to documents proving residents’ ownership of land (the documents were collected during the period of the Jordanian administrative government until 1959) and showing numbers of residents. Since 2004, he has been a member of various committees against the Wall. This makes him very much aware of everything that is going on in the village of Hizma. See also the statement by Ahmad Shahadeh Abdul-Aziz Al-Khateeb (20 December 2009) (**appendix 31**), p. 2. Shahadeh Al-Khateeb is a businessman, born and bred in Hizma. He belongs to the Al-Khateeb clan. His family owns a stone pit and land. He witnessed the construction of the Wall.

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built-up part of Hizma, the Palestinian authorities have administrative and municipal powers (area B), while the Israeli authorities have powers in the area of security.⁸⁷ The non-built-up parts of Hizma are fully under Israeli jurisdiction (area C). The total area of the village is about 18,000 dunums (18 km²), of which about 1,045 dunums (1 km²) have been built on.⁸⁸ About 6,000 Palestinians live in Hizma.⁸⁹ The land on which the Wall is constructed and which is cut off from the village by the Wall is owned by the residents of the village of Hizma.⁹⁰

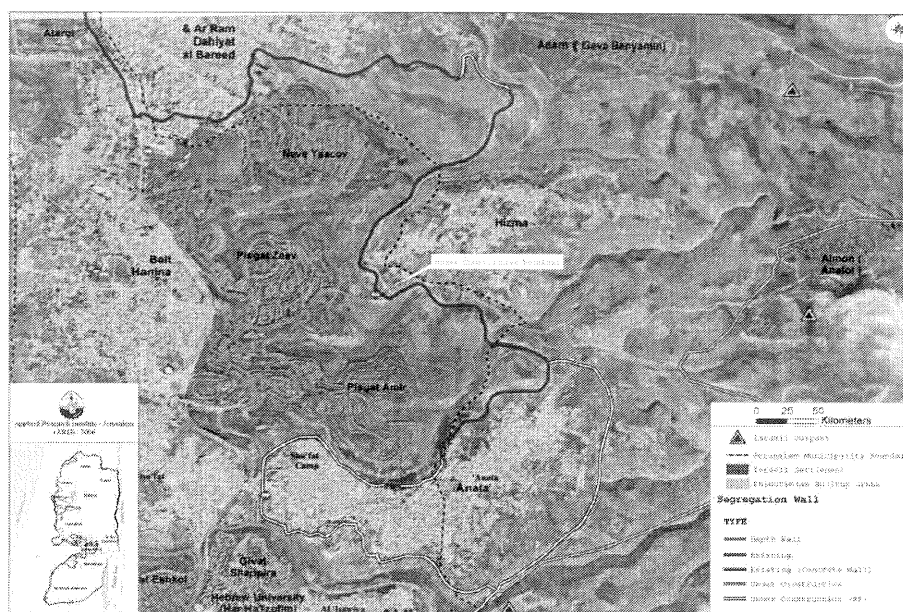


Figure 4 - Hizma

A large part of Hizma outside the built-up area consists of fertile grassland, rich in springs. There are also some stone pits in the rocky landscape. Cattle breeding and the trade in building materials form the original sources of income for the villagers. After

⁸⁶ 'Jerusalem Governorate'.

⁸⁷ Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 3. See also the Oslo II interim agreement.

⁸⁸ See Muwaffaq Al-Khateeb (**appendix 30**), p. 3: "According to the official records found at the local council, the (...) municipality boundary of the village covers only 1045".

⁸⁹ Statement by Muwaffaq Saeed Ayed Al-Khateeb (15 February 2005) (**appendix 32**), p. 1; Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 3.

⁹⁰ Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 2: "The council is in possession of records which identify the ownership and total area of land in the village. (...) These documents were collected during the period of Jordanian administrative rule over Palestinian lands between 1948-1967. The Jordanian Land Registry finished registering land in Hizma in 1959. At that time the land of Hizma was considered to have been totally surveyed. This means that the land was formally registered under the names of its owners and that there was an official record of every plot of land in Hizma." Military order T/33/04 shows that the land belongs to (the residents of) the village: "'The land – a piece of land 85.6 dunums (length 2050 metres, width 60 metres) marked in red on the map and is among the land belonging to the village" (**appendix 33**).

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the start of the Israeli occupation in 1967, a new source of income was added: residents of Hizma started working for the Israelis in Jerusalem.⁹¹

Prior to the construction of the Wall, the relationship between the residents of Jerusalem and Hizma was close.⁹² To the villagers, Jerusalem was the axis of their lives. However, the Israelis now consider the now cut-off village as lying in the West Bank. Unlike other Palestinian villages around East Jerusalem, the residents of Hizma have Palestinian identity cards because, due to the construction of the Wall, they came to live on the eastern side of the Wall.⁹³

The settlements and the Wall

The circumstances in the village of Hizma changed in the beginning of the 1980s, when Israel seized the land belonging to the village for the construction of five Israeli settlements and one settlement outpost.⁹⁴ At present, Hizma is, as it were, surrounded by the Wall, the settlements and the outpost: the Wall with, beyond it, three settlements in the hills west of Hizma, and two settlements and an outpost east of Hizma.⁹⁵ This is shown in figure 4, the red line indicating the Wall and the blue areas indicating the Israeli settlements. The areas which are cut off by the Wall and in which the settlements are located, are controlled by the IDF (Israeli Defence Forces), protecting the settlements; Palestinian residents are no longer allowed to come here.⁹⁶

⁹¹ Statement by Muwaffaq Al-Khateeb (**appendix 32**), p. 1; Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 4; Statement by Shahadeh Al-Khateeb (**appendix 31**), p. 1.

⁹² Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 2.

⁹³ See opening words of all statements; Statement by Muwaffaq Al-Khateeb (**appendix 30**), pp. 2-3; Statement by Shahadeh Al-Khateeb (**appendix 31**), p. 2.

⁹⁴ Statement by Muwaffaq Al-Khateeb (**appendix 30**), pp. 4-5. See also footnote 56 and (**appendix 15**) about settlement outposts.

⁹⁵ See: ARIJ and LRC 'Hizma: A Palestinian Village between the Wall and the Settlements' (21 March 2005) (**appendix 34**). As an illustration: Eighty percent of the settlement of Pizgat Za'ev – west of the Wall – was built on the land of Hizma and has about 50,000 residents (statement by Muwaffaq Al-Khateeb (**appendix 32**), p. 1)

⁹⁶ If they are found in these areas, they will be fined and/or arrested. Especially the herdsmen suffer nuisance from the colonists: sometimes, they are beaten up or sheep or cattle are stolen from them (statement by Muwaffaq Al-Khateeb (**appendix 32**), p. 1). The colonists are now cultivating the areas for their own use (see: ARIJ and LRC 'Hizma: A Palestinian Village between the Wall and the Settlements' (21 March 2005) (**appendix 34**)). Moreover, all settlements are growing, both as regards number of residents and geographical area.

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On 4 April 2004, the residents received a military order⁹⁷ for the seizure of land for the construction of the Wall. The total construction is 5 kilometres long and is 60 metres wide at some places, which means that the Wall itself takes up 300 dunums (0.3 km²).

When the land on which the Wall and all related facilities had to be formed was levelled by bulldozers, asphalt and concrete were poured. The Wall itself was built of fabricated concrete plates with a height of 6 to 9 metres.⁹⁸ There is one entrance through which the villagers can reach the grassland lying behind, but this entrance is only opened for a short period during the olive season.⁹⁹ As part of the construction of the Wall, a new ring road was also built, lined with a metal fence.

On 3 March 2005, the village received another two additional military orders from the IDF.¹⁰⁰ They also ordered the confiscation of land – belonging to Hizma – for the construction of the Wall.¹⁰¹

The situation in the village of Hizma became worse when, in September 2006, a terminal was built, blocking the only access road to Jerusalem.¹⁰² In the north, the Qakandiya Checkpoint closes off the road to Ramallah.¹⁰³ Moreover, a mobile checkpoint (Jaba Checkpoint) is sometimes installed in the north, also cutting off Hizma from the rest of the West Bank.¹⁰⁴

Riwal

A broadcast of the Dutch news programme *Netwerk* on 3 July 2006 shows that a Riwal crane is used to build the Wall in Hizma. The crane lifts up the concrete plates and then

⁹⁷ See military order T/33/04 (**appendix 33**). The order has been signed by the Israeli army commander Moshe Kibliniski (see the statement by Muwaffaq Al-Khateeb (**appendix 32**), p. 2).

⁹⁸ Statement by Muwaffaq Al-Khateeb (**appendix 32**), p. 2; Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 7; Statement by Shahadeh Al-Khateeb (**appendix 31**), pp. 4-5.

⁹⁹ Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 7.

