

Economic and Physical Oppression: The Wall, the Occupation, and Palestinian Workers

By Stijn Denayer¹

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Introduction

On 18 November 2009, twenty-one year old Mousa Barham arrived in the village of Ni'lin and attempted to cross the "Wall". Due to the lack of employment opportunities in the West Bank, he works on a construction site in Israel. He is forced to access his place of work by "illegally" entering Israel because he has been denied an official work permit. When trying to cross over on 18 November, Barham was apprehended by five Israeli soldiers. After the soldiers checked his ID card, Barham was taken to a nearby olive grove. There, under the cover of the trees, the soldiers started beating him severely, not only with their fists and feet, but also with the butts of their rifles. At one point an officer picked up a large rock and, whilst standing over Barham, who was lying on his back on the ground, dropped it on his chest. After half an hour the beatings stopped and the soldiers left the injured Barham behind in the olive grove.²

Mousa Barham's story is not unique. Ever since June 2002, when Israel, the Occupying Power, started construction of what Professor John Dugard, former UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories,

¹ The author holds an M.A. in literature and linguistics from the University of Leuven, Belgium, and an LL.M. in international human rights law from the Irish Centre for Human Rights (National University of Ireland – Galway). The author extends his special thanks to everyone at Al-Haq who helped in researching and preparing this case study, especially Hisham Sharabati.

² Al-Haq Affidavit No 4708 given by Mousa Barham on 7 February 2009.

has called the Annexation Wall,³ Palestinians have been forced to cross it, in search of a decent livelihood. Since construction of the Annexation Wall began, Palestinian workers have suffered severe maltreatment and abuse at the hands of Israeli Border Guards⁴ and military personnel when they are apprehended trying to enter Israel without a permit.

Al-Haq has recorded dozens of witness statements from Palestinian workers throughout 2009, indicating that this practice of maltreatment and humiliation continues today. As the witness statements included in this report will demonstrate, the humiliation and maltreatment of Palestinian workers at the Annexation Wall is pervasive: illegal use of firearms by Israeli occupation forces and hours of arbitrary detention involving degrading treatment, severe brutality and even torture are not unusual.

This case study focuses on human rights violations against Palestinian workers attempting to enter Israel without a permit, an action in contravention of Israeli military orders. It is therefore essential to first highlight the fundamental reasons why these workers find themselves in a situation in which they are forced to try to cross the Annexation Wall and expose themselves to the risks and dangers involved. The reasons that Palestinian workers risk their physical well-being and attempt to enter Israel without a permit are inextricably linked with Israel's failure to respect its international legal obligations regarding the economic well-being of the Palestinians in the Occupied Palestinian Territory (OPT).

The Annexation Wall

Under international humanitarian law, Israel as the Occupying Power is obliged to ensure not only the safety but also the well-being of the Palestinian residents in the OPT.⁵ Moreover, under international human rights law, which the International Court of Justice in 2004 authoritatively affirmed as being applicable in the OPT,⁶ Israel is bound by its obligation to respect the right to work and the right to an adequate standard of living of all Palestinians residing in the West Bank, including East Jerusalem, and Gaza.⁷

Nonetheless, reality diverges from the law, and it has done for a long time. Whether by design or otherwise, the Annexation Wall has resulted in severe economic hardship and has contributed to the serious underdevelopment of the Palestinian

³ “(...) the main purpose of the Wall is the annexation, albeit by de facto means, of additional land for the State of Israel.” Commission on Human Rights, 16th Session, UN Doc. E/CN.4/2004/6/Add.1 (Feb. 27, 2004).

⁴ In English, “Border Guard” is often used as the official translation for “Border Police” (Hebrew: בולמֶשְׁמֶר הַגָּ; *Mishmar HaGvul*).

⁵ Article 43 of the Hague Regulations; according to the Israeli Supreme Court this obligation entails that Israel should allow free movement between the Occupied Territory and Israel. HCJ 69/81, *Abu 'Itta v. Commander of Judea and Samaria, Piskei Din 37* (2) 197, 319-320.

⁶ ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion, 9 July 2004, para 102-113.

⁷ See articles 6 and 11 of the International Covenant on Economic, Social and Cultural Rights. Israel ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 3 January 1992.

economy.⁸ Since the beginning of the occupation in 1967, up until the time of the Oslo peace process, Israel refrained from investing in the development of an independent Palestinian economy and instead encouraged Palestinians to integrate themselves in the Israeli workforce.⁹ While this may have resulted in a low unemployment rate in the OPT (it is estimated that at times, almost a third of the workforce in the OPT was employed in Israel), Palestinian workers in Israel were not considered subjects entitled to rights such as equal treatment, wage and benefits, but were instead regarded as a source of cheap, manual and menial labour.¹⁰ As such, Palestinian workers who were admitted into Israel not only “found an existing niche waiting to employ them”, but also became the subject of discriminatory laws and regulations that developed “when capitalist and colonial interests converged”.¹¹

This dubious connection between high employment rates and low legal protection broke up dramatically in the beginning of the 1990s, when Israel initiated its closure policy of the Occupied Territory. Officially instituted in 1993, the closures are enforced through a range of stringent bureaucratic requirements of permits and magnetic ID cards, and more than 600 checkpoints and other physical obstacles dispersed throughout the OPT.¹² Intensified during the Oslo years and still in force today, the closure policy has not only solidified Israel’s economic and military control over the OPT, fragmenting and disconnecting Palestinian communities, it has also resulted in the general impoverishment of the Palestinian population.¹³ The recent construction of the Annexation Wall, approximately 86 per cent of which lies inside the West Bank¹⁴ and not along the Green Line, has sealed off the Occupied West Bank, its population and its workforce, from Israel and from its centre of commerce and culture, Jerusalem. Whereas Israel has always issued limited numbers of official work permits, most Palestinian workers could in the past enter and remain inside Israel without a permit with relative ease, securing their own livelihoods and

⁸ In 2006, the International Labour Office observed that “a Separation Barrier that deviates from the route of the Green Line and physically blocks movement within the territories as well as between the territories and Israel, disrupts the normal economic activity of Palestinian enterprises and is one of the major causes of the deteriorating conditions faced by workers.” International Labour Office, *The Situation of Workers of the Occupied Arab Territories*, at iii-iv (2006); Similarly, in 2005, the World Bank observed: “The inability of the Palestinian economy to fully use its productive potential is first and foremost the result of restrictions on the movement of people and goods.” World Bank, *The Palestinian Economy and the Prospects for its Recovery: Economic Monitoring Report to the Ad Hoc Liaison Committee Number 1*, para 29 (December 2005).

