

# **CREEPING DISPOSSESSION**

## **Israeli Restrictions on Palestinian Farming Beyond the Barrier**

EXECUTIVE SUMMARY | OCTOBER 2021



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Cover photo: Agricultural gate 623 in the Separation Barrier, Deir Al Ghusun, West Bank, 2017. Photo by Ahmad Al-Bazz/ActiveStills

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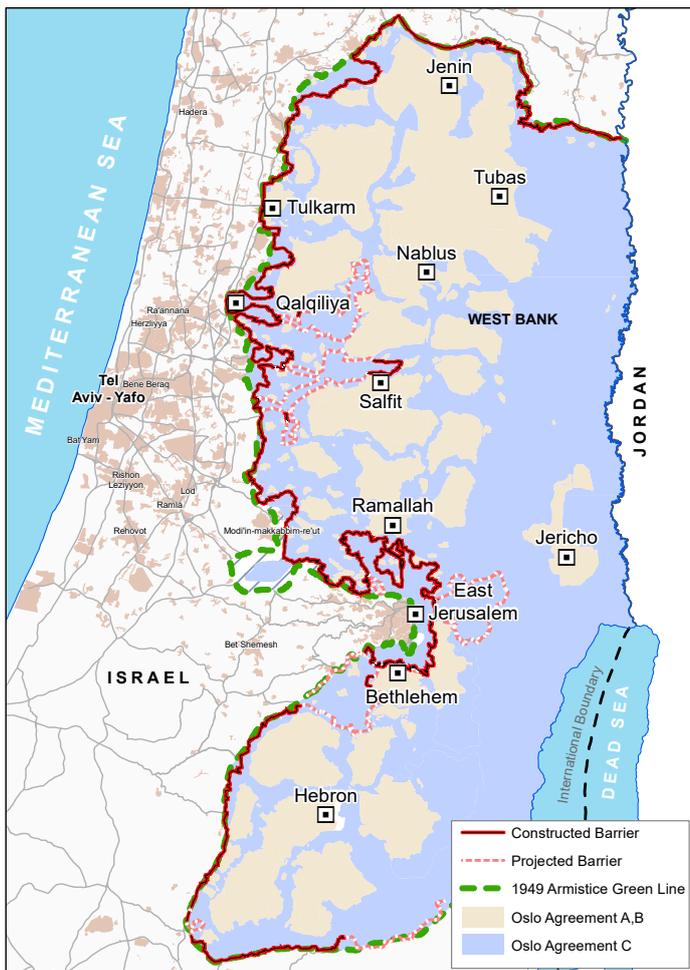
## EXECUTIVE SUMMARY

In 2002, against the backdrop of the violence of the second intifada, the Government of Israel decided to erect a physical barrier between the West Bank and the State of Israel. The government justifies the Barrier as necessary to prevent potential terrorists from infiltrating the country. However most of the Barrier is not built on the Green Line between Israel and the West Bank. Rather, 85% of the Barrier is built inside the West Bank, isolating 9.4% of the West Bank into dozens of separate

enclaves, cutting off tens of thousands of people from their lands, and disrupting daily life for hundreds of communities.

The military declared the areas trapped between the Barrier and the Green Line (which it refers to as the “Seam Zone”) to be a closed military zone which Palestinians need a special permit to enter. Palestinians can only apply for permits if they meet the criteria for specific permit categories (resident of those areas, business owner, teacher, medical staff, etc.). This report focuses on the largest group requiring access to these areas – tens of thousands of Palestinians who own plots of land in the Seam Zone, as well as their families and other agricultural workers.

In response to initial criticism, both by the international community and in the High Court of Justice, Israel promised that, barring security concerns, Palestinians would have virtually unfettered access to the other side of the Barrier. The state promised specifically that “Palestinians with links to lands in the Seam Zone would continue to cultivate them, while enabling relatives and other workers to assist them.”<sup>1</sup> As detailed in this report, these promises are far from reality.



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1 HCJ 9961/03, 639/04, HaMoked Center for the Defence of the Individual v. Government of Israel et al. (2011), [judgment dated April 5, 2011](#), para. 34.

## STEADY DETERIORATION IN ACCESS: THE RESTRICTIONS

Access to the Seam Zone is governed by a labyrinth military bureaucracy, as detailed at length in the report. HaMoked assists hundreds of Palestinians every year to navigate this bureaucracy, inquiring on behalf of people whose applications were denied and those who received no response at all, intervening with the relevant Israeli military offices and, if this is unsuccessful, petitioning Israeli courts. A majority of these interventions are ultimately successful – of HaMoked’s 166 Seam Zone cases concluded in 2020, 132 concluded with permits granted – but often people are left for many months and even years without a valid permit.