¹⁰⁰ Military orders T/34/05 and T/36/05, mentioned in ARIJ and LRC 'Hizma: A Palestinian Village between the Wall and the Settlements' (21 March 2005) (**appendix 34**).

¹⁰¹ See: ARIJ and LRC 'Hizma: A Palestinian Village between the Wall and the Settlements' (21 March 2005) (**appendix 34**).

¹⁰² The control at such a terminal is much more strict and also someone with the right documents may be denied access, see: ARIJ and LRC 'Israel announces the construction of a new Terminal on Hizma Village Lands' (16 September 2006) (**appendix 35**).

¹⁰³ Statement by Muwaffaq Al-Khateeb (**appendix 32**), p. 1.

¹⁰⁴ Statement by Muwaffaq Al-Khateeb (**appendix 32**), p. 1. The bus connection between Hizma and Jerusalem has also been cancelled.

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lowers them into the foundations.¹⁰⁵ On the images of the construction work of the Wall, witnesses recognised the village of Hizma, more specifically the land of the Al-Khateeb family, their houses and even a child of the Al-Khateeb family (see below for the Al-Khateeb family).¹⁰⁶

Consequences for the residents of Hizma

Due to the construction of the Wall, the large cities of Ramallah and Jerusalem are difficult to access for the residents of Hizma. This has several consequences.

The free movement of the villagers has been limited to a large extent. Special permits are required to pass through the checkpoint. However, these permits are hardly issued. Because Hizma is surrounded by the five settlements, the outpost and the Wall and, in addition, the residents of Hizma depend on the militaries controlling the checkpoints,¹⁰⁷ the residents of Hizma are no longer at liberty to go wherever they want.

The difficult accessibility of Jerusalem and Ramallah has had very adverse effects on the residents of Hizma.¹⁰⁸

Hizma itself has few facilities in the field of education and healthcare. At present, 600 school children can no longer reach their schools and there is only one badly equipped health care unit for all 6,000 residents of Hizma.¹⁰⁹ Moreover, the residents of Hizma can hardly reach the old city of Jerusalem since the construction of the Wall. One of the most important places to practise their faith is located here: the Dome of the Rock with the adjacent Al-Aqsa Mosque.¹¹⁰ The residents are therefore also restricted in their freedom of religion.

The Wall also has serious consequences for employment. After the construction of the Wall, the number of residents of Hizma working in Jerusalem declined drastically.

¹⁰⁵ See the video stills of the broadcast of *Netwerk* (3 July 2006) 1-7 (**appendix 42**).

¹⁰⁶ Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 9; Statement by Shahadeh Al-Khateeb (**appendix 31**), p. 6; video stills of the broadcast of *Netwerk* (3 July 2006) 1-7 (**appendix 42**).

¹⁰⁷ For a small selection of articles about the checkpoint, please refer to: 'Hell on earth: Qalandia checkpoint' (2 May 2002); 'A trip through the Qalandia checkpoint' (18 June 2009); 'Checkpoint misery epitomizes a Mideast divide' (21 February 2010) and UN Truth 'Yes, Qalandia Checkpoint is a scandal' (21 February 2010) (**appendix 36**).

¹⁰⁸ See the statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 3; see also: ARIJ and LRC 'Hizma Eclipsed by Segregation Wall' (26 August 2004) (37).

¹⁰⁹ See: ARIJ and LRC 'Israel announces the construction of a new Terminal on Hizma Village Lands' (16 September 2006) (**appendix 35**).

¹¹⁰ Statement by Muwaffaq Al-Khateeb (**appendix 32**), p. 2.

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Trade was also hindered due to the difficult accessibility of Jerusalem as a market.¹¹¹ The economic consequences for Hizma were major: the average income per person declined by 70 percent.¹¹² In 2000, the unemployment rate in Hizma was only 4 percent, but this number has now increased over tenfold.¹¹³

Due to the construction of the Wall, grasslands and old olive trees on the land of Hizma were destroyed; springs were destroyed.¹¹⁴ Due to the construction of the Wall, a number of the areas, consisting of fertile grasslands of Hizma located west of the Wall, has been cut off from the land of the village, with a total area of 4,400 dunums (4.4 km²).¹¹⁵ In fact, these areas have been annexed by Israel, and the settlements of Pizgat Za'ev, Neve Ya'acov and Pisgat Amir appropriate these areas (see also figure 4 above).

Due to the construction of the Wall, the villagers cannot expand the village further westward.¹¹⁶

A special case: the Al-Khateeb families

As a consequence of the placement of the Wall and the construction of the ring road, about ten families in Hizma have been closed in: by the Wall on three sides, by the road on one side.¹¹⁷ These families belong to the Al-Khateeb clan.¹¹⁸

Due to an application submitted by the afflicted families to the Israeli High Court, the planned Wall was relocated from in between them and the village of Hizma to the back of their house. As a result, their house is at the side of Hizma and the West Bank. How-

¹¹¹ Statement by Muwaffaq Al-Khateeb (**appendix 32**), pp. 1-2.

¹¹² Statement by Muwaffaq Al-Khateeb (**appendix 32**), p. 1; Statement by Muwaffaq Al-Khateeb (**appendix 30**), pp. 5-6; Statement by Shahadeh Al-Khateeb (**appendix 31**), pp. 3-4.

¹¹³ See: ARIJ and LRC 'Israel announces the construction of a new Terminal on Hizma Village Lands' (16 September 2006) (**appendix 35**).

¹¹⁴ Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 7 and 8.

¹¹⁵ Statement by Muwaffaq Al-Khateeb (**appendix 32**), p. 2; Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 7; Statement by Shahadeh Al-Khateeb (**appendix 31**), pp. 4-5. See also: ARIJ and LRC 'Hizma: A Palestinian Village between the Wall and the Settlements' (**appendix 34**).

¹¹⁶ Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 5; Statement by Shahadeh Al-Khateeb (**appendix 31**), p. 3.

¹¹⁷ See the aerial photograph, marked by Al Haq (**appendix 38**); Statement by Muwaffaq Al-Khateeb (**appendix 30**), pp. 8-9; Statement by Shahadeh Al-Khateeb (**appendix 31**), p. 5.

¹¹⁸ As from the early 1980s, these families have been receiving orders from the occupier for the seizure of land to make way for the settlement of Pizgat Zaev (see the statement by Shahadeh Al-Khateeb (**appendix 31**), pp. 2-3). In 2004, the family once again received expropriation orders, this time from the municipality of Jerusalem.

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ever, the land initially planned for the construction of the Wall (thus at the front of their house) remained seized and was eventually used to build the ring road.¹¹⁹

The closed-in villagers are not allowed and able to cross the ring road due to a fence placed alongside it;¹²⁰ they are expected to walk 1.5 to 2 km to the nearest crossing-place to the village. The surrounding leads to dangerous situations: the children of the family still cross the ring road through a hole in the fence. Two children were injured in accidents that happened when crossing over.¹²¹ Moreover, the family is not allowed nor able to have their land at their disposal: they are not allowed to build on their own land.¹²²

In addition, three Al-Khateeb families came to live on the West Side of the Wall, on the edge of the settlement of Pisgat Za'ev.¹²³ They are completely cut off from the village of Hizma and their family members living there. This constitutes a serious violation of their freedom of movement and family life.

Bruqin (Buruqin)

Bruqin is a Palestinian village located at 13 kilometres west of Salfit and 25 kilometres south of Nablus. Bruqin is part of the municipality of Salfit¹²⁴ (see figure 5). Originally, the territory of Bruqin covered 25,000 dunums (25 km²),¹²⁵ which belonged to (the residents of) the village of Bruqin.¹²⁶ The built-up area covers 1478 dunums (1.5 km²).

¹¹⁹ See the aerial photographs of Hizma (**appendix 39**) and the Hizma expropriation orders – 2 orders from the municipality of Jerusalem (one of which is certified) (**appendix 40**) and order T/33/04 (**appendix 33**). Moreover, land was seized in order to build the new Hizma checkpoint.

¹²⁰ The pictures taken by ARIJ clearly show this fence and that it is impossible to get through it, **appendix** to ARIJ and LRC 'Israel announces the construction of a new Terminal on Hizma Village Lands' (16 September 2006) (**appendix 35**). The sign attached to the fence says that it is not permitted to pass through the fence.

¹²¹ Statement by Muwaffaq Al-Khateeb (**appendix 30**), p. 9; Statement by Shahadeh Al-Khateeb (**appendix 31**), pp. 4-6.

¹²² Statement by Shahadeh Al-Khateeb (**appendix 31**), p. 3.

¹²³ See the Ynet newspaper article 'Palestinian family "jailed" in its own home' (25 May 2009), **appendix 41**.