⁹ “Israel has subordinated the economy of the OPT to its own, depriving the population under occupation of the capacity to govern its economic affairs. (...) By virtue of the structural economic measures it has imposed on the OPT, Israel has violated the Palestinian population’s right of economic self-determination and its duties as an Occupying Power.” HSRC *Occupation, Colonialism, Apartheid? A Re-assessment of Israel’s Practices in the Occupied Palestinian Territories under International Law*, at 16 (2009). Available at: <http://www.hsrc.ac.za/Document-3227.phtml>

¹⁰ Guy Mundlak, *Power-Breaking or Power-Entrenching Law? The Regulation of Palestinian Workers in Israel*, 20 Comp. Lab. L. & Pol’y J. 569 (1999).

¹¹ *Id.* at 573, 575.

¹² In June 2009, the UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that the total number of checkpoints, roadblocks, earthwalls, earthmounds, trenches and road barriers in the Occupied West Bank was 614. OCHA, *West Bank and Gaza Closure Maps*, at 1 (June 2009). Available at: http://www.ochaopt.org/documents/Closure_Maps_Book_Web.pdf

¹³ Al-Haq, *Waiting For Justice: 25 Years Defending Human Rights (1979-2004)*, at 23 (June 2005).

¹⁴ OCHA, *The Olive Harvest in the West Bank and Gaza Strip* (October 2008).

providing the Israeli economy with a source of cheap labour. The Annexation Wall has made this much more difficult. Although the number of permits for Palestinians to work in Israel and the illegal settlements has risen over the last few years (from 35,827 in April 2005 to 47,777 in April 2009),¹⁵ the number of permits issued desperately fails to meet the economic demand and the needs of the Palestinian population living under occupation. As a result, at the beginning of 2009 only 34.3 per cent of the West Bank population aged 15 and over were employed, a rate described by the International Labour Office as "extremely low by international standards".¹⁶

In this reality of closure, which has resulted in the effective underdevelopment of the West Bank economy, many Palestinians find themselves having no other option but to try to cross the Annexation Wall. The risks and dangers these workers are willing to face in this endeavour are a clear indication of their desperation to secure a decent livelihood. These risks are becoming greater by the day. As recently reported in both Israeli and Palestinian media, Palestinian workers are now being smuggled into Israel in inhumane and life-threatening circumstances, including heavily congested shipping containers of trucks, in which the only ventilation comes from holes drilled in the vehicles' floors.¹⁷ As such, Palestinians are starting to resemble illegal "goods" transported "in bulk" to fill a niche of manual and menial labour in Israel where they are also often exploited by their employers.

The following are excerpts from the witness statement of Fathi Hamayel, given to Al-Haq on 6 February 2010.

"At around 3:00 pm in late May 2009, I met with my colleague Mr. Walid Husein Hasan, about 48 years of age and a resident of the village of Beit Fourik, at the Israeli military Huwwara checkpoint, which is set up at the southern entrance to the city of Nablus. I met with Walid because we intended to travel together and work in Israel. Several minutes after we had met, we hired a taxi, which drove for about an hour and 20 minutes, until we reached a station where workers who do not hold permits to work inside Israel gather. The station is known as the area of al-Nabi Mousa near the Dead Sea. It is immediately adjacent to an archaeological site, which tourists visit. After we reached the aforesaid area and stepped down from the taxi, we saw more than 60 Palestinian workers from various West Bank governorates, including Qalqiliya, Jenin, Salfit, Nablus, Ramallah and Jericho. I say this because we, the workers from the aforementioned governorates, usually gather in this place and I am acquainted with a number of them. Also, owners of

¹⁵ International Labour Office, *The Situation of Workers of the Occupied Arab territories*, at 12 (2009).

¹⁶ *Id.* at 20.

¹⁷ Raanan Ben-Zur *Med Student Caught Transporting Illegal Palestinian Workers* YnetNews, 5 January 2010. Available at: <http://www.ynetnews.com/articles/0,7340,L-3830239,00.html>; Ma'an News Agency *Jerusalemite Gets 10 Years for Smuggling Palestinian Workers* 27 January 2010. Available at: <http://www.maannews.net/eng/ViewDetails.aspx?ID=257258>; Hanan Greenberg, *Soldier Suspected of Smuggling Palestinians into Israel* YnetNews, 28 January 2010. Available at: <http://www.ynetnews.com/articles/0,7340,L-3840859,00.html>; Eli Senyor *70 Palestinian Illegal Aliens Found in Truck* Ynet News, 6 February 2010. Available at: <http://www.ynetnews.com/articles/0,7340,L-3845107,00.html>.

