



united nations relief and works agency
for palestine refugees in the near east

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mini profile: biddu enclave jerusalem governorate Background

ICJ Advisory Opinion

In July 2004, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, issued its advisory opinion on the Legal Consequences of a Wall in the Occupied Palestinian Territory. While recognizing Israel's right to "protect the life of its citizens", the ICJ stated that the sections of the Barrier which ran inside the West Bank, including East Jerusalem, together with the associated gate and permit regime, violated Israel's obligations under international law. It called on Israel to cease construction of the Barrier, "including in and around East Jerusalem"; dismantle the sections already completed; and "repeal or render ineffective all legislative and regulatory acts relating thereto".

The Court also called on all States "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".¹ The 'Biddu enclave' is a cluster of eight Palestinian villages in the West Bank, located 10 kilometres northwest of Jerusalem. The villages are surrounded to the south, east and west by the Barrier, hindering access to the rest of the West Bank, while Jerusalem, to which they have traditionally been closely economically, socially and culturally tied, is prohibited to all except permit holders.² Many of the residents of the enclave are refugees who were displaced from their original villages near al-Lydd (Lod in present-day Israel) during the 1948/49 Arab-Israeli war. Some owned land in Biddu prior to the war, while others, having lost their land in al-Lydd, re-established their lives in Biddu and its surrounding areas. Today, approximately 70 per cent of the residents of these villages are UNRWA-registered refugees. Israel began constructing settlements in this area in the 1970s. Today, the settlements of Beit Horon, Giv'at Ze'ev, Giv'on Hahadasha and Har Smuel occupy a total area of 4.9 square kilometres on the eastern side of the enclave³ and have a combined population of over 13,000,⁴ forming one of the largest settlement blocs around Jerusalem. Har Adar settlement was established in 1986 on an additional 1.2 square kilometres of land on the western side. Nevertheless, communities in the enclave managed to maintain their livelihoods due to their ability to access jobs in Jerusalem and sell agricultural produce in Jerusalem, Israel and Jordan. This remained largely the case until 2000, when access to Jerusalem and Israel became increasingly restricted after the outbreak of the second Intifada.

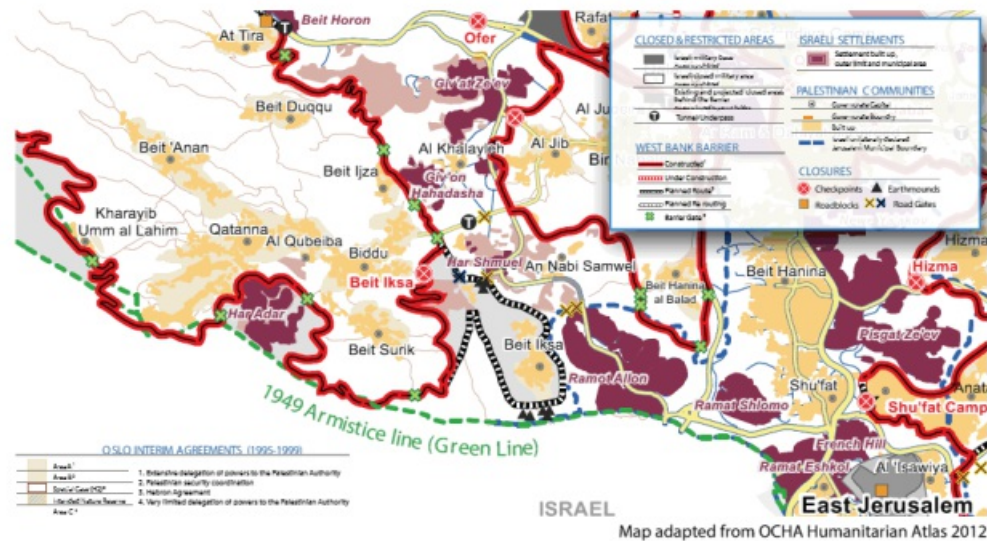
Communities in Biddu enclave: Biddu, Beit Ijza, Beit Surik, Al Qubeiba, Qatanna, Beit Duqqu, Beit'Anan & Kharayib Umm al Lahim

Population: Approx. 30,000 (70% are UNRWA registered refugees)

