



The Last Nail in Bethlehem's Coffin

The Annexation

Wall in Cremisan



The Society of St. Yves - Catholic Center for Human Right is working under the patronage of the Latin Patriarchate in Jerusalem. It was founded in 1991 by the Latin Patriarch of Jerusalem and the Holy Land, His Beatitude Emeritus Michel Sabbah, to help «the poor and the oppressed» according to the social doctrine of the Catholic Church, and was named after Saint Yves, patron Saint of lawyers and known as “Advocate of the poor”.

St. Yves provides gratis legal assistance, counsel, awareness raising events and advocacy to the fragmented members of the community. Today St. Yves manages some nine hundred cases per year and assists around 2000 people.

St. Yves has represented the Salesian Nuns Convent before Israeli Courts in the Cremisan case since 2010.

August 2015.

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St. Yves wishes to especially thank His Beatitude Patriarch Fuad Twal Latin Patriarch of Jerusalem, Adv. Dalia Qumsieh: lead author and Adv. Zvi Avni from St. Yves, Adviser to PLO Negotiations Affairs Department Mr. Xavier Abu Eid, Father Michael Mc. Donagh from the Latin Patriarchate of Jerusalem, Mr. John Pino, Beit Jala Municipality, Bethlehem Municipality and Photographer Luay Sababa for their generous contributions in this report.

This report was published with the support of





PATRIARCHATUS LATINUS - JERUSALEM

بطريركية القدس للاتين

Prot. N. (2) 699/2015

August 13, 2015



Dear Friends,

The Israeli army's unacceptable plan of building the annexation wall in Cremisan Valley and confiscating lands owned by 58 Christian families to accommodate its route has been approved by the Israeli Supreme Court. This unjust decision allows the Israeli army to confiscate large tracts of privately owned Palestinian lands, greatly undermining the potential of a viable Palestinian state, and paving the way for further settlement expansion in Palestine.

To the Church, the Cremisan decision is about the profound injustice that affects not only Palestinian Christians but everyone ("Injustice anywhere is a threat to justice everywhere"). Our Christian faith demands that we cry out in protest. The prophets in the Hebrew Bible decried injustice and spoke truth to power. Jesus also spoke truth to power.

This recent decision is a form of Christian persecution. While Christians have been assured by the Gospel that they will experience persecution, they must always sound a clarion call when injustice, especially State sponsored, is allowed free rein. The Church strongly encourages immediate and effective action to achieve justice for Palestinians in general, and save the lands of the 58 Palestinian Christian families in particular. Though few in number, they are deeply rooted in their identity and in the belief that they were placed here by God. The Christian world should encourage them to remain and not emigrate. But their presence must be reinforced, not by words alone.

Now, we are in a very urgent moment, when we send forth a strong appeal to halt this grave injustice in Cremisan and in the Holy Land. I urge especially those who have influence, to take immediate and effective action to save the lands of the 58 Christian families. Once again, I remind Israeli decision-makers that the expropriation of lands does not serve the cause of peace and does not strengthen the position of the moderates. Furthermore, I stress that the authorities need to achieve the inalienable rights of the Palestinian people as per international law.

I encourage you to read this report produced by the Society of St. Yves – Catholic Center for human Rights, which works tirelessly in raising awareness of and working to secure human and civil rights in our society

Finally, please pray each day for those in the decision-making positions to realize the values of justice and peace in finding a just resolution to all cases before them. I convey my profound thanks for your prayers and solidarity.

Yours sincerely in Christ,

+ Fouad Twal, Latin Patriarch

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I. BACKGROUND

The Cremisan valley runs along the seam line between the occupied West Bank and Jerusalem. It extends from Beit Jala to the village of Al Wallajeh and the 1967 border. Before the Nakba (“Catastrophe”) of 1948, the valley connected the villages which laid to the west of Jerusalem such as Al Malha and Ras Abu Ammar to the city of Bethlehem.

The northern side of the Cremisan valley, known as al Slayeb, used to be famous for its stone quarries. The southern area of the valley is known for its agricultural terraces, including over 60% of the olive trees in Beit Jala, a town famous for the quality of its olives and olive oil.

Within the Cremisan valley lie numerous constituencies: part of the city of Beit Jala, part of the illegal Israeli settlement of Gilo, the two Salesian orders, which are comprised of a Monastery and a Convent, Cremisan Cellars, which is a winery run by the Monastery, and multiple private homes and properties are all situated in the area.

Parts of Cremisan are located in an area under exclusive Israeli control classified as Area (C), which makes it virtually impossible for the Palestinian government, the Beit Jala municipality or the local, land-owning families to develop the area. Basic services such as clean water and waste collection and management are subject to Israeli control.

In 2006, the Israeli Ministry of Defense expressed its Intention to build a separation Wall along the length of the Cremisan valley. This was in response to what Israel called “terror attacks” that emanated from Bethlehem during the second intifada.¹ The State of Palestine argues that the route of the Wall is designed to grab more occupied Palestinian land, turning occupation into annexation.



¹ Israeli Ministry of Foreign Affairs

1. Salesian Orders in Cremisan

The name “Cremisan” comes from the Monastery built by the Salesian Order in the 19th century, in order to support the presence of Palestinian Christians in the region. In the 1950s, the Salesian Sisters Convent was built in Cremisan. A valley and agricultural lands separate the Convent from the Jerusalem municipal borders that were unilaterally expanded by the Israeli government into Bethlehem’s land after the Israeli occupation of 1967. Some of the Convent lands are situated within the “Jerusalem municipality borders” in the part taken by force by Israel in 1967, and are therefore classified as occupied territory according to international law. Currently, the Convent lies along the outskirts of the Beit Jala municipal borders.



For many years, the Convent has been part of Beit Jala and its surrounding communities, serving mainly as a place for education and charity. Today, it includes a developing primary school (until 8th grade, at present, and expanding one class each year), a kindergarten, as well as a school that provides tutoring for children with learning difficulties. Moreover, extracurricular activities and summer camps for children are provided by the Convent every year.

Around 450 children – girls and boys, Muslims and Christians alike - from the surrounding towns and villages (i.e., Bethlehem, Beit Jala, Beit Sahour, Al Walajah and the refugee camps) enjoy the services provided by this educational facility. As the Convent aims to serve the needy, it charges minimal fees. Following the educational method of the Don Bosco school systems, the Convent teaches values of truth, just peace and co-existence between different people and religions, regardless of race, gender and religion.



The Salesian Sisters Convent in Cremisan



The Salesian Monks Monastery in Cremisan

The Monastery was built in 1885, on the ruins of a 7th century Byzantine monastery. The Monastery used to operate as an educational complex; throughout the years, it taught theology to student from around the globe. The Monastery is also widely known for its winery (as previously mentioned), one of the finest in Palestine, and its cellars have been operating since its establishment in the 19th century.

2. Farming Lands

The Cremisan valley is one of the last green areas in the Bethlehem district. Private homes and agricultural lands lie across the valley; 58 Palestinian families own lands in Cremisan and depend on them as their primary source of livelihood. The local land owners grow olives, fruit trees and grapes for the local Cremisan wine industry; the land is cultivated well and the old terraces are carefully kept. Most of the lands in the Cremisan valley are privately owned by Christian families.

Such lands make a major source of income for the land owners; they largely benefit from the ancient olive trees planted on their land through selling olive and olive oil, as well as the production of olive wood for handicrafts sold to tourists.

Building the Annexation Wall in the agricultural lands of Cremisan means bulldozing the lands and uprooting the ancient olive trees to accommodate the snaking route of the Wall, and eventually these lands will be segregated from the city of Beit Jala. Owners of these lands will therefore incur severe damages, and as a result, will probably seek their means of support elsewhere, thus, contributing to the cleansing of Palestinian Christians from their homeland.²



2 Beit Jala Municipality: "The Segregation Wall Around Cremisan Area in Beit Jala City of Bethlehem Governorate, Palestine" – July 28th, 2015



II. ANNEXATION WALL AND SETTLEMENTS

1. Annexation Wall in Cremisan

The Israeli government, with the support of its legal and judiciary systems, has continued building the Wall on Palestinian territory, fully disregarding international opposition, international law and the International Court of Justice's ruling in its advisory opinion (2004) that the Israeli Annexation Wall is illegal and must be dismantled.³ While 62% of the Wall has already been constructed, 38% of the Wall is either planned or under construction. Around 85% of the Wall is built on Palestinian occupied territory rather than beyond it, on the 1967 border lines.

The Annexation Wall has been used by Israel as a tool to annex as much as possible Palestinian lands and change the demographic and geographic realities. Since its construction, the Annexation wall has severely undermined and deprived Palestinians from their most basic rights, including the right to self-determination, residency rights, family rights, right to education, right to health, right to employment, among others.



"Righteousness and Peace will meet"

³ International Court of Justice Advisory Opinion of 9 July 2004 on "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory": <http://www.icj-cij.org/docket/files/131/1677.pdf>



Writings on the gate of the Salesian Sisters Convent: « mercy and justice will embrace» - «there will be a day where there are no borders- but the heart will be the only passport»

In the case of Bethlehem, vast extensions of the Annexation Wall have been built to consolidate the annexation of Palestinian land in the northern Bethlehem area (i.e., in Beit Sahour for the expansion of Har Homa settlement and in Bethlehem for the annexation of Bilal Bin Rabah Mosque/Rachel Tomb shrine).

The Cremisan valley is no exception to this vast annexation policy; plans to build the Wall in Cremisan started in 2006, when the Israeli commander issued a military order seizing land for the purposes of building a part of the separation Wall around the Beit Jala area and Har Gilo settlement.

According to Israeli army order, its maps, detailed plans and suggested routes annexed to it, the Annexation Wall is to be built in Cremisan. All the route suggestions negatively affect the functioning of the Convent, Monastery and the agricultural lands in Cremisan: the army's plans had no regard for the rights and needs of the two Salesian orders, the local community or the land owners.



The peaceful march that took place in Beir Onah against the uprooting of olive trees and bulldozing lands in preparation for building the annexation wall in cremisan - August, 23rd, 2015

Since issuing the military order in 2006, the landowners engaged in a legal battle against the Israeli Ministry of Defense, joined later in 2010 by the Convent and Monastery in order to prevent the Wall in Cremisan. After 8 years of legal proceedings, in April 2015, the Israeli high Court allowed the army to build the Wall in the farming lands of Cremisan, and ruled in its decision that the route of the Wall is to avoid the Convent, Monastery and their agricultural lands.⁴

⁴ See part III. Legal Frameworks in Cremisan; A. The Legal Case of this report, page 11



Father Aktham Hjazin assaulted during the open air mass held in protest against the annexation wall in cremisan- Photo credit: Luay Sababa (August 2015)



On the 17th of August 2015, and despite the fact that legal proceedings are still pending before the Israeli High Court, the Israeli army arrived unannounced to Beir Onah – Beit Jala, accompanied by bulldozers and heavy machinery. The army started uprooting ancient olive trees that date back to 2000 years and bulldozing the lands in preparation for building the Annexation Wall in Cremisan. The operations of the Israeli army are still ongoing in the lands.

In response to the Israeli insistence on constructing the Annexation Wall in Cremisan, open-air masses and protests are held daily on field.

2. Settlement Expansion and Linkage

In an attempt to separate Occupied East Jerusalem from the rest of the Occupied West Bank, Israel built the illegal settlement of Gilo on the hill which lies to the north of the Cremisan valley, annexing around 22,000 dunums from the Bethlehem district in the process (including the northern lands of Beit Jala, Bethlehem and Beit Sahour).

On the southern side of the Cremisan valley, Israel has built the illegal settlement of Har Gilo, which overlooks the western Bethlehem area and is considered by Israel to be the first settlement of the



Settlement of Gilo

so called “Gush Etzion bloc”, a network of settlements aimed at annexing the western, and the most fertile lands of Bethlehem.

While the Israeli army constantly argues that security is the reason for building the Annexation Wall including in Cremisan, the main motivation behind the suggested routes ostensibly reflects territorial expansion for settlement connectivity. For instance, in June 2012, the expansion of the settlement of Gilo was approved by 800 new housing units. This would not be done if security was an issue in the area.



Most recently, in August 2014, the Israeli authorities announced the confiscation of around 5,000 dunums of privately owned Palestinian land south of Bethlehem in the southern West Bank. The Etzion settlements council welcomed the announcement and said it was the prelude to the expansion of the Gush Etzion jurisdiction area, and considered it as a step paving the way towards building the new “city of Gevaot”.

Under security pretense, Israel plans to build the Annexation Wall in Cremisan, located entirely on land belonging to the occupied State of Palestine, which aims at preventing Palestinian expansion in order to link the illegal settlements of Gilo and Har Gilo. Construction already began to expand the settlement of Gilo towards the valley, at an area known historically as Wadi Ahmad. By linking both settlements, Israel would not only be annexing thousands of dunums more of Palestinian lands, but it would also allow for the construction of more settlements, including the projected settlement of Gl’vat Yael, in the western Bethlehem area.



III. LEGAL FRAMEWORKS IN CREMISAN

1. The Legal Case

Initially, in 2006, an Israeli military commander issued an order to build a separation Wall in the Cremisan valley.⁵ The Israeli army suggested that the Wall should pass in front of the Convent, which would have left the Convent and its school on the Israeli side of the Wall, while the very community that it serves, would have remained on the Palestinian side.⁶ The Wall would have required the building of a guarded gate at the entrance to the Convent and school, which would have seen the passage of children, teachers, and Convent staff completely controlled by the military and in need of permits to attend their local school.⁷

St. Yves intervened as the legal representative for the Convent and school in 2010, on the strength of which Israel decided to change the route and planned to build the Wall not at the entrance to the Convent but on the existing wall that surrounds it and the school.⁸ However, this would have seen the Convent being cut off from its property that it has been in possession of since its establishment. Israel suggested that the Convent could access its lands through agricultural gates that it would build within the Wall, which would be open only during certain times during the year's agricultural season.⁹ Building the eight meter high Wall would have blocked the Convent's view of the Cremisan Valley, creating a prison-like atmosphere for the nuns and the students.¹⁰ The land would have been closed to students, wherein they could no longer participate in outdoor, educational activities.¹¹

On August 4, 2014, the Israeli Supreme Court decided after a hearing that Israel should

reconsider its suggested route, whereby both the Silesian Convent and Monastery would be on the



US Consul General's visit to Cremisan



UK Consul General's visit to Cremisan

⁵ Military Orders #62-06 and 75-07.

⁶ St. Yves, «Cremisan Valley Case Abstract, (2015).

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

Palestinian side of the Wall.¹² On September 4, 2014, the Israeli Ministry of Defense complied with the Court's decision by offering new suggestions.¹³ Nonetheless, these suggestions still strove to cut off the Convent from its lands, as well as the lands owned by families from Beit Jala: no amount of agricultural gates would solve this problem, considering they would be operated by the Israeli army.¹⁴

On November 30, 2014, the Israeli High Court held an additional hearing, in order to understand the petitioners' opinions and apply pressure on them to choose one of routes suggested by the army. All of them – the Convent, the Monastery, and the land owners – were steadfast in their position that they were fully opposed to all the suggested routes.¹⁵

On April 2, 2015, the Israeli High Court delivered its final decision; ruling in favor of keeping both the Monastery and the Convent on the Palestinian side of the Wall, and their connectivity to the community they serve, while at the same time having a convenient access to their agricultural lands. As to the agricultural lands in Cremisan, a facilitated access for the landowners was to be provided by the Army.



Adviser to US Secretary Kerry, Mr. Casey's visit to Cremisan



EU heads of missions' visit to Cremisan

Accordingly, in late April 2015, the Army informed the land owners that it will start building the Annexation Wall as per the final Court decision. The land owners submitted a contempt of Court, and the Court ruled against it, stating that the Israeli army did not contradict its final decision, and clarifying that the Annexation Wall – according to the final decision- is to avoid only the Convent and the Monastery, as well as their lands.¹⁶ Thus, the Israeli Ministry of Defense was given the green light to begin building the Annexation Wall in the privately owned lands in Cremisan. In other words, the Court limited the ban on building the Annexation Wall to the lands surroundings of the Convent, the Monastery, as well as both orders' agricultural lands. This effectively leaves a small opening in the wall, which is the hundreds of meters in width that is adjacent to the Convent and Monastery and their lands, limiting the cessation of the building of the Annexation Wall to the area around the Convent, Monastery and their lands.

The Ministry of Defense claimed that the Court's initial decision from last April did not annul the planned route; it has only requested maintaining the geographical connection between the Salesian Convent and Monastery as well as the connection between them and the local community. The High Court dismissed another petition presented by the land owners in Cremisan on August 5th 2015, in which they requested that the route of the Separation Wall as presented by the Army be annulled,

¹² «Cremisan Case: A Failure from a Security Perspective,» Latin Patriarchate of Jerusalem, (December 1, 2014), available at <http://en.lpj.org/2014/12/01/cremisan-case-a-failure-from-a-security-perspective/>.

¹³ Id.

