

مجموعة الرقابة الفلسطينية



PALESTINIAN MONITORING GROUP

TREND ANALYSIS

Israeli Policy and Environmental Pollution in the Occupied Palestinian Territory

Summary

On 04 April 2005, the Israeli newspaper *Ha'aretz* published information indicating that "Israel has decided to transfer garbage beyond the Green Line and dump it in the West Bank".¹ Israeli authorities subsequently confirmed to the Palestinian Authority their intention to authorize the disposal of solid waste in Abu Shusha Quarry near the Deir Sharaf Area in the northern West Bank district of Nablus.

Israel's recent attempts to "legalize and authorize" the transfer and disposal of garbage in the West Bank threatens to worsen the already poor environmental situation in the Occupied Palestinian Territory (OPT). This environmental situation has been prompted, in part, by Israeli policy, including settlements, ongoing Israeli military operations, and restrictions on Palestinian freedom of movement. Other contributing factors include Israel's failure to adequately invest in wastewater infrastructure or to take the necessary administrative actions to prevent environmental pollution over the course of its occupation. Part of the land on which the proposed dumping site is located is currently being illegally used by Israeli settlements in the area to dispose of various types of solid waste (*see photos below*). In addition, the proposed dumping of garbage at Abu Shusha Quarry is accompanied by the Israeli authorities' repeated refusals to allow the Palestinian Authority to launch effective waste management programs in the OPT.

Recognizing the principle of permanent sovereignty of peoples under foreign occupation over their natural resources, the United Nations General Assembly reaffirmed in Resolution 55/209 of 15 February 2001, "the inalienable rights of the Palestinian people ... over their natural resources, including land and water." As an occupying power, Israel is under an obligation, pursuant to the Hague Regulations of 1907, to "safeguard the capital of [public buildings, real estate, forests, and agricultural estates belonging to the occupied state], and administer them in accordance with the rules of usufruct." Usufruct refers to the temporary right to the use of land and enjoyment of the property of another, without changing the character of the property. It requires that the holder of the right safeguard the property over which he has administrative control, which would include taking the measures necessary to ensure protection of the environment. Accordingly, Israel is prohibited from taking actions that change the nature of land or result in environmental degradation of the OPT.

¹ David Ratner, "Israel Plans to Dump Tons of Garbage in W. Bank," 4 April 2005. *Ha'aretz*.

Overview of Situation

The proposed dumping site at Abu Shusha Quarry lies in the Nablus District, in the heart of the northern West Bank, a few kilometres north of the Israeli settlement bloc of Kedumim and the approved route of Israel's Wall. The proposed dumping site will cover some 20 - 30 *dunums* (5 – 7.5 acres) of land.

According to Israeli media reports, the project is sponsored by an illegal settler-owned firm “Bar-on Industrial Park” – a company owned by the two nearby Israeli settlements of Kedumim and Karnei Shomron – and Israel's Shomron Regional Council. According to the media reports, the two entities plan to ship 10,000 tons of Israeli garbage from Tel Aviv and Netanya areas each month to the Deir Sharaf site.

The Israeli Civil Administration has confirmed to the Palestinian Authority the involvement of the Bar-on Industrial Park in the proposed dumping project and that construction works on the site have reached their final stage. In a letter to the Palestinian Authority, Major General Youssef Mishlev, Coordinator of Government Activities in the Territories for the Israeli Ministry of Defence, confirmed that the Abu Shusha Quarry will be used as a waste disposal site. While the letter indicates that the site will benefit the Palestinian population in the area, it provides no details regarding in what way the population will benefit. While the Israeli government has responded to Palestinian queries regarding the quarry site itself, they have refused to address Palestinians queries regarding reports that the government intends to permit private companies to transfer garbage from areas in Israel.

Annex III of the Declaration of Principles, signed by the Palestine Liberation Organization and Israel in 1993, states that the two parties would establish an Israeli-Palestinian Continuing Committee for Economic Cooperation, focusing on, among other issues, the production of an “Environmental Protection Plan, providing for joint and/or coordinated measures in this sphere”.

Article 12 in Annex III of Appendix 1 to the Interim Agreement of September 1995, also known as the Protocol Concerning Civil Affairs, states the following in relation to environmental protection:

5. Both sides shall respectively adopt, apply and ensure compliance with internationally recognized standards concerning the following: acceptable levels of treatment of solid and liquid wastes, and agreed ways and means for disposal of such wastes; the use, handling and transportation ... and storage of hazardous substances and wastes (including pesticides, insecticides and herbicides).

