



## ON THE 15TH ANNIVERSARY OF THE INTERNATIONAL COURT OF JUSTICE (ICJ) ADVISORY OPINION ON THE ILLEGALITY OF THE CONSTRUCTION OF THE WALL IN OCCUPIED PALESTINE



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### The Carving of East Jerusalem into Segregated Bantustans The Case of Sur Bahir<sup>1</sup>

#### Introduction

To alter the Palestinian and Arab character of East Jerusalem, Israel, the occupying power, has been using a wide range of unlawful policies and practices aimed at reducing Palestinian presence and increasing its colonial-settler population in the city. This includes allocating a mere 13% of the city's land for Palestinian construction in comparison to 35% for the construction of Israeli settlements. In parallel, Israel employs a discriminatory planning and permit system and corresponding policy of home demolitions to forcibly displace the native Palestinian population to accommodate the transfer of Israel's civilian population to occupied Palestine. Such transfer constitutes a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute.

The case of Sur Bahir illustrates how Israel's colonial-settlement enterprise, and associated policies such as home demolitions, has served to carve occupied East Jerusalem into segregated Bantustans, reflecting an Israeli system of apartheid imposed on both the land and the people.

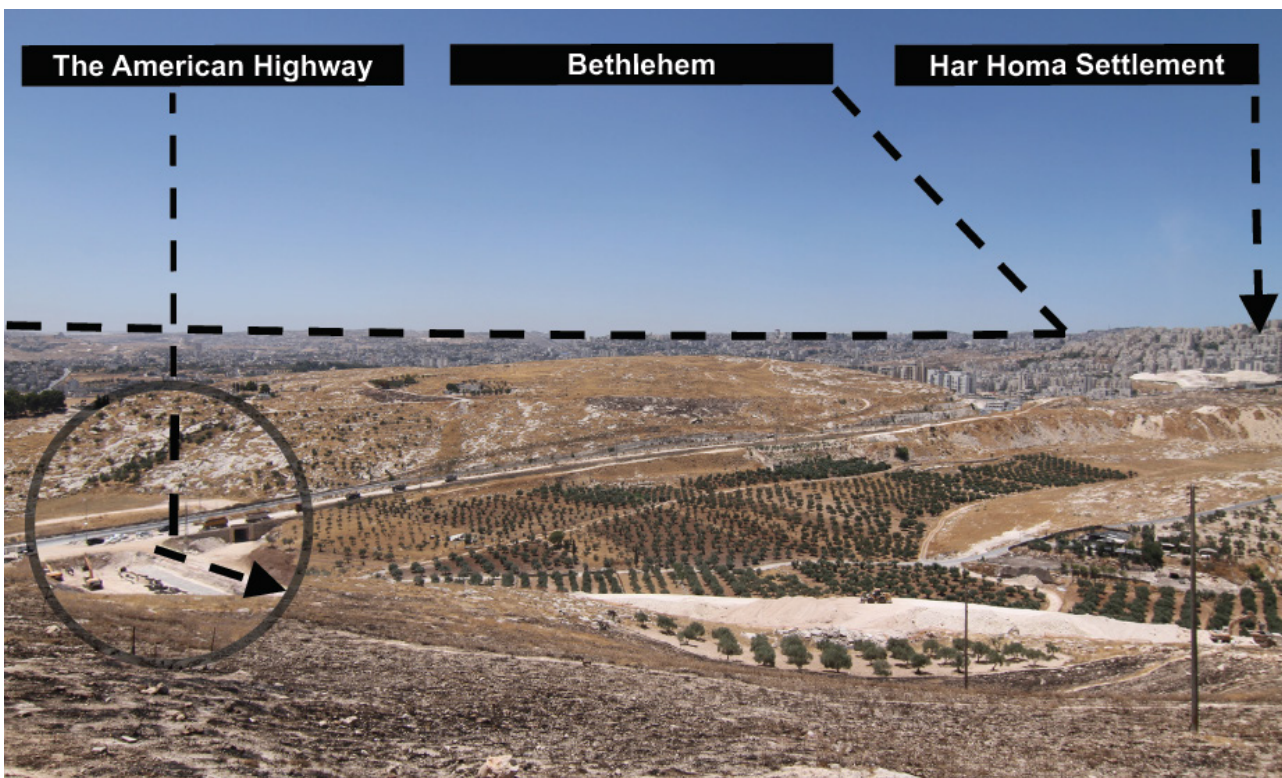
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<sup>1</sup> Also written as Sur Baher.