¹⁴ See «Press Release – ACOHL on the Latest Developments in the Cremisan Case,» Latin Patriarchate of Jerusalem, (December 5, 2014) available at <http://en.lpj.org/wp-content/uploads/2014/12/Press-Rel-Cremisan-EN.pdf>.

¹⁵ «The Israeli security pretext threatens the land of the Cremisan in Beit Jala city,» POICA – Monitoring Israeli Colonization Activities in the Palestinian Territories, (7 December 2014), available at <http://www.poica.org/details.php?Article=7295>.

¹⁶ See translated final HJC ruling, dated April 2nd, 2015: <http://www.sainttyves.org/uploads/files/Cremisan%20Final%20Ruling.pdf>.

and that the Army presents an alternative route.

On July 30th, 2015 St. Yves submitted a new petition to the Israeli High Court, in which it requested the Court to order the Ministry of Defense to reveal and present its whole planned route of the Separation Wall in Cremisan before it proceeds with building it in the privately owned lands.

St. Yves also requested the High Court to issue an injunction preventing the Army from building the Wall before they reveal the whole planned route of the wall, and after allowing all parties and petitioners to submit their objections, especially for the land owners who will incur severe damages from the construction of the Separation Wall.

In its capacity as the representative of the Salesian Convent, St. Yves stated in its petition that since the Army intends to build the Separation Wall in Cremisan, leaving the width of 225 meters of land without presenting its planned route in it or suggesting modified routes, it will create an unlawful situation where facts will be imposed on the ground, thus, confining the possibility to set a route in the future that is less harmful and more convenient for the land owners and the local community and their interests, as per the final ruling of the High Court which was delivered in April 2015.

St. Yves also highlighted in its petition that building the Annexation Wall without revealing the whole planned route can be subject to future problems that would affect the land owners and the local community directly, and the Monastery and Convent indirectly. Accordingly, St. Yves demanded that the Army reveals the whole route of the Wall immediately and refrains from any construction until then. The State responded to St. Yves' petition arguing that it is another attempt to re-open the original in which a final decision was given.



His Beatitude Patriarch Fuad Twal at the press conferece held at the Salesian Convent in Cremisan upon delivering the final decision by the Court (April 2015)

2. Israeli Military Law Vs. Israeli Civil Law: Occupation and Annexation of Palestinian Lands

The legal regime that currently operates in the occupied Palestinian territories is one where two systems of law are applied in a single territory: one is a civilian legal system for Israeli citizens and the other is a military Court system for Palestinian residents, which gives effect to institutionalized discrimination.¹⁷

The prevailing legal situation in the West Bank has developed out of “temporary” military rule, which has given rise to two separate and unequal systems of law that discriminate between the two ethnic groups living in the same territory of the West Bank – Israelis as illegal settlers, and Palestinians.¹⁸ The legal differentiation is not restricted to security or criminal matters, as the Israeli government alleges, but touches upon almost every aspect of daily life, which has nothing to do with security.¹⁹ Indeed, religious life, primary education and agricultural pursuits should not and do not factor into the provision of security from “terrorist cells,” as the Israeli state alleges in the Cremisan context.²⁰

A number of military decrees, legal rulings and legislative amendments emanating from the military Courts, the Israeli Supreme Court and the Knesset, respectively, have resulted in a situation whereby Israeli citizens living in the Occupied West Bank as illegal settlers, in general, remain under the



Ancient Roman olive tree being uprooted by the Israeli army in Beir Onah (August 17th, 2015)

17 » One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank,» The Association for Civil Rights in Israel (ACRI), (October 2014), p. 121, accessed July 28, 2015, available at <http://www.acri.org.il/en/2014/11/24/twosysreport/>.

18 Id.

19 Id.

20 Ministry of Foreign Affairs, Legal Update, (July 18, 2015) available at <http://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/The-Security-Fence-in-the-Cremisan-Valley-15-Jul-2015.aspx>.



jurisdiction of Israeli law and the Israeli Court system, with all the benefits and privileges that this confers.²¹ This renders the de facto situation of occupation appear de jure (i.e., annexation), which is a completely illegal maneuver, and, in essence, treats Palestine as if it were Israel proper.

Israel's High Court of Justice has ruled that the rights enshrined in Israel's Basic Laws – pseudo-constitutional provisions – apply equally to these citizens, despite the fact that they do not reside in sovereign Israeli territory but in an illegally occupied territory, which has been annexed by the building of the Annexation Wall. The Palestinians, conversely, are left to contend with Israeli military law, a second-class system of juridical administration.²² This is exactly what is taking place in the Cremisan context: the Israeli military is effectively annexing Palestinian lands in the West Bank to Israel, allowing the settlement enterprise to continue, at the expense of minority religious communities, schools, and local Palestinian families.

Further, the laws change when the people living on the land changes, and not when the state in control of the land changes (it has not) – this evidences the system of racial discrimination in which the Palestinian community finds itself. Also, the versatility of Israel's application of its legal system in Palestine is when Israeli Law is applied to "Jews according to the Law of Return," regardless of whether or not they are Israeli citizens.²³ Theoretically, Cremisan lands could be allocated to Jewish immigrants, people who have never set foot in the Holy Land until recently, only to grab conveniently transferred land from generations of Palestinians to newly acquired land for settlement expansion between Bethlehem and Jerusalem.

In stark contrast to civil Israeli laws that apply to the settlers residents of West Bank settlements,

²¹ «One Rule, Two Legal Systems,» ACRI, available at <http://www.acri.org.il/en/2014/11/24/twosysreport/>.

²² Id.

²³ Id.

Palestinians in the West Bank are subject to much stricter military legal law – military orders that have been issued by generals in the Israeli Army since 1967.²⁴ Israeli military law, the same law that is being invoked to build the Annexation Wall in Cremisan, is being applied in addition to Jordanian, British, and Ottoman Laws that preceded the region's occupation.²⁵ "This report demonstrates that discrimination between Israelis and Palestinians, living under one rule and in the same territory, is not a localized phenomenon, but an issue of institutional discrimination, as it applied to areas entirely unrelated to security matters. It falls to Israeli society to recognize this reality."²⁶

Freedom of movement is strictly protected under civil Israeli law and is an essential condition for the realization of most basic rights.²⁷ Without freedom of movement, a person has difficulty making a living, receiving an education and healthcare services, participating in family life, etc. As stated by Israeli Supreme Court Justice Theodor Or:

*"In Israel, freedom of movement is guaranteed as a basic right [...] It also encompasses a person's freedom to move freely throughout and across the State of Israel [...] This right is essential to individual self-actualization."*²⁸

Unfortunately for Palestinians, this Israeli civil law standard for measuring one's quality of life does not apply. Building the Annexation Wall in the Cremisan valley inevitably means that local families' freedom of movement becomes incredibly hindered, cutting them off from their families' property and delegitimizing their claims to sustain a good quality of life for their families' future generations.



²⁴ Id.

²⁵ Id.

²⁶ Tamar Feldman, «One Rule, Two Legal Systems,» ACRI, (November 24, 2014) available at <http://www.acri.org.il/en/2014/11/24/twosysreport/>.

²⁷ One Rule, Two Legal Systems,» ACRI, (October 2014), p. 103, accessed July 30, 2015, available at <http://www.acri.org.il/en/2014/11/24/twosys-report/>.

²⁸ HCJ 5016/96 Horev v. Minister of Transportation, PD 51(4) 1, 95. (2007).

IV. INTERNATIONAL LAW

1. ICJ Opinions re: the Annexation Wall – illegal

The first main issue with the building of the Annexation Wall in any regard, not just in Cremisan, is the denial of Palestinian rights to self-determination.²⁹ The International Court of Justice (“ICJ”) mentioned the rights to freedom of movement and the right against invasion of privacy of home and family, which are enshrined in Articles (12) and (17) of the International Covenant on Civil and Political Rights (“ICCPR”), and the right to work, to an adequate standard of living, health, and education, which are enshrined in Articles (6), (11), (12), and (13) of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).³⁰

In its conclusion, the ICJ stated that Israel must cease construction of the Wall, dismantle the parts of the Wall that were built inside the West Bank, revoke the orders issued relating to its construction, and compensate the Palestinians who suffered losses as a result of the Wall.

Succinctly, Israel should cease flouting the ICJ’s judgment and desist from confiscating even more Palestinian land. This is not security; this is, in the absence of armed conflict in Cremisan, illegal expansion and annexation. The ICJ also called on the international community to refrain from assisting in maintaining the unlawful situation that has arisen following construction of the Wall, and to take legal measures to cease Israel’s violations and to ensure enforcement of the Fourth Geneva Convention



²⁹ «Separation Barrier,» B’Tselem, International Court of Justice (ICJ) opinion, July 9, 2004, confirmed by UNGA on December 3, 2004, (stating that by altering the facts on the ground, while building the Wall past the Green Line in Palestinian territory, Israel would annex ‘de facto’ sections of the West Bank), available at http://www.btselem.org/separation_barrier/international_Court_decision. See also ICJ, «Legal Consequences of the Construction of a Wall in Occupied Palestinian Territory,» available at <http://www.icj-cij.org/docket/index.php?pr=71&p1=3&p2=4&ca=&case=131&code=mwp&p3=4>.

³⁰ Id.

(i.e., revert to the Green Line borders of 1948).³¹ It would behoove the United Nations, the European Union, the United States, and the Vatican to interdict Israel's political message of security with one of human rights, fairness, and common sense in maintaining the status quo in the Cremisan, lest Israel incite resentment for the confiscation and annexation of even more privately held Palestinian land.



EU delegation visits the bulldozed lands in Beir Onah (August 25th, 2015)

2. The 4th Geneva Convention

Regarding the Wall's construction as well as the construction of settlements on occupied territory, Israel constantly argues that the Fourth Geneva Convention does not apply in the West Bank, because the application of the Convention is limited to a State's national borders – which do not include the West Bank.³² This issue of applicability has been authoritatively settled in 2004 by the International Court of Justice in the advisory opinion on the Israeli Wall, clarifying that Israel continues to have the status of Occupying Power in the OPT and is bound, as such, by customary international law and the humanitarian and human rights treaties it has ratified, including, among others, the Fourth Geneva Convention and the ICCPR.

Article (47) of the Geneva Convention IV solidifies the inviolability of rights of people, regardless of the political regime under which they find themselves.³³ This includes all people under occupation. Not only does the presence of the Wall have devastating effects on the civilian Palestinian population, but it also propagates the Israeli-Palestinian issue, continuously thwarting the possibility of peace in the region.³⁴ Article (53) prohibits the destruction of real and/or personal property owned by private individuals, the occupied state, or by a collective of social organizations, outside of absolute military necessity.³⁵ The defamation of local land in Cremisan is hardly a military necessity, as it has not been the site of militant action in the recent past. It is, however, the site of some of the most fertile land in this part of the Holy Land, making it a highly desirable acquisition for the Israeli state in the propagation of its settlement expansion.

Concurrently, and contrary to international law, Israel promotes its own citizens to move to and settle in the West Bank mainly by providing incentive packages for settlers. Israel provides vast tracts

³¹ Id.

³² Id. (rejecting Israel's assertion that Geneva IV doesn't apply, the ICJ said that because the war saw the West Bank changing hands between two states that were party to the Convention, then the territory that was exchanged, i.e., the West Bank, is under the Convention).

³³ Article 47, Geneva Convention IV, United Nations, (12 August 1949), available at <https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=615B6A191D988A75C12563CD0051BD90>.

³⁴ Id. (explaining that the Wall is overstepping the Green Line in an effort to incorporate 320,000 Israeli settlers that are illegally living in occupied territory).

³⁵ Article 53, Geneva Convention IV, supra.

of land and large water supplies to these illegal settlements, creates specific plans that take into account both present requirements and forthcoming expansion, and “turns a blind eye to violations of planning and construction laws in settlements “.³⁶

3. Holy See – Israel Treaty

On a different but central issue, Israel has legal commitments to the Catholic Church and its constituency in the Holy Land. In the Fundamental Agreement of 1993, the Holy See and the State of Israel normalized their diplomatic relations, giving effect to many of the extant status quos that exist to this day. In Article (3), Section (2) of the Fundamental Agreement, it states that:

*“The State of Israel recognizes the right of the Catholic Church to carry out its religious, moral, educational and charitable functions, and to have its own institutions, and to train, appoint and deploy its own personnel in the said institutions or for the said functions to these ends. The Church recognizes the right of the State to carry out its functions, such as promoting and protecting the welfare and the safety of the people. Both the State and the Church recognize the need for dialogue and cooperation in such matters as by their nature call for it.”*³⁷

This agreement entails that political ploys against Catholic religious institutions will not be tolerated in the Cremisan Valley, because the Monastery, the Convent and its school are religious in nature and are protected under this agreement. The Israeli government’s past interference with the community life of both the Convent and the Monastery has contravened the Agreement. Likewise, the farming community of Cremisan is clearly the constituency of the Catholic Church that is referred to in the Agreement, thus assuring the local population protections for their way of life, most notably the education of their children and the continuation of their family lives without outside military interference.



Additionally, the life of 58 Christian families will be in jeopardy, due to the subsequent confiscation of their lands if the Wall is to be built.³⁸ They are almost sure to leave if the Israeli government conducts a land grab disguised in the form of security.³⁹ Besides the 58 families who will lose their lands to the route of the Wall, hundreds of other families will be negatively affected by the new

³⁶ B'Tselem, «Acting the Landlord: Israel's Policy in Area C, the West Bank,» Report Summary, (June 2013) available at http://www.btselem.org/publications/summaries/201306_acting_the_landlord.

³⁷ «Fundamental Agreement between the Holy See and the State of Israel,» Vatican, (December 30, 1993) available at http://www.vatican.va/roman_curia/secretariat_state/archivio/documents/rc_seg-st_19931230_santa-sede-israele_en.html.

³⁸ Mark Woods, «Israel: Cremisan Valley confiscation will finish Christians, mayor tells Vatican,» Christian Today, (February 13, 2015) available at <http://www.christiantoday.com/article/bethlehem.mayor.tells.vatican.that.israel.cremisan.valley.confiscation.will.finish.christians/48060.htm>.

³⁹ Id.

Israeli colonization plan in Cremisan. The families will collectively lose 300 hectares of land to the other side of the Wall as well as sources of irrigable water for their crops and for drinking.⁴⁰

The Israeli government's denied registration and protection of minority religious sites and institutions has led to a tacit purging of Palestinian culture, violating international human rights law while contravening the Protection of Holy Places Law of 1967. Under international law, Israel must respect the religious rights of all people within its territory, including the protection and recognition of minority religious sites. In the ICCPR, the freedom of religion is protected as is the freedom to worship.⁴¹ These rights are delimited only at times of "public emergency which threatens the life of the nation," and even then no diminishment of the "rights to life (...) and freedom of thought, conscience and religion" is admissible.⁴²

Furthermore, because ethnic, religious and linguistic minorities exist, Article (27) of the ICCPR guarantees these minorities the right, "in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, [and] to use their own language."⁴³ This equality implicates the right for religious sites to be protected at the same level that the majority religious sites are in Israel. This protection must also apply to the West Bank, because Israel treats the situation as de facto civil law where it resides.

Israel cannot rely on a military law regime to circumvent its obligations under international law,



especially an Agreement with the Vatican in protecting religious minorities, a tenet of international

⁴⁰ Asia News, «For Palestinian leader, the Cremisan Valley Wall is a new obstacle on a path toward peace,» (July 08, 2015) available at <http://www.asianews.it/news-en/For-Palestinian-leader-the-Cremisan-Valley-Wall-is-a-new-obstacle-on-the-path-of-peace-34720.html>.

⁴¹ Article 18, International Covenant on Civil and Political Rights (ICCPR), UNESCO, available at <http://www.unesco.org/most/rr4iccpr.htm>.

⁴² Id.

⁴³ Article 27, ICCPR, available at <http://www.unesco.org/most/rr4iccpr.htm/>.

treaty body of the UN that deals with human rights. Considering the Wall is dividing Beit Jala into two for the benefit of Israeli citizens in the settlements outside Jerusalem, Israel would do well to apply the Fundamental Agreement to these areas where the Wall is being built, in order to ensure continuity for the protection of minority religious places and institutions.