¹²⁴ 'Salfit governorate'; see also the statement by Ikrima Samara (6 January 2010) (**appendix 43**), p. 1.

¹²⁵ Statement by Ikrima Samara (**appendix 43**), p. 1.

¹²⁶ Statement by Ikrima Samara (**appendix 43**), p. 5: "However, according to British records of property tax paid in villages in the year 1935, which the municipality has a copy of, the area of Al-Haraiq and Dahr Al-Mashyad, where the industrial area is being expanded, is registered in the name of two clans, Samara and Abdul Rahman, both of whom are families from this village. The land was not officially transferred to the heirs and remained registered under the name of the forefather. The reality is that 95% of village land is registered in that way, in the names of our

This built-up area of Bruqin is classified as area B, in which the Palestinian Authority is responsible for civil administration, but enforcement of security is in the hands of Israel. Of the other parts of Bruqin, half is area B and the other half is area C, which means under complete Israeli control.¹²⁷ About 3,500 Palestinians live in Bruqin.

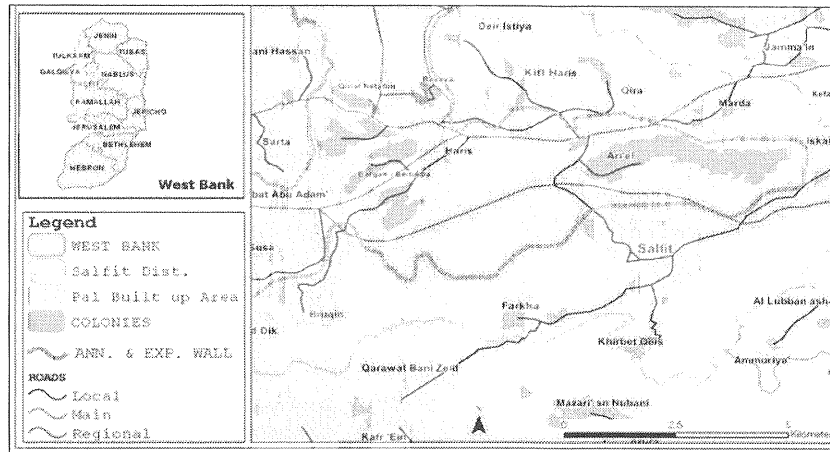


Figure 5 - Bruqin

The land surrounding the built-up area is rocky and mountainous and used to be unfit for agriculture.¹²⁸ But through the years, the residents of Bruqin planted olive trees at some places and grain, wheat, barley and fodder plants were grown in the mountainous areas. Agriculture and cattle breeding were the most important sources of income for the residents of Bruqin.¹²⁹ After the occupation of the West Bank by Israel in 1967 – when Israel allowed Palestinians to enter the labour market – the residents of Bruqin started working as labourers on the Israeli side of the Green Line (Israel).¹³⁰ The work in Israel brought in much more money.¹³¹

grandfathers and great grandfathers. (...) [A]ll the official documents in the possession of the municipality prove that the areas of Al-Haraiq and Dahr Al-Mashyad are an integral part of the land belonging to the village of Burqin even if they had not been registered, especially because our parents used to cultivate all that area with grain and animal feed and used it for grazing until 1967. (...) The municipality has a book dating back to the British mandate period which records the land ownership. It contains a record of the name of the owner, the location of the land (not an exact location but the name accorded to the area) and the squared area of the land – both the area that is taxed and that is untaxed. (...) The land appears to have been inherited through the generations according to the Sharia system. As for who the land belongs to, it belongs to the clans of Samara and Abdallah of this village.” See also the military orders (appendix 44).

¹²⁷ Statement by Ikrima Samara (appendix 43), p. 2.

¹²⁸ Statement by Ikrima Samara (appendix 43), p. 2.

¹²⁹ Statement by Ikrima Samara (appendix 43), p. 2.

¹³⁰ Statement by Ikrima Samara (appendix 43), p. 2.

¹³¹ The wall was built after the second intifada (Palestinian uprising), which started in 2000. Figure 5 also shows the Wall. This caused those from the village who worked in Israel to lose their jobs. See the statement by Ikrima Samara (appendix 43), p. 2. At present, the unemployment-
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The settlements: confiscation and human rights violation

When the West Bank was occupied by Israel, the Israeli government started to seize, through military orders, the parts located north of the land of Bruqin. In those seized parts, one of the - now - largest Israeli settlements was built: Ariel (1978), where, according to the most recent figures, about 17,000 colonists live. Figure 5 shows Ariel in blue.¹³²

In 1986, another 350 dunums (0.35 km²) of agricultural land of Bruqin was seized for the construction of the settlement of Ariel West.¹³³ Ariel West is an industrial zone, shown in figure 5 as the blue area located closest to Bruqin.¹³⁴ The Internet address of the settlement of Ariel writes the following about Ariel West:

“On Ariel’s western border stands a large, modern industrial area with over 110 diversified industries. An additional industrial park, 'Ariel West' is currently being developed on 200 acres of land. This new park will house 60 plants and factories and provide employment for hundreds of residents of Ariel and the region.”¹³⁵

The residents of Bruqin are not aware of the existence of any military orders or expropriation orders of the land seized. The bulldozers appeared on the land of Bruqin unannounced. The bulldozers started to dig off the land of Bruqin. About 100 residents of

ment rate in the village of Bruqin is around 60%, statement by Ikrima Samara (**appendix 43**), p. 2.

¹³² It moreover clearly shows that the Wall appropriates a large part of the West Bank, so that Ariel still finds itself at the west side of the Wall, despite its location deep in the West Bank. Also large parts of the other surrounding villages were expropriated for this settlement. According to the website of the settlement: “In 1978, with the approval of the Israeli government, 40 families, led by Ron Nachman, took up residence on top of the rocky and barren hill that would become the City of Ariel. Living conditions were difficult but these modern day pioneers understood the need to establish a Jewish presence in this vital strategic area.” The settlement of Ariel about 'Ariel West' (**appendix 45**). In the following years, two other settlements and an outpost settlement were built, also in the parts of the land north of Bruqin, which can also be seen in figure 5. The residents may no longer freely enter the parts of the land – about 700 dunums (0.7 km²) – which are cut off from Bruqin by the settlements and road number 446. Only after permission from the Israeli contact person may the residents enter the land during the olive season (in the late autumn) in order to maintain it. Permission is by no means always granted. Statement by Ikrima Samara (**appendix 43**), p. 3.

¹³³ Statement by Ikrima Samara (**appendix 43**), p. 2.

¹³⁴ Al-Haq photograph of Ariel West (**appendix 47**), 3 aerial photographs of Ariel West (**appendix 48**), maps showing the boundaries of Bruqin (**appendix 49**) and the aerial photograph of the Ariel West industrial area, marked by Hadeel Hunaiti: “It shows the two factories that were built to begin with over our land. I have marked them with an X to point them out. I have marked the area where the industrial complex is being expanded with a Y” (**appendix 50**).

¹³⁵ The settlement of Ariel about Ariel West (**appendix 45**).

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Bruqin and other surrounding Palestinian villages tried to stop the bulldozers.¹³⁶ Then, during an inspection of the land seized, some members of the local administration of Bruqin were arrested and held for several hours on a nearby military basis.¹³⁷

Around 1997, the first factories were built in Ariel West. The area was given a different name: "Industrial Ariel" or "Ariel Gardens" as the local residents called it, or the "Industrial Area of Western Ariel", as stated on the English placard hanging over the entrance of the main complex. Five factories were built then, in an area of about 80 dunums. Two of these factories were built on the land of Bruqin.¹³⁸

In 2008, this industrial area was expanded. The bulldozers destroyed large parts of the land of Bruqin. At present, they are still flattening the land and building the factories.¹³⁹ By now, about 28 factories have been built, 21 of which have been opened during the past few years, while the other 7 are still under construction.¹⁴⁰ No-one lives in the Ariel West industrial zone. The area serves to support and expand the settlement of Ariel. The companies in Ariel West pay their taxes directly to Ariel.

Riwal

On 27 July 2009, access equipment of Riwal Israel was used to construct a building in Ariel West.¹⁴¹ On 9 September 2009, access equipment of Riwal was again used to construct a building in the settlement of Ariel West.¹⁴² By participating in the construction of parts of the settlement of Ariel West, Riwal contributes to the destruction of property of the residents of Bruqin, the limitation of their freedom of movement and the transfer

¹³⁶ Statement by Mahfooz Muhammad Ahmad Samara (6 January 2010) (**appendix 46**), p. 1.

¹³⁷ Statement by Mahfooz Samara (**appendix 46**), p. 1; statement by Ikrima Samara (**appendix 43**), p. 4.