In Article 40 of the Protocol Concerning Civil Affairs, the Israelis and Palestinians agreed to cooperate, on the basis of mutual understanding and shared responsibility, in virtually all areas related to water and sewage. Paragraphs 21-24 of Article 40 provide that each side will take all necessary measures to protect the water and sewage systems in their respective areas and to prevent any pollution or contamination of water and sewage systems, including those of the other side. Article 40 also provides for the establishment of a “Joint Water Committee” (JWC) that would be composed of an equal number of representatives from both parties and would deal with all water and sewage related issues in the West Bank. All decisions taken by the JWC are to be reached by consensus.

The provisions of the Interim Agreement of September 1995 make clear that the parties should agree jointly on the methods used for the disposal of solid wastes, which are specifically cited in Schedule 2 of the Interim Agreement. It is notable that the requirements apply to all sites used for solid waste disposal, not simply to sites accepting toxic or hazardous wastes. The relevant Palestinian authorities were not consulted in relation to the existing or proposed operations at the Abu Shusha Quarry site.

Environmental Pollution Stemming from Israeli Policy

Israel's proposed dumping of garbage at the Abu Shusha Quarry is but the latest in a series of policies and actions that cause significant environmental damage to the OPT. A report published by the United Nations Environment Programme (UNEP) in January 2003 notes that "among other factors, the occupation, policies of closure and curfew, and incursions of the Israeli military have had significant negative environmental impacts". In particular, the study notes the harmful effects of, among other factors, Israeli settlements' disposal of solid wastes and discharge of sewage onto Palestinian land; limited access of Palestinians trucks to existing landfills; damage to water and wastewater infrastructure; Israeli restrictions on developing Palestinian projects; and Israeli military actions.

Israeli settlements and their related infrastructure are a major source of pollution and environmental damage in the Occupied Palestinian Territory. The UNEP report concludes that wastewater management in the Occupied Palestinian Territory has historically been neglected and that the situation is made worse by Israeli settlements which discharge untreated wastewater into the environment. The study notes that "[a]ccording to some of the literature, many Israeli settlements in the West Bank have no form of treatment for domestic or industrial wastewater, the number of settlements and settlers has increased and no apparent measures have been taken to solve the environmental problem of untreated wastewater." Citing the same sources, the report states that "effluent flows freely into nearby wadis [valleys] without consideration of its environmental impacts."²

According to UNEP's report, Israel provides a conflicting account of the situation, stating that the majority of the 11 million cubic metres (MCM) of wastewater flowing from settlements into the West Bank is treated. In addition, Israel contends that 66% of the settlements have wastewater treatment plants, but UNEP could not confirm this information as they were not permitted to visit the wastewater treatment plants in the settlements.

Palestinian residents of settlement-adjacent areas confirm the pattern of settlement-related pollution identified in the UNEP study:

City of Salfit: According to the Municipality of the City of Salfit, wastewater flowing from the Israeli settlement of Ariel damages area agricultural land and contaminates 'Ein al Matwi spring, one of the city's 3 water resources. 'Ein al Matwi spring, located to the west of the city, provides approximately 20% of Salfit's total water consumption.

Israeli settlements not only cause environmental damage because of untreated waste, they also generate Israeli policies that threaten Palestinian access to their own environmental resources. The approved path of the Wall, for example, dips 22 kilometres into the OPT in the Salfit District so as to include the Ariel settlement to the west of the Wall. If the Wall is completed as planned, 'Ein al Matwi spring will be isolated from the city of Salfit, depriving the city of water supplies from this spring. Land levelling for Wall construction in this area began in late May 2005.

Deir Ballut, District of Salfit: According to the Deir Ballut village council, sewage from the Israeli settlements of Peduel and Eli Zahav drains onto Palestinian agricultural land belonging to the Palestinian village of Deir Ballut, causing damage to olive groves.

Deir Nidham, District of Ramallah: According to the head of the Deir Nidham village council, sewage from the Israeli settlement of Halamish flows onto Palestinian agricultural land and damages area olive groves. On 12 March 2005, Israeli settlers from the settlement of Halamish took control of and erected a

² UNEP, *Desk Study on the Environment in the Occupied Palestinian Territories* (January 2003) p. 44.

fence around some 40 – 50 *dunums* (10 – 12.5 acres) of land in the same area and are using it as a garbage dump for refuse from settlement houses.