V. RECOMMENDATIONS

Given the Israeli policies of expansion and annexation in the occupied Palestinian territory generally, and in the Cremisan valley specifically, and with Israel's expressed insistence to proceed with its plans of building the Annexation Wall in Cremisan, the Society of St. Yves calls upon the international community to urgently exert pressure on Israel and insist upon:

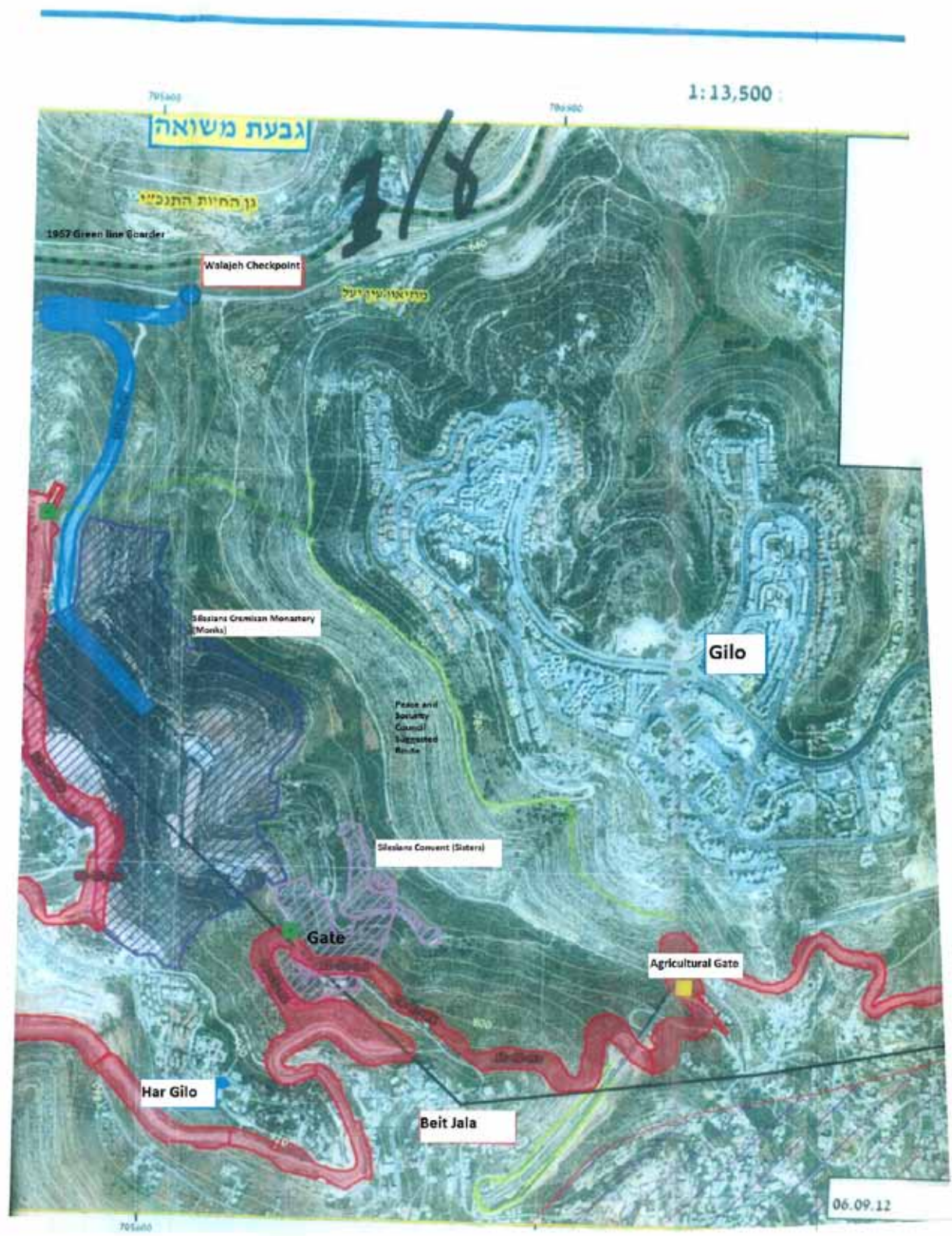
1. Israel to respect the local Beit Jala Palestinians' rights to self-determination, including their property rights, right to freedom of movement as well as the right to work and to education, under the UN treaty bodies of the ICCPR and ICESCR.
2. Israel to immediately comply with its obligations under international law and abide by the ICJ's ruling in its advisory opinion, and cease construction of the Annexation Wall in Cremisan, dismantle the parts of the Wall that were built inside the West Bank, and revoke the military orders issued relating to the Wall's construction.
3. Israel to cease relying on its military legal regime in the West Bank to circumvent its international law obligations for the benefit of the Palestinian people under occupation as well as its own supposed democratic values.
4. The international community to refrain from assisting in maintaining the unlawful situation that has arisen following construction of the Annexation Wall and take legal measures to cease Israel's violations of international law and international human rights law, as well as to ensure enforcement of the Fourth Geneva Convention.



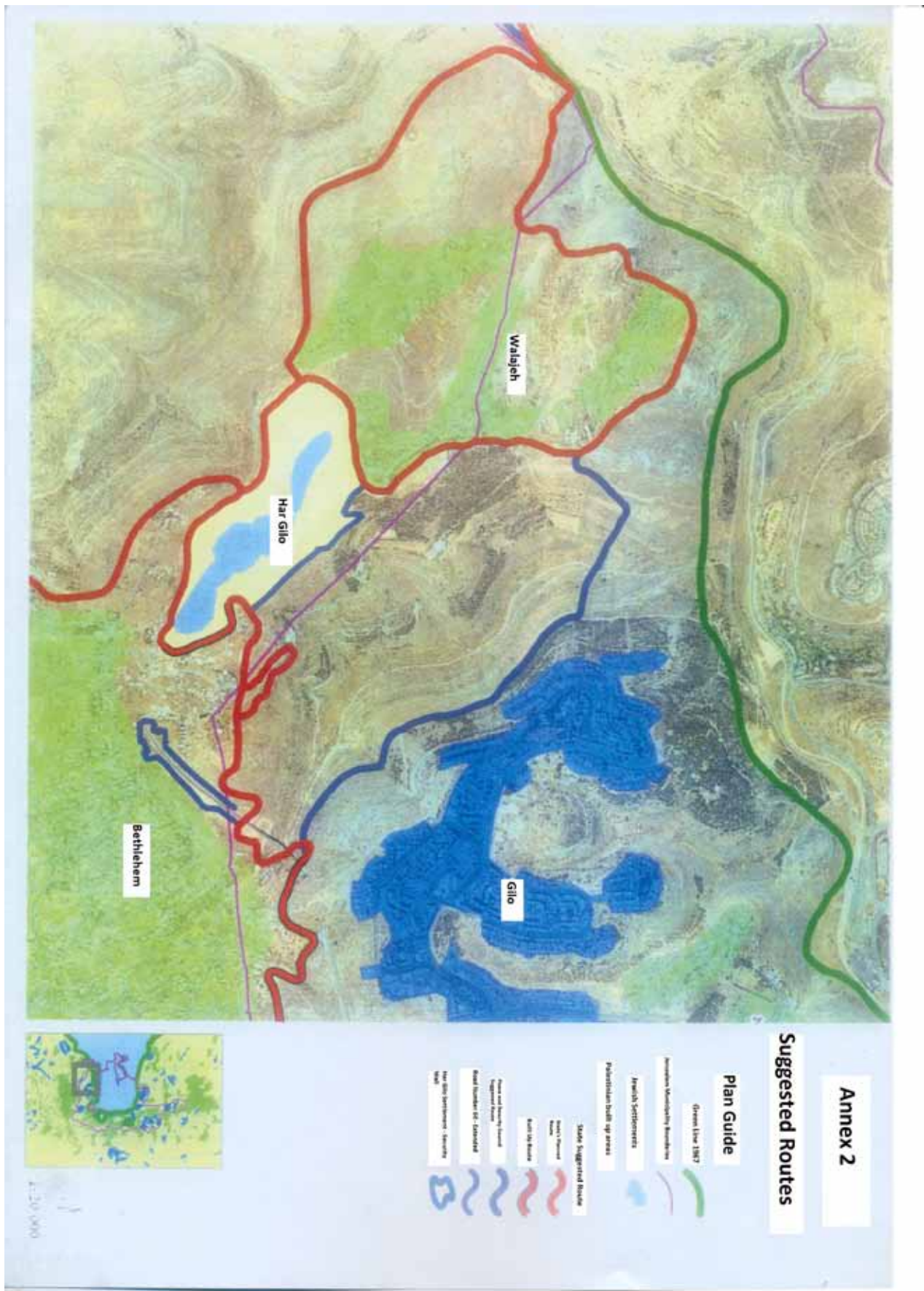
A close-up photograph of an olive branch with silvery-green leaves and small, dark green olives. The background is softly blurred, showing hints of a terracotta-colored wall. The word "ANNEX" is centered in a bold, white, sans-serif font.

ANNEX

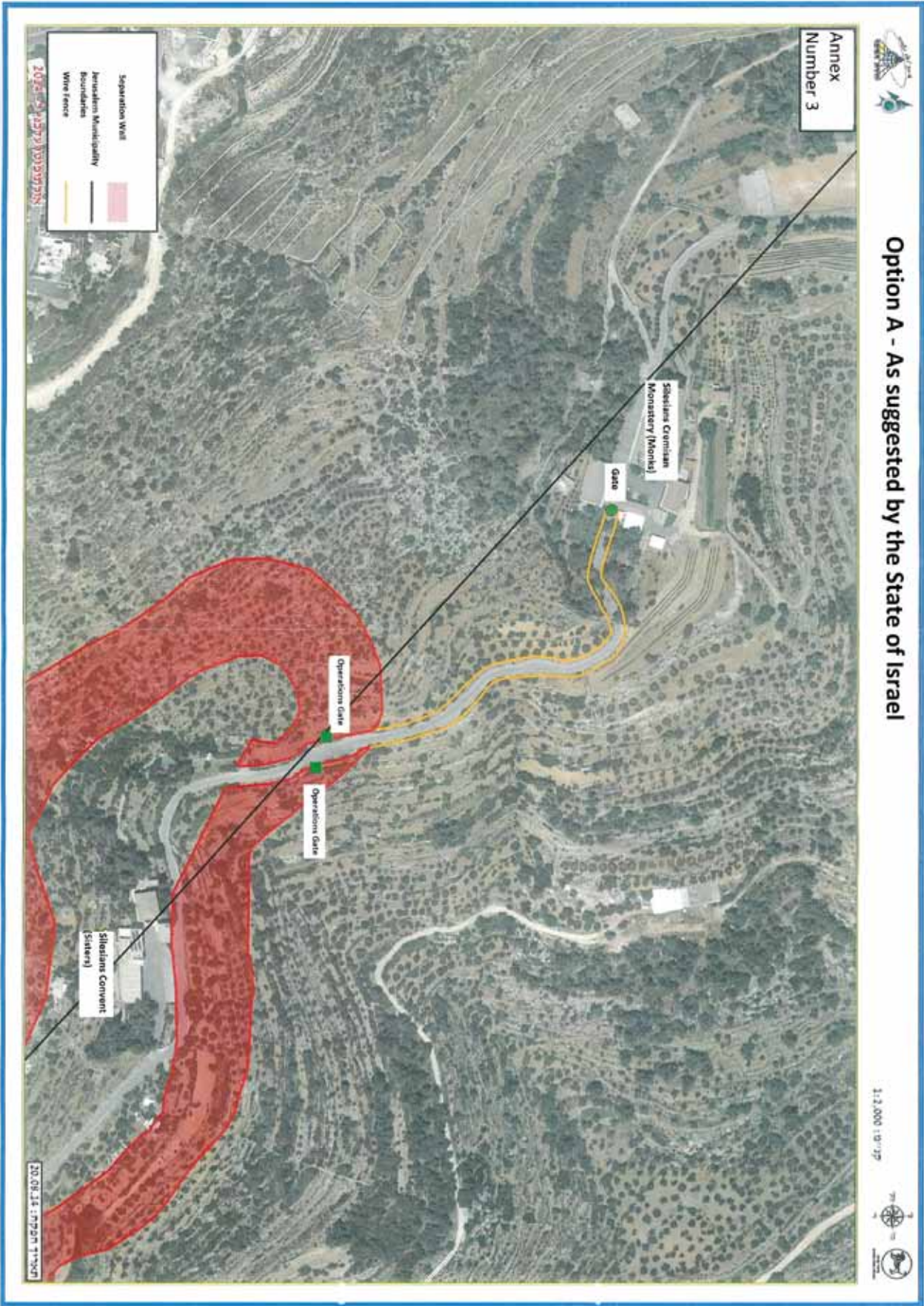
ANNEX 1 - Different Suggested Routes Of The Annexation Wall



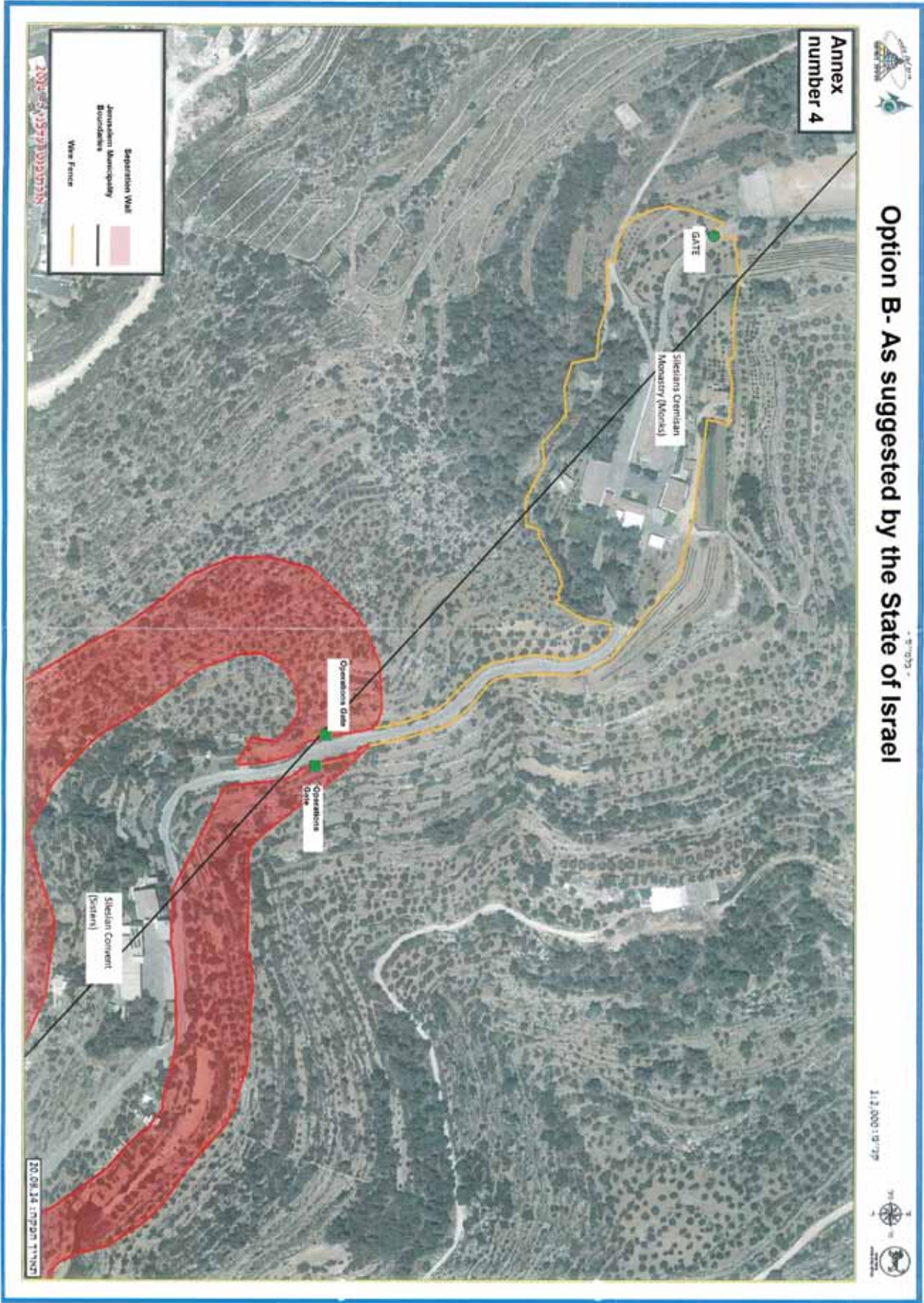
ANNEX 1 - Different Suggested Routes Of The Annexation Wall