Even those who manage to obtain permits cannot access their lands freely; they are restricted to the opening hours of one or two gates specified in their permit. Soldiers open most gates only three days a week, and only two or three times a day, each time for an hour or less.

### The Regulations of 2017: No Permits for “Tiny Plots”

Every few years, the Israeli military amends the regulations governing access to the Seam

Zone; invariably, each new version of the regulations is more restrictive than the one before.

Since the 2017 amendment, these regulations no longer recognize the *right* of farmers to access their lands, but rather applicants must prove “agricultural need” in order to receive a Seam Zone farmer permit. The regulations state that “as a rule, there will be no sustainable agricultural need for cultivation of a tiny plot, less than 330 square meters.”<sup>2</sup>

This new “tiny plot” rule has profound implications; it is the basis for the rejection of hundreds of permits. Yet, as detailed in the report, 330 m<sup>2</sup> is a completely arbitrary requirement. There is no reason to deny Palestinians their right to cultivate even smaller plots. Furthermore, most of the plots that are defined as “tiny plots” are actually much larger, but the military treats larger plots as a composite of many “tiny plots”, calculated as “a multiple of the entire plot by the relative portion of the ownership of the person requesting.”

Thus, for example, if a three dunam plot of land is owned jointly by ten cousins, the military will calculate each cousin as owning 300 m<sup>2</sup> – and no one will be entitled to a permit to tend this land. This is not a hypothetical scenario. Rasmiya Ta’meh from Qaffin village owns 17.5 dunams of farmland (17,500 m<sup>2</sup>) in the Seam Zone, collectively with her relatives. Her son was denied a permit as the military calculated the size of her segment of the plot as 212 m<sup>2</sup>, this although none of the other joint owners had been given a permit.

**I have a deep emotional connection to my land. Reducing my connection to my land to a calculation of the crops grown there is offensive.**

Ahmad Abadi, 55, from Tura al-Gharbiya

<sup>2</sup> [Standing Orders 2017](#), p. 22 (Hebrew).

Year	Farmer Permit Requests Submitted	Requests Approved	Requests Refused	Percent of Refusals
2014	4,504	3,180	1,324	29%
2015	4,476	2,694	1,782	40%
2016	9,501	4,286	5,215	55%
2017	5,363	2,409	2,954	55%
2018	7,954	2,161	5,793	73%
2019	7,400	2,741	4,659	63%
2020	8,015	2,184	5,831	73%

In 2018, HaMoked petitioned the High Court of Justice against the tiny plot restriction. In December 2020, the High Court issued an order nisi directing the state to explain “why [the article concerning the “tiny plot”] of the Seam Zone Regulations should not be cancelled [...] and/or replaced by another arrangement which provides for the joint owners of rights in plots”.<sup>3</sup> The state refused to cancel this restriction and the petition is still pending.

### STEADY DETERIORATION IN ACCESS: THE DATA

Data that HaMoked obtained from the Israeli military through Freedom of Information requests show the steady deterioration in Palestinian landowners’ access to the Seam

Zone,<sup>4</sup> as displayed in the table above.

### Access Denied for Reasons Unrelated to Security

While security considerations should be the *only* reason to deny permits, in fact these constitute a tiny fraction of permit denials. According to the data provided by the military, a “security preclusion” accounts for 0-3% of denials of farmer permits. The vast majority of permits are denied due to difficulties navigating the military bureaucracy and failure to meet the ever-more restrictive criteria.

3 H CJ 6896/18, Ta’meh et al. v. Military Commander in the West Bank et al., [Amended Petition, February 27, 2020](#).

4 The military also provided data on other agricultural permits for entry into the Seam Zone, such as “agricultural work permits” and “farmer relative permits”, however inconsistencies in the data prevented a comparison between years.

## CASE STUDY: QAFFIN

In June 2020, HaMoked petitioned the High Court of Justice to dismantle the Qaffin segment of the Barrier. The petition was