## Location/ History

Sur Bahir, one of the largest Palestinian towns in occupied East Jerusalem, is situated to the southeast of the Old City of Jerusalem – a mere 4.6 kilometers away from its ancient walls. It is home to 24,000 Palestinians, the majority of whom hold permanent residency rights and a Jerusalem identity card, as well as refugee cards from the United Nations Relief and Works Agency for Palestine Refugees (UNRWA).<sup>2</sup> Sur Bahir is bordered by the Palestinian areas of al- Sawahira al- Gharbieh and al-Sheikh Sa'd to the east, Jabal Al-Mukabbir to the north, Beit Safafa to the west and Beit Sahour in Bethlehem Governorate to the south.

According to local residents, the history of Sur Bahir can be traced back over a thousand years and its name is derived from a secret meeting held in the area by the Muslim Caliph Omar Ibn Al-Khattab. It was originally named “al- Sir al- Bahir”, meaning “the impressive secret,” which later became “Sur Bahir”.



## Israel's Colonial-Settlement Enterprise in Sur Bahir

The total original land area of Sur Bahir, including the adjacent town of Umm Tuba, is close to ten thousand dunums<sup>3</sup> (1 dunum equals 1,000 square meters), most of which was lost following the Nakba in 1948. After the Israeli occupation in 1967, Israel confiscated nearly 1,700 dunums in Sur Bahir for the construction of the illegal settlements of East Talpiot to the north<sup>4</sup> and Har Homa to the southwest.<sup>5</sup> And throughout the past 52 years, Israel has continued to appropriate more of the town's lands for the construction of its Annexation Wall, settlements, and settlement infrastructure, including bypass roads.

2 Appeal addressed to the Secretary General of the United Nations, from the Committee for the Defense of the Lands and Buildings Subject to Demolition in Sur Baher in Jerusalem, 8 July 2019.

3 Map obtained from a land surveyor outlining the village boundaries during the British Mandate, 13 July 2019.

4 Map by PLO-NAD showing how the US Embassy in Jerusalem falls in an occupied Palestinian Territory, 10 May 2018: <https://bit.ly/2Y25BMe>

5 Sur Bahir & Umm Tuba Town Profile, the Applied Research Institute- Jerusalem (ARIJ), 2012

“ There is also a risk of further alterations to the demographic composition of the Occupied Palestinian Territory resulting from the construction of the wall inasmuch as it is contributing... to the departure of Palestinian populations from certain areas. That construction, along with measures taken previously, thus severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel’s obligation to respect that right.”

**ICJ Advisory Opinion on the Wall, Para. 122 , 2004**

## The American Highway

**Sign: the opening of the American Highway is in November 2019**



Currently under construction is the American Highway, which is set to open for traffic in November 2019. This highway is the southern extension of the eastern part of Israel’s illegal Ring Road project that surrounds occupied East Jerusalem to connect Israeli settlements in and around the city with West Jerusalem and to sever the city from the remainder of the occupied West Bank. This project effectively cuts off Palestinian neighborhoods within East Jerusalem from one other and threatens their prospects for urban growth and economic development, as well as the contiguity and viability of an independent and sovereign State of Palestine.

With the completion of the American Highway, all the sections of Israel’s Ring Road will be completed with the exception of one section extending from the Palestinian neighborhood of Al-Za’ayem (through Al-Tur, Ras al-Amud, Al-Eizariya (Biblical Bethany), Abu Dis, al- Sawahira al- Gharbieh, Al-Qunbar, al-Sheikh Sa’d) to Sur Bahir. This section, which requires the construction of three tunnels and five bridges, is 11.5 kilometers long and goes through several densely populated Palestinian neighborhoods. To complete this huge project, Israel intends to confiscate more than 1,230 dunums of privately-owned Palestinian land and to demolish several Palestinian homes.

## Sur Bahir Between Israel's Defined Municipal Boundaries of Jerusalem and its Annexation Wall



Following the occupation in 1967, Israel unilaterally annexed some 70,000 dunums of the West Bank and extended the municipal boundaries of Jerusalem on that basis.<sup>6</sup> As a result, the remaining lands of Sur Bahir were also annexed. Following the Oslo II Interim Agreement of 1995, the rest of the land was classified into areas A, B, C. These areas of Sur Bahir are: Wadi Al-Homs, Al-Muntar and Deir Al-Amoud.

