

Walajeh -- a Village under Siege

November 2010

The village of Walajeh is located on the southern seamline between Jerusalem and the Bethlehem district of the West Bank. The village's entire area, 18 km², is beyond the Green Line, but one third of its land on the northern side was annexed to Israel along with the rest of East Jerusalem and included in Jerusalem's municipal boundaries. As opposed to the rest of the Palestinian neighborhoods and villages that were annexed, Israel did not recognize the residents of Walajeh -- not even those who lived in the annexed part -- as residents of Jerusalem, and therefore almost all of the 2,500 residents of the village carry the orange identity cards of West Bank residents. Only a minority has the blue identity cards of Jerusalem residents, obtained by marriage and family unification in the days when that was still possible.

The village was originally located on the other side of the Refaim River (the route of the railroad tracks) on the west side of the Green Line, where the Israeli village of Aminadav is today. During the 1948 war the residents of Walajeh fled to their farming lands in the southeast and settled there. After 1967 the residents of the village lost an additional large amount of land, when about half of the area of the village was expropriated by Israel to build the settlement of Har Gilo and the neighborhood of Gilo southeast of Jerusalem.

Like most of the Palestinian villages in the area, Walajeh too was a farming village and until 1967 its residents were mainly farmers. Following the expropriations that detracted large swathes of the village's land, farming stopped being the main source of livelihood for the residents of the village and they sought work in the Bethlehem area as well as Jerusalem – inasmuch as they had the required work permits.

In the shadow of the separation barrier

In 2003, with the planning of the separation barrier in the southern part of Jerusalem, the residents of Walajeh were confronted with a very complex situation: as a rule, the separation barrier seeks to follow the municipal boundaries of the city determined in June 1967 when East Jerusalem was annexed. However, it goes beyond the municipal boundaries by placing the bubble of Gush Etzion on the Israeli side of the barrier and actually connecting it to the area of Jerusalem, with the village of Walajeh in the middle between Jerusalem and Gush Etzion. Building the barrier along the municipal boundaries in the Walajeh area actually means physically dividing the village, because the municipal boundary cuts through the village's land.

The initial proposal by the government of Israel as to the route of the barrier in the area left the entire village on the Israeli side of the barrier, but separated it from the Bethlehem district, which serves as the village's natural urban hinterland. Ultimately Israel decided on a route that surrounds the village with a barrier on all sides, separating it from most of its agricultural land, and completely disconnecting it from its surroundings, while connecting it by a single road to Beit Jala. One of the reasons is the desire to protect the transportation artery connecting Har Gilo to Jerusalem.

Even though most of the construction of the separation barrier in the Jerusalem area has long been completed, its construction in the Walajeh area began only recently,

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because of legal challenges against the approved route, as well as budgetary and other constraints.

Groundwork recently began for the construction of the separation barrier, amid protests by the villagers. As of today, the original route that was approved, which is supposed to surround the village on all sides, is still the valid route. A number of petitions have been submitted to the court against the planned route, including one by the Givat Yael Corporation, which plans to build a new Israeli neighborhood in the area with 13,000 housing units. Givat Yael wishes to change the route to allow the corporation maximum exploitation of the land on which it plans to build the new neighborhood. It is interesting to note that an opinion was attached to the petition by Givat Yael (which has not yet begun the administrative steps to approve the building plan) by none other than the planner of the original route of the separation barrier, Col. (Res.) Danny Tirzah, who now argues there is no security reason not to change the route of the barrier as per the request by the Givat Yael Corporation (more about the Givat Yael plan below).

The groundwork for building the separation barrier has been met by protests by residents of the village and Israeli activists who demonstrate regularly at the site. Meanwhile, a similar protest has been organized by residents of Har Gilo and Gush Etzion who also object to construction of the separation barrier, but the residents of Walajeh avoid creating any connection between the two protests and insist on distinguishing their resistance from the settlers'.

Who plans?

As part of the defective planning situation in most of the Palestinian neighborhoods of East Jerusalem, the Israeli planning authorities have never presented an official outline plan for the village of Walajeh -- neither for the parts of the village that are within Jerusalem's municipal boundaries nor for its other parts. This means the chances for residents of the village to receive building permits to build their houses legally are slim to nonexistent. However, that planning omission has not prevented the enforcement authorities from demolishing homes built in the village without licenses, which are de facto impossible to obtain because of the absence of a valid outline plan.