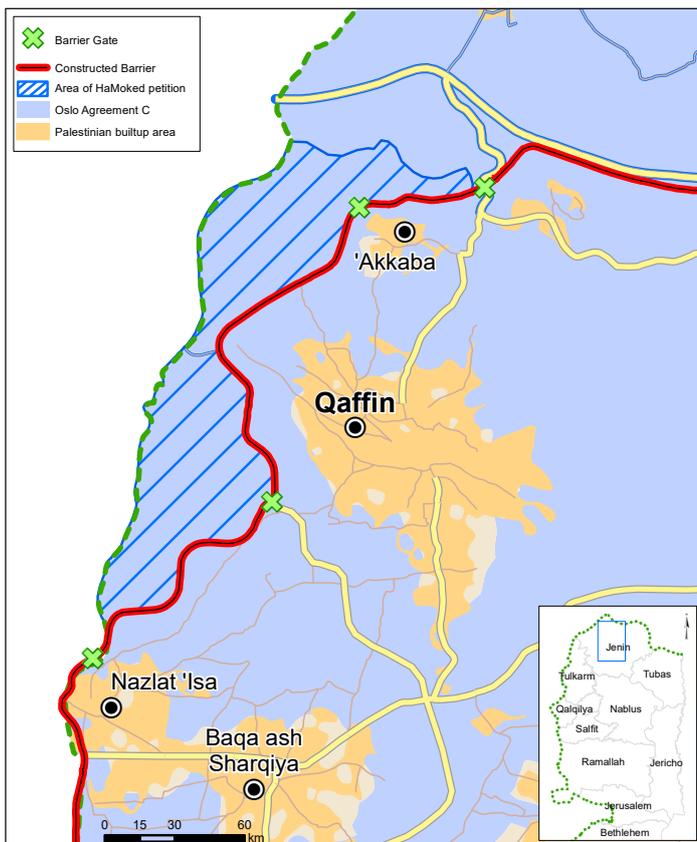
60% of Qaffin farmlands are to the west of the Barrier and fully 80% of Akkaba farmlands are to the west of the Barrier. Access to these lands is only possible via two agricultural gates, which are open three days a week, Sunday, Tuesday and Thursday, for three short times: in the morning from 6:30 to 7:15; at midday for 10 minutes between 12:00 and 12:10; and in the afternoon from 15:45 to 16:30.

The Separation Barrier has had devastating effects on these communities, which traditionally relied on agriculture as their primary source of sustenance. Taysir Amarneh, the head of the Akkaba Municipal Council, and one of the petitioners, explains:

In the past, Akkaba residents earned their living from agriculture. We grew almonds, za'atar, cucumbers, olives, sesame, tobacco, and okra, and we used the land for grazing. Construction of the Barrier and the restrictions on reaching our land blocked our main source of income. We had to abandon the crops that require daily attention. Now we grow mostly olives, and some wheat and sesame. And grazing herds is very difficult. Before the Barrier the village had 1,170 head of sheep. Today we only have about 340.

Starting in 2014, there was a severe deterioration in agriculture in this area, because of the increasing restrictions on permits. Spouses and children of landowners can't get farmer permits anymore, so in most cases a single, elderly landowner has all the burden of tending the land. Between 2012 and 2014 the military gave 280 permits to villagers. Today we only get about 80 permits.

The fertility of the land has also declined



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submitted on behalf of seven farmers from the villages of Qaffin, Akkaba and Nazlat 'Isa.

In this area, the Barrier runs along a route that is 200-1,600 meters inside the West Bank. This segment of the Barrier isolates some 3,200 dunams of land (3.2 square kilometers), all of it privately-owned Palestinian land, belonging primarily to the three adjacent communities.

Qaffin and Akkaba in particular are farming communities and the Barrier separates them from a majority of their farmlands: some

as a result of the neglect. The yield from olive trees in the Seam Zone has decreased by 65%.

Today many farmers have abandoned their lands west of the Barrier. Most of the residents of Akkaba now work inside Israel, or they rent land to the east of the Barrier.

[...] Our economic situation has really been badly affected because we can't reach our land. We used to grow all our own vegetables and fruits and grains. Today we have to buy everything.

Like in Akkaba, the roughly 12,300 people

**I calculated that as a result of the Barrier, I lose about 25,000 shekels in income every year. Before the Barrier, I would tend the land together with my nieces and nephews. Other relatives would also come and help harvest. Now no one gets permits. My wife and I have to do it alone.**

Jihad Harashe, 69, from Qaffin

living in Qaffin have been hard-hit by the Barrier and the restrictions. The Qaffin farmers have had to alter the crops they grow in the Seam Zone due to the restrictions. All of them have lost income as a result, and many have had to find alternative sources of income.

The Israeli military provided figures to HaMoked regarding permit requests to pass through the Qaffin gate. In 2014, the military

received 1,778 requests for permits, of which it approved only 1,256 – 71%. This number has steadily deteriorated. In 2018 (the last year for which data was provided), Qaffin residents submitted 1,182 requests for permits, of which only 606 permits were granted – 51%. The data support the reports from the villagers: fewer people are requesting permits at all, and far fewer permits are granted to those who request them.