The original route of Israel's Annexation Wall cut through Sur Bahir and would have separated many Palestinian families. Yet, after the residents' appealed and US National Security Advisor Condoleezza Rice intervened, the route of the wall was changed.<sup>7</sup> As a result, parts of areas A, B and C of Sur Bahir remained on the Jerusalem side of the Annexation Wall, while the rest of the land was situated between the Palestinian village of Dar Salah, located in Bethlehem Governorate, and the Annexation Wall.

The Annexation Wall, which is 4 kilometers long in Sur Bahir, highlights how it is designed to further divide and annex the land of Palestine and to cut off its people from one another; rendering each village, town and city divided and isolated whether by walls, military checkpoints, Israeli settlements or bypass roads for settlers.

<sup>6</sup> <https://www.btselem.org/jerusalem>.

<sup>7</sup> Terrestrial Jerusalem, The Wadi Hummus Demolitions: Unlike Anything Witnessed to Date, by Adv. Danny Seidemann, 9 July 2019. <http://t-j.org.il/LatestDevelopments/tabid/1370/currentpage/1/articleID/925/Default.aspx>

## Latest Development



There are currently ten inhabited and under- construction buildings that face the threat of demolition in Sur Bahir, including some 70 apartments.<sup>8</sup> While most demolitions in East Jerusalem are enforced on the pretext of lack of building permits, which are impossible to obtain from the occupation's arm of the Jerusalem Municipality, the current demolition orders were issued on security grounds pursuant to a military order dating back to 2011. This order prohibits construction within 100-300 meters on both sides of the Annexation Wall.<sup>9</sup>

On 11 June 2019, Israel's High Court of Justice dismissed a petition filed by the residents of Sur Bahir in 2017. A week later, the Israeli occupying forces issued a "Notice of Intent to Demolish" that is set to expire on 18 July 2019. Of the ten buildings slated for demolition, six are to be completely demolished, while the rest face partial demolition. If residents do not self-demolish their properties by the 18 July deadline, the Israeli military will execute the demolitions and force the owners to cover the costs. Among the many losses the owners of the buildings and apartments will suffer, three Palestinian families will be displaced, totaling 17 people, including 9 children.<sup>10</sup>

There are at least 11 other separate cases relating to properties located in areas A, B, and C of Sur Bahir in Israeli courts, comprising over 100 apartments, which may face the same fate.

The latest ruling by Israel's High Court of Justice aims to set a precedent to enable the Israeli occupying forces to demolish numerous Palestinian buildings located in close proximity to Israel's Annexation Wall, both within and without the Wall. Such a ruling highlights how Israel's judiciary is complicit in grave violations of international law.

<sup>8</sup> Threat of demolitions in East Jerusalem, UNOCHA, 9 July 2019, <https://www.ochaopt.org/content/threat-demolitions-east-jerusalem>

<sup>9</sup> Ibid

<sup>10</sup> Threat of demolitions in East Jerusalem, UNOCHA, 9 July 2019, <https://www.ochaopt.org/content/threat-demolitions-east-jerusalem>

“...the Court...is not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives. The wall, along the route chosen, and its associated régime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order. The construction of such a wall accordingly constitutes breaches by Israel of various of its obligations under the applicable international humanitarian law and human rights instruments.”

**ICJ Advisory Opinion on the Wall, Para. 137 , 2004**

## Israeli Construction Restrictions

In addition to several Israeli restrictions imposed on Palestinian construction, the 24,000 Palestinians in Sur Bahir are only permitted to build on approximately 15% (1,555 dunums<sup>11</sup>) of their village's historical lands (within the Israeli defined municipal boundaries of Jerusalem), with a plot ratio of 50% (compared to 120% in Har Homa Settlement for example).<sup>12</sup>

Therefore, and due to population growth and the construction of Israel's Annexation Wall in 2005, many Palestinian families obtained permits from the Palestinian Authority to build in areas A and B, as zoning and planning authority in these areas is under Palestinian control pursuant to the 1995 Oslo II Agreement. According to the local committee in charge of providing services to these parts of Sur Bahir, 30 buildings existed in this area before 1995 and today there are over 800 buildings.

