

## **The 5<sup>th</sup> Anniversary of the Bil'in Protests**

**ACRI Position Paper, February 2010**

**"Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law"**

The Universal Declaration of Human Rights, 1948

For the past 5 years, the residents of Bil'in and their supporters have been demonstrating against the route that the Israeli authorities designated for the Separation Fence [internationally known as the Separation Wall or Barrier] around the village. For many in Israel, reports on the "Bil'in demonstrations" are merely news items of no particular interest, but for the Bil'in residents, they speak of realizing their right to protest against the violation of their most basic rights. The separation fence route in the Bil'in region separated the villagers from half of their farming lands because the authorities wished to place the settlement of Modiin Ilit and additional plots designated for its future expansion on the Israeli side of the fence. The High Court of Justice (HCJ) established that the route is illegal.

Though the demonstrations staged there are meant to protest against the illegal and unjust infringement on human rights, the security forces have been systematically trying to suppress them, often using excessive force. Last year, these operations escalated as members of the village leadership, which organizes the demonstrations, were incarcerated. The state not only impairs on the human rights of the Bil'in residents while violating the international law and even the HCJ ruling, but its recent activities further deny the resident's right to freedom of expression and protest.

**Background: What Are the Bil'in Residents Demonstrating About?**

In 2005, Israel started building the separation fence near the village of Bil'in. Contrary to common belief, the route of the separation fence, for the most part, does not run along the Green Line, which marks the border between the State of Israel and the occupied territories, but encloses parts of that occupied territory, sometimes far from the borderline<sup>1</sup>. In the case of Bil'in, the fence runs some 5 km east of the Green Line, which left some 50% of the villagers' farming lands - the main source of income for some 200 families - on the "Israeli" side of the fence.

### **The Selected Fence Route: an Illegal Violation of Human Rights**

If the fence were built for the protection of sovereign the State of Israel, its route would have mostly paralleled with the state's borderline (the Green Line). The Israeli authorities, however, decided on additional, immaterial, and illegal purposes for the fence. The fence planners wished to take advantage of the need to create a security barrier between Israel and the West Bank and connect most of the Jewish settlements and settlers who reside in the occupied territory with the "Israeli side" of the fence - practically and gradually annexing lands east of the fence.

As the route map clearly shows, the main reason for shifting the route away from the border of sovereign Israel was the intention to bring existing settlements and lands reserved for their future expansion into the Israeli side. Thus, in the case of Bil'in, the route was designed not only to include the existing settlement of Modiin Ilit, but also lands slated for its future eastward expansion, on Bil'in lands.

[[[map - in English??]]]

Nevertheless, the fence route in that region was motivated not only by ideological settlement expansions, but also by economic interests. Israeli and Canadian construction companies that build the Matiyahu East<sup>2</sup>

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<sup>1</sup> Some 20% of the fence parallels with the Green Line, while some 80% encroaches on the West Bank.

<sup>2</sup> See the companies' request to partake as respondents in the proceedings of the petition against the fence route in the Bil'in region in HCJ 8414/05, Ahmad Yasin v the Government

neighborhood of Modiin Ilit are among other bodies that support keeping the invasive fence in its current place. That neighborhood is being built on Bil'in lands<sup>3</sup>.

**The fact that the fence encroaches east of the Green Line to include settlements is the main reason for the detrimental damage it causes to the Palestinian population that lives in the territories.**

This route - which was determined so as to connect settlements built on occupied territories with the State of Israel proper, and not for the sake of the State of Israel's security and the protection of its residents - is illegal according to the international law that is binding on Israel. That illegality cannot be legitimized based on the international law. This has been the argument of human rights organizations ever since work on the fence project started, and the International Court of Justice in The Hague supported that view in July 2004<sup>4</sup>.

“In other terms, the route chosen for the wall gives expression *in loco* to the illegal measures taken by Israel with regard to Jerusalem and the settlements, as deplored by the Security Council (see paragraphs 75 and 120 above)...”

(Chapter 122 of the legal opinion)

Judge Buergenthal further explained that in his opinion:

**“Paragraph 6 of Article 49 of the Fourth Geneva Convention also does not admit for exceptions on grounds of military or security exigencies. It provides that “the Occupying Power shall not deport or transfer parts of its**

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of Israel (2007).