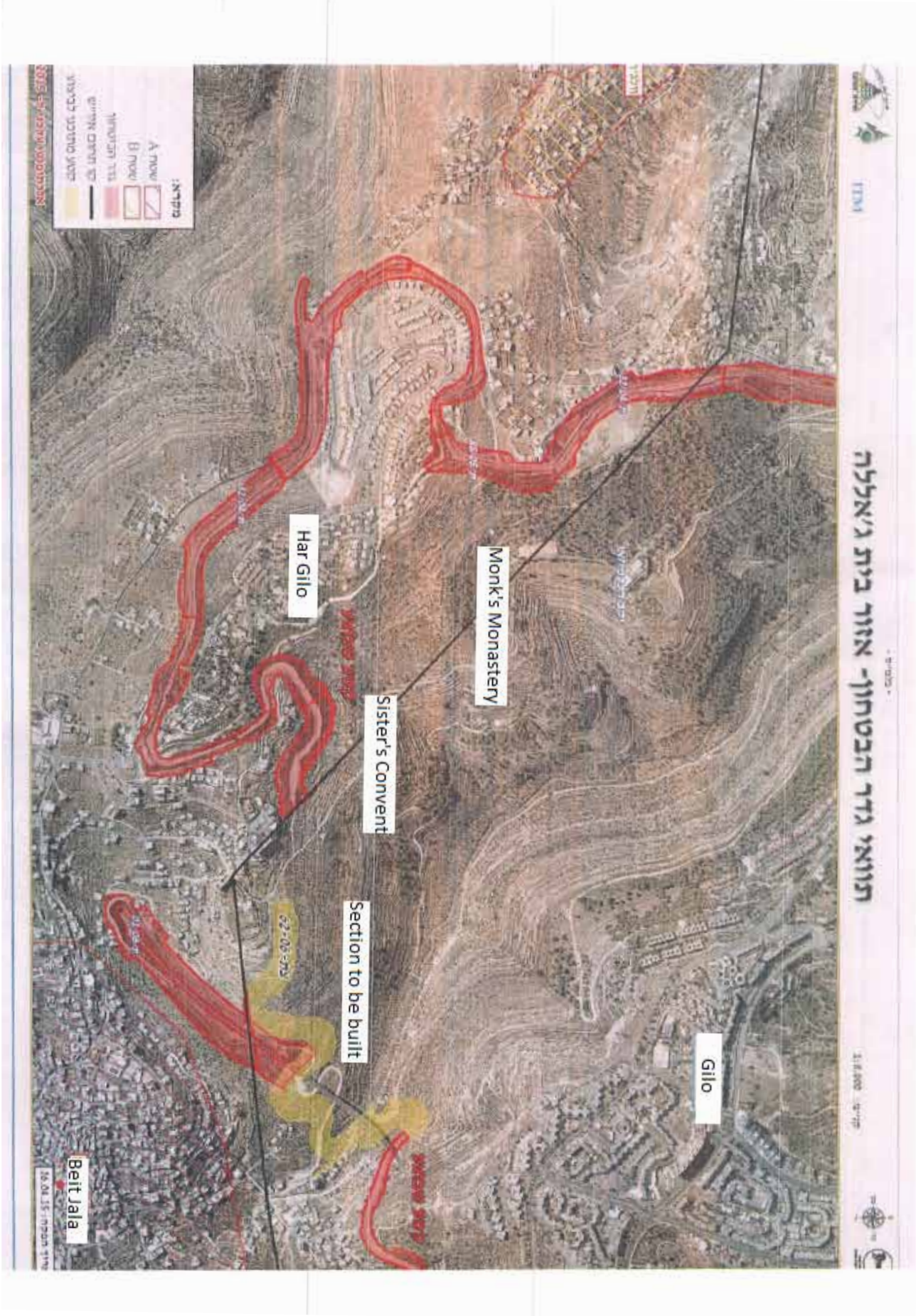
ANNEX 1 - Different Suggested Routes Of The Annexation Wall



ANNEX 1 - Different Suggested Routes Of The Annexation Wall



ANNEX 1 - Different Suggested Routes Of The Annexation Wall



ANNEX 2 A - Final Court decision (2 April 2015)



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אדם

In the Supreme Court in its capacity as the High Court of Justice

HCJ 5163/13

Before: Hon. President (ret.) A. Grunis

Hon. Judge N. Hendel

Hon. Judge U. Vogelman

The petitioners:

1. Beit Jala Municipality
2. Issa Haliliah
3. Issa Shatla
4. Salivah Zidan
5. Hanna Teet
6. Odeh Haliliah
7. Nasri Najar
8. Nidal Mubarak
9. Gouda Abu Sa'ad
10. Riad Abu Muhar
11. Yousef Shatla
12. Nachaleh Abu Eid
13. Mina Zidan
14. Ibrahim Abu Awad
15. Yaacoub Abu Amasheh

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16. Nader Abu Jatass
17. Louris Haliliah
18. Hachaleh Abu Eid
19. Johnny Shahawan
20. Perach Elallem
21. Emile Elallemouda Elaraj
22. Lamieh Elaraj
23. Bshara Awad
24. Issa Kasfasah
25. Na'ama Abu Mouhar
26. Riad Abu Mouhar
27. Gariss Abu Mouhar
28. Yousrah Salem Nawauwiah
29. Hanna Salivah Kosateh
30. Eskandar Abu Roman
31. Karim Hadawah
32. Akram Hadawah
33. Dr. Bshara Elias Nassrallah
34. Eliad Na'im Jarayes Lachsin
35. Victor Hani

Vs.

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The respondents:

Defense

1. The General Director of the Ministry of Defense
2. The Ministry of Defense
3. The Seam Line (Barrier) Administration
4. The Military Commander in the West Bank
5. Har Gilo Local Committee
6. Salesian Sisters Convent
7. Salesian of Don Bosco
8. The Peace and Security Council
9. The Nature and Parks Authority

Petition for Order Nisi and Interim Injunction

Date of Meeting:

8th of Av, 5774 (4.8.2014)

On behalf of the Petitioners:

Jiat Nasser, Adv.

On behalf of Respondents 1-4:

Channy Ofek, Adv.

On behalf of Respondent 5:

Dr. Gershon Gontovnik, Adv.

On behalf of Respondent 6:

Zvi Avni, Adv.

On behalf of Respondent 7:

Nahad Arshid, Adv.

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On behalf of Respondent 8: Talia Sasson, Adv.

On behalf of Respondent 9: Nirit Aharon, Adv.

Ruling

The President (ret.) A. Grunis:

1. The petition before us is directed against the route of the security fence in the area of Beit Jala, south of Jerusalem. The route at the heart of this petition is located partially in the municipal territory of Jerusalem, and is the separating line between Israel and the Judea and Samaria Area (hereinafter: JSA), and partially goes through JSA. In the petition, it is requested to cancel the seizure orders which have been issued for the purpose of building the fence, in connection with the land located in JSA and in Israel's territory. As a part thereof, it is requested to cancel the Ruling of the Appeal Committee acting according to the Law for the Regulation of Land Seizure in a State of Emergency-1949 (hereinafter: the Law), which rejected the appeal regarding the legality of the seizure orders issued under it for the purpose of building the fence in Israel (Appeal Committee (Tel Aviv-Yaffo) 875/06 Haliliah vs. The Ministry of Defense, ruling dated 24.4.2013, Hon. Judge E. Ravid, Adv. Y. Arbel and Adv. A. Efron).

Background and sequence of events

2. For over a decade now, the State of Israel has been working on building a

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security fence in a number of sections in what is called the Seam Zone, including in the area of Jerusalem. This, as part of dealing with terrorist threats and with the purpose of hindering and preventing the penetration of terrorists into Israel's territory (for elaboration regarding the background for the building of the security fence, see HJC 2056/04 Beit Surik Village Council vs. Government of Israel, Ruling 58(5) 807, 816-818 (2004) (hereinafter: the Beit Surik Case); regarding the background for the building of the fence in the Jerusalem envelope area, see for example, HCJ 5488/04 Alram Local Council vs. The State of Israel, paragraph 2 (President (ret.) A. Barak (13.12.2006) (hereinafter: the Alram Case); HCJ 9516/10 Walaja Village Council vs. The Military Commander in the West Bank, paragraph 1 (22.8.2011) (hereinafter: the Walaja Case)). As part of the efforts for completing the fence in the Jerusalem area, Respondent 1 has issued on 19.3.2006 a land seizure order according to Section 4(1) of the Law (490-06-62). The purpose of the order was to enable the completion of the fence south of Jerusalem near the Har Gilo settlement, in front of Beit Jala and near two monasteries close to it, Respondents 6 and 7 (hereinafter, respectively: the Women's Convent and the Men's Monastery, and in conjunction: the Monasteries). Both Monasteries include a number of structures, including a winery and an olive press, and their lands, which are also used for various agricultural growths, are located in the Beit Jala Ridge. The aforesaid order was issued with the purpose of allowing building of the fence for a length of about 1,500m, connecting between the

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sections of the fence already built in the JSA. According to plan, the fence section for which the aforesaid seizure order was issued would pass close to Highway 60 (the “Tunnels Road”) while leaving the bridge on which this route passes in the “Israeli” side of the fence, to be connected with the route passing through JSA.

3. Residents of Beit Jala have submitted an appeal against the seizure order to the Appeal Committee, according to Section 17 of the Law (hereinafter: the Appeal Committee). Note that the Committee’s authority only extends to the section of the fence passing through Israel’s territory. The appeals were processed for about seven years, during which many witnesses were heard, and a tour was performed in the area in question. During this period, Respondents 1-2 have made several changes to the fence’s route, in response to the Appellants’ claims in their appeal. In 2007, a seizure order was issued (490-75-07) changing the route so that the fence would include within the “JSA side” a few of the Beit Jala residents’ houses that remained on its “Israeli” side. In the Ruling, it was noted that the original route was informed by the presumption that the Women’s Convent prefers to stay on the “Israeli” side of the fence. However, at the end of 2010, the Convent requested to join the procedure as Appellant, and to change the fence’s route. The Committee decided to allow the Convent to join the procedure despite the great delay in its response. In 2011, Respondent 1 issued a new seizure order (490-11-02), with the purpose of including the Women’s

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Convent and all its educational institutions on the “JSA side” of the fence.

According to the amended route, the fence would cross between the Women’s

Convent and part of its lands as well as the Men’s Monastery, which would

remain on the “Israeli” side of the fence. It is to be further noted that in 2009,

Respondent 8 (hereinafter: the Council) has joined the appeal as amicus curiae,

however after a time, had requested to withdraw its affidavit and quit the

process. Respondent 5 also joined the appeal as a respondent. Its reason for

joining was the fact that the fence’s route passes near the Har Gilo settlement.

4. The Appeal Committee rejected the appeal. In its Decision, it was decided that the route of the fence in question indeed injures the residents of Beit Jala. The injury is expressed via the seizure of land for the purpose of building the fence, and the separation that would be created between the residents and their agricultural land, to which access would be limited to passage through a gate which would be irregularly open, and be subject to a permit regime. However, the Appeal Committee decided that the fence’s route was determined according to military considerations and not extraneous considerations. According to the Committee, engineering constraints also support the route determined, and choosing it would minimize injury to Palestinian lands and olive trees. The Committee rejected two alternative routes which the Appellants proposed to it. According to the first appeal which was proposed and rejected, the fence’s route would be too far diverted to the direction of Gilo stream and Gilo

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neighborhood, in a way that would leave Beit Jala's residents' agricultural lands in the "JSA side" of the fence, so that their access to them would not be disturbed. The Appeal Committee noted that the great majority of the aforesaid route is not under its authority. It decided that the aforesaid route indeed makes less injury to the farmers' accessibility to their lands, however accepted the position of Respondents 1-2, according to which the route does not fulfill its security purpose as the route determined by them. The second and main alternative proposed by the Appellants is largely similar to the route proposed by the Council (hereinafter: the Council Route). According to this proposal, the fence would start on the northern side of the bridge over Gilo stream, continue west on an existing dirt road and will cross the stream south. The fence would surround the settlement Har Gilo on all sides and it would become a special security area (SSA). The Appeal Committee noted that the great advantage of this route is in the fact that injury to the land cultivated by Beit Jala's residents is prevented, and the need to build agricultural gates is negated. This alternative was also rejected for the reason that this route is "significantly inferior in terms of security" than the route at the heart of the Appeal (paragraph 51 of the Decision). This, due to the narrow alert area that it enabled, the great closeness of the fence of the Gilo neighborhood houses in Jerusalem, and lack of sufficient response to the threat over the Tunnels Road. Additionally it was decided that the route determined by Respondents 1-2 is better topographically and that the Council Route necessitates seizure of land and injury of trees on a

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wider scope.

In addition, it was decided that the injury involved with the fence is proportionate. The Appeal Committee noted Respondents 1-2's willingness to pay, in appropriate cases, compensation and user fees for the land seized for the purpose of building the fence, and decided that setting two agricultural gates in the fence comprises an appropriate solution to the difficulty in cultivating the land. In addition, the Decision mentioned Respondents 1-2's undertaking to regulate access from the monastery to its lands using an electrical gate, and to enable Clerics free passage between the Monasteries. The Committee rejected the Women's Convent's request to determine a route that would leave all of its lands in the "JSA side" of the fence. This, for security reasons and since this would necessitate the issuance of new seizure orders, a move which might involve injury to additional lands and significant delay to the building of the fence. In addition, the Committee commented that given that a significant part of the fence is already built, then demolishing and then reconstructing it would harm the landscape. In addition, claims were rejected regarding the injury caused to the Women's Convent due to surrounding its school by the fence, as well as arguments regarding possible injury that would be caused to the Convent if it's decided to expand it. Finally, the Attorney General's position was accepted, according to which the approval of the route does not breach the conventions between Israel and the Vatican.

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5. For the sake of completing the picture, it should be noted that in 2011, the Military Commander in JSA issued a land seizure order (11/8/400), seizing land located in JSA, for the purpose of building a fence to be connected to the fence route discussed before the Appeal Committee. This order is not in the authority of the Appeal Committee and was not discussed by it.

The petition before us and the Parties' claims

6. Following the Decision, Beit Jala Municipality and the city's residents who were a party to the procedure in the Appeal Committee, have submitted the Petition before us. In the Petition, it is requested to cancel the Appeal Committee's Decision, the seizure orders discussed before it (490-62-06, 490-75-05 and 490-02-11) and the land seizure order issued by the Military Commander in JSA, as aforesaid in the previous paragraph (11/8/400) (all aforesaid orders will hereinafter be referred to in conjunction as: the Seizure Orders). In addition, it is requested to decide that the fence's route proposed by Respondents 1-4, represented by the State Attorney's Office (hereinafter: the Respondents), is neither reasonable nor proportionate, and to instruct the examination of alternatives to it.
7. On 21.7.2013, a temporary injunction was given on the Petition, forbidding the performance of works in the route of the fence at the heart of this Petition, and this until further decision (Judge U. Vogelmann). On 3.2.2014, an order nisi has

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been given in the Petition (President A. Grunis and Judges N. Hendel and U. Vogelman).

8. The parties' positions have been presented to us in detail, in writing and orally, and this is the essence of their claims. The Petitioners are claiming that in the Appeal Committee's Decision there occurred various procedural flaws, with special emphasis on the prevention of the Council's participation in the procedure after it was acknowledged as *amicus curiae*. In addition, they claim that the committee did not properly consider all the evidence that were presented to it and they reject its conclusions on this matter. According to them, the fence route injures their rights disproportionately and it is unreasonable. The injuries are expressed, according to them, via the fence passing through Beit Jala's residents' land; the surrounding of houses in the city by a "choke hold" vis-à-vis the fence; the disconnection to be created between Beit Jala and agricultural lands of its residents and between the Monasteries serving them; and via the environmental injury that the fence would cause. The Petitioners claim that the route determined does not serve any security purpose and that its true purpose is to create territorial continuity between Gilo neighborhood and the Har Gilo settlement in order to enable annexation of the intermediate territory. According to them, the route is illogical, determined without appropriate factual grounds and is inconsistent with the rules of the Israeli administrative law and international law's instructions. The Petitioners propose

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adopting the Council Route instead of the route determined. In addition, they claim that it is no longer permissible to act on the seizure orders discussed before the Appeal Committee, since the period during which it was possible to hold territories under them is expired, in accordance with the instructions of Section 6 of the Law. According to the Section, land seized under an order issued on 1.8.1952 or thereafter will not be kept for a period exceeding three years.

9. Respondent 6, the Women's Convent, joins the Petitioners' claims and notes that the Petition reflects its positions. It explains that it saw no need to submit an petition of its own in this matter, among other reasons, due to a change that occurred in its legal representation and due to its ambivalent relation to dealings with the Court. The Women's Monastery is on principle opposed to the building of the fence. According to it, if this can't be avoided, then the fence must be built over the "Green Line" (which is the armistice line between Israel and Jordan), or alternatively according to the Council Route, which is considered the lesser of two evils. According to it, the fence will create a separation between the Convent and its lands used for its livelihood. In addition, it claims that the fence, including its gates to be operated by the military, would harm the landscape and the Convent's character, and would discourage sending the community's children to the educational institutions inside it. Further the Convent claims that the building of the fence is in contradiction with the

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agreements signed between Israel and the Vatican.

10. The arguments of Respondent 7, the Men's Monastery, are very similar to the arguments of the Women's Convent. The Men's Monastery particularly emphasizes the injury that would be caused by leaving it on the "Israeli" side of the fence. According to it, the fence would divide between it and the Women's Convent and the cities of Beit Jala and Bethlehem, in which the Salesian Order's (to which it belongs) community, employees and offices all reside. It demands that all its lands and facilities would remain connected, as one single entity, with no fence separating between them and the Beit Jala area. The Monastery rejects the claims according to which it consented to the building of the fence in the discussed route. According to it, in years 2005-2007, the military's representatives have negotiated with the Monastery's representatives regarding the original route of the fence in the area, but these were not finalized in any agreement, and the Monastery notified them that it opposes the building of a fence in any route in the area. These negotiations were made, according to the Monastery, with low levels within it, under the presumption that the building of the fence is considered a *fait accompli*, and their purpose was to find a solution to practical problems ensuing from it. According to the Monastery, no contact was made between it and the security system regarding the changes that were later made to the route. It admits that its representatives have toured the area with the representatives of the security system in 2014, however

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according to it, the tour was purposed to regulate other issues and the fence route before us was not discussed as part of it.