HaMoked's High Court petition includes an expert security opinion from Colonel (Res.) Shaul Arieli, who concludes that there is no security logic to this segment of the Barrier. In fact, the opposite is true: Arieli compared the current route to an alternative along the Green Line and concluded that a barrier based on the Green Line is preferable by every operational parameter set by the military: barrier crossing, early detection, dominating terrain, proximity to urbanized terrain, security of troops operating along the Barrier, reduction of Barrier length, number of agricultural gates and permits needed for village residents, and reduction of Barrier maintenance.<sup>5</sup>

<sup>5</sup> [Expert Security Opinion for Petition Regarding the Security Barrier Route in the Qaffin Area](#), Shaul Arieli, March 22, 2020.

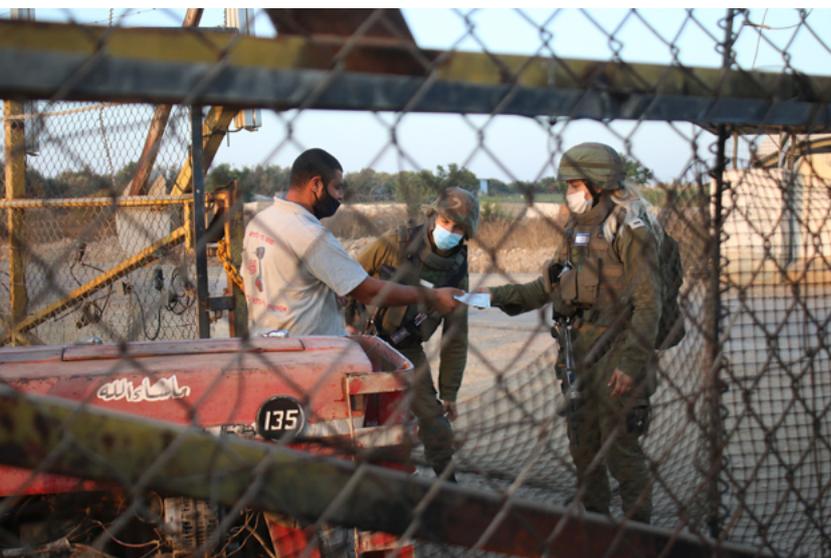
## A VIOLATION OF BASIC RIGHTS

Under International Humanitarian Law, the Israeli military is required to protect the Palestinian population under occupation and ensure its welfare. Human rights treaties to which Israel is a signatory require Israel to respect and protect Palestinians’ basic rights. Most obviously the Barrier and the permit regime violate Palestinians’ right to free movement. However, the restrictions on movement, in turn, lead to other human rights violations. Ownership, for instance, is meaningless if one cannot access the property, nor reap the benefits of it.

Additionally, the permit regime imposed in the Seam Zone is also a severe violation of the principle of non-discrimination, a fundamental component of international human rights law. While Israelis and foreigners have free access to the Seam Zone, the vast majority of Palestinians are denied entry to those areas. Only a small minority of Palestinians are eligible to apply for permits, and even these people must endure

the extremely restrictive, complicated and time-consuming permit bureaucracy. Even those who succeed in navigating this bureaucracy and obtain the necessary permits have extremely limited access to the Seam Zone, subject to the days and hours of operation of the gates.

The 2004 Advisory Opinion of the ICJ found that those segments of the Barrier route inside the West Bank violate Israel’s obligations under international law. The ICJ called on Israel to dismantle the segments already completed; and “repeal or render ineffective forthwith all legislative and regulatory acts relating thereto.”<sup>6</sup> The Court also found that third party states “are under an obligation not to recognize the illegal situation resulting from the construction of the wall,” and must “see to it that any impediment resulting from the construction of the wall to the exercise by the Palestinian people of its right to self-determination is brought to an end.”<sup>7</sup>



Agricultural gate 914 in the Separation Barrier, Falameya, West Bank, 2020. Photo by Ahmad al-Bazz, Activestills

<sup>6</sup> [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), International Court of Justice, Advisory Opinion of 9 July 2004, para. 163(3)B, p. 53.

<sup>7</sup> *Ibid.*, para. 163(3)D.

## LONG-TERM ECONOMIC AND POLITICAL IMPLICATIONS

Restricted access to farmlands has harmed livelihoods for thousands of families. Communities can no longer fully exploit the potential of this area due to the Barrier. Many farmers reported to HaMoked that they have switched from high-yield to lower-yield agriculture in the Seam Zone, as access restrictions make it difficult to maintain greenhouses and cultivate high-yield vegetables. Even olive yield has suffered as a result of restricted access to lands in the Seam Zone. Farmers' income has dropped significantly as a result.