Israeli vehicles transport workers from this location to areas inside Israel. Having waited for about ten or more minutes, we coordinated with a person to agree on our behalf with a driver to transport us to Israel in return for NIS 210 per worker. We paid the sum of money in advance. In turn, the said person coordinated with a driver of an Israeli truck to transport us, the workers, to Israel in his truck. At that time, the driver arrived in his truck, which had a closed metal box (semi-trailer), measuring approximately 7 metres in length and 2.40 metres in width. As soon as it stopped, we climbed on the semi-trailer. We were about 65 workers of various ages, ranging from almost 16 to 53 years. We all sat on the floor of the semi-trailer, which did not have any seats. We were in a very difficult condition; we could not move inside nor even inhale fresh air. Nevertheless, the presence of two small windows in the front part of the semi-trailer relieved us a little. Measuring about 40 square centimetres each, we managed to endure the difficult situation with these windows. Especially when the truck moved, air passed through them.”¹⁸

After the truck with the approximately 65 workers inside passed the ‘Ein Gedi checkpoint and travelled for about 20 minutes in the direction of Bir al-Sabe’, it was stopped on the highway by the Israeli police. Witness Fathi Hamayel then heard the following conversation take place between the police and the truck driver:

“Why are there openings in the semi-trailer?” I heard a person ask the driver. “Openings are prevented in a refrigerated semi-trailer,” the person went on.

The driver replied that it was a semi-trailer used for transportation of vegetables.

“You are lying,” the person said and ordered the driver to open the door.

Indeed, moments after that, the driver opened the door closed on us. And just after he opened the door, I saw a blue police jeep as well as four police officers, who were in the blue uniform and had pistols on their waists.

“So you’re transporting vegetables!” a police officer addressed the driver as soon as he saw us.

The police officer said that we were refugees, indicating that we were not Israeli citizens. Having looked at us for 15 seconds, the door was closed and I did not know who closed it. In addition, I could not distinguish who was in rank of an officer amongst the policemen. Meanwhile, I heard a conversation take place between policemen and the driver, but I could not hear it well and understand what was going on. About five minutes later, the truck set off once again (I am estimating the time). It drove very slowly and stopped again almost five minutes later (time is also estimated). Particularly when the truck stopped, we felt shortness of

¹⁸ Al-Haq Affidavit 5242 given by Fathi Hamayel on 6 February 2010.

breath inside the semi-trailer because air did not reach us. We took turns to stand near the windows in order to breathe. About ten minutes later, I took my turn and stood near the window, where I could see everything outside the semi-trailer. I saw that the truck was parked at a distance of 70 metres on sandy land on the right side of the street. I could clearly see that because I saw the cars travel along the street at the aforesaid distance. At the first moment after I stood near the window, I saw a police officer. I shouted in Hebrew, which I knew, that he should open the door.

“We are suffocating. We are dying,” I repeated.

“I wish that you all die!” he replied in Hebrew.

Moreover, the police officer threw several small stones at me.

As the truck was left closed on a stretch of land next to the road, in the heat of the late afternoon, and as the situation of the workers inside the truck deteriorated perceptibly, Fathi Hamayel decided to call on his mobile phone a labour office representative from his village and also a Palestinian human rights organisation, who all promised to help. Several hours passed.

“We continued to strike on the sidewall of the semi-trailer and demand that the door be opened. We also shouted that we were suffocating inside, but nobody replied. About two hours later, the person from a human rights organisation called me again and told us that the Israeli police were on their way to our location. Indeed, I saw the radiation of several flashing strobe lights around the truck about five minutes after my short conversation with the human rights officer ended. Almost ten minutes after they arrived, the truck set off once again. Based on its route, I realised that we were heading towards the ‘Ein Gedi checkpoint, which I mentioned earlier.

Having travelled for the period of time I mentioned above, a number of soldiers opened the door as soon as the truck stopped. Then, I immediately saw a large number of Israeli troops, who were in the usual military uniform and carried long weapons, dispersed around us. I also saw a number of police officers present at the checkpoint. After the door was opened, soldiers ordered us in Hebrew to step down from the semi-trailer.”

It is a worrying development that the image of Palestinian workers being smuggled into Israel in congested truck containers now strongly resembles the dire and life-threatening conditions in which tens of thousands of people are being smuggled every day by human traffickers from the less advantaged places of this world to the more prosperous ones, in the hope of finding a better existence. This is not only disturbing from a human standpoint, but is also legally problematic. Israel’s obligations under international humanitarian law and human rights law require that it must ensure the livelihood of the Palestinian residents in the Occupied Territory under its effective control and guarantee their right to work and to an adequate

standard of living. Moreover, it must be recalled that when Palestinian workers illegally cross the Annexation Wall, much of which lies *inside* the West Bank and cuts deep into Palestinian farmland, they are ultimately prevented from accessing Palestinian land that would otherwise provide an adequate source of livelihood.

This situation, in which residents of the West Bank are illegally crossing an arbitrarily constructed “border” to access sources of livelihood that are denied to them under occupation, adds urgency and relevance to the present Al-Haq report. The study aims to highlight and expose the additional physical and psychological abuse Palestinian workers face at the hands of the Israeli Border Guards and military personnel when they are apprehended crossing the Annexation Wall.

Witness Statements & Legal Analysis

Illegal use of firearms

Palestinian workers who try to enter Israel without a permit breach the military commander’s order defining the West Bank as a closed military area and violate the ‘Entry into Israel law’. However, this does not allow Israeli occupying forces free reign to use force against Palestinians who violate those laws. International law necessitates that when Israeli occupying forces aim to prevent Palestinians without permits from entering Israel, they must use a level of force that is reasonable, strictly necessary and proportionate to the stated objective. Unfortunately, as evidenced by several witness statements from Palestinian workers in 2009, Israeli occupation forces continue to use unnecessary and disproportionate force in carrying out these duties. Nowhere is this more evident, and more serious, than in their illegal use of firearms.