<sup>3</sup> In HCJ 143/06 Peace Now v the Defense Minister, the court ruled (on 5 September 2007) that though the neighborhood was built illegally, the buildings there may be inhabited, will not be demolished, and the contractors may go on building there on lands as demarcated by the fence route, which will be decided upon at a later stage.

<sup>4</sup> Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, ICJ Advisory Opinion, 2004.

own civilian population into the territory it occupies.” I agree that this provision applies to the Israeli settlements in the West Bank and that their existence violates Article 49, paragraph 6. **It follows that the segments of the wall being built by Israel to protect the settlements are ipso facto in violation of international humanitarian law.”**

(Chapter 9 of Judge Buergenthal's opinion; our accentuation)

In conclusion, the International Court of Justice stated:

The wall, along the route chosen, and its" associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order. **The construction of such a wall accordingly constitutes breaches by Israel of various of its obligations under the applicable international humanitarian law and human ".rights instruments**

(Chapter 137 of Judge Buergenthal's opinion; our accentuation)

### **The HCJ Established: Fence Route Is Illegal**

When work on the separation fence in the Bil'in region started, the local residents complained before the authorities that the planned project infringes on their rights. They filed a petition with the HCJ in September 2005, arguing that the fence route wrongfully harms their human rights and **is illegal**<sup>5</sup>.

Despite that, the State of Israel decided to continue building the fence on the

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<sup>5</sup> Before that petition was filed, another two petitions against the Bil'in fence were filed in the matter (HCJ 11363/04 and HCJ 1778/05); the first was spiked by the petitioners and the other was rejected outright by the court.

village lands, massively and irreversibly destroying plots and crops, irrecoverably changing the nature of life in the village.

In September 2007, the court handed down its verdict, accepting some of the petitioners' arguments and stating that the route that the state had chosen was illegal:

“The respondents have not denied that the Bil'in residents had been harmed, but believe that the harm is reasonable and proportionate.... We cannot accept that argument. The construction of a fence on parts of the Bil'in lands and restricting the Bil'in residents' access to other, significant parts of their lands by way of erecting checkpoints and farming gates that serve only permit holders create serious difficulties for the residents of Bil'in and discernibly harms their life fabric.... The route as determined deviates from the balance between the security needs and the Bil'in villagers' welfare and needs. Though we do accept the respondents' position that choosing a route that runs adjacently to the buildings in Modiin Ilit does not offer an appropriate security solution, the respondents' position was established based on the boundaries of the future outline of the Matityahu East neighborhood, not on the existing construction works. As we established above, the plan to develop the eastern end of the Matityahu East neighborhood should not be taken into consideration at this stage, and it thus seems that the harm caused to the local residents can be minimized by choosing an alternative route that does not consider the plots that were slated for the future construction

of Stage 2 of the Matityahu East neighborhood."

HCJ 8414/05 Ahmad Yasin v the Israeli Government (2007)

Thus, the HCJ ruled against the fence route where it was designed to allow for preparations for the future expansion of that settlement, but at the same time authorized a route that is meant to place the existing settlement on the Israeli side of the fence. This means that **the court ordered that harm caused to the villagers should be minimized, but did not order the authorities to nullify the illegal harm caused to their rights.**

Eight months later, after the state elected not to act on the court's verdict, the residents had to seek justice again, this time arguing contempt of court. Soon after that, the state presented an alternative pattern, but the court ruled that it too does not follow even a single requirement as presented in its previous verdict.

In September 2008, the state presented a second alternative route, but that too failed to meet the parameters that the verdict established<sup>6</sup>. A year after the initial verdict was handed down, the HCJ established that the state failed to uphold it:

"It has been found that the alternative chosen does not uphold the instructions of the verdict.

**The respondents are therefore ordered to follow the instructions of that verdict without further delay**, and determined a route for the fence that meets the criteria as established in the verdict, and as detailed and clarified above, and while considering the circumstances of the case, and do so as soon as possible."

HCJ 8414/05 Resolution dated 15 December 2008 (accentuation added)

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<sup>6</sup> For example, the verdict ordered that the amended route should mostly run on state lands, not on privately-owned Palestinian plots, but in the second alternative the state presented, some 163 dunams of the 200 dunams required for the new route (more than 80%) were privately-owned Palestinian lands.