Refugees from: al-Lydd/ Lod

Settlements in the West Bank

Article 49 of the Fourth Geneva Convention prohibits the Occupying Power from transferring parts of its own civilian population into the territory that it occupies. The consequences of illegal Israeli settlements have been described as: "[having] a heavy toll on the rights of the Palestinians. Their rights to freedom of self-determination, non-discrimination, freedom of movement, equality, due process, fair trial, not to be arbitrarily detained, liberty and security of person, freedom of expression, freedom of access to places of worship, education, water, housing, adequate standard of living, property, access to natural resources and effective remedy are being violated consistently and on a daily basis."⁵



The Barrier and Seam Zone in the Biddu enclave

The construction of the West Bank Barrier began in 2003. Several parts of its course have been altered, but in the Biddu enclave, the Barrier diverges significantly from the 1949 Armistice Line ('Green Line') to bring the settlements onto the 'Israeli' side. Approximately 30 square kilometres have thus become a 'Seam Zone',⁶ and as a result, communities in the enclave have lost access to a significant proportion of their land. For example, landowners in Biddu, Beit Ijza and Beit Surik have lost direct access to 31-38 per cent of the total area of their communities and around 20 per cent of their original agricultural lands in the West Bank.⁷

Access to agricultural land

Agricultural gates

20% Average annual percentage of days gates opened per year from 2009 - 2013

Palestinians' access to their land in the Seam Zone is governed by a restrictive system of agricultural gates and an associated permit and/or coordination regime. There are currently a total of 80 agricultural gates along the entire route of the Barrier.⁸ A survey conducted by UNRWA reveals considerable differences across the West Bank in the level of access Palestinians have to their land. For example, in Jenin, Tulkarm and Qalqilya, an average of around half the communities along the Barrier have daily access to their land on the other side. However, in the southern and central governorates, where the Biddu enclave is located, communities overwhelmingly have only seasonal access.⁹

There are seven agricultural gates in the Biddu enclave. They are opened only on a seasonal basis, during harvest periods or for conducting additional work on the land. The inadequate level of access significantly inhibits farmers' ability to maintain their lands throughout the year, leading to a substantial decline in agricultural production and income.

Coordination system

Access for farmers at four of the seven gates in the Biddu enclave is governed by an inefficient and bureaucratic coordination system. To obtain access to their lands in the Seam Zone, village councils must first send a list of farmers' names to the Palestinian coordination office. This, in turn, is sent to the corresponding Israeli coordination office for approval. The approved list is then held at the gate by Israeli security forces. Only those whose names are on the list are permitted to cross.

Israeli authorities will typically open the gates five days per week when coordination has been approved in advance. This, however, does not mean that access is easy. The gates are open only twice per day, once in the morning, for farmers to go to their land, and once in the afternoon for them to return. The gates are opened for only 10-15 minutes each time; those farmers who are not at the gate during this period cannot access their land on that day. Those who manage to pass through in the morning are unable to return until the gates open in the afternoon. In cases of emergency, farmers must coordinate access to return through the gate.

On many occasions, the gates have been opened late. Other times, the gates have been opened early, and therefore closed before the scheduled closing time. In such cases, although farmers arrived at the time specified by the IDF, they found that the gate had already been closed. This restrictive system makes access to their lands unpredictable for the farmers and does not serve their needs.

Permit regime

At one of the gates, which provides access to land around Har Adar settlement, the Israeli Civil Administration introduced an even more restrictive regime in January 2009. Farmers must apply for permits to pass through Har Adar gate, but these are only granted to those who can prove a connection to the land via property ownership or tax documents.

This burden of proof is complicated by a number of historical factors, the most significant being that only 33 percent of West Bank land is formally registered or titled to an owner.

"Lands in the Biddu enclave were not included during registration processes. Furthermore, in 1968, the year following its occupation of the West Bank, including East Jerusalem, Israel formally suspended systematic land registration and closed all land records to the public. As a result, land documentation as a prerequisite for granting permits is at odds with the reality of available land-registration documentation in the West Bank."¹¹

The land isolated behind Har Adar gate is primarily owned by farmers from the village of Beit Surik. They initially refused to apply for permits, knowing that the permit system had led to decreased access in other parts of the West Bank.

In 2010, after nearly two years with no access, the landowners finally applied, fearing that their land might be confiscated and declared state land due to lack of cultivation. Seventy farmers and their family members received three-week permits at the end of 2010. In 2011, access through the gate became further restricted, with only about 15 farmers receiving permits; this declined again in 2013 and 2014, when approximately 7 persons received permits. Permit holders are still required to coordinate their access with the Israeli authorities; despite holding permits, farmers cannot pass through this gate when there is no coordination at the other four.