On 1 August 2009, Jad Tarwa travelled to al-Z’ayyem to try to enter Israel without a permit. As he was approaching the Annexation Wall, two Border Guards appeared from a nearby gate. Upon seeing them, Tarwa immediately ran away, turning back in the direction from which he had come. The Israeli Border Guards nevertheless opened fire, hitting Tarwa in the leg.¹⁹

Similarly, on 6 September 2009, Fathi Kawazba attempted to enter Israel from the village of al-Z’ayyem, near Jerusalem. His witness statement reads:

“There were dozens of Palestinian workers from all cities of the West Bank who were trying to enter Israel in order to work. The workers were gathering there because a Border Guard patrol was positioned in the area. For that reason, no one could clandestinely enter. An hour and a half later (that is, around 3:30 am), the Border Guard jeep left and I no longer saw it patrol the area. Therefore, around seven other workers and I approached a hole in the Wall in order to cross to the other side. However, the Border Guard jeep came back and officers saw us try to enter clandestinely. I quickly turned around and escaped, running

¹⁹ Al-Haq Affidavit No 5068 given by Jad Tarwa on 5 August 2009.

towards the town of al-Z'ayyem because I saw a soldier step down from the jeep and pointing his weapon at us. While I was running away, I heard the sound of one bullet, which sounded like 'tik'. Suddenly, I felt something cold in my leg after I had heard the bullet. Then, I felt pain, became lame and could not run any more. I also saw the young man who was running with me fall on the ground. After I walked for another two metres, I fell on the ground as well. I screamed of intense pain and was almost unconscious."²⁰

International normative guidance on the use of firearms by law enforcement officials can be found in the body of non-treaty human rights principles and standards formed by the UN Code of Conduct for Law Enforcement Officials (Code of Conduct) (1979) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles) (1990).

Article 3 of the Code of Conduct states: "*Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.* Furthermore, the commentary on this article clarifies that the use of firearms is considered as "an extreme measure" and that "*Every effort should be made to exclude the use of firearms...*".

Principle 9 of the Basic Principles states: "*Law enforcement officials shall not use firearms against persons except in self-defence or in defence of others against the imminent threat of death or serious injury...and only when less extreme means are insufficient to achieve these objectives...*".

The use of firearms against Jad Tarwa on 1 August 2009 and Fathi Kawazba on 6 September 2009 represents a failure by the Israeli Border Guard to adhere to these important and authoritative international standards. When they were fired at, both Tarwa and Kawazba were running away from the Border Guards and as such posed no threat to them, and certainly no "imminent threat of death or serious injury". Moreover, after both victims were shot, they were left lying on the ground. No attempt was made to arrest them. As such, the use of firearms in these cases cannot be conceived of as being part of the legitimate aim of making an arrest, which only adds to the suspicion that both workers were fired at as a deterrent or as a form of informal punishment.

Although Jad Tarwa and Fathi Kawazba were both hit in the leg, at times the use of firearms against Palestinian workers directly endangers their lives. The following is a witness statement by Ahmad Fatafta:

"I am married and the father of one girl. Her name is Lama and she is about 2 years old. For about ten years, I have been working in the construction sector in Israel because it is difficult to find work opportunities in the West Bank. To access my workplace in Israel, I travel from my town of Tarqoumiya to the town of al-Dahriyya, where cars bearing Israeli registration number plates transport workers to the area of the Separation Wall. Most, if not all, of these cars are not licensed

²⁰ Al-Haq Affidavit No 5086 given by Fathi Kawazba on 6 September 2009.

at the Israeli licensing departments. I clandestinely enter into Israel on foot through a section of the Wall that is currently incomplete. Each time I travel, transportation to access my workplace costs me about 200 shekels. Usually I stay one or two weeks at my workplace. I sleep at the construction site, which is usually unfinished. Construction sites are subject to frequent raids by the Israeli police and Border Guard forces. They search for workers who reside inside Israel without permits as well as arrest and return them to the West Bank. In most cases, Israeli police and Border Guard officers abuse workers.

At around 5:00 pm on Monday, 18 May 2009, I left the town of Tarqoumiya along with three other youths, including my relative Muhammad Hasan Fatafta, about 25 years old. We arrived at the town of al-Dahriyya at around 6:00 pm, where we waited for about an hour and a half. A Toyota pickup transported us. We were seven passengers, including four who sat inside the cabin and three others on the uncovered rear part of the pickup. I sat in the rear and my cousin Muhammad Hasan was inside. In 15 minutes, the pickup travelled from the centre of the town of al-Dahriyya towards the south and passed the village of al-Ramadin. Before we reached the Separation Wall, which is constructed south of the village of al-Ramadin, the driver stopped and reversed the pickup. (The Wall is made of barbed wire and a 300-metre-long fence). The driver said that he had received a call from a friend, who said there was an Israeli army jeep in the area. He preferred that we did not take the risk and return back. We were supposed to enter Israel by passing the incomplete section of the Separation Wall on foot. I heard the driver talk to his colleague on a wireless telecommunications device.

The pickup drove us back to the village of al-Ramadin. It drove slowly at a speed of not more than 50 km/h. It also crossed a low dirt barricade across a road. Five minutes later, I saw three Israeli soldiers on the left side of the road and two on the right side. Hiding behind the dirt barricade, they opened fire at the pickup after it passed them. The other two workers and I, who were in the rear part of the vehicle, lay on the floor. The soldiers opened fire for a short time, not more than one minute. I estimate that dozens of bullets were fired at us. Our driver continued to drive although one of the wheel tyres was hit. The rear window glass was also broken. After the first bullets were fired, I felt a sting in my right hand. I looked and saw it bleeding. I realised I was injured. After the pickup had travelled about half a kilometre, I realised that my cousin Muhammad Hasan sustained a bullet wound on his left ear. The pickup went on towards the village of al-Ramadin, which was at a distance of about two kilometres. Having arrived, my cousin Muhammad Hasan and I hired another car that transported us to the clinic of al-Dahriyya Municipality. After we were x-rayed and diagnosed, we received first medical aid. Doctors told me that a bullet had penetrated my right hand and had gone through my palm. They also told Muhammad that bullet shrapnel had hit his ear. A Palestinian ambulance transported us to Hebron Governmental Hospital. Muhammad Hasan left

the hospital on the same night. However, I spent the night at hospital and left it at noon the next day.