¹³⁸ Statement by Ikrima Samara (**appendix 43**), p. 3; statement by Mahfooz Samara (**appendix 46**), p. 2; see also the aerial photograph marked by Hadeel Hunaiti (**appendix 50**), of the Ariel West industrial area: "It shows the two factories that were built to begin with over our land. I have marked them with an X to point them out. I have marked the area where the industrial complex is being expanded with a Y." The three other factories were built on the land of the residents of Haris (statement by Ikrima Samara (**appendix 43**), p. 3; statement by Mahfooz Samara (**appendix 46**), p. 2.

¹³⁹ Statement by Ikrima Samara (**appendix 43**), p. 3; statement by Mahfooz Samara (**appendix 46**), p. 2.

¹⁴⁰ Statement by Ikrima Samara (**appendix 43**), p. 3.

¹⁴¹ See photographs 1-8 and the testimony about this (**appendix 51**), taken by Merav Amir, a member of the Israeli investigation team 'Who Profits'. See also Simone Korkus, *De Groene Amsterdammer* (7 October 2009) (**appendix 59**).

¹⁴² See photographs 9-16 (**appendix 51**) taken by Dalit, a member of the Israeli investigation team 'Who Profits', from Point A.

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of Israeli citizens into occupied territory.

Consequences of the construction of the settlement for the residents of Bruqin

Through the seizure of large parts of the land of (the residents of) Bruqin and the flattening of all that was present on this land in order to facilitate the construction of factories and buildings, these pieces of land were destroyed and can no longer be used by the original owners. In total, 300 dunums (0.3 km²) of land of the village, which were normally used to pasture the cattle, were appropriated for the construction for the benefit of the Israeli colonists. This land was also destined to facilitate the future expansion of the village,¹⁴³ which was made impossible as a result of this. The residents of Bruqin are therefore no longer able to have their land at their disposal.¹⁴⁴

Although no fence was placed around the industrial area, the residents were not allowed to enter the land. If they attempted to do so, they were sent away.¹⁴⁵

Moreover, Ariel West keeps expanding, more and more in the direction of the village and on the territory of Bruqin. The large settlement of Ariel attracts more and more residents, as a result of which more employment, means and foodstuffs need to be created for the colonists. This expansion of Ariel West is effected by each time flattening and immediately building on a new piece of land.

Crimes within the meaning of the WIM

The acts as described above, to which Riwal culpably contributed, constitute war crimes and crimes against humanity within the meaning of the International Crime Act [*Wet Internationale Misdrifven* or WIM]. The following serves as an explanation to war crimes and crimes against humanity.

The criminal culpability of Riwal contributing to these crimes will be dealt with in the paragraph after that.

¹⁴³ Statement by Ikrima Samara (**appendix 43**), p. 3.

¹⁴⁴ A Bedouin family from Yata, who lived in the areas swallowed up by Ariel West, were expelled from their houses, as their entire property was swept away by the bulldozers. Statement by Ikrima Samara (**appendix 43**), p. 3; statement by Mahfooz Samara (**appendix 46**), p. 2.

¹⁴⁵ If the residents protest against the occupation, seizure and destruction of their properties, this protest is nipped in the bud. These kinds of actions seriously limit the freedom of peaceful protest and speech of the residents of Bruqin.

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War crimes

War crimes in an international armed conflict are made punishable by Article 5 of the WIM, if these crimes are committed against so-called protected persons. This Article serves to protect persons, organisations and property not involved in the hostilities. Legal persons may also commit or participate in war crimes.

The occupation by Israel of the Palestinian territories should be regarded as an international armed conflict within the meaning of the Fourth Geneva Convention and the Palestinians are protected persons within the meaning of this convention. The International Court of Justice ruled as follows:

“In view of the foregoing, the Court considers that the Fourth Geneva Convention is applicable in any occupied territory in the event of an armed conflict arising between two or more High Contracting Parties. Israel and Jordan were parties to that Convention when the 1967 armed conflict broke out. The Court accordingly finds that the Convention is applicable in the Palestinian territories which before the conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel, there being no need for any enquiry into the precise prior status of those territories.”¹⁴⁶

The acts described above can be qualified as 'large-scale deliberate and unlawful destruction and appropriation of property without military necessity' committed during an international armed conflict against protected persons within the meaning of Article 5(1)(d) of the WIM.¹⁴⁷ In its Advisory Opinion, the International Court of Justice ruled that through the construction by Israel of the Wall and the settlements in the occupied Palestinian territories, the Israeli occupier violated Article 53 of the Fourth Geneva Convention, the prohibition on the destruction of property. Violation of Article 53 of the Fourth Geneva Convention (prohibition on the destruction of property, unless absolutely necessary by military operations) is made punishable by Article 147 of the Fourth Geneva Convention (which determines the grave breaches of the Convention). Article 5(1)(d) of the WIM is based on Article 147 of the Fourth Geneva Convention.

The Geneva Conventions show that two types of property are protected:

1. real or personal property in occupied territory, belonging individually or collectively to private persons, or to the State, or to other public authorities, or to

¹⁴⁶ IGH *Wall case* (appendix 8), para. 101.

¹⁴⁷ Article 5(1)(d) is based on Article 147 of the Fourth Geneva Convention.

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social or cooperative organisations (except where such destruction is rendered absolutely necessary by military operations).¹⁴⁸

The destruction has to be deliberate and large-scale. The long-term preparation of the construction of the wall, which, according to the Israeli Ministry of Defence is “the biggest infrastructure project in Israel”¹⁴⁹, the expropriation orders issued, as well as the continuation of the unlawful construction of the wall and settlements after the condemnation by the International Court of Justice in July 2004, undoubtedly indicate intent on the part of Israel. The fact that this destruction is also large-scale is sufficiently evident from the length of the wall and the number of Palestinians affected by this.¹⁵⁰

In the military expropriation orders¹⁵¹, Israel points out the military necessity of the expropriation. The International Court of Justice nevertheless ruled that the destruction of the properties of the Palestinians as a result of the construction of the Wall was not necessary by military operations.¹⁵²

In addition, the acts described above can be qualified as 'transfers, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies' (Article 5(5)(d) of the Fourth Geneva Convention).¹⁵³ In particular, the expansion of the settlement of Ariel and Ariel West near Bruqin is a crime within the meaning of this provision. The International Court of Justice ruled that through the construction of the settlements and the Wall, the Israeli occupier violates Article 49 of the Fourth Geneva Convention, prohibiting the transfer of the own population of Israel as an occupier into the occupied Palestinian territory.¹⁵⁴ Deliberate violation of Article 49 of the Fourth

¹⁴⁸ Article 53 of the Fourth Geneva Convention (1949).

¹⁴⁹ The Israeli Ministry of Defence about the Wall (**appendix 9**).

¹⁵⁰ In its Advisory Opinion of 2004, the International Court of Justice stated the consequences of the Wall for the Palestinian population as follows: “On the basis of that route, approximately 975 square kilometres (or 16.6 per cent of the West Bank) would, according to the report of the Secretary-General, lie between the Green Line and the wall. This area is stated to be home to 237,000 Palestinians. If the full wall were completed as planned, another 160,000 Palestinians would live in almost completely encircled communities, described as enclaves in the report.” IGH *Wall case* (**appendix 8**), para. 84.

¹⁵¹ For example, see the military orders T33/04 (**appendix 33**), T/210/05 (**appendix 20**) and T/201/05 (**appendix 21**).

¹⁵² *Wall case* (**appendix 8**), para. 135.

¹⁵³ See IGH *Wall case* (**appendix 8**), para. 120. The UN Security Council considered the transfer by Israel of its own population into occupied Palestinian Territory as a flagrant violation of the Fourth Geneva Convention, *idem*.

¹⁵⁴ Article 49(6) of the Fourth Geneva Convention: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territories it occupies”.

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Geneva Convention is made punishable by Article 85(4)(a) of the First Additional Protocol of 1977, on which provision Article 5(5)(d) of the WIM is based.

Crimes against humanity

In addition, the acts of which Riwal is accused constitute crimes against humanity made punishable by Article 4 of the WIM. This Article offers protection against structural impairments and ignoring of essential aspects of the humanity of others. It is possible that a legal person commits crimes against humanity.

The acts to which Riwal contributed culpably meet all cumulative elements in order to be qualified in general as crimes against humanity pursuant to Article 4 of the WIM.

The acts of which Riwal is accused are part of a widespread and systematic attack directed against a civilian population.¹⁵⁵ The way of acting constitutes committing acts for several times against the Palestinian civilian population in order to implement or continue the policy of Israel, which is designed to carry out such an attack. The attack is extensive and has far-reaching consequences for Palestinian citizens. An indication hereof is, among other things, the number of victims among the Palestinian civilian population. In addition, there is an obvious pattern or methodical plan on the part of Israel.¹⁵⁶

The crimes against humanity of which Riwal is accused come under Article 4(1)(h) of the WIM (persecution) in conjunction with Article 4(1)(j) of the WIM (apartheid).