Nearly 2 years after the verdict was handed down and 5 years after work on the fence started on the village lands, the state presented the petitioners with a third alternative route. That route significantly departs from the previous one, but it does not fully meet the verdict instructions: it still takes up many of the village lands and will seriously harm its residents; it runs deep inside the occupied territory with the intention to defend the settlements built there; and it is still illegal, according to the international law.

The Bil'in residents filed their objection to that route, accompanied by an engineer's opinion according to which, the fence can be built more to the west, on a route that meets the verdict's demands. The state rejected that objection and work has recently started to amend the route.

**The Bil'in residents are protesting because they are being robbed of their lands, livelihood, and way of life in violation of law and justice.**

### **Demonstrations Against the Fence**

The Bil'in demonstrations were launched as soon as work started on the fence, in February 2005. Staged for the past 5 years every Friday afternoon, the demonstrations are attended by the villagers - men, women, and children - and many other Palestinian, Israeli, and international activists. They intend to repeatedly protest against the illegal construction of the separation fence on the village lands.

In most cases, the media report merely that IDF soldiers, Border Police officers, or demonstrators were injured during a violent and illegal riot. The reports ignore the reason why the demonstrations were staged or the fact that the IDF views any demonstration in the territories as an illegal disturbance of public order.

The right to stage a demonstration is basic and every person has the right to stage one, regardless of the issue he may be protesting against.

"As for the extent of the freedom of expression and demonstration, this court has often established that these liberties do not apply only to the expression of agreed, pleasant, or popular issues.... Indeed, the freedoms of expression and demonstration were not meant

to merely defend popular views, but also to protect the expression of views that might be upsetting or enraging - and here is where the application of the freedom of expression is put to the test.... This court's interpretational approach expands the scope of the freedom of expression so that the expressed issue should not be examined for its content before the very act of expression is accorded protection."

HCJ 8988/06 Yehuda Meshi-Zahav v Jerusalem District Police Chief (handed down on 27 December 2006; not yet published)

The right to stage a demonstration follows from the right to the freedom of expression, as anchored in Article 19 of the UN Covenant on Civil and Political Rights to which Israel is a signatory. That right may be restricted only "For respect of the rights or reputations of others" and "For the protection of national security or of public order (ordre public), or of public health or morals." Additionally, according to Article 21, "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

And while this right is accorded, the state has the duty to allow protests and demonstrations. In the matter before us, the demonstrations were staged in protest of an illegal and unjust infringement on human rights. Taken in the context of human rights, the right to demonstrate is doubly important. The State of Israel has acknowledged that too when it joined the declaration concerning the rights and responsibilities of individuals and organizations to promote and defend human rights and basic, internationally-acknowledged liberties:

UN General Assembly Resolution 53/144 states:

"Article 1: Everyone has the right, individually and in association with others, to promote and to



strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

"Article 12.1: Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

"Article 12.3: In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States...."

As is evident and explained in the declaration, the freedoms of demonstration and protest do not include the right to throw stones or otherwise exercise violence.

It should be stated that the initiative to stage demonstrations in Bil'in is modeled of the nonviolent protest model, though rocks are sometimes hurled in their course. The Popular Committee Against the Bil'in Separation Fence, which organizes and promotes the demonstrations, is taking steps to ensure that the demonstrations are quiet and challenge the state creatively, while attempting to minimize the violence they might cause. This can be viewed in remarks written about Muhammad Khatib, an organizer of the popular demonstrations:

When I visited the village, several days" earlier, Khatib explained to me the principles that guide their demonstrations and said that rocks may not be thrown in its course. That rule is generally observed, but after the demonstrations end, or once the army starts firing tear gas or rubber bullets, and particularly when the soldiers enter the very

village, the organizers can no longer control

"<sup>7</sup>....the stone-throwers

As Khatib himself put it: "In Bil'in, we've drawn inspiration from the US civil rights movement as we've carried out a three year nonviolent resistance <sup>8</sup>campaign against the discriminatory policies of Israel's military occupation

Even Ms. Hila Jilani, Special rapporteur of the United Nations Secretary-General on human rights defenders, who visited the Bil'in demonstrations when she toured Israel and the territories in October 2005, noted that the Bil'in demonstrators are viewed as "human rights defenders" and their <sup>9</sup>protest acts are recognized as "peace-seeking demonstrations

### **Wave of Detentions in Bil'in Aims at Suppressing Popular Protests**

As soon as the Bil'in demonstrations started, the security forces took steps to disperse and suppress them, often employing excessive force, massive and indiscriminant firing of rubber-coated metal bullets, throwing stun grenades, and using various other violent means, often without any preceding violent provocation on the demonstrators' part<sup>10</sup>. As a result of that violent conduct by the authorities, demonstrator Basam Abu-Rahma<sup>11</sup> was killed,

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<sup>7</sup> M. Rapaport, "No Shahids," Haaretz, 7 June 2005.