At the hospital, the other workers told me that bullets had hit the headsets of the driver's seat and the seat beside him. I believe this was why the driver continued to drive after fire was opened on us. He might have feared that casualties would be higher if he had stopped. The soldiers who opened fire on us did never ask us to stop. If they had done so, I would have been the first to hear them because I sat in the rear part of the pickup."²¹

This witness statement represents evidence of serious threats to the inalienable right to life of Palestinian workers. According to international human rights law, as expressed in Article 6 of the International Covenant on Civil and Political Rights, arbitrary deprivation of life is prohibited. Moreover, under international humanitarian law, soldiers must differentiate between civilians and combatants, ensuring respect for the fundamental principle of distinction that underpins this body of law.

By opening indiscriminate and intensive fire at vehicles suspected of transporting Palestinian civilian workers who pose no immediate or discernable threat, Israeli occupation forces are failing to respect their international legal obligations. In the case outlined above, soldiers fired at the car only after it had passed them, while it travelled at a modest speed of 50 kilometres per hour. It is unclear how the soldiers could have perceived the situation as an imminent threat. As such, the use of potentially lethal force, whereby bullets penetrated the glass of the vehicle and hit the headrests of the seats of the driver and a passenger, in this case is illegal and cannot be justified.

Beatings, degrading treatment and torture

When Palestinian workers who attempt to enter Israel without a permit are caught or arrested by Israeli Border Guards, they frequently fall victim to incidents of violence and severe brutality. As stated earlier, Israeli security forces may use reasonable force in self-defence or for duty-related purposes such as controlling rioters, apprehending suspects resisting arrest, or preventing a detainee from fleeing, but only to the extent strictly necessary for and proportionate to these legitimate objectives.²² Once a suspect is under control and in custody, the powers to use force are severely restricted. Overstepping these limited powers amounts to inhuman and degrading treatment and punishment and, in some cases, torture. Both the International Covenant on Civil and Political Rights²³ and the Convention against

²¹ Al-Haq Affidavit No 4920 given by Ahmad Fatafta on 23 May 2009.

²² *See, for instance*, Police Commissioner's Directive 4.03.02 – Use of Force: "Force may only be used if the law authorizes such use, when the duties of the police officer so require, and the force is necessary and justified under the circumstances. Police officers may use force only in the cases delineated in the Police Directives, and only to the extent that the force is needed to achieve the objective for which the use of force is required."

²³ Article 7 of the International Covenant on Civil and Political Rights states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,²⁴ to which Israel is a State Party, prohibit, under all circumstances, the use of torture and other excessive forms of punishment. Furthermore, as the International Criminal Tribunal for the Former Yugoslavia held in *Furundzija*, the prohibition against torture has evolved into a peremptory norm of international law or *jus cogens*, “one of the most fundamental standards of the international community” from which States cannot derogate “through international treaties or local or special customs or even general customary rules not endowed with the same normative force”.²⁵ Additionally, the “violation of the (...) body or dignity of *any person*” is prohibited under Israeli domestic law.²⁶

There now exists a broad consensus in international jurisprudence which demonstrates the “general acceptance” of the main elements contained in article 1 of the Convention Against Torture, which defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person (...) when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”²⁷ With regard to the differences between inhuman and degrading treatment and torture, however, both the Human Rights Committee and the Committee against Torture have found it unnecessary to establish sharp distinctions between the different kinds of punishment or treatment, since these distinctions “depend on the nature, purpose and severity of the treatment applied”.²⁸ Nonetheless, the practice of international courts and other judicial or quasi-judicial bodies makes clear that these legal differences are primarily characterized in terms of degree and the intensity of the pain or suffering caused.²⁹ In addition, torture - the most severe level of imposed suffering - requires the existence of a specific purpose behind the act, such as obtaining information or a confession, or the execution of a punishment.³⁰

According to Al-Haq’s documentation, Palestinian workers were routinely subjected to inhuman and degrading treatment and torture in 2009. What happened to workers after they were caught or arrested by the security forces can only be described as an alarming trend of informal punishment and brutality. The following witness statements, collected in 2009, are clear examples.

After ‘Isa al-Shalalda and other workers, including two of his relatives, managed to cross the Annexation Wall on 1 August 2009 in the area of al-Z’ayyem, east of the

²⁴ Israel ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 3 October 1991.

²⁵ *Prosecutor v. Anto Furundzija (Trial Judgement)*, IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, para 153-157.

²⁶ Basic Law: Human Dignity and Liberty, Article 2 - *Preservation of life, body and dignity*. (emphasis added)

²⁷ Antonio Cassese, *International Law* (New York: Oxford University Press, 2nd ed. 2005) 446; *Furundzija*, ICTY, para 161.

²⁸ HRC, *General Comment No. 20: Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 10 March 1992, para 4.

²⁹ Chris Ingelse, *The UN Committee against Torture: An Assessment* (The Hague: Kluwer Law International, 2001) 58-59; Cassese, *International Law*, at 446.

³⁰ International Committee of the Red Cross (ICRC), *What is the Definition of Torture and Ill Treatment?* Available at: <http://www.icrc.org/Web/eng/siteeng0.nsf/html/69MJXC>

city of Jerusalem, they encountered a Border Guard jeep on the other side. The following events then unfolded:

“Four Border Guard officers stepped down [from the jeep], pointed their weapons at us and ordered us to lie on our stomachs on the ground and to place our hands on our heads. Border Guard officers grabbed me, Hamza and Haytham, as well as two other workers from the city of Hebron. Later, I learned that the workers were Lou’ay Muhammad Hamdan ‘Abdallah (about 22 years old) and Ziyad ‘Ayesh Ahmad ‘Abd-al-‘Al (also about 22 years old). The officers tied our hands with plastic handcuffs, beat us with their feet, fists and rifle butts, and shouted obscenities at us. We screamed of pain.”³¹

On 8 August 2009, Tha’er Jaradat attempted to climb the Annexation Wall in the area of al-Ram, north of the city of Jerusalem. When he was atop the Wall, a Border Guard jeep arrived.