## Home Demolitions

According to UNOCHA, dozens of buildings in areas A, B, and C of Sur Bahir (where 6,000 Palestinians live today) received demolition orders from the Israeli occupying authorities over the past 14 years. And since 2009, in the Israeli defined municipal boundaries of Jerusalem, nearly 70 structures, including 46 homes (inhabited/under-construction), were demolished. Around 400 Palestinians were displaced or otherwise affected. In both areas, Israel used the pretext of lacking building permits to enforce the demolitions.

The threat of home demolitions constitutes an ongoing process of ethnic cleansing faced by the native Palestinians in East Jerusalem at the hands of Israel. The case of Sur Bahir is only one example.

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11 Bimkom, Survey of the Palestinian neighborhoods of East Jerusalem, June 2014, <https://bimkom.org/eng/planning-survey-and-planning-assistance/>

12 UN-HABITAT, Right to Develop, <https://unhabitat.org/books/right-to-develop-planning-palestinian-communities-in-east-jerusalem/> (Page 12), 2015.

## TESTIMONIES

**Iman Al-Jolani, 59-years-old. A mother of four and a grandmother of 20 grandchildren; the eldest is 17 and the youngest is 2-years-old. Both her home and her son's home face the threat of demolition.**

"My husband's family are refugees from Jaffa so when we got married in 1977, I moved to live with him in Shu'fat Refugee Camp. As our children grew, it was no longer possible for us to live in a very small apartment. We bought land in Sur Bahir so that we could build four houses; three for my children and one for my husband and me. We moved here in 2016 - living here near the barbed wire (the Annexation Wall) is definitely a relief compared to living in the camp.

It has only been possible to build two apartments so far because in early 2017 we were coincidentally informed of the Israeli military notice that bans construction in this area.

I feel there is no place for us to live. If it is up to Israel, they will demolish the entirety of Jerusalem and expel us all to empty it for settlers. Life has been so hectic and it is not getting any better. I am tired of even thinking of what will happen next (after the demolition). I often cry just when I start thinking about it. I am not sure how to answer my grandchildren when they ask 'why should our homes be demolished?'"



**Nida' Obeidi, 38-years-old. A mother of five boys and one girl; the eldest is 19-years-old and the youngest is 4-years-old. Nida's home is facing the threat of demolition.**



"My husband got a Palestinian building permit to construct this house in area B of the West Bank. Regardless of what the definitions are, all I know is that I live in Jerusalem. It was previously impossible for my husband to obtain a permit from the Israeli authority to build a house in Jabal Al-Mukabbir, where his family lives. The house we lived in atop his family's house also received a demolition order.

Life in Jerusalem is suffocating.

We have invested so much money in this house and planned to include four houses in the building - for us and our children when they get married. We also have debts that will take years to repay.

This house is the future of our family. We are still in denial despite the fear we live in. Thinking about losing this house is beyond me."

**Hadi<sup>13</sup>, 26-years-old. He owns an apartment in a building that is still under construction and faces the threat of demolition.**

"So far, I have invested nearly 170,000 shekels in this apartment and I have not yet paid the price in full. I put years of my life into working and saving to own a house, get married and start a family. I was engaged. Not anymore.

I have been procrastinating my decision to end my engagement while waiting for the decision of the Israeli High Court. Once they decided that demolition will happen, I decided that marriage for me is not an option. So, I ended my relationship.

I was so hopeful. Such a huge loss. I have always wanted to own a house because rent for me is not an option. Rent means that my life will be about repaying debts. I cannot live such a life. I also refuse to leave Jerusalem to go anywhere else. I am from here and I should have the right to live in my hometown.

I am a strong believer in fate, so I cannot give up. And so, I am still hopeful that at least part of my loss will be compensated so I can restart my dream."

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<sup>13</sup> This individual's name has been changed for the sake of privacy.



## Conclusion

On the watch of the United Nations and the entire international community, Israel, the occupying power, has been dedicating its efforts to ensure that Palestinian life is unbearable. Israeli breaches of international law and violations of Palestinian rights, necessitate urgent action by the international community – not mere condemnations. Without accountability, Israeli impunity will prevail. Therefore, we urge the international community to abide by its obligations under international law and engage with the accountability mechanisms available, including support for Item 7 of the Human Rights Council and the publication of a Database of companies involved in illegal settlements as outlined by Human Rights Council Resolution 31/36 (2016).

The viability and security of an independent State of Palestine, with East Jerusalem as its capital, is only possible with an end to Israel's more than half- a- century- long occupation.

“Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end.”

**ICJ Advisory Opinion on the Wall, Para. 159 , 2004**