In fact, many Palestinians have abandoned agriculture in the Seam Zone altogether, due to the obstacles in accessing these lands. In villages like Qaffin and Akkaba (discussed above) that once relied on agriculture as a primary source of livelihood, most households are now dependent

on day labor inside Israel or employment by the Palestinian Authority. And so, once fertile areas have become barren, uncultivated lands due to the highly restricted access.

The Separation Barrier also undermines the territorial integrity of the West Bank as a whole. The isolation of 9.4% of the West Bank has clear implications for the Palestinians' collective right to control of their natural resources and their right to self-determination.



Separation Wall by Ni'iln, West Bank, 2013. Photo by Keren Manor, Activestills

**My grandfather, of blessed memory, used to grow winter produce on our land. But we don't grow vegetables anymore, because of the Barrier and all the rules and regulations of the military. There's no guarantee we'll be able to get to our land. If we cannot get uninterrupted permits, we can't take the risk of growing vegetables.**

Hiam Ghanemah, 43, from al-Araqa

## CONCLUSIONS

Nearly two decades since the construction of the Barrier, we see the logic of a creeping dispossession – more and more restrictions on Palestinians trying to access areas trapped between the Barrier and the Green Line, and as a result, fewer and fewer people willing to navigate the permit bureaucracy Israel has put in place.

Any agricultural community will tell you that land is not merely functional. The land is a source of produce and income, but its benefits cannot be quantified solely in monetary terms. The land is also a site for family and community events, and connection to the land is integral to the local culture. For dozens of Palestinian communities, and tens of thousands of people, all of this has been destroyed by the Separation Barrier. Even those who receive permits to cross the gates during their limited opening hours cannot have a picnic with their family or a spontaneous outing to their land as they once did.

**The olive harvest used to be a big festival. All of our relatives would meet and spend hours and days together, adults and children alike. I remember we would sometimes sleep out on the land. We can't do that anymore. You have to file documents. You need a permit. There's a checkpoint. If I cross, I'm worried I'll get stuck inside.**

Amal Zeid, 37, from Nazlat Zeid

The permit regime reverses the basic logic of international law, that individuals enjoy freedom of movement within their own country, and that movement can only be restricted with just cause. For Palestinians living near the Separation Barrier that Israel built on a route that cuts through the West Bank, free movement is the exception, and the restriction on movement is the rule. And whereas initially Israel promised access to lands behind the Barrier except when security needs warrant precluding access, now no security need is required to deny access. Instead, the premise of the permit regime is now that only Palestinians who prove a need to enter these areas will be allowed to do so. Furthermore, the military periodically amends its definition of “need” to be more and more narrow.

HaMoked has had success in overcoming some of the restrictions: individuals who were denied permits eventually received them following litigation; some restrictive policies have been reversed and others are still under judicial review. However, none of this changes the overall picture emerging from this report: steadily increasing restrictions on Palestinians' access to the areas of the West Bank known as the Seam Zone have decimated the livelihoods of individuals, families and entire communities.

## RECOMMENDATIONS

The so-called Seam Zone is an integral part of the West Bank, and Palestinians have individual and collective rights to freely access these lands. Israel has the legal obligation to respect and ensure these rights and must take the following measures:

1. Dismantle the segments of the Separation Barrier built inside the West Bank. If Israel chooses, it can reroute the Barrier to the Green Line or inside its own territory;
2. So long as the Barrier remains in place, Israel must cancel the Seam Zone permit regime. All Palestinians should be allowed to access these areas subject to a security check;
3. As an immediate measure, so long as the Barrier and the Seam Zone regime remain

in place, Israel must grant long-term, unrestricted permits to all Palestinians with ties to lands beyond the Barrier, subject to a security check.

The international community must ensure that Israel fulfil its obligations.

Israel's High Court of Justice approved the construction of the Barrier and the Seam Zone permit regime as temporary security measures, based on the understanding that they would not unduly harm Palestinians' rights. This is clearly not the case, and the situation is only deteriorating. It is long past time to end this violation of Palestinians' individual and collective rights.



Agricultural gate 943 in the Separation Barrier, Jayyus, West Bank, 2012. Photo by Oren Ziv/ActiveStills



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**HaMoked: Center for the Defence of the Individual is a human rights organization founded in 1988 by Dr. Lotte Salzberger. HaMoked provides free legal aid to Palestinians living under occupation, and conducts strategic litigation and advocacy against Israel's violations of international humanitarian and human rights law in the West Bank, East Jerusalem and the Gaza Strip.**

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