“Two Border Guard officers quickly stepped out of the jeep. One of these officers pointed his weapon at me and came close. He ordered me to get down. It was difficult to get back because the barbed wire fence was above me and the Border Guard officer was pointing his gun towards me. I jumped down from an area that was approximately four metres high and ran for about five metres in an attempt to flee. However, I was stopped by another Border Guard officer who grabbed me. The two officers severely beat me with their feet and rifle butts on all parts of my body, particularly on my feet. As a result, I fell on the ground. The Border Guard officer demanded that I stand up more than once, but I replied that I could not.

About 15 minutes later, a green Toyota arrived at the area. A Border Guard officer, who was of medium height and in his late twenties or early thirties, stepped out and threw two sound grenades towards the area on the other side the Wall. He then shouted at me in broken Arabic, demanding that I stand up. As I answered that I could not, he kicked my feet while I was lying on the ground. One of the Border Guard officers, who had first beat me, tried to force me to stand up with his aid, but I fell on the ground. He repeated his attempt three times. The Border Guard officer who had arrived in the green Toyota picked up a broom handle that was on the ground. He threatened to beat me with it if I did not rise to my feet.

“If you do not stand up, I will take you to the prison. I will say that you are a member of Hamas and will let the jailers do obscene acts to you,” the Border Guard officer threatened me.

However, I was unable to stand up. Several minutes later, a third Border Guard jeep arrived. An officer brought a large police dog with a muzzle on its mouth. He let the dog approach me and threaten me more than

³¹ Al-Haq Affidavit No 5066 given by ‘Isa al-Shalalda on 12 September 2009.

once to see whether I could walk and run away. An hour later the Border Guard officers demanded that I go to the Toyota car, which was five metres away from me. However, I could not stand up and walk. Therefore, the officers grabbed my arms to help me stand, but I continued to fall on the ground. As the Border Guard officers were insisting and yelling at me, I crawled on the ground towards the Toyota car and climbed to the rear seat. A Border Guard officer drove the car to the Border Guard station in the area of Hameshpir in al-Ram.”³²

On 14 March 2009, Naseem Shalaldeh and his brothers Sanad and Mohammed crossed the Annexation Wall in an area between Abu Dis and the Mount of Olives. When a Border Guard officer caught them, the following events unfolded:

“When my brother Muhammad presented his ID card, the officer kicked him in the right side of his waist. Muhammad screamed of pain. My brother Sanad and I got up and pushed the officer back so that he would not continue to beat Muhammad. “Why do you beat him? He has given you his ID card on your request,” I exclaimed.

“Sit down or I will shoot you,” he replied.

Therefore, Sanad and I sat down.

Five minutes later, the officer demanded that we move to a nearby road and sit on the sidewalk. Then, Ashraf Nadi Shalalda and Muhammad al-Khdour arrived accompanied by a Border Guard jeep. Ashraf could hardly walk and leaned on Mahmoud. Ashraf also put some paper tissues on his nose, which seemed to have been bleeding. I realised that Border Guards had captured him and had beaten him. Two Border Guard officers stepped down from the jeep. They were tall and of light complexion. Then, the officer told me to get in the jeep, which I did. Meanwhile, I heard my brother Muhammad ask the officer where he would take me.

“Do you want to go with him?” the officer asked Muhammad.

As Muhammad agreed, the officer told Muhammad to get in the jeep as well.

The officer also demanded that the other workers walked to the al-Zaytoun crossing, which was approximately 250 metres away from our location. In the meantime, the officer and two soldiers went onboard the jeep, which drove slowly towards the Crossing. There, the officer told me to get out. I had a book. The officer demanded that I give it to my brother Muhammad, who was still detained in the jeep. At the Crossing, the officer took me to the toilets and locked the door. As demanded, I took off my sweater, which he grabbed and threw on the ground. He also ordered me to empty my pockets. He tampered with the contents of my

³² Al-Haq Affidavit No 5021 given by Tha’er Jaradat on 10 August 2009.

wallet, gave it back to me, and told me to put it on a sink. Then, the officer took off his body armour, removed the ammunition from his weapon, placed the magazine in a reverse position, and put it on the sink.

“This is not necessary now,” he commented.

Then, he pushed me inside a toilet and ordered me to sit on the toilet seat, but I refused. Therefore, he severely beat me in an attempt to force me to sit down or lie on the ground. He shouted all kinds of obscenities at me and I screamed of pain. Fifteen minutes later, the officer stopped beating me after I told him I had had a surgical operation and that my health condition might deteriorate. He took me out of the toilet and requested to see the place where I had the operation. I lifted my shirt up and showed him the area where I had undergone appendix surgery three years earlier. Then, the officer took me out of the Crossing and told me to stand at a distance of 5 metres from the other workers and to turn my back.

I heard the officer call my brother Sanad and he took him inside. From the area where I stood, I heard Sanad scream. Later on, Sanad told me that the officer forced him inside a toilet like he had done with me. Sanad was even more severely and harshly beaten for 20 minutes. When he was out, Sanad’s face was red and he carried his jacket and possessions in his hands.”³³

Later that evening, Naseem Shalalkeh and his two brothers Sanad and Mohammed tried to cross the Annexation Wall a second time. Again they were caught by the Border Guard. They were taken to al-Z’ayyem checkpoint where they were, once more, severely maltreated:

“In less than ten minutes, a Border Guard jeep arrived at the checkpoint. An officer, who had a plastic insignia on his shoulders, as well as two Border Guards stepped down from the jeep. Speaking in fluent Arabic, the officer inquired about what had happened to Sanad. However, he said that they had seen Sanad on surveillance camera attempting to clandestinely enter on three occasions. The cameras showed Sanad fall off the wall and onto the ground. The officer attributed Sanad’s injuries to the fall off the wall, not to the fact that he had been severely beaten.