11. The Respondents, however, believe that the Petition should be rejected, and endorse the Appeal Committee's Decision. They detail the considerations on which the determined fence route was based. On the security level, it's noted that the fence is necessary for the defense of Gilo neighborhood in Jerusalem, of the Tunnels Road, of Har Gilo and of other civilian sites the in Jerusalem area, and for the purpose of preventing penetration to Israel by terrorists and illegal aliens. The Respondents emphasize that the building of the fence must be completed soon and the security breach left in the route blocked. According to them, as long as the fence isn't completed in the entire area, the route already built in the area, which is about ten and a half km long and cost over ILS 80 million, would not be able to operate efficiently. In addition, the Respondents describe the topographical considerations, the engineering constraints and the environmental aspects that led to determining the aforesaid route. Among other things, they note that the route chosen is the shortest possible route, and its security efficiency is the greatest. According to them, the route was finalized in cooperation with Respondent 9 (hereinafter: the Nature and Parks Authority), according to whose opinion, this is the alternative that least harms nature and the landscape. According to them, this route has an additional benefit, since it passes through Jerusalem's municipal territory, and therefore enables defense of

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Israel's boundaries from within its own territory.

The Respondents are not denying the injury that the fence would cause the Petitioners and the Monasteries, however in their opinion the injury is proportionate, and the corrections made to the route comprise an appropriate response to it. They believe that both gates to be placed in the fence would solve Beit Jala's residents' access difficulties to their lands in Israel, and mention that JSA residents have no given right to enter Israel. The Respondents claim that the gate in the fence, to be operated by the security forces, would solve the access problems between the Women's Convent and its lands and the Men's Monastery, and express willingness to agree on mitigating arrangements for the monks' passage between the two Monasteries. As to the Men's Monastery, the Respondents claim that it expressed its will and gave its consent, in conduct and explicitly, to the route which leaves it on the "Israeli" side of the fence, and that it has no right to argue against it. The Respondents emphasize that the Men's Monastery's produce is sold mainly in Israel, and that it is possible to deal with the separation that would be created between it and the Women's Convent using a daily gate (i.e. which is open every day) to be set in the fence. The Respondents request that the Council would be erased as a Respondent to this Petition and reject the route proposed by it, while explaining in detail its disadvantages, especially on the security and engineering levels. The respondents emphasize that the Council Route in fact aims to change the

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fence's route in the general south Jerusalem envelope area, a route where many of its sections have already withstood legal inspection, and this in contrast to the narrow section at the heart of this Petition. According to them, accepting the Petitioners' position would necessitate demolishing the fence that was already built, including the high costs involved in it, and would necessitate a rehabilitation of the landscape and a wide seizure of land. This move might, according to them, incur additional legal proceedings and delay the building of the fence, and would comprise an overturn of several Decisions and Rulings given regarding the fence's route in the south Jerusalem envelope area. Finally, the Respondents reject the claims according to which the seizure orders are expired, and claim that the period in which the Appeal of the orders was discussed is not included in the count of the days for the validity of the orders according to Section 6 of the Law.

12. Respondent 5, Har Gilo Local Committee, believes that the Petition should be rejected. It emphasizes the need for completing the fence and including the Har Gilo settlement on the "Israeli" side of the fence, in light of the security situation in the area. Respondent 5 rejects the claims according to which the route was chosen according to extraneous considerations, and claims and the Petitioners did not propose an alternative route to the route in discussion. Further it requests that the Council be omitted as a Respondent to this claim, and that it would be disallowed from presenting its opinion.

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13. The Council, on its part, has requested to join the procedure as amicus curiae. It agreed that there exists a security justification for the building of the fence in the discussed area, however in its opinion the route proposed by it is preferable to the route determined by the Respondents. Its arguments focus on basing this claim and in rejecting the arguments raised by the Respondents regarding the difficulties involved with the route offered by it. The Nature and Parks Authority has also requested to join as a Respondent to this Petition. Despite the delay in submitting their request, and in light of the issue's importance, we have agreed to its request (see my decision from 9.6.2014). In essence, its position is that from the environmental aspect, the route determined by the Respondents, which was planned in cooperation with it, is to be considered as the lesser of two evils and is preferable to the Council Route.

14. On 7.8.2014, we have instructed the Respondents to consider various options according to which both Monasteries would be located on the "Palestinian" side of the fence (President A. Grunis and Judges N. Hendel and U. Vogelmann). In response, the Respondents notified on 4.9.2014, that they have examined the possibility of diverting the fence's route so that the "JSA side" would also include the winery and the factory of the Men's Monastery. However, this possibility was rejected. This, mainly due to security reasons relating to the fence's closeness to crowded civilian sites, and the fact that this would necessitate movement of the security forces down Gilo stream, while exposing

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them to risks from the direction of the ridge overlooking the route which would be located on the “JSA side” of the fence. According to them, this is joined by environmental reasons and the concern that this would necessitate additional land seizure, which would incur new objections. Instead, the Respondents presented two new alternatives to the discussed route. According to them, both alternatives leave the Monasteries on the “JSA side” of the fence and preserve their affinity, continuity and freedom of movement between them. The Respondents clarify that they are willing to dialogue with the Monasteries, if they give their consent in principle to one of the proposed alternatives. In the discussion held before us on 30.11.2015, the Respondents noted that if no consent is received for either of the alternatives, they would stick to the original route of the fence.

According to the first alternative, a fence would be set on both sides of the road connecting between the Monasteries, and it would continue to the gate of the Men’s Monastery (hereinafter: the Sleeve Alternative). According to this proposal, movement from the Men’s Monastery, on the “Israeli” side of the fence, to the Women’s Convent, on the “JSA side”, would be free. In the opposite direction, access will be kept similarly to the current situation, as well as allowing the movement of people for the purpose of cultivation of the agricultural lands on the “Israeli” side of the fence. The Respondents emphasize that increased sensitivity would be required in the matter of movement from

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JSA to Israel, and attention kept lest the passage is used for illegal purposes (without the knowledge of the Monastery). According to them, in light of the trust and respect that they hold for the Monastery, they are prepared to allow its people to perform the gate control, under the security system. This, alongside security elements and cameras to be installed on the gate and reserving the possibility to perform spot checks and security checks by the security system. The Respondents believe that this alternative is indeed less efficient in terms of security than the route at the heart of this Petition, however it responds to the injury to the Monasteries' quality of life, as it would allow convenient access between the Monasteries without need for screening by the security forces. According to them, the marginal addition of environmental harm involved in this alternative is relatively low. The Respondents state that this alternative would necessitate the issuance of the seizure order for the purpose of building the "sleeve's" fences, and in the future might require expropriation and use of land for a limited time which may be extended. They demand that the Parties to this Petition commit to avoiding resistance to these actions. In addition, the Respondents note that if resistance would arise following these moves, this would cause delay to the building of the fence, and in this case they reserve the right to return to the original route until the end of the investigation of the resistance.

According to the second alternative, the Men's Monastery would be surrounded

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by a fence so that the Monastery would stay on its “JSA side”, without separation from the Women’s Convent and Beit Jala, while the winery, the factory and the Monastery’s lands would remain on the “Israeli” side of the fence. On the fence, a daily gate would be set for the purpose of employee movement, to be operated by the security forces in coordination with the Monastery (hereinafter: the Envelope Alternative). The Respondents believe that the security efficiency of this alternative is greater than that of the Sleeve Alternative, and that it responds to the need for free movement between the Monasteries and the accessibility of Beit Jala’s residents to the Men’s Monastery. According to them, the additional harm to the environment according to this alternative is also relatively low, though it is greater than what would be caused by the Sleeve Alternative. The Respondents state that on the surface, it appears that this Alternative would necessitate the issuance of additional seizure orders and would likely also require expropriation and use of land for a limited time which may be extended. Therefore, as far as they are concerned, the conditions for the building of the Sleeve Alternative mentioned above are also relevant to the Envelope Alternative.

15. The Respondents’ proposals were rejected by most Parties to this Petition. The Monasteries believe that both Alternatives do not fulfill the Court’s Ruling and comprise a breach of the agreements between Israel and the Vatican. They strictly oppose the possibility that the security checks, as per the Sleeve

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Alternative, would be performed by the Men's Monastery and are reluctant to accept any solution involving the separation between the two Monasteries and between them and their lands and facilities. The Men's Monastery, on its part, refuses to commit to avoid opposing the issuance of seizure orders or expropriation in the future, and both Monasteries repeat their endorsement of the Council Route. For similar reasons, both Petitioners also oppose both aforesaid alternatives and argue that these do not mend the injuries of their rights at the heart of this Petition. The Council also believes that both alternatives are inappropriate and according to it, both significantly injure the Israeli security interest. Therefore it repeats the advantages of the alternative proposed by it. The Nature and Parks Authority, for environmental reasons, supports the route at the heart of this Petition or the Sleeve Alternative, and opposes the Envelope Alternative and the Council Route.

16. It is to be further noted that on 8.1.2015, the Petitioners submitted a request for the submission of new evidence. This concerns the recording of an interview made with the Mayor of Gush Eztion and the principal of the Gush Eztion Sadeh School which was broadcast on the news on 27.12.2014. According to the Petitioners, the interview shows that the Gush Eztion Council's (to which Respondent 5 belongs) position has been changed, and that it no longer supports the fence route in the discussed area. Therefore, it is their opinion that it should be examined whether there is a necessity at all to build the fence. The

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Monasteries agree to the request, the Council does not oppose it, and the Nature and Parks Authority leaves this consideration to the discretion of the Court. The Respondents oppose the request. In response, the Petitioners note that in another case, the Court has also addressed things published in the media. It should be noted at this point that we did not see fit to accept the Petitioners' request for the submission of the new evidence. The evidence whose submission is requested is a media publication, whose probative force is rather limited (see, for example, HCJ 5144/12 Dallal vs. Dagan (14.8.2012); HCJ 5296/12 Temple Mount and Eretz Yisrael Faithful Movement vs. The Attorney General (27.8.2012)). In addition, anyway there is nothing in this evidence to substantially contribute to this matter. The speakers in the article represent no respondent of this Petition and their position does not affect its fate. This case is not at all similar to the case which the Petitioners referenced in their response, where the Court instructed the respondents to address the things said by the Minister of Defense, who was one of the respondents of the petition, and which were published in the media, regarding the intention to build the security fence in the area relating to that petition (HCJ 7612/12, 8716/12 Battir Village Council vs. The Military Commander in the West Bank (decision from 23.11.2014)). It turned out that the Minister of Defense's position was, regarding the building of the fence in that specific area, that building it was not in high priority justifying its building at the time. For this reason, it was decided to clear the petition, while maintaining the parties' arguments. In contrast,

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regarding the current matter, the Respondents repeat and validate their intention to build the fence at this time.

Discussion and ruling

17. As aforementioned, according to Section 6 of the Law, no land must be kept whose seizure order was issued after 1.8.1952, for a period exceeding three years. According to the Petitioners, this period has long passed. In light of the result of the procedure, we did not see fit to elaborate on the matter. However, we will comment and that appears that the seizure order has not been implemented in this case, and therefore allegedly the period of three years, which is the longest period of holding land under the seizure order, has yet to pass. It is also possible that the long period in which the procedures had undergone in the Appeal Committee and in this Court should be ignored. Anyway, it seems that allegedly, there is nothing to prevent expropriation of the relevant lands in accordance with the Land Ordinance (Acquisition for Public Purposes), 1943 (as done in the case judged in this Court in HCJ 2779/07 Battir Village Council vs. The Military Commander in the West Bank (25.1.2012)).
18. An additional preliminary comment concerns the fact that the route of the fence before us partially passes through JSA and partially through Israel, on Jerusalem's municipal territory. This fact is significant in terms of the laws applying to the various sections of the fence. The decision regarding the

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question of the fence's legality in JSA is made based on a two-phase examination: in the first phase, the very authority to build the fence is examined. In this matter, it's already been determined that the Military Commander is authorized to build a security fence in JSA for the sake of defending the state of Israel and its citizens, as long as his decision is based on military-security considerations rather than political considerations (see, for example, the Beit Surik Case, pp. 829-830; HCJ 7957/04 Marabah vs. The Prime Minister of Israel, Ruling 60(2) 477, 493, 498, 546 (2005) (hereinafter: the Marabah Case)). In the second phase, the manner of implementing the authority, and the Military Commander's discretion in deciding the fence's route should be examined (see, for example, HCJ 4387/06 Masha Village Council vs. The Prime Minister, paragraph 15 (11.4.2010) (hereinafter: the Masha Case)). Implementation of the authority to build the fence should be performed in a proportionate and reasonable fashion, with appropriate balance between the security consideration at the heart of the building of the fence and other considerations, primarily the area's residents' rights, which may be injured as a result of building the fence (see the Marabah Case pp. 503, 506-507, HCJ 10202/06 Dhahiriya Municipality vs. The Military Commander in the West Bank, paragraphs 11 and 14 (12.11.2012) (hereinafter: the Dhahiriya Municipality Case)). The main criterion used by the Court in approaching these questions is the principle of proportionality (see: Beit Surik Case, pp. 840; Marabah Case, pp. 507). Regarding the fence sections located in Israel, the

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مؤسسة سانت ايوف – المركز الكاثوليكي لحقوق الإنسان
אגודת סנט איב – המרכז הקתולי לזכויות
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question regarding the Military Commander's authority is inapplicable. The authority in this matter is given to the decision makers according to internal Israeli Law (see: Alram Case, paragraphs 40-45). The decision regarding the fence's route in Israel must also comply with the proportionality and reasonableness principles, and to reflect an appropriate balance between the entirety of the relevant considerations, similar to the considerations mentioned above (see, for example, *ibid* paragraph 45; HCY 1676/09 The Defense Ministry Director vs. Kalandia Village Council, paragraph 19 (30.11.2011); HCY 6193/05 Ras Khamis Residents Committee vs. The Competent Authority According to the Land Seizure Regulation Law, paragraphs 14-16 (25.11.2008) (hereinafter: the Ras Khamis Case); HCY 1073/04 Salameh vs. The Minister of Defense, paragraphs 12-13 (6.8.2006) (hereinafter: the Salameh Case)).

19. In the discussed case, and as determined in previous cases, it cannot be said that the decision regarding the building of the fence was made without authority. The remaining question, then, relates to the manner of the authority's implementation and consideration in determining the fence's route. The main criterion for the decision in this question is, as mentioned, the proportionality principle (as to the position according to which similarity exists between the fundamental principles applying according to International Law regarding the building of the fence in JSA, and the principles applying according to Israeli Law regarding the building of the fence in Israeli territory, see: Alram Case,

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paragraph 46).

20. The route of the fence discussed before us, which is about 1,500m long, involves, as aforesaid, injury to rights. The injuries are caused by the fence's passage on Beit Jala's residents' and the Monasteries' lands, and the separation that would be caused between those entities and their agricultural lands. Additional injuries are rooted in the fact that the Men's Monastery is expected to stay on the "Israeli" side of the fence, which would cross between it and the Women's Convent, Beit Jala and Bethlehem, where its community, employees and the offices of its Order are located. As stated during the Petition discussions and as indicated by our Decision from 7.8.2014, we are unsatisfied with the alternative by which the Men's Monastery would be forced to remain on the "Israeli" side of the fence. Indeed, we have the impression that both Monasteries have supported, or unfortunately failed to oppose, in the beginning to the possibility that they will be left on the "Israeli" side of the fence. The Monasteries have joined the legal procedure late, years following the issuance of the seizure orders and after works have started for the building of the fence in the area. The Men's Monastery has joined the procedure in the Appeal Committee only in 2012, over a year after the Women's Monastery joined. In the aforesaid period, the Men's Monastery's representatives have kept in touch with the Respondents' representatives for the purpose of coordinating the route, and detailed negotiations were held between them in this matter. As part of this, in 2006, the Men's Monastery even contacted Israeli companies providing

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water, electricity and telephone infrastructure for the purpose of coordinating the services' provision to the Monastery after it is disconnected from the services it received from the Palestinian Authority. In any case, even if we did accept the claim that there has been delay in the Monasteries' conduct, under the current circumstances, I do not believe that this reason alone justifies preventing them from being heard and raising their arguments in this procedure. This, due to the injury that might be caused to them and in consideration of the great public interest involved in this Petition (compare, APA 867/11 Tel Aviv-Yaffo Municipality vs. EBC Management and Holdings Ltd., paragraph 27 (28.12.2014); Masha Case, paragraphs 12-14). The Respondents' conduct in the above procedure indicates that they also understand the need to take the Monasteries' position into account. This can be seen vis-à-vis their noteworthy willingness to make changes to the fence's route, to examine alternatives to the route and to maintain dialogue with the Monasteries. This, in order to minimize the injury to the Monasteries and the protected residents.