Persecution

¹⁵⁵ In the Statement made by Mr. John Dugard, Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, 59th Session of the General Assembly, Third Committee, Item 105 (c), New York, 28 October 2004 and in his report dated 21 January 2008 (General Assembly A/HRC/7/17, Human Rights situation in Palestine and other occupied Arab territories, 21 January 2008, par. 3, 35, 54), Mr. Dugard calls Israel's actions towards the Palestinian population systematic and wide-spread.

¹⁵⁶ Report of Dugard (**appendix 12**), para. 57: "Moreover Israel has systematically violated peremptory norms of international law in the OPT, ranging from the denial of self determination to serious crimes against humanity." See also Matthew Lipmann, 'The New Terrorism and International Law', p. 305 (**appendix 52**): "The Israelis have joined the Palestinians in a cycle of revenge which has led Israel to resort to various understandable, but questionable tactics. (...) The Israelis also have attempted to impede suicide bombers by building a fence between the West Bank and Israel. At times, this has led to accusations that the Israelis, themselves, have committed crimes against humanity and war crimes."

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The construction of the Wall and the settlement near Bruqin constitutes persecution within the meaning of Article 4(1)(h) of the WIM.

These acts are directed against an identifiable group, namely the Palestinian population. The Palestinians are distinguished from the Israeli population based on race, nationality and cultural and religious grounds.

Based on their identity, the Palestinians are deliberately and to a serious degree deprived of fundamental rights, in contravention of international law, as is evidenced by this report and the judgment of the International Court of Justice.¹⁵⁷ Apart from the rights which are deemed to apply under all circumstances (*notstandsfest*),¹⁵⁸ fundamental rights infringed also include other rights, if the infringement is as serious as the violation of other crimes against humanity.¹⁵⁹ The fact whether a certain infringement is as serious as the other crimes mentioned in Article 4(1) of the WIM should not be viewed in the light of an isolated incident, but based on the series of actions of which this incident forms part. It is the entire persecution which needs to be as serious as the crimes mentioned in paragraph 1.¹⁶⁰ Subsequently, this single incident, or the series of incidents which together form the persecution, must constitute an infringement upon a fundamental right laid down in international customary or treaty law.¹⁶¹ Apart from infringements

¹⁵⁷ It should be noted here that persecution may not only be directed against the entire group, but also to a few individuals – who possess the identity of the group –, see M. Boot, '*Genocide, Crimes against Humanity and War Crimes*' (Antwerp, 2002), p. 523 (**appendix 53**): "persecution concerns the deprivation of fundamental rights and, in general, individuals are subjects of these rights. Furthermore, case law of the Ad Hoc Tribunals shows that the crime of persecution covers conduct against both individuals and groups, whereby the emphasis is put on the notion that a group consists of individual members."

¹⁵⁸ Such as the right to live, freedom from torture, slavery and freedom of religion (House of Representatives, session year 2001-2002, 28 337, no. 3, p. 42 (**appendix 54**)).

¹⁵⁹ House of Representatives (**appendix 54**). Reference is made, among other things, to Judgement, *Prosecutor v. Kvočka, Kos, Radic, Zigic and Prcać*, Case No. IT-98-30/1-T, T. Ch. I, 2 Nov. 2001 and Judgement, *Prosecutor v. Kordić and Cerkez*, Case No. IT-95-14/2-T, T. Ch. III, 26 Feb. 2001.

¹⁶⁰ *Prosecutor v. Dragan Nikolić*, Trial Chamber (18 December 2003) (**appendix 55**), para. 110: "The Trial Chamber reiterates what is stated in *Stakić*: (...) When considering whether acts or omissions satisfy this threshold, they should not be considered in isolation, but in their context and with consideration to their cumulative effect. An act which may not appear comparable to the other acts enumerated in Article 5 might reach the required level of gravity if it had, or was likely to have, an effect similar to that of the other acts because of the context in which it was undertaken."

¹⁶¹ *Prosecutor v. Kordić and Cerkez*, Appeals Chamber (17 December 2004), para. 103 (**appendix 57**): "it must be demonstrated that the acts underlying the crime of persecutions constituted a crime against humanity in customary international law or international treaty law at the time the accused is alleged to have committed the offence. As stated above, these acts must constitute a denial of or infringement upon a fundamental right laid down in international customary or treaty law; not every act, if committed with the requisite discriminatory intent, amounts to persecutions

upon the rights which offer protection against physical and mental impairments, these infringements also include infringements which seem less serious, such as infringements upon property rights.¹⁶² It is of importance here that the victims are selected based on discriminatory considerations,¹⁶³ that the destruction is extensive and far-reaching¹⁶⁴ and that the destruction affects personal belongings.¹⁶⁵

The persecution is related to the war crimes set out above as well as to the crime of apartheid. The following is stated about the latter crime.

Apartheid

In my client's opinion, the construction of the wall and the settlements also constitutes apartheid within the meaning of Article 4(1)(j) of the WIM.

Article 1(1)(g) of the WIM gives the following description of apartheid: inhuman acts of a character similar to those referred to in Article 4(1), committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.

Article 7(2)(h) of the Statute of the International Court of Justice, on which the WIM is based, describes apartheid as:

‘The crime of apartheid’ means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.’

as a crime against humanity.” In this judgment, reference is made to *Prosecutor v. Blaskić* Appeals Chamber (29 July 2004), para. 139 (**appendix 56**).

¹⁶² *Prosecutor v. Simic, Tadic and Zaric*, Trial Chamber (17 October 2003) (**appendix 58**), para. 50: “The persecutory act(s) or omission(s) may encompass physical or mental harm, infringements upon personal freedom, as well as acts that appear less serious, such as those targeting property, provided that the victimised persons were specially selected or discriminated on political, racial or religious grounds.”

¹⁶³ *Prosecutor v. Simic, Tadic and Zaric*, Trial Chamber (17 October 2003), para. 50 (**appendix 58**).

¹⁶⁴ *Prosecutor v. Blaskic*, Appeals Chamber (29 July 2004), para. 146 (**appendix 56**).

¹⁶⁵ *Prosecutor v. Blaskic*, Appeals Chamber (29 July 2004), para. 146 (**appendix 56**).

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The description of apartheid in the WIM is therefore a literal copy of Article 7(2)(h) of the Statute of the International Court of Justice. The prohibition of apartheid is customary law.¹⁶⁶

According to Article 2 of the Apartheid Convention (1973), apartheid exists when it is implemented 'for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them'.¹⁶⁷ This wording can be compared to the wording used in the Statute of the International Court of Justice. The Statute of the International Court of Justice and the Apartheid Convention (1973) both emphasise the systematic and institutionalized and oppressive nature of discrimination on which apartheid is based.¹⁶⁸ According to Boot, the definition of apartheid in the Statute of the International Court of Justice is inspired on the description in the Apartheid Convention (1973) and other international instruments on apartheid.¹⁶⁹ In addition, the Dutch Court needs to focus on international law for the substantiation of the elements of the offence (objective and subjective) and for setting limits on criminal liability.¹⁷⁰ Article 2 of the Apart-

¹⁶⁶ This has been confirmed in the Explanatory Memorandum to the WIM, *Regels met betrekking tot ernstige schendingen van het internationaal humanitair recht (wet internationale misdrijven)* [Rules with regard to serious violations of international humanitarian law (International Crime Act)], Parliamentary Papers II 2001/02., 28, 337, no. 3, p. 6. In addition, this can be reduced to the repeated efforts of the UN aimed at the elimination of racial discrimination in general. In addition, apartheid is condemned in various UN resolutions (Resolution 2202 (XXI) of 16 December 1966, The policies of apartheid of Government of the Republic of South Africa, par. 1) and international conventions (including: Convention on the elimination of all forms of racial discrimination (Art. 3), Additional Protocol I of 1977 (Art. 85 (4) (C)). See UN, Audiovisual Library of International Law: International Convention on the Suppression and Punishment of the Crime of Apartheid', available on '<http://untreaty.un.org/cod/avl/ha/cspca/cspca.html>' <most recently visited on 15 March 2010>.

¹⁶⁷ *Article II Apartheid Convention*. 'For the purpose of the present Convention, the term "the crime of apartheid", which shall include similar policies and practices of racial segregation and discrimination as practised in southern Africa, shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them...'

¹⁶⁸ Human Sciences Research Council, *Occupation, Colonialism, Apartheid?; a re-assessment of Israel's practices in the occupied Palestinian territories under international law*, Cape Town, May 2009, p. 49.