Israeli Actions Blocking Effective Palestinian Waste Management

The Palestinian Authority has been blocked consistently by either the Joint Water Committee (JWC) – whose mandate requires that all decisions be reached by consensus – or by the Israeli Civil Administration from satisfying its obligations under the Interim Agreement. Projects submitted to the JWC have often been denied approval. For example, until the end of 2004, proposals for sewage treatment projects intended to serve Palestinian populated areas had been denied approval if they did not also serve the adjacent Israeli settlements. Palestinian objections to serving these settlements, based on the fact that they are illegal under international law, have been ignored.

Even when projects did receive the approval of the JWC, they then had to be submitted to the District Coordination Liaison (DCL) for approval, but such approval has been rarely granted. According to the Palestinian Water Authority, from 1996 to 2003 a number of proposed projects to construct sewage treatment plants to serve Palestinian communities in the Tulkarem, Nablus, Salfit, Ramallah, Jerusalem, Bethlehem and Hebron districts failed to receive approval either because they were denied by the JWC or, if they received approval from the JWC, were denied by the DCL.

In very general terms, the adverse impacts of waste disposal operations relate to several factors, including the nature of the waste; the volume of waste involved over time; the mitigation measures proposed to control any possible adverse impacts; and the nature and number of the receptors of possible adverse impacts. Accordingly, sanitary landfills, as well as wastewater treatment plants, should be located in uninhabited areas in order to avoid health threats and /or minimize the risk (in case of improper functioning) to local inhabitants and neighbouring areas.

The Interim Agreement of September 1995 classified the West Bank into three areas: A, B and C. Area C, which constitutes 60 per cent of the West Bank, is the appropriate place for waste management and treatment facilities to be located, given their distance from inhabited areas. Area C, however, remains under the sole control of Israel and the Israeli Civil Administration has repeatedly rejected Palestinian proposals – citing security concerns – for wastewater and solid waste disposal projects located in Area C.

- For example, the German government agency GTZ-KFW agreed to fund a sanitary landfill to serve the Ramallah and El Bireh districts. Based on technical and environmental considerations, the Palestinian Authority recommended locating the site near the Palestinian village of Deir Dibwan, which lies in Area C. The Israeli Civil Administration, however, opposed the location, citing security concerns, hence freezing the project indefinitely.
- In 1999, the Palestinian Ministry of Local Government and the Palestinian Water Authority approached the Municipality of the village of Deir Ballut and requested its participation in a sewage treatment project that would serve 10 Palestinian villages in the Ramallah and Salfit districts. The project involved construction of a partial sewage network, along with a water treatment plant that would enable area farmers to utilize treated water for irrigation of some 10,000 *dunums* (2,500 acres) of agricultural land. According to the Municipality of Deir Ballut, however, the Israeli Civil Administration indicated that it would approve the project only if the treatment plant were also designed to serve Israeli settlements in the area. Palestinian residents protested this condition and the project remains suspended to date.

The policy of consistent refusal of proposed waste treatment projects has not only impeded the Palestinian Authority's ability to fulfil its obligations under the Interim Agreement, it has also resulted in a tremendous financial loss for Palestinians. Because proposals are often submitted to the JWC only after

funding has been secured, failure to approve the projects results in lost funding opportunities. In addition, because of Israel's frequent refusal to permit construction to begin, Palestinians have been unable to take advantage of some of the collateral benefits of wastewater treatment, among them the re-use of effluents.

Israeli Financial Claims for Treatment of Sewage

Though either the JWC or the Israeli Civil Administration, or both, have repeatedly obstructed Palestinian efforts to effectively deal with waste management, Israel believes itself entitled to impose penalties on the Palestinian Authority when sewage it claims has originated in Palestinian controlled areas spills into Israel, hence causing environmental damage to Israeli communities.

In a January 2003 letter, the Israeli Ministry of Finance advised the Palestinian Authority of Israel's decision to treat sewage ostensibly emanating from Palestinian controlled areas in Israeli facilities and called on the Palestinian side to settle the resulting debt which has been incurred. According to the Israeli Ministry of Finance's calculations, the Palestinian side owes a total of 39.1 Million NIS for treatment of sewage originating from Bethlehem, Beit Jala, Bir Nabala, Ar-Ram, Qalqiliya, Habla, Nablus, Tulkarem, and Jenin. These communities lie in the very districts for which proposals for waste treatment facilities were rejected by the JWC or the Israeli Civil Administration between 1996 and 2003.

A second letter relating to the treatment of sewage originating in Hebron explains that Israeli residents petitioned the Israeli Supreme Court to devise a solution to the problem of Palestinian sewage. The emergency solution recommended by various Israeli Ministries was to treat the sewage in the Be'er Shiva treatment facility. This was said to require the construction of a sewage line and pumping station, with the cost of this investment being projected at 16,000,000 NIS. In addition, Israel anticipates that the cost of treating 1.8 million cubic metres of sewage at 1.741 NIS/M³ would total 3.134 million NIS (approximately 728,840 USD).