“If my brother had fallen off the wall, he would have injured either his head or his feet, not both,” I said.

Furthermore, I told the officer that I was ready to take him to the area where Sanad had been beaten and show him his blood there. I also commented that I would believe images recorded by the surveillance cameras if those images had not been tampered with. The officer did not like what I said. He grabbed my clothes and forcefully pushed me back. My head hit the side mirror of the Border Guard jeep. I felt that my skull had broken. Along with other Border Guards, the officer severely beat

³³ Al-Haq Affidavit No 4776 given by Naseem Shalalkeh on 17 March 2009.

me and my brother Muhammad, as he had protested when he saw them beating me. Other officers attempted to keep Muhammad and I away from those who were beating us, but it was in vain. The security officer wearing a black uniform also beat us. I tried to respond and protect my face. Meanwhile, the officer's insignia dropped on the ground when I touched it. He was enraged. Five minutes later, the officer in the black uniform took me to a square-shaped room, measuring about four by two square metres. With the upper half of the room made of glass, a soldier was usually positioned there to watch vehicles that crossed the checkpoint. It was located at a distance of about 20 metres from the place where we had been beaten. My brother Muhammad was also taken to a neighbouring, similar room. While he was directing me to the said room, the officer in the black uniform threatened me with an electric rod.

“If you move, you will die,” he told me.

The two security officers who had first stopped us near the checkpoint, two Border Guards, and the officer whose insignia fell off his shoulder entered the glass room.

“You have dropped this off,” the officer addressed me as he carried his insignia, “I will make you forget your mother's milk,” he went on.

All five officers started to beat me with their fists, feet and rifle butts on all parts of my body. I shouted and screamed of intense pain. Twenty minutes later, they released me. Immediately thereafter, they released my brother Muhammad. He told me that four Border Guards had beaten him with chairs and rifle butts and that his nose bled.”

Impunity and lack of judicial remedy

In addition to the violence and brutality Palestinian workers are exposed to, they are also denied any judicial recourse or remedy for the injustices they are subject to. Al-Haq concludes from its 2009 documentation that pervasive indifference and impunity result when Palestinian workers suffer intense physical and psychological abuse.

Palestinian workers are often denied urgent but feasible access to medical treatment. The Israeli occupying forces operating in the “seam zone” routinely refuse to call an ambulance for the Palestinian workers they have injured and deliberately postpone any medical intervention. That this amounts to an extra layer in the security forces' pattern of informal punishment and deterrence is evident from the fact that workers are very often left behind seriously injured or unconscious in the open fields or secluded olive groves where they were maltreated. Many of the witness statements Al-Haq collected in 2009 demonstrate not only the brutality many Palestinians are subjected to, but also the callousness of their treatment by the Israeli occupation forces in the aftermath of the incident.

From the witness statement of ‘Adnan Shalalda:

“Then, the two Border Guard officers, who had beaten me, ordered me to stand in the sun several metres away from the cabin. I was partly unconscious and lay motionless on the ground. More than once, I shouted for the two Border Guard officers to call an ambulance, but they did not care. As I continued to shout, they approached me and splashed water on my head. A Palestinian janitor who was in the area helped them. Then, a Border Guard officer offered me his cellular telephone and suggested that I call an ambulance. However, I was not able and reported that to him. At that point, one of the two Border Guard officers returned my ID card and told me to go away. At the same time, another Border Guard officer returned the ID card of Ra’fat, who immediately left the area. Although I tried more than once, I could not get up and my ID card fell on the ground. I lay on the ground again and was not conscious of what was going on around me. I came around over an hour or perhaps two hours later (I could not estimate the time), when a Border Guard officer was asking why I had not left the area. I told him I could not and asked that he call an ambulance for me. The Border Guard officer brought me some water to drink. Then, he and his colleague returned and splashed water on my head once again. They also tried to help me stand up, but I could not. After they left me, the driver of the jeep, who had taken our ID cards earlier, approached me and asked why I did not leave the area. I answered I could not.

“If you go away from this area, I will bring you an ambulance,” he commented.

I got up and walked uneasily for a distance of about 50 metres towards the Crossing, but I could not continue and sat in the shade in front of the Crossing. There, I spoke with two police officers who were in blue uniforms. A police officer asked me about what had happened to me and I replied I was severely beaten.

“Why did the Border Guard officers not arrange an ambulance for you?” he asked.

“I requested that they do so, but they refused,” I replied.

The police officer advised that I call an ambulance myself and go to the nearby town of al-’Eizariyya to receive medical treatment. However, I said I could not because of my condition. Therefore, he demanded that I rest for some time and wait for a car to transport me to al-’Eizariyya. After I rested for almost another 15 minutes, the jeep, the driver of which had taken our ID cards earlier, arrived and transported me to al-’Eizariyya Crossing. The officer of the jeep advised me to file a complaint there. I asked residents who were at the Crossing whether I could lodge a complaint and they said I should go to the settlement of Ma’ale Adumim, where an Israeli police station exists.”³⁴

³⁴ Al-Haq Affidavit No 5092 given by ‘Adnan Shalalda on 1 October 2009.

According to Al-Haq's 2009 documentation, the Israeli occupying forces routinely detain Palestinian workers for much longer than the limited period permitted in order to achieve certain strictly defined objectives, such as questioning or identity-check. Moreover, Israeli law states that "the detention and delaying of a person shall be made in a way that ensures maximum protection of the person's human dignity and rights".³⁵ Whereas it is evident that beatings and other forms of maltreatment are irreconcilable with ensuring respect for the human dignity of "illegal" workers and the legal protections against arbitrary detention, so too is denying them access to urgent medical treatment after they are beaten. Regularly, Palestinian workers are arbitrarily detained for several hours after severe maltreatment and abuse, and are left lying on the ground in the presence and under the control of the security forces who mistreated them. The following is an excerpt from the witness statement of Nathir al-Hreibat.