¹⁶⁹ M. Boot, *Genocide, Crimes against Humanity and War Crimes* (Antwerp, 2002), p. 528-529 (appendix 53).

¹⁷⁰ Explanatory Memorandum, *Regels met betrekking tot ernstige schendingen van het internationaal humanitair recht (wet internationale misdrijven)* [Rules with regard to serious violations of international humanitarian law (International Crime Act)], Parliamentary Papers II 2001/02., 28, 337, no. 3, p. 5.

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heid Convention (1973) may therefore serve as a guideline in the interpretation of the crime of apartheid under the WIM.

In his Report of January 2007, Mr. John Dugard, Special Rapporteur on the human rights situation in the 1967 occupied Palestinian Territories, considers that Israel's acts towards the Palestinian population constitute apartheid within the meaning of the Apartheid Convention (1973). He writes the following:

Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1966 defines "racial discrimination" as meaning "any distinction, exclusion, restriction preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". This convention only requires States to prohibit and eliminate racial discrimination. Another convention, the International Convention on the Suppression and Punishment of the Crime of Apartheid of 1973, goes further and criminalizes practices of racial segregation and discrimination that, inter alia, involve the infliction on members of a racial group of serious bodily or mental harm, inhuman or degrading treatment, arbitrary arrest or the deliberate creation of conditions preventing the full development of a racial group by denying to such a group basic human rights and freedoms, including the right to freedom of movement, when such acts are committed "for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them".

Israel vehemently denies the application of these Conventions to its laws and practices in the Occupied Palestinian Territory. Despite this denial, it is difficult to resist the conclusion that many of Israel's laws and practices violate the 1966 Convention on the Elimination of All Forms of Racial Discrimination. Israelis are entitled to enter the closed zone between the Wall and the Green Line without permits while Palestinians require permits to enter the closed zone; house demolitions in the West Bank and East Jerusalem are carried out in a manner that discriminates against Palestinians; throughout the West Bank, and particularly in Hebron, settlers are given preferential treatment over Palestinians in respect of movement (major roads are reserved exclusively for settlers), building rights and army protection; and the laws governing family reunification (...) unashamedly discriminate against Palestinians. It is less certain that the International Convention on the Suppression and Punishment of the Crime of Apartheid is violated. The IDF inflicts serious bodily and mental harm on Palestinians, both in Gaza (...) and the West Bank (...); over 700 Palestinians are held without trial (...); prisoners are subjected to inhuman and degrading treatment (...); and Palestinians throughout the OPT

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are denied freedom of movement (...). Can it seriously be denied that the purpose of such action is to establish and maintain domination by one racial group (Jews) over another racial group (Palestinians) and systematically oppressing them? Israel denies that this is its intention or purpose. But such an intention or purpose may be inferred from the actions described in this report.¹⁷¹

The Special Rapporteur specifically states some of the acts which are also mentioned in this report. Systematic discrimination exists when one population group is allowed the things which the other population group is denied. The land of the Palestinian population in Al Khader/Hizma/Bruqin is confiscated in order to integrate Israeli settlements into Israeli territory, so that Jewish citizens in Israel may live in these settlements.

According to the report dated 12 June 2002 of the Special Rapporteur on adequate housing, Mr. Miloon Kothari, Israel confirms and stabilises its occupation through its actions aimed at the destruction of the living conditions of the Palestinian population (including the destruction of houses, land confiscation, building of settlements and building of infrastructure aimed at the dismemberment of the Palestinian territories).¹⁷² This leads to the conclusion that Israel has the intention to maintain its regime. In addition, the Jewish and Palestinian identities in the Occupied Palestinian Territories function as identification of race under the Apartheid Convention.

My client concludes that the crimes which it reports also constitute apartheid within the meaning of Article 4(1)(j) of the WIM.

Criminal liability of Riwal

The above justifies the conclusion that, during the period to which this report relates, crimes under the WIM were committed in the Netherlands and/or the Occupied Palestinian Territories and that the natural and legal persons mentioned in the introductory paragraphs of this letter made a contribution to this that is culpable under criminal law.

In other words, there is significant evidence that, during the period relevant for this purpose, the suspects mentioned in this report were involved in the punishable construction of the Wall and the settlements near the villages of Al-Khader, Hizma and Bruqin.

¹⁷¹ Report of Dugard (**appendix 12**), para. 50.

¹⁷² Economic and Social Council E/CN.4/2003/5/Add.1, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living*, 12 June 2002, par. 79 (**appendix 53a**).

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The exact extent of the involvement of the above natural and legal persons will have to be investigated further. It will also have to be investigated whether, apart from the suspects mentioned in this report, any other natural or legal persons played an important role in the body of facts. My client does certainly not rule out the involvement of other Dutch natural or legal persons whether or not belonging to the Riwal Group.

Anyhow, it is an established fact that Riwal machines were used in the construction of the Wall near Al-Khader and Hizma and the settlement near Bruqin. Moreover, there are good reasons to assume that Riwal *knew* that the company's machines were used for the contested work.

The fact that Riwal machines were used, with the company's knowledge, for the construction in the Occupied Palestinian Territories is not only evidenced by the witness statements cited above, but also by statements made by or on behalf of Riwal during the relevant period.¹⁷³

Following the broadcast of *Netwerk* on 3 July 2006, which was already cited above,¹⁷⁴ a broadcast dedicated to, among other things, the construction of the Wall near Hizma, questions were asked at the time by Mr. Koenders, a Member of Parliament for the Labour Party, to the Minister of Foreign Affairs about Riwal's involvement in the construction of the Wall. Subsequently, various media reported on these parliamentary questions, Riwal also being asked to comment on the issue.

For instance, on 7 July 2006, a Riwal spokesperson said the following in response to questions of RTV Rijnmond, a regional radio and television station:

"Riwal in an internationally operating and successfully operating company renting mobile cranes and access equipment to companies such as builders, installation companies, maintenance companies and government institutions. This is also the case in Israel, where we have been active with local management and employees since 2003. At present, Riwal Israel rents out cranes to a big client for the Israeli separation wall along the West Bank. To Riwal, this is a commercial assignment which has only been accepted and is being executed as such."¹⁷⁵

¹⁷³ See the articles from newspapers and other media about Riwal's building work (**appendix 60**).

¹⁷⁴ See the video stills of the broadcast of *Netwerk* (3 July 2006) 1-7 (**appendix 42**).

¹⁷⁵ The Dutch News Agency ANP also quoted from this statement on 7 July. See the Profundo report (**appendix 4**), p. 10.

Following the questions arisen in the House of Representatives, the Minister of Foreign Affairs contacted Riwal at the end of September 2006. The company then informed the Minister that it had

“already stopped supplying cranes to the building project for about 6 to 8 weeks”.¹⁷⁶

This statement shows that Riwal was aware of the fact that, at least until the summer of 2006, the company's machines were used for the construction of the Wall and settlements.¹⁷⁷ According to my client, it should therefore be assumed that the contested acts were performed intentionally.¹⁷⁸

As already stated above, further investigation is required into the exact extent of the involvement of the various natural and legal persons mentioned in this report in the offences. This further investigation will therefore show how to further substantiate this involvement from a legal point of view; the criminal liability of the various parties involved will have to be substantiated further.

With regard to this substantiation, my client would first of all like to state that rules of general criminal law apply to the WIM, in accordance with Article 91 of the Dutch Penal Code.

With regard to the various forms of participation in the offences, the Dutch Court should therefore, in principle, apply Dutch general criminal law. Our provisions about participation in offences should, however, be placed in the international context and, if

¹⁷⁶ RTV Rijnmond, 'Riwal stops the construction of the Israeli wall' (10 October 2006) (**appendix 61**).

¹⁷⁷ However, my client strongly suspects that the company also supplied machines for the construction in the Occupied Palestinian Territories after the summer of 2006. One year after Riwal said that it had stopped supplying cranes, the Minister of Foreign Affairs saw another cause to approach the company yet again when in June 2007, an investigation by B'Tselem, an Israeli human rights organisation, showed that Riwal was still involved in the construction of the wall, this time in the village of Al Khader. See RTV Rijnmond, 'Dutch minister Verhagen raps Riwal on its knuckles' (11 November 2007) (**appendix 62**).

¹⁷⁸ In or about 2007, Ris Maaskant, public relations employee of Riwal, writes in an e-mail to *Real News* that neither Riwal Israel nor Riwal Holding Group is involved in the construction or the maintenance of the Wall, see www.israel-academia-montor.com. However, the director of Riwal Israel, Tal Perri, acknowledges in September 2009 that it is possible that Riwal cranes are used for the construction of the industrial area of Ariel West, an Israeli settlement. Mr. Perri says about Riwal's responsibility for the consequences of this settlement for the Palestinians that Riwal has: "no control of the work or the location. It could be that a building contractor uses Riwal access equipment in Ariel. You could compare us to an international car rental company, see Simone Korkus, *De Groene Amsterdammer* (7 October 2009) (**appendix 59**).