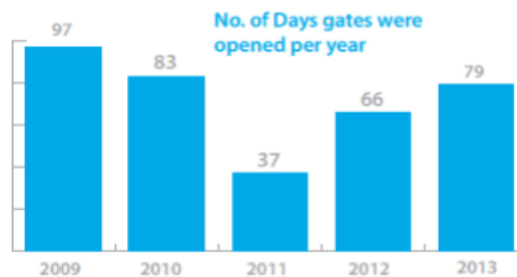
Significantly, this doubly restrictive regime at Har Adar has only been imposed on Palestinian landowning farmers who wish to access their land. Palestinian labourers who hold permits to work in Har Adar settlement do not face such harsh restrictions, having year-round access through the same gate 5 days a week, 3-4 times a day, with gates opening for 30-45 minutes at a time. The Beit Surik village council reports that around 150-200 labourers have permits to cross the gate to work in the settlement.

Impact on livelihoods

The Barrier and the associated restrictive access regime have considerably disrupted the work of the farmers in the Biddu enclave. UNRWA's monitoring of the gates indicates a significant decrease over the past three years in the number of days that the gates have been open per year. Ever since 2009, farmers have only been able to access their lands between 10 and 25 per cent of the year.

The loss of access to land has forced farmers to change their agricultural practices and the types of crops they can cultivate. Vegetables, which require regular care and maintenance, can no longer be grown. Consequently, farmers must choose crops that require less care, regardless of productivity or profitability. As access grows increasingly restricted, even these crops become difficult to cultivate.

Farmers have informed UNRWA that the gate opening periods do not meet their needs. For example, in 2010 and 2011, Israeli authorities did not open the gates in August and September, leading to a total loss of the grape harvest. While the gates were opened for the grape harvest in 2012, they remained closed in early June, the harvest season for fruits such as peaches and plums, and for all of July, when farmers needed to spray their grapevines. The Israeli authorities did not open the gates in June and July 2014. While the number of days the gates were opened increased in 2012 and 2013, until the end of September 2014, the gates were opened for 35 days, an over 40 per cent decrease over the same period in 2013.



A seasonal calendar for gate openings was agreed upon between the Israeli authorities and the Palestinian Authority. However, the Palestinian coordination office must still send a request for the gates to be opened before each agreed period. Even if this request is accepted by the Israeli counterpart, it has to be confirmed again by the two offices at the beginning of each week. Openings can also be postponed or cancelled at any time, often at short notice. This unpredictability makes it almost impossible for farmers to plan their activities in advance, leading to uncertainty, reduced productivity and the waste of resources.

Because the gates open only once in the morning for the farmers to go to their fields, those who have other jobs cannot go to their farms after work even if they wish to do so. Farmers' wives are often unable to help their husbands on the land, since the gates open before their children go to school. Hired labourers are also no longer able to access the land they used to work on, meaning that farmers are often unable to manage all of their land. Furthermore, gates in the area have not been installed where agricultural roads used to be, forcing farmers to take long detours through difficult terrain, rendering access even more problematic.

The combined effect of all these obstacles is a significant disincentive for farmers to continue farming their land in the Seam Zone. According to the head of the Farmers Association of Biddu, "If the farmers cannot harvest their crops because the gates do not open during harvest time, the next year they will wonder why they should do all this work if the gates will not open."

Planned barrier extension in Beit Iksa

The village of Beit Iksa (population 1,895 -63 percent refugees) is currently located on the Jerusalem side of the Barrier. Nevertheless, the residents of the community, even those holding Jerusalem IDs or appropriate permits, are not allowed to travel on the road directly connecting the community to the city. To reach the 'West Bank' side of the Barrier, residents follow the only accessible road that leads from the village to Beit Iksa checkpoint, northwest of the village, which they must cross. Barrier is completed along its planned route in the area, Beit Iksa will also become incorporated into the Biddu enclave. This will isolate 3,267 dunums of the community's land on the other side of the Barrier, in addition to the 1,545 dunums that have already been lost to two Israeli settlements, Har Smuel and Ramot.¹² This means that the community will lose access to a total of 4,812 dunums, or 60 per cent of their West Bank land.

"If the farmers cannot harvest their crops because the gates do not open during harvest time, the next year they will wonder why they should do all this work if the gates will not open."