<sup>8</sup> M. Khatib, "The Road to Apartheid - Separate and Unequal in Palestine", 28.11.07, <http://www.counterpunch.org/khatib11272007.html>;

See also, E. Bronner, "In Village, Palestinians See Model for Their Cause", New York Times, 28.8.09, [http://www.nytimes.com/2009/08/28/world/middleeast/28bilin.html?\\_r=2](http://www.nytimes.com/2009/08/28/world/middleeast/28bilin.html?_r=2), and M. Khatib, "One Palestinian Village Struggles Against Israel's Ever-Expanding Settlements", 26.9.07, AlterNet - <http://www.alternet.org/story/63640/>

<sup>9</sup> Report of the Special Representative of the Secretary General on the Situation of Human Rights Defenders on her visit to Israel and the Occupied Palestinian Territories (5-11 October 2005), Para 53.

<sup>10</sup> See, for example, an article by Miron Rapaport in Haaretz, 9 September 2005 at: <http://www.haaretz.co.il/hasite/pages/ShArt.jhtml?itemNo=622968>

<sup>11</sup> Abu-Rahma was killed by a gas grenade that an IDF soldier fired at him on 17 April 2009 during a demonstration in Bil'in; see at: [http://www.btselem.org/hebrew/firearms/20090422\\_firing\\_tear\\_gaz\\_canisters\\_directly\\_on\\_people](http://www.btselem.org/hebrew/firearms/20090422_firing_tear_gaz_canisters_directly_on_people)

demonstrator Limor Goldstein<sup>12</sup> was severely wounded in the head, and many other demonstrators were injured.

The defense forces' attempts to suppress the Bil'in demonstrations escalated in 2009, and since June 2009, we have witnessed an unprecedented wave of detentions as many of the village residents, including the demonstration organizers, were arrested for inquiries. Since June 2009, some 37 activists were detained, some for the duration of their inquiry.

Indeed, the security forces did not only detain youths suspected of hurling rocks at them, but also representatives of the local leadership that is involved in organizing the protest acts; and even though the organizers are determined to stage a non-violent struggle, they were arrested and charged with instigating stone-throwing and other felonies<sup>13</sup>.

Non-violent demonstrations staged in the Village of Ma'asara in the Bethlehem District are met with a similar attitude by the security forces; namely, violent demonstration-dispersion measures and the detention of numerous demonstrators.

### **Oppressing Legitimate Protests - Wrong and Banned**

Oppressing popular protests, the State of Israel adds insult to injury. The residents of Bil'in, and indeed all individuals who wish to do so, have the

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<sup>12</sup> Goldstein was seriously wounded in the head when rubber-coated bullets were fired by the security forces at the demonstrators in Bil'in on 11 August 2006; see at: <http://www.acri.org.il/Story.aspx?id=1369>.

<sup>13</sup> Among others, Adib Abu-Rahma and Abdallah Abu-Rahma, leading figures in organizing the demonstrations, are presently in detention until the end of proceedings against them. Muhammad Khatib was arrested as well. See the description of his detention in an op-ed article by Gabi Lasky and Michael Sfarad on Ynet dated 31 January 2010: "How the IDF Makes Palestinian Heroes Popular" at: <http://www.ynet.co.il/articles/0,7340,L-3841848,00.html>; also see an article by Amira Haas, published in Haaretz on 12 February 2010: "The Shin Bet and IDF Shopping List in Ni'ilin and Bil'in" at: [www.haaretz.co.il/hasite/spages/1149316.html](http://www.haaretz.co.il/hasite/spages/1149316.html).

right to protest and demonstrate against wrongs and harms done, while it is the State of Israel's duty to allow and respect that right.

That duty follows from the basic duty to which Israel is subject - to respect the law and human rights of every individual.