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necessary, be further substantiated by the court based on, among other things, the case-law of international tribunals.¹⁷⁹

In the event of a conflict between international and Dutch rules on criminal liability, the former rules will prevail.¹⁸⁰ According to my client, this situation does not occur in the present case.

Renting out machines for the punishable construction of the Wall and settlements indicates complicity, a form of participation in an offence of which also legal persons could be guilty under Dutch law. However, my client cannot and will not rule out in advance that the cooperation with other parties involved or suspects was so close and deliberate that one should (also) speak of co-perpetration.

In this report, Lima Holding B.V. is the key player, because it is responsible for all Israeli activities of Riwal. Through the other holdings mentioned in the report (ProDelta Investments B.V. and D. Schalekamp Holding B.V.), Lima Holding B.V. is fully owned by the natural persons mentioned in the report: Doron Livnat and Dick Schalekamp.

Based on the information provided in this report, the conclusion should be drawn that there are strong indications that the work performed by Riwal on the Wall and the settlements (or the contribution made to this) can reasonably be imputed to the Dutch Holdings. This work in the Occupied Palestinian Territories seems to have been performed in the scope of the Dutch legal persons, in the sense that it seems to concern work which are apparently part of the normal course of business or normal business activities of Riwal or the Holdings mentioned.

Regarding the involvement of the natural persons, Doron Livnat and Dick Schalekamp, it must also be noted that they (apparently) did not take any measures to prevent the use of the machinery for the construction, while they were certainly entitled and also reasonably obliged to do this. In my client's view, Doron Livnat and Dick Schalekamp cannot evade their liability as (de facto) directors (Article 52 of the Dutch Penal Code) or as superiors (Article 9 of the WIM), where it should be noted that the special form of liability of the superior not only has a variation of intent, but also a variation of guilt.

As stated above, the name of Riwal Israel was changed into Rom on 8 December 2009. Rom hereby became an Israeli company. This legal change in the structure of Riwal in

¹⁷⁹ Parliamentary Papers II, 2001/02, 28 337, no. 3, p. 25 ff.

¹⁸⁰ The Hague District Court, 23 December 2005, LJN AU8685, para. 6.2.

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Israel is, however, not relevant to this report, as the de facto directors have not changed and this report deals with acts committed prior to the above date.

The company which was a key player in the body of facts, Lima Holding B.V., in fact still exists.¹⁸¹ As already stated above, prosecution pursuant to the WIM seems logical for this reason.

Jurisdiction

The Dutch Court has jurisdiction to try Lima Holding B.V. and the other natural and legal persons mentioned in this report. The target group of the WIM not only includes natural persons, but also legal persons.

The *locus delicti* of the punishable acts is (partly) in the Netherlands, as the natural and legal persons under suspicion live or reside in the Netherlands or have their official seat here and the contested acts, as outlined in this report, were committed in the Netherlands or in the Dutch scope of these legal persons.

Insofar as the place where the punishable acts as laid down in this report were committed is located outside the Netherlands, Article 2(1), under (a) and (c), of the WIM confers extraterritorial jurisdiction to the Dutch court with regard to "anyone who is guilty of committing one of the crimes described in this Act outside the Netherlands, if the suspect is situated in the Netherlands", and to "any Dutch national who is guilty of committing one of the crimes described in this Act outside the Netherlands." As the natural and legal persons being the subject of this report live or reside in the Netherlands or have their principal place of business in the Netherlands, this condition of jurisdiction has been met.

The requirement of double criminality does not apply to crimes described in the WIM.¹⁸²

Feasibility and expediency

In its Advisory Opinion, the International Court of Justice emphasised the following:

¹⁸¹ Extract from the Chamber of Commerce, 10 March 2010 (**appendix 3**).

¹⁸² Instructions on the Disposal of reports with regard to the penalizations in the International Crime Act [*Aanwijzing Afdoening aangiften m.b.t. de strafbaarstellingen in de Wet internationale misdrijven*] (9 December 2003), p. 2.

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“Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction.”¹⁸³

It follows from this that the Netherlands, too, is obliged not to recognise the illegal situation and not to contribute to it.¹⁸⁴ This is also evidenced by the point of view put forward by Minister Bot in the House of Representatives:

“I consider economic relations of Dutch companies with settlements and the cooperation by Dutch companies in the construction of the Israeli barrier on Palestinian territory to be undesirable.”¹⁸⁵

Moreover, Article 146(2) of the Fourth Geneva Convention prescribes that:

“Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case.”

Pursuant to this provision, the Netherlands is obliged to prosecute the behaviours made punishable in the WIM which also constitute a violation of the Fourth Geneva Convention.¹⁸⁶

In response to the parliamentary questions about the involvement of Riwal in the construction of the Wall, Mr. Bot, at the time Minister of Foreign Affairs, stated the following, also on behalf of the State Secretary for Economic Affairs:

¹⁸³ IGH *Wall case* (**appendix 8**), para. 159.

¹⁸⁴ The fact that Advisory Opinions of the International Court of Justice are not binding, does not affect this obligation. Thirlway, an authority in the field of the International Court of Justice, formulates it as follows: “The essence of an advisory opinion is that it is advisory, not determinative: it expresses the view of the Court as to the relevant international legal principles and rules, but does not oblige any State, nor even the body that asked for the opinion, to take or refrain from any action. The distinction, clear in theory, is less so in practice: if the Court advises, for example, that a certain obligation exists, the State upon which it is said to rest has not bound itself to accept the Court’s finding, but it will be in a weak position if it seeks to argue that the considered opinion of the Court does not represent a correct view of the law”, H.W.A. Thirlway, ‘The International Court of Justice’, in Evans M (ed.), *International law* (Oxford UP: Oxford: 2003), p. 582 (**appendix 64**).

¹⁸⁵ Parliamentary Papers II (2006-2007), ‘Appendix’, p. 1680 (**appendix 63**).

¹⁸⁶ Also compare Article 86(1) of Additional Protocol I.

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“The government is also of the opinion that the construction of the barrier on Palestinian territory is contrary to international law. The government therefore considers it to be undesirable that a Dutch company, in whatever way, would contribute to the construction of this barrier. I will therefore, in consultation with the State Secretary for Economic Affairs, inform Riwal/Schalekamp Beheer of the Dutch point of view on the matter.”

In addition, there are sufficient indications of offences justifying a further investigation. There is a good chance that criminal proceedings will eventually lead to a conviction.

If criminal proceedings are instituted, the victims of the offences laid down in this report will probably join as injured parties to the criminal proceedings in order to be awarded damages. This goal in itself is reason enough to institute proceedings.¹⁸⁷

Request

On behalf of my client, I request that you institute criminal proceedings against the natural and legal persons mentioned in this report. I request that you keep me informed of the progress of your investigation.

My client requests that, for the time being, you treat this report in confidence.

Kind regards

Liesbeth Zegveld

Appendices:

AL-HAQ

- 1) Bylaw of Al-Haq

RIWAL

- 2) Extract from the Chamber of Commerce, Lima Holding B.V. (10 March 2010)
- 3) Extract from the Chamber of Commerce, ProDelta Investments B.V. (10 March 2010)
- 3a) Copy/copies from the Commercial Register (10 March 2010)
- 4) Profundo report, 'Riwal and the Israeli Separation Wall' (12 September 2006)

¹⁸⁷ See Den Bosch Court of Appeal, 15 January 2001, LJN [National Case-Law Number]: AA9797.