What the authorities failed to do, the residents of the village decided to do themselves, and with the help of the Jerusalem architects Claude Rosenkovich and Dahlia Klemes, they began to draw their own outline plan for the village.¹ The plan sought to resolve the problem of building without permits in the village, while preserving the unique agricultural terraces and maintaining Walajeh's unique rural character, with a modest expansion of the existing construction, erection of proper public buildings, and access roads to the village. One of the first questions that faced the residents was whether to plan the area of the entire village or only the part in the Jerusalem municipal boundaries. Even though they constitute a single settlement, the bureaucratic procedures in the two parts of the village deal with completely different bodies, complicating an already complex process. Ultimately they decided to plan the area of the entire village, but the Second Intifada brought the work on the plan to a standstill.

¹ TPS 12062.

Towards the end of the intifada, and after municipal bulldozers resumed home demolitions in the village, work on the outline plan resumed, with limited cooperation from the municipality regarding the planning of the part of the village located within the boundaries of Jerusalem. As for the rest of the areas in the plan that are located in the West Bank, the Civil Administration told the planners that if they met the threshold conditions of the District Planning and Building Committee, it too would accept the plan.

During work on the outline plan for the village, the planners learned from sources in the Jerusalem municipality about a plan on the drawing boards to build 13,000 housing units in the same area, and that the municipality tended to support massive Israeli building on the land of Walajeh. Behind this plan is the Givat Yael Corporation, which claims to own more than 2000 dunams in the Walajeh area, and the planner is the architect Eli Reches, the former partner of city engineer Shlomo Eshkol.

Meanwhile, the defense establishment finished defining the route of the separation barrier in the Walajeh area, intending to separate all of the land of the village from Jerusalem, as well as from the West Bank. In light of that, the planning officials in the municipality lost interest in preparing an outline plan for the village, apparently understanding that the Jerusalem municipality was going to disengage from the village de facto and de jure after the barrier was built. However, the planners received confirmation that the plan met the District Planning and Building Committee's threshold conditions, and thereby received the green light to continue advancing the plan.

Ultimately, the plan submitted by the residents of Walajeh was rejected in February 2009 after a three-hour discussion, after the director of the Jerusalem district of the Interior Ministry, Ruth Yosef decided against the plan, claiming the proposed plan is slated for a green zone, which is not zoned for construction.

The rejection of the plan of the Walajeh residents becomes more significant in light of a court decision made three years earlier, in response to an appeal submitted by 15 residents of Ein Jawiza neighborhood, in the Jerusalem part of the village, against the municipality's intention to implement demolition orders issued against their homes.² The appellants' main argument was that in the absence of a valid outline plan for the village, there was no real possibility of their receiving a building permit. The court accepted their argument and its decision from August 2, 2006 said: "In light of the aforementioned, we decided to consider the special circumstances of this case and provide a realistic extension for executing the demolition orders issued against the appellants, in the hope that the extension will allow for planning of the place that serves the appellants and their families as a residence [...] We order cancellation of the deadline for implementing the demolition orders against the appellants. The deadline for implementation shall not be decided before three years from today." In other words, the court postponed carrying out of the demolition orders by at least three years in order to give the appellants an extension to plan the neighborhood. Despite that court order, the District Committee rejected the residents' plan and left them once again without a planning solution and exposed to the threat of demolition.

Legal proceedings

² Jerusalem District Court, CA 009083/05.

Caught between the hammer of planning omissions and demolition orders and the anvil of the separation barrier that was about to hem them in from all sides, the residents of the village turned to legal channels to fight the route of the separation barrier that was going to completely isolate them from their surroundings and detract most of the village's agricultural land.

The main argument of the residents' petition focuses on the expiration of the requisition orders that were issued in order to build the separation barrier. After the route of the separation barrier was approved, two requisition orders were issued: one for the part of the route that goes through the territory of Jerusalem,³ and the other for the part of the route that runs through the West Bank, in the Har Gilo area.⁴ As for the rest of the route that lies south of the village, the state argued that the land in question was state land and did not require any requisition orders.⁵ The requisition order for the segment of the barrier that runs through the West Bank was signed on April 15, 2004 and was valid until the end of 2005. The validity of this order was extended several times until August 14, 2009, and was extended again until December 31, 2009. About two months after the order expired it was extended again until December 31, 2011, meaning that the extension was made for an order that had already expired. The fact that the requisition orders had not been realized for years since they were issued led to a number of petitions by various parties.