21. Regarding this matter, various alternatives have been raised by the Parties to the route at the heart of this Petition, with the purpose of making sure that both Monasteries are located on the "JSA side" of the fence. However, as aforesaid, despite the efforts to reach an understanding, so far, they did not succeed. One additional route proposed, as aforesaid is the Council Route. It is to be noted that the Council's choice to withdraw its affidavit from the discussion before

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the Appeal Committee, and to avoid submitting the proposed route to the Committee for examination, indeed raises difficulties. However, under the current circumstances, we believe that this is not enough to dismiss the presentation of the Council Route in the procedure before us, and it has indeed been presented to us in detail. After examining the Council Route, we have reached the conclusion that it does not comply with the security purposes at the heart of the fence as much as the route determined by the Respondents. In this decision, we have given great weight to the Petitioners' detailed opposition to this route. However, since this concerns a question entirely located in the field of security estimation and specialty, and given that the Respondents are the ones with the knowledge and responsibility in this matter (see, for example, the Masha Case, paragraph 22; the Beit Surik Case, pp. 842-844, 846; HCJ 8414/05 Yasin vs. The Government of Israel, paragraph 29 (4.9.2007); the Walaja Case, paragraph 14; the Alram Case, paragraph 48). In this matter, the Petitioners failed to lift the heavy burden of disproving the Respondents' professional opinion and to convince us that the route suggested by the Council is preferable to the one determined by the Respondents. In light of the above, we cannot accept the claim that the Council Route comprises an appropriate alternative to the route discussed in the current Petition.

22. In contrast to the Council Route, two other alternatives (the Sleeve Alternative and the Envelope Alternative) were proposed by the Respondents, following

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our Decision from 7.8.2014. These alternatives involve, at least presumably, less injury to the Monasteries and those needing their services, in light of the inclusion of the Men's Monastery on the "JSA side" of the fence. In addition – we believe that these alternatives sufficiently fulfill the security purposes at the heart of the fence. Under these circumstances, we were not convinced that the fence could not be built in a route enabling fulfilling the security purposes at its heart, but that would involve less injury to the rights of the Monasteries and the protected residents. Specifically, we are in doubt as to whether there exists a possibility to build the fence in a route that would not necessitate leaving the Men's Monastery on the "Israeli" side of the fence, including the resulting injuries to its rights and the rights of its community, the area's inhabitants. However, at this stage and in light of the information brought before us, it is impossible for us to decide whether these indeed comprise real and sustainable alternatives to the route in question. This, seeing as the preliminary conditions for the implementation of the two proposed alternatives have not been fulfilled. As aforesaid, the conditions set by the Respondents for the performance of both alternatives offered by them, and mainly receiving the Monasteries' consent and obligation to avoid resisting the actions involved in this. The Monasteries oppose both alternatives, and the Petitioners and the Nature and Parks Authority are reluctant to accept them as well. In addition, it has been noted that the building of the fence according to both of the above alternatives might necessitate the issuance of additional seizure orders, as well as additional

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expropriation and use of land for a limited period. At this stage, it has not yet been clarified whether this would indeed be necessary and whether such acts might injure the rights of additional entities whose position has not yet been heard and who are not a party to the current procedure (compare, Ras Khamis Case, paragraph 23, Salameh Case, paragraph 16). In light of all this, the probability and applicability of both alternatives proposed by the Respondents are unclear. Seeing as such, in this current point in time it is impossible to evaluate the probability of these alternatives or to express a clear opinion regarding their proportionality.

23. In light of the aforesaid, we do not see fit to express, at this point, a binding position on the question of whether these comprise appropriate alternatives. At this time, it is enough to state that on the surface, the Sleeve Alternative, and especially the possibility to delegate the authority for security checks at the Men's Monastery gate to the Monastery, incurs significant difficulties. This, for security considerations, for practical considerations and for considerations concerning delegation of control authority to the Monastery's employees. The question of whether the Envelope Alternative is a sustainable possibility was not satisfactorily clarified to us and in lack of further details in this matter, this question cannot be decided. In our opinion, the Respondents must reexamine whether it is possible to determine an alternative route for the fence that would enable the inclusion of the Men's Monastery on its "JSA side". It should be

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clarified that it is not our intention that they should necessarily act according to the alternatives offered in the aforesaid procedure. As is well known, application of the proportionality tests does not necessarily result in only one “correct” answer. The Authorities might be faced with a number of possibilities, which would all be found in the “proportionality area” and the choice between them is given to them. It should be mentioned that anyway any route chosen by the Respondents would be subject to judicial review. In this matter, President A. Barak’s words are relevant, written regarding the Marabah Case, on pp. 555, though said in a slightly different context, according to which:

“And what is the answer if examining an alternative route would lead to the conclusion that the only route fulfilling the minimum security requirement is the existing one? For without it there would be no safety for Israelis; for with it there is great injury to the village residents’ quality of life? What is the answer in this situation (“absolute” application of proportionality in the narrow sense: Surik Case, pp. 840)? This is the most difficult question. ...How shall we resolve this difficulty in the case before us? It seems to us that it is not yet time to deal with this difficulty, and perhaps that time will never come. It should be hoped that examining the second condition of the proportionality test would enable a

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change to the fence's route, in the spirit of our comments, in a way that would find a new route whose injury to the lives of the local residents would be far lesser than the one caused by the present route..."

24. In light of our aforesaid conclusion, we do not see fit to determine at this time whether the rest of the injuries involved with the building of the fence are proportionate. My intention is especially regarding the injury arising from the fence's passage through Beit Jala's residents' lands and the Monasteries', and the separation of these entities from their lands. Anyway the possibility to examine these injuries is highly limited in light of our conclusion that a renewed examination of the fence's route is needed. This, seeing as any change made to the route might also affect the proportionality of the aforesaid injuries. Thus, for example, the potential changes to the fence's route might also change the regulation of passage to the Petitioners' and the Monasteries' lands. In this context, we will comment that it is understood that every effort should be made in order to minimize the injury to the area's inhabitants, the monks and the Monasteries' employees. It's to be hoped that in this aspect, too, cooperation will be had between the relevant entities in order to reach an agreement which would enable as convenient access as possible between the Monasteries, the area's inhabitants, and their lands (on the issue of passage regulation, see, for example, HCJ 11344/03 Salim vs. IDF Forces Commander in Judea and

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Samaria, paragraphs 41-43 (9.9.2009); HCJ 1182/08 Nasser vs. The Government of Israel, paragraph 23 (17.8.2010); Masha Case, paragraphs 24-25; Beit Surik Case, pp. 851-854; Alram Case, paragraph 55).

25. As part of the reexamination, the aspect of time should also be considered. As we have seen, the procedures before the Appeal Committee lasted for about seven years. If there is a need to issue one or more new seizure orders regarding a different route of the fence, and if the affected parties would oppose the orders and appeal to the Appeal Committee, as they are entitled to do, this matter should be considered. It should not be acceptable that the issuance of a new order would delay this matter for another long period. Eventually, and since this concerns a fence with the purpose of protecting Israel's inhabitants, the period of time which may go by without completing the fence bears great weight.

The President (ret.)

Judge U. Vogelmann:

My colleague, the President (ret.) A. Grunis, found that that the Respondents must reconsider the route of the separation fence in the section at the heart of this Petition, so that there would be no separation between the Salesian Sisters Convent and Salesian of Don Bosco. In my view, despite the aspect of time on which my colleague the President insists, there can be no escape from changing the route in the focused aspect explained by my colleague and for his reasons, in a way that

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would prevent disruption to the territorial continuity between the Monasteries – between them and themselves – and also there should be no separation between the local Christian communities in Beit Jala and Bethlehem (note: I do not set my opinion at this stage relating the question of potential separation between the Monasteries and the agricultural lands cultivated by the monks). In this sense, I agree that the order nisi will become permanent.

To this I will add that I concur with my colleague's decision that there is no cause to intervene with the Military Commander's discretion, which did not see fit to accept the route suggested by the Peace and Security Council for having, in its view, significant security flaws, particularly in the aspect of lack of efficient alert area, due to the great closeness of the route to the borders of the Gilo neighborhood. The aforesaid is not to dismiss the Council's principle opinion and the professional opinion's weight. However, in the words of President A. Barak – "This matter regards two military approaches. Each possesses advantages and flaws in the military field. In this state of things we must lay the Military Commander's professional opinion at the base of our Ruling" (HCJ 2056/04 Beit Surik Village Council vs. The Government of Israel, Ruling 58(5) 807, 845 (2004)).

Judge

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Judge N. Hendel:

I concur with the Ruling of my colleague the President (ret.) A. Grunis and with the comment of my colleague Judge U. Vogelmann.

Therefore, we make the order nisi permanent but in the following sense: the Respondents must reconsider, soon, the various alternatives of the separation fence's route in the section at the heart of this Petition. No order for costs will be issued.

Given today, 13th of Nisan, 5775 (2.4.2015)

The President (ret.)

Judge

Judge

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אגודת סנט איב – המרכז הקתולי לזכויות אדם

In the Supreme Court in its capacity as the High Court of Justice

HCJ 5163/13

Before: Hon. President (ret.) A. Grunis
Hon. Judge N. Hendel
Hon. Judge U. Vogelman

The petitioners:

1. Beit Jala Municipality
2. Issa Haliliah
3. Issa Shatla
4. Salivah Zidan
5. Hanna Teet
6. Odeh Haliliah
7. Nasri Najar
8. Nidal Mubarak
9. Gouda Abu Sa'ad
10. Riad Abu Muhar
11. Yousef Shatla
12. Nachaleh Abu Eid
13. Mina Zidan
14. Ibrahim Abu Awad
15. Yaacoub Abu Amasheh
16. Nader Abu Jatass
17. Louris Haliliah
18. Hachaleh Abu Eid
19. Johnny Shahawan
20. Perach Elallem
21. Emile Elallemouda Elaraj
22. Lamieh Elaraj
23. Bshara Awad
24. Issa Kasfasah
25. Na'ama Abu Mouhar

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26. Riad Abu Mouhar
27. Gariss Abu Mouhar
28. Yousrah Salem Nawauwieh
29. Hanna Salivah Kosateh
30. Eskandar Abu Roman
31. Karim Hadawah
32. Akram Hadawah
33. Dr. Bshara Elias Nassrallah
34. Eliad Na'im Jarayes Lachsini
35. Victor Hani

Vs.

The respondents:

1. The General Director of the Ministry of Defense
2. The Ministry of Defense
3. The Seam Line (Barrier) Administration
4. The Military Commander in the West Bank
5. Har Gilo Local Committee
6. Salesian Sisters Convent
7. Salesian of Don Bosco
8. The Peace and Security Council
9. The Nature and Parks Authority

Request under the Contempt of Court Regulations. 10.6.2015

- | | |
|-------------------------------|-----------------------------|
| On behalf of the Petitioners: | Ghayyath Nasser, Adv. |
| On behalf of Respondents 1-4: | Channy Ofek, Adv. |
| On behalf of Respondent 5: | Dr. Gershon Gontovnik, Adv. |
| On behalf of Respondent 6: | Zvi Avni, Adv. |
| On behalf of Respondent 7: | Nahad Arshid, Adv. |
| On behalf of Respondent 8: | Talia Sasson, Adv. |
| On behalf of Respondent 9: | Nirit Aharon, Adv. |

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Ruling

Before us is a request under the contempt of court regulations regarding the allegation of preventing the implementation the Court's verdict on this case (building the separation wall in Beit Jala) as well as a request for an injunction order.

1. On 2/4/2015 the court issued a final decision (court order 5163/13: Beit Jala Municipality v the Public Administration of the Israeli Ministry of Defense) in which the Court asked the respondents to consider alternative routes for that section of the separation wall mentioned in the petition (the petition was addressed by judge Grunis (retired), Judge Hendel, Judge Vogelmann. Judge Naor replaced Grunis as President after his retirement). The route of the wall addressed in the petition passes through the South of Jerusalem adjacent to Har Gilo, across Beit Jala near two Monasteries; the Salesian Sister's Convent and the Salesian Monks Monastery. Under the planned route, the Sister's Convent and the educational institutions connected to it would be on the West Bank side of the wall and the wall would separate it from part of its lands. On the other hand, the Monks Monastery would remain on the Israeli side of the wall. On the 7th of August 2014 we asked the respondents to consider alternatives where both the Convent and the Monastery would remain on the Palestinian side of the wall. The Court indicated that alternative under which the Monks were to remain on the Israeli side against their will is not acceptable to the Court. The respondents presented two alternative suggestions which were rejected by the petitioners. In the Court's final decision, we indicated that based on the previous assertions we can't assess the reasoning of these alternatives or their rationality as compared to the end results of these alternatives. (paragraph 22 of President's opinion). We added that regardless of the time factor, the route must be altered in such a way which prevents geographical disconnection between the Monastery and the Convent or between them and the local Christian community in Beit Jala and Bethlehem (opinion of Judge Vogelmann, joint by Judge Hendel). As a result, this conditional term was unanimously changed to a final decision in the following sense: "the respondents have to consider once more, in the near future, alternatives to that section of the route of the wall referred to in the petition."
2. On the 10th of June 2015, the petitioners submitted a request under the contempt of court regulations. In the allegation, the petitioners pointed that they received on the 29th of April 2015 a notification from the legal advisor of the Ministry of Defense informing them that irrespective of considering alternative routes as requested by the Court, which is still

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ANNEX 2 B - Court Decision on Contempt of Court Request 6 July 2015



SOCIETY OF ST. YVES – Catholic Center for Human Rights

مؤسسة سانت إيف – المركز الكاثوليكي لحقوق الإنسان
אגודת סנט איב – המרכז הקתולי לזכויות אדם

ongoing, the Ministry of Defense intends to initiate constructing a section of the wall included in the petition at the length of 1.2 Km with leaving an opening of about 225 meters. The petitioners view these actions which the respondent intends to initiate as contempt to the court's decision; any measures undertaken in the route of the wall addressed in the petition violates the court's decision. Respondents 6 and 7 (the Monastery and the Convent) joint the contempt of Court request.

3. The respondents 1-4 (hereafter the State) claimed that their decision to build a section of the wall serves the purpose of reducing evident security threats in the area, and that this - in conjunction with considering alternatives for the remainder of the route and concluding the requested legal procedures for building it – is directly proportional with the Court's decision. These actions guarantee free access and connection between the two monasteries and further guarantees free access for the people of Beit Jala and Bethlehem to both monasteries. The final decision in the petition, in the opinion of the State, does not prohibit these actions, but aims to guarantee a new consideration of an alternative route which would be executed and advanced, despite the fact that it was not built yet. The State further added that the partial construction of the wall is inevitable in any future route and there is no place for doubt that it will disappear in the future. The State elaborated that at the moment, they haven't started implementing the planned work until a decision is reached on this current request. Respondent No. 5 (The Local Committee of Har Gilo) joined the State's response. Respondent No. 9 (the Nature and National Parks Authority) informed us that it reached an agreement with the State that the work will be implemented following a joint discussion in which they would indicate the means to be taken in order to reduce environmental harm to the area.
4. After discussion and weighing the different allegations and responses before us, we decided to reject the request. The contempt of Court procedures aim to guarantee the implementation of decisions issued by the Court; non-implementation of the Court's decisions would lead to social disorder and will harm the credibility and the decisions which the Court aims to implement. (criminal appeal No. 517/06 Manor v KPMG Inc, Para. 12, 24/7/2007), see also; request for permission for civil appeal No. 3888/04 Cherbt v Cherbt, Court Decision N.T. 4(49), 58 (2004)). The works planned for by the State do not contempt the Court's decision, as there is no conflict between them and the Court's final decision in this petition. This Court's decision stresses the importance of finding an alternative route which would prevent disconnecting the Monasteries from each other or from the community they serve. For

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plausible reasons, they abstained from clearly specifying the suitable alternative (see and compare with the Court's Decision No. 8414/05 Yaseen v State of Israel, Para 8, 15/12/2015). However, we don't dispute that in light of our final decision, the works of building the wall cannot be implemented in such a way that would disconnect the Monasteries from each other or from the community. As mentioned in the State's response, to which a map of the planned route was attached, the planned work does not intend to geographically disconnect the Convent and the Monastery from each other, the Monasteries from their lands or from the local community (assuming that the planned works should not only guarantee access, but also not to hinder or make it burdensome). The State further affirms, in response to the petitioners claim that building the wall will hinder free access of farmers from Beit Jala to the lands used by them, that their connection and access to their lands will be guaranteed to remain free and in the same manner as happens today. Based on the above, there is no reason for why the contempt of Court procedures should be used. In addition to that, we do not see a need to decide on whether the planned works in the route of the wall are inevitable in any future route or not, as that State has pointed. It is enough for us that these works, which are being implemented to reduce security risk, do not contradict with the Court's decision as it does not contradict the Court's instructions (which as mentioned earlier, do not request annulling the whole of the planned route.)

Based on the above, the request is denied including the request to issue an injunction order. No expenses will be ordered.