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- 5) Profundo report, '*Nederlandse economische relaties die de Israëlische bezetting van Palestijnse en/of Syrische gebieden ondersteunen* [Dutch economic links in support of the Israeli occupation of Palestinian and/or Syrian territories] (September 2006), pp. 40-41
- 5a) Profundo report, 'Update of "Dutch economic links in support of the Israeli occupation of Palestinian and/or Syrian territories"' (February 2010), pp. 1-5 and 16-17
- 6) 'KlaagMuur 2.0 Made in Holland' the Internet address: <http://marksweblogsite.blogspot.com/2009/04/klaagMuur-20-made-in-holland.html> (4 April 2009)
- 7) Appendix, Hebrew document about Rom

GENERAL BACKGROUND MATERIAL ABOUT THE WALL AND SETTLEMENTS

- 8) Advice of the International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories* (9 July 2004) International Court of Justice Reports 2004, p. 136
- 9) Israeli Ministry of Defence about the Wall, available on <http://www.seamzone.mod.gov.il/Pages/ENG/execution.htm> <most recently visited on 13 January 2010>
- 10) Statement of the UN High Commissioner for Human Rights (9 July 2009), available on: <http://unispal.un.org/UNISPAL.NSF/0/9749ED6FD4607A4F852575ED00666DB2> <most recently visited on 14 January 2009>
- 11) 'Humanitarian Implications of Latest Wall Projections' (18 April 2009), available on: <http://israels-apartheid-wall.com/?p=41> <most recently visited on 23 February 2010>
- 12) Report of John Dugard, Special Rapporteur on the Human Rights Situation in the 1967 Occupied Palestinian Territories (29 January 2007), UN Doc. A/HRC/4/17
- 13) United Civilians for Peace, 'Infosheet Nederzettingen' [Settlements Infosheet] (March 2008), DC Index: 2008/03/002dc
- 14) Peace Now, 'Breaking the law in the West Bank – One Violation Leads to Another: Israeli Settlements Building on Palestinian Property' (October 2006)
- 15) UN Office for the Coordination of Humanitarian Affairs occupied Palestinian Territory, 'Israeli settler violence and the evacuation of outposts' (November 2009)

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16) Empty

AL-KHADER

- 17) Statement by Mahmoud Abdallah Muhammad Moussa (9 December 2009)
- 18) Statement by Muhammad Omar Muhammad Moussa (9 December 2009)
- 19) Statement by Hassan Yusuf Ahmad Subyah (4 November 2009)
- 20) Military expropriation order T/210/05 (21 November 2005)
- 21) Military expropriation order T/201/05 (2005)
- 22) ARIJ and LRC, 'Al Khader Village to lose its lands for the construction of the Israeli Segregation Wall' (6 May 2009), available on: http://www.poica.org/editor/case_studies/view.php?recordID=1931 <most recently visited on 26 February 2010>
- 23) ARIJ and LRC, 'New Israeli Military Order to confiscate additional area of Palestinians' Lands in the villages of Al Khader and Artas' (17 September 2007), available on: http://www.poica.org/editor/case_studies/view.php?recordID=1164 <most recently visited on 26 February 2010>
- 24) Statement by Adnan Jowdah Ahmad Subayh (10 November 2009)
- 25) 5 and 8 aerial photographs of Khader marked by Al Haq (2006 and 2009)
- 26) ARIJ and LRC, 'The Israeli Segregation Wall hits Al-Khader village lands' (16 April 2005), available on: http://www.poica.org/editor/case_studies/view.php?recordID=553 <most recently visited on 26 February 2010>
- 27) Statement by Kareem Issa Muhammad Jibrán (12 January 2010)
- 28) ARIJ and LRC 'Al Khader village Epitomize Israeli belligerent acts against Palestinian communities' (2 August 2007), available on: http://www.poica.org/editor/case_studies/view.php?recordID=1120 <most recently visited on 26 February 2010>
- 29) Photographs taken by order of Btselem 1-7

HIZMA

- 30) Statement by Muwaffaq Saeed Ayed Al Khateeb (20 December 2009)
- 31) Statement by Ahmad Shahadeh Abdul-Aziz Al-Khateeb (20 December 2009)
- 32) Statement by Muwaffaq Saeed Ayed Al-Khateeb (15 February 2005)

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- 33) Military expropriation order T/33/04
- 34) ARIJ and LRC, 'Hizma: A Palestinian Village between the Wall and the Settlements' (21 March 2005), available on: http://www.poica.org/editor/case_studies/view.php?recordID=546 <most recently visited on 23 February 2010>
- 35) ARIJ and LRC, 'Israel announces the construction of a new Terminal on Hizma Village Lands' (16 September 2006), available on: http://www.poica.org/editor/case_studies/view.php?recordID=900 <most recently visited on 26 February 2010>
- 36) Articles about the checkpoints: 'Hell on earth: Qalandia checkpoint' (2 May 2002), available on: <http://electronicintifada.net/v2/article1634.shtml> <most recently visited on 28 February 2010>; 'A trip through the Qalandia checkpoint' (18 June 2009), available on: <http://holylanddispatches.blogspot.com/2009/06/military-checkpoint-is-one-of-most-well.html> <most recently visited on 28 February 2010>; 'Checkpoint misery epitomizes a Mideast divide' (21 February 2010), available on: <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/21/AR2010022100029.html> <most recently visited on 28 February 2010>; and UN Truth 'Yes, Qalandia Checkpoint is a scandal' (21 February 2010), available on: <http://un-truth.com/israel/qalandia-checkpoint-is-a-scandal> <most recently visited on 28 February 2010>
- 37) ARIJ and LRC, 'Hizma Eclipsed by Segregation Wall' (26 August 2004), available on: http://www.poica.org/editor/case_studies/view.php?recordID=432 <most recently visited on 26 February 2010>
- 38) Aerial photograph of Hizma, marked by Al Haq
- 39) 3 aerial photographs of Hizma
- 40) Expropriation order of the municipality of Jerusalem
- 41) Ynet 'Palestinian family "jailed" in its own home' (25 May 2009), available on: <http://www.ynetnews.com/articles/0,7340,L-3721152,00.html> <most recently visited on 3 March 2010>
- 42) Video stills of the broadcast of *Netwerk* (3 July 2006) 1-7

BRUQIN

- 43) Statement by Ikrima Samara (6 January 2010)
- 44) Military orders T/82/06 and T/01/07

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- 45) The settlement of Ariel about 'Ariel West', available on: <http://go.ariel.muni.il/ariel/en/index.php?option=content&task=view&id=14&Itemid=40> <most recently visited on 24 February 2010> and http://go.ariel.muni.il/ariel/en/index.php?option=com_content&task=view&id=130&Itemid=62 <most recently visited on 3 March 2010>
- 46) Mahfooz Muhammad Ahmad Samara (6 January 2010)
- 47) Photograph of 'Ariel West' marked by Al Haq
- 48) 3 aerial photographs of 'Ariel West'
- 49) Maps showing the boundaries of Bruqin
- 50) Aerial photograph of 'Ariel West', marked by Hadeel Hunaiti
- 51) photographs 1-8 (27 July 2009) and 9-17 (9 September 2009), including a witness statement by Merav Amir (1 September 2009), and photographs 18-22 of various organisations (including Bimkom and Peace Now).

CRIMES WITHIN THE MEANING OF THE WIM

- 52) Matthew Lipmann, 'The New Terrorism and International Law' (10 *Tulsa J. Comp. & Int'l L.* 297), p. 305
- 53) M. Boot, '*Genocide, Crimes against Humanity and War Crimes*', p. 523
- 53a) Economic and Social Council E/CN.4/2003/5/Add.1, Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, 12 June 2002, par. 79
- 54) House of Representatives, session year 2001-2002, 28 337, no. 3, p. 42
- 55) *Prosecutor v. Dragan Nikolić*, Trial Chamber (18 December 2003), para. 110
- 56) *Prosecutor v. Blaskic*, Appeals Chamber (29 July 2004), paras. 139 and 146
- 57) *Prosecutor v. Kordić and Cerkez*, Appeals Chamber (17 December 2004), para. 103
- 58) *Prosecutor v. Simic, Tadic and Zaric*, Trial Chamber (17 October 2003), para. 50

ROLE OF RIWAL

- 59) *De Groene Amsterdammer*, 'Maatschappelijk verantwoord onderdrukken' [Socially responsible oppression] (7 October 2009), available on <http://www.groene.nl/2009/41/maatschappelijk-verantwoord-onderdrukken> <most recently visited on 11 March 2010>

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- 60) Simone Korkus, 'Kritiek op hulp Dorchts bedrijf aan Israël' [Criticism of the help of a company in Dordrecht, the Netherlands, to Israel] (26 September 2009), available on <http://www.unitedcivilians.nl/nl/doc.phtml?p=Riwal+2009> <most recently visited on 11 March 2010>
- 61) RTV Rijnmond, 'Riwal stopt met bouw Israëlische muur' [Riwal stops building the Israeli wall] (10 October 2006), available on <http://oud.rijnmond.intermax.nl/Homepage/Regionieuws/Nieuws?itemid=39563> <most recently visited on 11 March 2010>
- 62) RTV Rijnmond, 'Minister Verhagen tikt Riwal op vingers' [Dutch minister Verhagen raps Riwal on its knuckles] (11 November 2007), available on <http://oud.rijnmond.intermax.nl/Homepage/Regionieuws/Nieuws?itemid=45008> <most recently visited on 11 March 2010>

FEASIBILITY AND EXPEDIENCY

- 63) Parliamentary Papers II (2006-2007), 'Appendix', p. 1680
- 64) H.W.A. Thirlway, 'The International Court of Justice', in Evans M (ed.), *International law* (Oxford UP: Oxford, 2003), p. 582

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