Head of the Farmers Association of Biddu

Devastating impact on farmers' livelihoods

"75,000 shekels a year", recalled Abu Hatem. "That's how much money my family used to make selling 15 tons of grapes during the harvest season." The amount is roughly equivalent to US\$ 20,000.

Abu Hatem, 73, is one of many farmers from the Palestinian town of Beit Ijza, located in the Biddu enclave. He owns 40 dunums of land, planted with olive, grape, almond, fig and peach trees, as well as various field crops, on the "other side" of the Barrier.

Abu Hatem's name is on a list that gives him access to his land when the Israelis open one of the gates. Unfortunately, the number of "opening days" is not nearly enough for him and other farmers to care for their land.

"In January and February, we plough the land, and in March, we prune the plants. Between April and June we have to spray the plants for insects. Then we monitor them until it becomes time to pick the fruit; it is a year-long process."

Conclusion

UNRWA is deeply concerned about the Barrier's negative impact on the livelihoods of the affected Palestine refugees, not least the farmers separated from their lands.

Israel must provide unrestricted access for Palestinians separated from their lands by the Barrier. Such access should only be restricted for reasons of absolute military necessity. If access is restricted for such reasons, the relevant Israeli authorities must take all measures to ensure that a well-functioning system is established whereby Palestinians can continue to access their lands at all times, together with necessary agricultural equipment, inputs, labour etc. in order to properly maintain, cultivate, harvest and transport crops from their land.

UNRWA assistance in the Biddu enclave

- Three UNRWA schools in the area, serving a total of 1,514 students
- One health centre, in Beit Surik
- Support to an additional 1,013 individuals in 2012 through the UNRWA Social Safety Net Programme
- Advocacy for farmers' access to land, including interventions with Israeli authorities

UNRWA is a United Nations agency established by the General Assembly in 1949 and is mandated to provide assistance and protection to a population of registered Palestine refugees. Its mission is to help Palestine refugees in Jordan, Lebanon, Syria, West Bank and the Gaza Strip to achieve their full potential in human development, pending a just solution to their plight. UNRWA's services encompass education, health care, relief and social services, camp infrastructure and improvement, microfinance and emergency assistance. UNRWA is funded almost entirely by voluntary contributions.

UNRWA West Bank Public Information Office wbpiol.unrwa.org

Endnotes

¹ ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, para 141 and para 163.

² Since 1993 Palestinians with West Bank IDs have been required to obtain a permit to access Jerusalem for education, healthcare, employment and religious purposes. Access restrictions became increasingly severe since 2000, with an increase in checkpoints and other obstacles on routes leading to the city.

³ Calculated based on GIS data from UNRWA West Bank field office

⁴ Settlements and outposts numbers and data from Peace Now, <http://peacenow.org/Veng/content/settlements-and-outposts>.

⁵ Report A/HRC/22/63: Independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, para. 105. Available online at http://www.dohchrd.org/Documents/HRCBodies/EIRCOUNV/RegularSession/Session22/A-HRC-22-63_en.pdf

⁶ The 'Seam Zone' refers to West Bank land between the Green Line and the Barrier.

⁷ Research by ARD estimated that Biddu lost 23.6% of its agricultural land, Beit Sunk 11.4%, and Beit Ijza 30.4%. The local councils of Biddu, Beit Sunk, and Beit Ijza, on the other hand, claimed that they had lost nearly 50% (8.5 km² out of 16.91 m² of the agricultural land).

⁸ OCHA/The Humanitarian Impact of the Barrier, July 2012.

⁹ Information based on UNRWA research on access through the Barrier.

¹⁰ Land Equity International, *Land registration Study for the Ministry of Planning*, May 2007, p.28.

¹¹ Since the early 1980s, Israel has used an interpretation of the Ottoman land law of 1858 (which was inherited from Jordanian legislation) to appropriate vast swathes of West Bank land by declaring it to be "state land. The provision allows for a sovereign to take possession of land that has not been cultivated for three or more consecutive years by its owner. Between 1979 and 2002, Israel declared over 900,000 dunums of West Bank land (excluding East Jerusalem) as state land, representing a 170% increase in the amount of state land in the West Bank prior to the Israeli occupation in 1967. This represents an increase from 9.1% to about 25% of West Bank land (excluding East Jerusalem), most of which has been allocated to Israeli settlements. (B'Tselem, Under the Guise of Legality: Israel's Declarations of State Land in the West Bank, February 2012).

¹² ARD, Beit Iksa Village Profile, 2012.

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