Given today, 19th of Tamuz, 5775 (6.7.2015)

President

Judge

Judge

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ANNEX 3 - Owners of Land Threatened by Confiscation in Cremisan



SOCIETY OF ST. YVES – Catholic Center for Human Rights

مؤسسة سانت إيف – المركز الكاثوليكي لحقوق الإنسان
אגודת סנט איב – המרכז הקתולי לזכויות אדם

Owners of Land Threatened by Confiscation in Cremisan

1	Hanna Abu Shaybeh
2	Ibrahim Saliba Abu Awad
3	Omar Al J'eidi
4	Nuha Sliman Kaplanyan
5	Hanna Yaqoub Qysieh
6	Mahmoud Muhammad Hamamra
7	Ahmad Muhammad Hamamra
8	Yaqoub Saleem Abu 'Amsa
9	Khadir Jabra Ruzqallah
10	Layla Awad Ghniem
11	Emyl Jaddalah Khamashta
12	Samer George Abu Awad
13	Jeries Jabra Al Hadweh
14	Jabra Jeries Al Hadweh
15	Saqir Muhammad Ramadan
16	Ryad Faryd Abu Muhor
17	Ni'meh Napoleon Abu Muhor
18	Judeh Sim'an Al A'raj
19	George Eid Al Hadweh
20	Saba Anton Al Hadweh
21	Geroge Issa Al Hadweh
22	Kareem Saba Al Hadweh
23	Carlos Andrwsos Al Hadweh
24	Adieb Iskandar Al Hadweh
25	Najiem Jeris Al Hsyn
26	Maria Jameel Al Hsynat
27	Issa Jameel Khalilyeh
28	Yusif Elias Al Shatleh
29	Odeh Salem Khalilyeh
30	Anton Yusif Duqmaq
31	Sami Zakharia Zryneh
32	Nakhleh Elias Zryneh
33	Mussa Emyl Saba
34	Nael Anton Salman
35	Waleed Na'iem Salman
36	Jadallah Hanna Shshadeh
37	Rami Ibrahim Al Saras
38	Jamal Naji Al 'Arja
39	Fakhri Habeeb Ghniem
40	Femya Andrawos Qusta
41	George Bishara Lolas

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42	Murqos Fuad Al Mukarkir
43	Johnny Nikola Al Mukarkir
44	Sami Farah AL Mukarkir
45	Farah Yusif Al 'Alam
46	Nikola Saleem Al 'Alam
47	Demyan Hanna Al 'Alaam
48	Khalil Ibrahim Hamideh
49	Nikola Khristo Vazdiki
50	Khristo Nikola Vazdiki
51	Salih Muhammad Yaghmour
52	Sa'di Ibrahim Hmydan
53	Jihad Ibrahim Hmydan
54	Sameer Muhammad Yaghmour
55	Hanneh Khalil Al Tyet
56	Ra'ouf Hanna Al Tyet
57	Victor Hanna Hani (Jwyjat)
58	Nader Zakaria Abu Ghattas
59	Jameel Jadallah Khalilyeh
60	Loryes Jameel Khalilyeh
61	Saliba Zydan Zydan
62	Issa Yusef Al Shatleh
63	Nakleh Farah Abu Eid
64	Dahoud Hanna Ghniem
65	Yusef Saleem Al Masou
66	Violet Yusef Awwad
67	Elias Mikhael Abed Rabo
68	Anton Hanna Al Tyet
69	Sameer (Nasri) Hanna Al Najjar
70	Issa Basiel Zu'orob
71	Antn Jabra Al Hadweh
72	George Mussa Mitwasi
73	Nadeem Jeris Al Hadweh
74	Naseem Jeris Al Hadweh
75	Khalil Elias Ruzqallah
76	Khadir Anton Jwyjat
77	Nabeel Jabra Rabi'
78	Fuad Zakharia Zryneh
79	Layla Jabra Khalilyeh
80	Mussa Jameel Saba
81	Geroge Mikhael Rishmawi
82	Waleed Naiem Qysieh
83	Imad Geroge Qysieh
84	Yusri Salem Qysieh

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85	Taghreed Qysieh
86	Rami Issa Qysieh
87	Mussa Nabih Qysieh
88	Salmyeh Nakhleh Khalilyeh
89	Elias Mitri Abu Ghattas
90	Khadir Nikola Al Alam
91	Ricardo Hani
92	Elias Fatouleh
93	Naïem Al Qsasfeh
94	Iskandar Fareed Abu Rumman
95	Abed Hajhjah
96	Simon Al Hadweh
97	Lamya Al 'Araj Al Arja
98	Tariq George Al Mitwasi
99	Khader Saliba Zidan
100	Bishara Kharoufeh
101	Toni Hani
102	Victor Hani
103	Issa Wahbeh Musleh
104	Khristo Al 'Araj
105	Bishara Awad
106	Majid Mubarak
107	Nidal Mubarak
108	Carlos Barham
109	Issa Myna Zidan
110	Abdallah Abu Eid
111	Ratib 'Adawi
112	Mahmoud 'Adawi
113	Hanna 'Amer
114	Issa Abu Hanak
115	Nader Anton Abu 'Amsha
116	Hanna Khalil Al 'Alaam
117	Saleh Yusef Kharoufeh
118	Hanneh Issa Al Hadweh
119	Nikola Anton Kharoufeh
120	Eli Idmon Shhadeh
121	Idmon Habeeb Shhadeh
122	Imad Sliman Al Mukarkir
123	Issa Jameel Al 'Alam
124	Hanna Yusef Al Tarih
125	Sliman Salameh Al Mukarkir
126	Jabra Roki Salah
127	Na'ela Saba Murad

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128	Ibrahim Jeris Lolas
129	Iskandar Nikol Bader
130	Madlain Hanna Mukarkir
131	Majid Naji Al 'Arja
132	George Farah Al 'Araj
133	Pedro Butros Al 'Araj
134	Khadir Nikola Al Shatleh
135	Mu'ayad Jabra Mitwasi
136	Raed Kamil Zryneh
137	Jeris Na'iem Zryneh
138	Samih Nasyef Zryneh
139	Sameer Bishara Kharoufeh
140	Sofi Elias Kharoufeh
141	Yaqoub Wadee' Al Hsyen
142	Usamma Nikola Al Shatleh
143	Issa Nakhleh Matar
144	Yaqoub Nakhleh Matar
Source: Beit Jala Municipality – June 2015	

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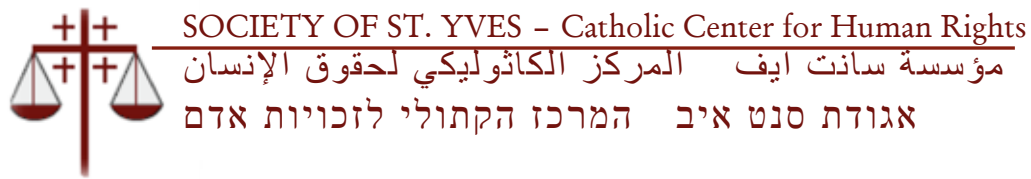
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ANNEX 4 - Testimony of Mr. Rami Abu Sa'd



Testimony

Mr. Rami Abu Sa'd:

"My name is Rami Abu Sa'd, and my family own a plot of land of approximately 1 dunum in Beir Onah – Beit Jala. The land is cultivated with olive trees, peach, plum and grapes, and I have bee hives in it. My house is 150 meters away from the land.

In the second half of June 2015, a group of Israelis, accompanied by border police, visited the area, including my land, and put red and wooden marks on different spots in the lands owned by different families there.

On Sunday, August 16th 2015, they came back again, this time accompanied by border police and a private security force. I went to talk to them, and asked them what they were doing in our lands. They said that they were going to start working in the lands the following day, and that we will know the route of the Wall by the trees that will be uprooted – meaning that the Wall will pass wherever they uproot trees.

On the morning of the following day, Monday the 17th of August, at around 7:30 a.m. between 10 to 15 border police jeeps arrived to the area and positioned themselves in different spots, but mainly at the entrance of the main road, accompanied by bulldozers and heavy machinery. Then, the bulldozing work started on the lands, uprooting ancient Roman olive trees. They started uprooting the trees of the Shatleh family. They were uprooting the trees in a way that makes it impossible for them to produce olives again if re-planted. I went to my land, and I wanted to enter it to care for my bee hives, which require daily care, but the soldiers blocked my way and said I cannot go there. They also prevented my brother Judeh from entering the land when he attempted to do so that same morning.

At around 11 a.m. the landowners, activists and journalists gathered in Beir Onah where the trees were being uprooted. The landowners, including myself, tried to talk to the soldiers that were there in an attempt to convince them to halt the work and stop uprooting their olive trees, but they did not listen and ignored us. The work continued anyway".

Beit Jala, August 26th, 2015.

ANNEX 5 - Letter to the Pope from the Mayors of Beit Jala, Bethlehem , Beit Sahour on the Situation in Cremisan



February 9, 2015

A Cry for Justice to H.H Pope Francis from the Christians of Palestine, the Holy Land

Subject: The Segregation Wall around Cremisan area in Beit Jala city of Bethlehem Governorate, Palestine

Your Holiness, while thanking you for giving us the privilege to meet you, we would like to provide you of more information on a matter that affects Palestinian Christians in the Holy Land, and particularly those in the Bethlehem Area. We, Christian and Muslim residents, religious institutions, civil institutions and communities of Beit Jala town convey to you our intense concern of the Israeli Segregation Wall and land confiscation activities, which have recently intensified on our lands, and urge you to please help us to: Stop the Israeli Segregation Wall and Beit Jala Lands Seizure

Israel's Illegal Annexation Wall in Bethlehem

In Bethlehem Governorate a total of 7000 hectares (70 km²) will be cut-off behind this Wall from Bethlehem Governorate and will be annexed to Israel. More than 1600 hectares of the area to be segregated are owned by Christian Palestinians living in the three towns of Bethlehem, Beit Jala, and Beit Sahour. The wall will slay all our fertile agricultural lands located at the northern, western and southern parts of Bethlehem Governorate. The total length of the segregation wall in Bethlehem is planned to be 50 Kilometers (31.2 Miles) with a width of 68 meters as a buffer zone.

The proposed wall over the lands of Beit Jala town has a length of 11.7km of which 2.7 km are constructed and 9km planned. The wall stands to isolate 6420 dunums in total, around 3000 dunums in Cremisan area (approximately 45% of Beit Jala's lands) behind it.

Background of Beit Jala city:

Beit Jala, in the Bethlehem Governorate, is a growing Palestinian agricultural town (whose name in Aramaic means "grass carpet") originally spread over an area of 14,000 dunum (1,400 hectare). It is located at only 1 km west of Bethlehem and 8 km southwest of Jerusalem at an

ANNEX 5 - Letter to the Pope from the Mayors of Beit Jala, Bethlehem , Beit Sahour on the Situation in Cremisan

altitude of 650-930m above sea level. It lies on slopes covered with olive trees, vineyards and apricots. Beit Jala hosts a population of around 17,000.

Over 47 years of occupation of the West Bank in June 1967, many colonization schemes were implemented in Beit Jala, which shred the town's agricultural and social infrastructure into segments beginning with the three Israeli settlements Gilo, Har Gilo, and Givat Hamatos, and the by-pass road 60 confiscating from Beit Jala citizens around three thousand dunum of land. In addition, the annexation of 1967 of East Jerusalem included a large area of Beit Jala lands. This annexation spread from St. Elias monastery to Cremisan monastery land and included a horizontal distance of more than 2km.

The latest scheme planned by the Israeli Authorities is the segregation wall around the West Bank and occupied Jerusalem, which included a ring wall around Bethlehem area; especially in the Cremisan valley calling it a separation wall "Seam line around Jerusalem". This wall in this area is adjacent to the houses of Beit Jala citizens and takes a trajectory around the Salesian nuns' monastery leaving it with the Palestinian side and continues around the Cremisan land situating the Cremisan Monastery on the side of Jerusalem and cutting it off from the Bethlehem environs. Also the Israeli forces built a road from Alwalajeh bypass road 60 to the lands of the Cremisan monastery thus connecting it directly with Jerusalem.

Legal aspects of the wall case:

In July 2003, the International Court of Justice (ICJ) passed an advisory opinion declaring that the wall Israel is constructing is illegal built on others lands and it should stop building it, dismantle the built and repair all damages caused to the lands and land owners. This Wall is a collective punishment and a human right violation, including the right to self-determination, the right to freedom of movement, the right to work, the right to medical treatment, the right to education, and the right to an adequate standard of living and access to holy places. Therefore the ICJ declared that the illegal Israeli annexation Wall has to be dismantled and Palestinians have to be compensated for the damage on their lands.

Having been prevented from accessing international courts, Beit Jala municipality since 2006 have filed a court case against the Israeli military to cancel the current trajectory of the wall around and close by the houses of the Beit Jala's Palestinian citizens, Salesian monastery land and the Cremisan area lands. This case reached the Central Court in Tel Aviv and currently it

ANNEX 5 - Letter to the Pope from the Mayors of Beit Jala, Bethlehem , Beit Sahour on the Situation in Cremisan

is in the Israeli Supreme Court in Jerusalem. This request for cancellation of wall trajectory to the court is based on that the proposed wall:

- Separates both Salesian monasteries from each other, the nuns' monastery and the Salesian Monastery of the fathers, as well as destroying part of the nuns' monastery lands.
- Separates the Bethlehem Christian community of Bethlehem, Beit Jala, and Beit Sahour from the Cremisan monasteries, school and services that are offered to this Christian community.
- Annexes lands in the Cremisan valley that are owned by Beit Jala Christian families of around 2000 dunums. Those lands are considered as an income generating for those families from benefiting from its olive products.

The Council of Peace and Security (Israeli retired military officers) submitted to the Supreme Court an alternative trajectory plan for the separation wall in this area running along the northern side of the Cremisan valley adjacent to the Gilo settlement in Jerusalem and continues to the Armistice Line closing near Alwalajeh village. *(Included are maps showing this alternative trajectory)*, but the military still insists on the trajectory proposed by them initially and will not accept any other alternative proposal due to their own reasons. This alternative trajectory proposed by the Council of Peace and Security is a better trajectory of the two evils since it allows connection of the two monasteries and the mobility of the Bethlehem Christian community to use the premises of both monasteries as well as the Beit Jala land owners can reach their lands and to farm them.

Today the status of this case is waiting for the final ruling of the Supreme Court after its last hearing on 30/11/2014.

We are against separation walls of all kinds, we do not want walls instead we want bridges.

Impacts of the wall:

The agricultural lands to be segregated are a major source of income of Beit Jala citizens, and Bethlehem Governorate in general, in addition that they include the only remaining forest (Cremisan forest) West of Bethlehem city, which is considered today the only recreational site in the whole area where many citizens used to go during weekends or holidays. The Wall will

ANNEX 5 - Letter to the Pope from the Mayors of Beit Jala, Bethlehem , Beit Sahour on the Situation in Cremisan

swallow the remaining open spaces and strangle the built-up areas and leave Beit Jala without any possibility for future urban expansion or development.

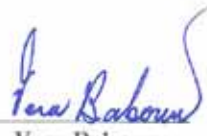
The population densities in Beit Jala's municipal area, which is 4460 dunums reaches to nearly 3628 person/km² in 2005, with the creation of the segregation zones and the isolation of the open spaces the population densities are projected to increase to nearly 4196 person/km² in the coming five years. This situation will lead directly to an alarming level of population densities in the urban areas and leads to numerous urban stress and problems. Israel's implementation of the Segregation Wall in Beit Jala city, Bethlehem Governorate amounts to indirect forceful ethnic cleansing by making the living conditions completely unbearable and unsustainable, and will contribute in emptying the Palestinian Christians from around the birthplace of Christ and the Holy city of Bethlehem.


This confiscation is a clear Israeli land grab measure, which will affect the sustainable development of the town; also it has major negative impacts on the political economic, social and environmental aspects of the Palestinian life summarized in the following points:

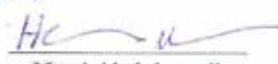
- The wall intends to keep more than 45% of Beit Jala's lands under Israeli control in the western segregation area.
- Harsh measures are imposed on Palestinian mobility and movement to the segregated area.
- Increased urbanization pressure and population density and will create new demographic facts that will lead to forced migration among Palestinians.
- It will cause severe damage to the Palestinian agricultural sector and the farmers, and natural resources will decrease, forestry, pastures, open spaces and recreation area will be extremely limited. Also a distortion in wildlife movement as a result of cutting off different kinds of species from their natural habitat, and will alter the Palestinian natural landscape.
- Loss of open space posing a threat to the sustainability of the urban and rural areas as well as to the natural resources and biodiversity.
- The owners cannot benefit from their lands that are majorly planted with ancient olive trees through selling their olive and oil and using the olive wood in the handicrafts sold to tourists; this will increase the levels of poverty causing an escalating hatred and violence among the population.