Both letters allowed the Palestinian Authority seven days to take all measures necessary to prevent the spilling of sewage into Israeli territory. Failure to take appropriate measures, the letter warned, would result in Israel taking necessary measures to treat the sewage. The letter asserted that the Palestinian Authority would be responsible for the cost of such treatment.

According to the letters, the basis for Israel's claim arises out of Palestinian responsibilities as set out in paragraphs 21-24 of Article 40 of the Protocol Concerning Civil Affairs of the Interim Agreement. That basis, while sound in principle, does not apply to this case. While paragraph 24 provides for reimbursement by one party to another, it calls for such reimbursement only in two specific cases –in the case of “unauthorized use” or in the case of sabotage “to water and sewage systems situated in the areas under its responsibility which serve the other side.” Given that Israel has presented no evidence to support either unauthorized use or sabotage, and given that the factual basis laid out fails to support an assertion of either event having occurred, this clause does not apply to the current situation.

Not only has Israel misapplied Article 40 to suit its own purposes, the claim Israel raises is procedurally deficient and ignores the Palestinian right to due process. The Israeli Ministry of Finance's letters fail to explain the process whereby Israel determined either the origin of the wastewater, or its quantity. Nor do the letters indicate how Israel was able to discern – or whether it did so – that a portion of the polluted water did not, in fact, originate from Israeli settlements located in the West Bank. In addition, while the letters assert that Israel is treating the wastewater, they fail to provide evidence to substantiate their claim or, if the water is indeed being treated, the precise method chosen to do so. The letters also fail to indicate whether or not Israel is re-using the effluents after treatment, and if so, whether Israel has deducted the value of those effluents from the amounts claimed.

Finally, Article 40 provides that *each side* will take all necessary measures to protect the water and sewage systems in their respective areas and to prevent any pollution or contamination of water and sewage systems, including those of the other side. Israel makes use of that provision to support its own claim for payment, but it has provided no indication that it intends to compensate the Palestinian Authority for environmental damage to the OPT that has resulted from the harmful Israeli actions laid out above.

To date, Israel has indicated that it has deducted 65 million NIS from Value Added Tax (VAT) funds owed to the Palestinian Authority and that it is billing the Palestinian Authority between 1 -3 million NIS per month for treatment of wastewater flowing from the OPT into Israel. However, given that Israel continues to withhold the total amount of VAT funds owed to the Palestinian Authority, the Palestinian side is unable to discern the exact amount for which it has been charged.

Conclusion

Israel's recent efforts to prepare the Abu Shusha Quarry as a garbage dump takes place within a history of Israeli policy that has resulted in considerable environmental degradation in the OPT, and, ultimately, causes harm to both the Israeli and Palestinian populations.

Since the onset of the occupation in 1967, Israel has failed to meet its obligations as an occupying power to safeguard Palestinian land and protect it from environmental damage. During the period for which it was solely responsible for the OPT, Israel failed to invest adequately in wastewater infrastructure or to construct sufficient sewage treatment facilities to accommodate the growing population. According to the Palestinian Water Authority, over a period of more than thirty years, only 20% of the OPT was served by a sewage network and only 5% by actual treatment stations. At the same time, Israel's policy of building and expanding Israeli settlements has resulted in considerable pollution of Palestinian land.

Throughout the period during which the Palestinian Authority was supposed to assume responsibility for sewage and water treatment in some areas of the OPT, the Israeli authorities have repeatedly impeded the Palestinian Authority's ability to fulfil its obligations by refusing to approve construction of wastewater treatment and sanitary landfill projects.

While the international law of occupation generally prohibits any change in the character of immovable property by the occupying power, exceptions may be allowed in cases of long-standing occupation. However, such an exception may be made only if the purpose of the change is to benefit the local population and if this population is properly consulted. In the case of the Abu Shusha Quarry, not only have the relevant Palestinian authorities not been consulted in relation to the existing or proposed operations, it remains unclear how the proposed dumping site will benefit the Palestinian population. Based on past history wherein Israeli action in the OPT, including settlement policy, has wrought environmental and other damage on Palestinian communities, Israel's claims that the Abu Shusha site will benefit the Palestinian population appear spurious.



Abu Shusha Quarry
(Source: Palestinian Environmental Quality Authority)



Refuse at Abu Shusha Quarry
(Source: Palestinian Environmental Quality Authority)