"The soldier who had told us to get out of the car asked in Hebrew whether I was the driver. Having lifted my head to reply, he hit me with the butt of his rifle on my shoulder and ordered me to remain lying on the ground. A short while later, the same soldier who had hit me came back and ordered me to rest on my hands and knees, lift my back and keep my face touching the ground, which I did. Then, he kicked me forcefully on my stomach several times. He also hit me with the rifle butt on my right shoulder and stomach. The strike on my stomach was so strong that I began to throw up. Two other soldiers came and began to tread on my back and kick me forcefully, while I was moaning because of the strikes. When I was being beaten, I kept my mouth shut, which a soldier noticed. Therefore, he ordered me to open my mouth, causing some soil to get in it. About half an hour later the soldiers stopped beating me, but I continued to throw up. Then they ordered a worker to help me. He lifted my head while I was lying on the ground. I suffered from pain and I vomited. Foam came out of my mouth. I remained in that condition for over one hour after the soldiers had stopped beating me. Meanwhile, I requested that soldiers give me some water to drink, but they refused, claiming that water would harm people in my condition."³⁶

The prevailing impunity in the OPT with respect to Israel's ongoing violations of international humanitarian and human rights law is illustrated by the lack of remedies available to Palestinian workers whose rights have been violated. Whereas Israel will occasionally investigate wrongdoing committed by its military and law enforcement officials, in the majority of cases, Palestinian victims are unable to seek redress. Complaints of maltreated Palestinian workers are routinely closed either for "lack of public interest" when the violence committed against them is only deemed to have been "minor", or for "lack of evidence" when the complaint is based only on testimony of Palestinian workers and is contradicted by statements of Israeli Border Guards or soldiers.³⁷

³⁵ Criminal Procedure (Enforcement Powers – Detention) Law, 5756 – 1996, Chapter One: General Provisions, Section 1(b).

³⁶ Al-Haq Affidavit No 5144 given by Nathir al-Hreibat on 5 November 2009.

³⁷ B'Tselem, *Crossing the Line: Violation of the Rights of Palestinians in Israel without a Permit*, at 64 (March 2007); State Comptroller, *Annual Report 56A* (August 2005), 361-363.

Moreover, in Al-Haq's experience, Palestinian workers often refrain from filing complaints for lack of trust in the Israeli judicial system or even for fear of exposing themselves to additional harassment and reprisals from the Israeli police. Additionally, in some cases maltreated workers are forced to sign documents, the contents of which are unknown to them. In Al-Haq's experience, this practice makes workers even more reluctant to seek accountability. The following is an excerpt from the witness statement of Tha'er Jaradat. After he was severely beaten, the following events took place:

“The two officers mocked me and alleged that I was lying and that I could walk. Upon their request, I crawled towards a ready-made room (a caravan), which was about three metres away from the car.

Meanwhile, I felt dizzy and nearly lost consciousness. Inside the caravan, I managed to climb and sit on a chair. Later, the Border Guard officer who had transported me in the Toyota car took my fingerprints on an electronic device. He also held my hand and signed my name on a paper, the content of which I did not know.”³⁸

When workers do wish to seek a remedy, the movement restrictions put in place by the Occupying Power in the West Bank often make it impossible for them to reach the very places where they are required to file their complaint, which are often located in settlements. Additionally, Israeli occupying forces will often refuse to identify themselves to Palestinian workers, making it impossible for the victim to name his attacker.

Conclusion and Recommendations

As the witness statements in this case study have demonstrated, Palestinian workers continue to experience harassment, abuse, mistreatment, and arbitrary detention in their search for employment, both inside Israel and in parts of the OPT that are cut off by the Annexation Wall. The evidence collected illustrates the extent to which Palestinian workers are exposed to serious violations of their fundamental rights. The study also makes evident that the violations are not isolated incidents, but are part of a disturbing trend that is directly associated with Israel's occupation regime.

Al-Haq calls upon the Israeli occupying authorities to carry out, in good faith, independent investigations into allegations of abuse and mistreatment made by Palestinian workers. Should Israel continue to deny Palestinian workers who fall victim to such violations an effective means of redress, the international community has a responsibility to take action to ensure that Israel complies with international law. Under Article 1 of the Fourth Geneva Convention, States Parties to the Convention are responsible for both respecting and “ensuring respect” for the Convention. Therefore, Al-Haq requests that the international community intervene with Israel to ensure that Palestinian workers are no longer mistreated or abused by Israeli occupation forces, and that there is accountability for any such violations.

³⁸ Al-Haq Affidavit No 5021 given by Tha'er Jaradat on 10 August 2009.

Al-Haq strongly emphasizes that the underlying reason Palestinian workers attempt unofficial entry into Israel is to secure a decent livelihood. Their inability to secure gainful employment in the West Bank is an effect of the continued and deepening failure by Israel to respect its fundamental obligations under international humanitarian law and human rights law. In particular, the Annexation Wall has exacerbated the deterioration of the economic situation in the West Bank, and has increased the exposure of Palestinian workers to abuse and arbitrary detention by Israeli occupation forces when they attempt to cross the Wall.

Al-Haq requests that the international community put pressure on Israel to stop the construction of the Annexation Wall and to advocate for its complete removal from the OPT. The 2004 International Court of Justice advisory opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territories determined that construction of the wall violates international law. The decision held that third states have an obligation not to recognize the illegal situation that arises from the Wall's construction, and must not render aid or assistance in maintaining the situation that results from its construction.

Ultimately, the violations of the right to life, the right to work and the right to an adequate standard of living result from Israel's ongoing denial of the right of the Palestinian people to self-determination through its continuing 43-year occupation of the OPT. True justice will only be achieved when international human rights and humanitarian laws are applied and enforced and the occupation is ended.