ANNEX 5 - Letter to the Pope from the Mayors of Beit Jala, Bethlehem , Beit Sahour on the Situation in Cremisan

Your Holiness Pope Francis, having survived the horrors of the 1948 Nakba (catastrophe) and the occupation that began in 1967, we know very well what Israel is doing. If it is not stopped, we risk losing any chance to achieve a just and lasting peace. We call upon your Holiness to be our faithful messenger in front of God in your prayers. Therefore we call upon your Holiness to interfere and help us by pressuring the Israeli Government to stop building the wall in this area, which will enable us to achieve our goal for a free and independent state with no settlements and no walls, and the Palestinian Christians to remain as "the salt of this land." We pray with Prophet Micah "to do justice, love, and mercy and to walk humbly with your God (Micah 6:8).


Vera Baboun
Mayor of Bethlehem


Nicola Khamis
Mayor of Beit Jala


Hani Abdelmasih
Mayor of Beit Sahour



مجلس رؤساء الكنائس الكاثوليكية في الأرض المقدسة



אספת ההגמוניים הקתוליים
של ארץ הקודש

THE ASSEMBLY OF CATHOLIC ORDINARIES OF THE HOLY LAND
Latins, Melkites, Maronites, Syrians, Armenians, Chaldeans, Custody of the Holy Land

Press Release- For Immediate Release

December 5th, 2014

ACOHL on the Latest Developments in the Cremisan Case: “The Best Time to Take Action is Now, Before It Is Too Late “

JERUSALEM - the Assembly of Catholic Ordinaries of the Holy Land (ACOHL) observes with anxiety the latest developments in the “Cremisan” Valley’s case, of which the final verdict is expected any minute now. The last hearing, held on November 30th, 2014 was meant to pressure the residents in order to make a choice between two unacceptable alternatives, both to the community and the Salesian Congregation.

ACOHL stands wholeheartedly with achieving justice in “Cremisan” and against building the separation wall, which is contrary to international law. In fact, the wall is intended by Israel, not to achieve security for its pre-June 1967 borders, but to protect the settlements illegally constructed on previously confiscated land in the early seventies and to give more expansion to Gilo and Har Gilo settlements. At the same time, the wall alienates the most basic rights and freedom of the Christian community of Beit Jala.

ACOHL stresses that land confiscation and settlement expansion do not serve peace in the region and warns of the continuous emigration of the “Cremisan” community, mostly Christians, as a result of building the separation wall. ACOHL hopes that the Israeli High Court changes its route and shifts it along the “green line”. The bishops are in favor of building bridges and not walls.

Finally, ACOHL calls on the international community to take immediate action to protect the “Cremisan” valley’s integrity within the Palestinian side and prays for all those in power and authority to wake up and realize the values of justice and peace, based on mutual respect and international legitimacy.

+ Fouad TWAL

Patriarch of Jerusalem for Latins
President A.C.O.H.L.

+ Georges BACAOUNI

Gr. Melkite Cath. Archb. of Akko
Vice president A.C.O.H.L.

+ Moussa AL-HAGE

Maronite Archbishop of Haifa
Maronite Exarch of Jerusalem
President Comm. for Consecrated Life

+ Michel SABBAAH

Latin Patriarch of Jerusalem emeritus
President Comm. Justice and Peace

+ Yaser AL-AYYASH

Gr. Melkite Cath. Archb. of Amman

+ Joseph SOUEIF

Maronite Archbishop of Cyprus

+ Jean B. SLEIMAN

Apost. Adm. ‘sede plena’ of Archep. of Amman

+ Boutros MOUALLEM

Gr. Melkite Cath. Archb. of Akko emeritus

ANNEX 6 - Statement by the Assembly of Catholic Ordinaries in the Holy Land on /cremisan

مجلس رؤساء الكنائس الكاثوليكية في الأرض المقدسة



אספת ההגמוניים הקתוליים
של ארץ הקודש

THE ASSEMBLY OF CATHOLIC ORDINARIES OF THE HOLY LAND
Latins, Melkites, Maronites, Syrians, Armenians, Chaldeans, Custody of the Holy Land

+ **Elias CHACOUR**

Gr. Melkite Cath. Archb. of Akko emeritus

+ **Gregoire Pierre MELKI**

Syrian Catholic Exarch of Jerusalem

+ **Joseph Jules ZEREY**

Greek Melkite Catholic Patriarchal Vicar of Jerusalem

+ **Maroun LAHHAM**

Latin Patriarchal Vicar for Jordan

+ **Giacinto-Boulos MARCUZZO**

Latin Patriarchal Vicar for Israel

+ **William SHOMALI**

Latin Patriarchal Vicar for Jerusalem & Palestine

+ **Kamal-Hanna BATHISH**

Latin Patriarchal Vicar general emeritus

+ **Selim SAYEGH**

Latin Patriarchal Vicar for Jordan emeritus

Msgr. **Georges DANKAYÉ**

Admin Armenian Catholic Exarchate

Fr. **Pierbattista PIZZABALLA**, OFM

Custos of the Holy Land

Fr. **Jerzey KRAJ**, OFM.

Latin Patriarchal Vicar for Cyprus

Fr. **David NEUHAUS**, S.J.

Patriarchal Vicar for Hebrew Vicariate

Fr. **Pietro FELET**, scj

Secretary General

ANNEX 7 - Letter to President Obama from (ACOHL)

Letter to President Obama from the Justice and Peace commission (ACOHL)



JERUSALEM – We publish the letter from “Justice and Peace commission” of the Assembly Catholic Ordinaries of the Holy Land to the US President Obama for his first visit in Israel, West Bank and Jordan. Barack Obama will arrive in Israel on Wednesday, his first visit as US president.

14 March, 2013

***The President of the United States
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500
USA***

Dear Mr. President,

We, the heads of the Catholic/Christian Churches in Jerusalem, welcome you wholeheartedly on your forthcoming visit to Israel and Palestine. On this occasion we would like to draw your attention to some major problems that deeply affect the Christian presence in these countries.

In this year, the Palestinian people are living for 46 years under Israeli military occupation. The plight of the Palestinian Christians is the same as that of the Palestinian People as a whole, and as a consequence everything that affects the Palestinian people also affects the Christians.

ANNEX 7 - Letter to President Obama from (ACOHL)

In the occupied Palestinian territories, among the numerous violations of international law by the Israeli authorities we mention only a few: illegal Israeli settlements, a permit regime which restricts severely access to the Holy places for Muslims and Christians alike, expropriation of privately owned Palestinian land for settlement expansion and the construction of the separation barrier (like in the present case of the valley Cremisan), etc.

Statelessness, endless family unification procedures and the rejection of the registration of children as well as the limited possibilities to expand due to few granted building permits in East Jerusalem violate basic human rights of the Palestinians and force them into displacement, migration and exile.

The majority of the local Christian population being part of the Arab population in Israel, they are as such subjected to an ongoing, hidden policy of discrimination and are treated as second class citizens in the fields of education, job opportunities, property ownership, local municipal services, etc.

Though the Christian Palestinian presence plays an important role in this Holy Land: it gives a large contribution in the fields of education, healthcare and social services, their absence will have catastrophic consequences especially with the rise of the fundamentalists on both sides. Thus every effort should be made to preserve the Christian presence in the Holy Land, and to have it flourish in the future so that hope is not lost. The oppressive and discriminatory policies by the Israeli government constitute a violation of the protection of a religious minority which is specifically underlined by international law.

We urge you, in your position as President of the United States of America, to require from the State of Israel to respect international law and to stop all illegal policies targeting the Palestinian population of the Holy Land; this would be the best way of contributing to preserve and protect the Christian presence in the Holy Land.

Most Respectfully,

Yusef Daher

Secretary

On behalf of the Justice and Peace Commission

Source: Latin Patriarchate of Jerusalem (<http://en.lpj.org/2013/03/19/letter-to-president-obama-from-the-assembly-of-catholic-ordinaries-justice-and-peace-commission/>)

ANNEX 8 - Letter to Secretary Kerry from the US conference of Catholic Bishops



Committee on International Justice and Peace

3211 FOURTH STREET NE • WASHINGTON DC 20017-1194 • 202-541-3160

WEBSITE: WWW.USCCB.ORG/JPHD • FAX 202-541-3339

August 24, 2015

The Honorable John Kerry
Secretary of State
2201 C St NW
Washington, DC 20520

Dear Secretary Kerry:

As Chairman of the Committee on International Justice and Peace of the United States Conference of Catholic Bishops, I write regarding the injustice being perpetrated in the Cremisan Valley near Bethlehem in the Occupied Palestinian Territories. My predecessor as Chairman called this situation to your attention earlier. A recent statement of the Latin Patriarchate encapsulates our concerns:

“On Monday morning, August 17, Israeli bulldozers arrived unannounced on private properties in Beir Ona, near the Cremisan Valley, to resume construction of the Separation Wall. The residents of the area were surprised and felt the pain of the loss of about fifty of their centuries-old olive trees that were uprooted.

The Latin Patriarchate of Jerusalem strongly condemns this Israeli conducted operation, which is without regard to the rights of the families of the valley; the rights that these same families have bravely tried to defend before the law over the past decade. We join with the sorrow and frustration of these oppressed families, and we strongly condemn the injustice done to them.

The construction of the Separation Wall and the confiscation of lands of the local families are threats and insults to peace. We call on the Israeli authorities to await the decision on the petition submitted by the families of the Valley to the Supreme Court of Israel a few days ago and to stop the work that has been started.”

We urge you to press Israeli authorities to stop the work on the Separation Wall whose route is confiscating the private lands of Palestinian families in the West Bank. Such actions undermine the cause of peace and impair the possibility of a two-state solution.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Oscar Cantú".

Most Reverend Oscar Cantú
Bishop of Las Cruces
Chairman, Committee on International Justice and Peace

ANNEX 9 - Statement by the EU on the Latest Development in Cremisan



Jerusalem, 27 September 2013

Local EU Statement on the construction of the Separation Barrier in the Cremisan Valley

“The EU missions in Jerusalem and Ramallah are concerned by the construction of the Separation Barrier, east of the Green Line, in the Cremisan Valley (Beit Jala). When completed along the planned route, the barrier will separate 58 families from their agricultural land and children from their school at the Salesian convent, as well as affect the religious site of the Cremisan Monastery.

EU Missions in Jerusalem and Ramallah recall that the EU has endorsed the advisory opinion of the International Court of Justice (July 2004) stating that the construction of the Separation Barrier on occupied territory is illegal.”

Contact:

EU Press Office on +972-2-541 5888

ANNEX 10 - Statement by the Co-ordination of Bishops' Conference



Bishops Call for Human Dignity as Basis of Peace *Statement of the Co-ordination of Bishops' Conferences in support of the Church in the Holy Land, 15 January 2015*

We came to pray with and support the Christian community and to promote peace and human dignity in this divided land.

We witnessed the tragic consequences of the failure of both local and international politicians to advance peace. Human dignity is given by God and is absolute. The ongoing conflict assaults the dignity of both Palestinians and Israelis, but in a particular way our commitment to the poor calls us to lift up the suffering people in Gaza. A year ago, we called Gaza “a man-made disaster, a shocking scandal, an injustice that cries out to the human community for a resolution.” In the wake of the terrible destruction caused by last year's war, our presence reminded the small Christian community that they are not forgotten.

Many tens of thousands of families in Gaza lack adequate shelter. In the latest freezing weather, at least two infants died of exposure. The continuing blockade dramatically impedes rebuilding and contributes to desperation that undermines Israelis' legitimate hope for security. It also creates intolerable levels of unemployment and pushes ordinary people into deeper poverty.

Despite the devastation, the appalling scenes of destruction we saw, and the fears of another war we heard, hope is alive in Gaza. We saw families resolutely rebuilding their lives. We witnessed a small Christian community that has enormous faith. We admired the tenacity of many volunteers. We visited Holy Family School where Muslims and Christians study and play together in harmony. We met with the Holy Rosary Sisters, who true to their co-foundress Marie-Alphonsine, to be canonized a saint this year by Pope Francis, exercise a prophetic ministry of education. We celebrated Mass with the Sisters of the Bethlehem Carmel. Their foundress Mariam Baouardy, another Palestinian whose life testifies to the holiness that still emanates from this Land, also will be canonized.

Political leaders must defend the human dignity of the people in Gaza. One student poignantly told us that he received an email during the war asking if he needed food or clothing or shelter. Without bitterness, he replied that what he needed was dignity. People of good will on both sides of the conflict want the same thing, a dignified life worthy of the human person.

In the coming months we will continue to oppose the building of the proposed wall in the Cremisan Valley. It would result in the loss of the lands and livelihoods of many Christian families. This situation is tragically a microcosm of the reality of the land issue. We will also continue to oppose expansion of the settlement program, illegal under international law, which we witnessed acutely in Hebron. Its impact on the freedom of movement of Palestinians and the confiscation of lands is simply unjust.

After the failed negotiations and ensuing violence of 2014, we urge public officials to be creative, to take new approaches, to build bridges, not walls. We must humanize the

ANNEX 10 - Statement by the Co-ordination of Bishops' Conference

conflict by fostering more interaction between Israelis and Palestinians. Peace will only come when all parties respect the fact that the Holy Land is sacred to three faiths and home to two peoples.

Aware that this year we walk in the footsteps of Pope Francis, we take to heart his recent statement to the Diplomatic Corps:

“My thoughts turn above all to the Middle East, beginning with the beloved land of Jesus which I had the joy of visiting last May, and for whose peace we constantly pray. We did this with extraordinary intensity, together with the then President of Israel, Shimon Peres, and the President of Palestine, Mahmoud Abbas, inspired by a confident hope that negotiations between the two parties will once more resume, for the sake of ending violence and reaching a solution which can enable Palestinians and Israelis alike to live at last in peace within clearly established and internationally recognized borders, thus implementing the ‘two state solution’.”

The path to peace demands respect for the human rights of both Israelis and Palestinians. Our prayer nurtures the hope that makes peace possible. We call on all Christians to pray for the Jews, Christians and Muslims of this Land we call Holy.

Bishop Stephen Ackermann, Germany
Archbishop Stephen Brislin, South Africa
Bishop Raymond Browne, Ireland
Bishop Peter Bürcher, Denmark, Finland, Iceland, Norway, Sweden
Bishop Oscar Cantú, United States of America
Bishop Christopher Chessun, Church of England
Bishop Michel Dubost, France
Archbishop Ricardo Fontana, Italy
Bishop Lionel Gendron, Canada
Bishop Felix Gmur, Switzerland
Archbishop Patrick Kelly, England and Wales
Bishop William Kenney, England and Wales, COMECE
Bishop Declan Lang, England and Wales
Bishop Kieran O'Reilly, Ireland
Bishop Thomas Maria Renz, Germany
Archbishop Joan Enric Vives, Spain

Editors' notes:

Since 1998, the Co-ordination of Episcopal Conferences in Support of the Church of the Holy Land has met at the invitation of the Assembly of Catholic Ordinaries of the Holy Land. Expressly mandated by the Holy See, the Holy Land Co-ordination meets every January in the Holy Land, focusing on prayer, pilgrimage and persuasion with the aim of acting in solidarity with the Christian community as it experiences intense political and social-economic pressure.

Finally, the Court is of the view that the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion.

*

The Court considers that its conclusion that the construction of the wall by Israel in the Occupied Palestinian Territory is contrary to international law must be placed in a more general context. Since 1947, the year when General Assembly resolution 181 (II) was adopted and the Mandate for Palestine was terminated, there has been a succession of armed conflicts, acts of indiscriminate violence and repressive measures on the former mandated territory. The Court would emphasize that both Israel and Palestine are under an obligation scrupulously to observe the rules of international humanitarian law, one of the paramount purposes of which is to protect civilian life. Illegal actions and unilateral decisions have been taken on all sides, whereas, in the Court's view, this tragic situation can be brought to an end only through implementation in good faith of all relevant Security Council resolutions, in particular resolutions 242 (1967) and 338 (1973). The "Roadmap" approved by Security Council resolution 1515 (2003) represents the most recent of efforts to initiate negotiations to this end. The Court considers that it has a duty to draw the attention of the General Assembly, to which the present Opinion is addressed, to the need for these efforts to be encouraged with a view to achieving as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region.

*

The full text of the final paragraph (para. 163) reads as follows:

“For these reasons,

THE COURT,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) By fourteen votes to one,

Decides to comply with the request for an advisory opinion;

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tomka;

AGAINST: Judge Buergenthal;

(3) Replies in the following manner to the question put by the General Assembly:

A. By fourteen votes to one,

The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law;

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tomka;

AGAINST: Judge Buergenthal;

B. By fourteen votes to one,

Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion;

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tomka;

AGAINST: Judge Buergenthal;

C. By fourteen votes to one,

Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem;

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tomka;

AGAINST: Judge Buergenthal;

D. By thirteen votes to two,

All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tomka;

AGAINST: Judges Kooijmans, Buergenthal;

E. By fourteen votes to one,

ANNEX 11 - Excerpts from the International Court of Justice Advisory Opinion (June 2004)

The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion.

IN FAVOUR: President Shi; Vice-President Ranjeva; Judges Guillaume, Koroma, Vereshchetin, Higgins, Parra-Aranguren, Kooijmans, Rezek, Al-Khasawneh, Elaraby, Owada, Simma, Tomka;

AGAINST: Judge Buergenthal.”