The Walajeh village council petitioned against various segments of the route represented by the lawyer Jiat Nasser. The petitions focus on two main arguments: the fact that no requisition orders were issued for large parts of it (the southern part of the barrier) and therefore the residents were not given the opportunity to appeal them, and the fact that the requisition orders that were issued (for the northern part of the barrier) had expired and were renewed after they were no longer valid.⁶ The Walajeh village council did not receive a copy of the map of requisition orders in the village area. The residents of the village filed their petition on March 29, 2010, immediately after receiving notice that work had begun to level the route for the separation barrier, which was expected to seriously damage the village's main road. In the petition they requested an interim order to stop the work until their claim was heard. This request is still pending in court and the work continues. Other petitions against the route of the barrier were made by the municipality of Beit Jala and residents of the city who own land in the area in question, as well as the Givat Yael Corporation (more about this petition below).

Ahmad Barjout's Petition

Along with the petition by the Walajeh village council, another petition was made by Ahmad Barjout, who lives in the northern part of the village,⁷ near the area where construction of the barrier was planned. According to the planned route, and requisition order 67/06, the barrier was supposed to "cut" through the Barjout family's

³ Requisition Order under the Law Regulating Land Requisition in Times of Emergency, 1949, RO 06-67.

⁴ Land Requisition Order T/32/04.

⁵ "...the land that is the subject of this petition is in the realm of the state land within the boundaries of the outline plan of the settlement of Har Gilo and on the basis of the route of the settlement barrier. Therefore no requisition order was issued for the area of the aforementioned work." Section 18 of the state response to the petition by the residents of Walajeh.

⁶ HCJ 2556/10.

⁷ HCJ 4119/10

burial grounds where the petitioner's parents and grandmother are interred, and completely destroy them. The Barjout family, along with other residents of the village, appealed against the aforementioned requisition order right after it was issued.⁸ Their appeal was rejected by the appeals committee, in the absence of Ahmad Barjout who did not receive an entry permit to Israel and therefore could not argue before the committee. Even though the appeal did not focus on the issue of the graves, the committee stated that "we have taken note of the commitment by the respondents that if graves are found on the land, the respondents will find them a local solution. We add that the solution must of course honor the feelings of the family members and be coordinated with them."

Since the state committed to coordinate work in the burial grounds with the family, the issue of the burial grounds was not included in the petition submitted by the Walajeh village council. But despite that commitment to the appeals committee, and despite the specific instruction by the committee that work in the burial grounds should be coordinated with the family, in early May this year the security authorities began construction of the barrier in the area without making any contact with the Barjout family about the aforementioned burial grounds.

The request to issue an injunction against continuing the work on this segment until a hearing in the court was rejected on June 1, 2010. Ahmad Barjout said that a representative of the defense establishment who visited the site promised him that a gate would be built in the barrier, allowing access to the family burial grounds. Even though Barjout knows Hebrew well, the representative chose to use an interpreter, who, upon hearing his statement, commented, according to Barjout's testimony: "Why are you making a promise you can't keep?"

The Givat Yael Corporation's petition

Besides the petitions by the Palestinian residents against the route of the separation barrier in the Walajeh area, another petition was made by the Givat Yael Corporation Ltd.

Givat Yael Corporation is an Israeli-owned commercial business that claims to own 2,000 dunams in the Walajeh area, where it wants to build a new neighborhood with 13,000 housing units that would close in the village from the east, north and west. The neighborhood would also include commerce and entertainment areas, a country club and roads, and will serve as a link between Jerusalem and the outskirts of Gush Etzion. The planner is architect Eli Reches, who was the partner of Shlomo Eshkol, the current city engineer, in the Reches-Eshkol architectural firm. Despite the corporation's claims of land ownership, and even though it has demonstrated presence on the ground by fencing off areas to which it claims ownership, to date the company has presented concrete ownership papers (in the form of registration in the land registry) for only two dunams.

Even though the plan's developers have not yet began the procedural measures needed to approve the plan and have not opened a town planning scheme (TPS) file for it yet, the plan has bounced around the corridors of the municipality, the District Committee and the Interior Ministry unofficially for years. As far back as 2004, after it learned of the changes the security system was planning to make in the original route of the

⁸ Appeal 738/06

barrier (which was supposed to leave the entire village on the Israeli side of the barrier), the Givat Yael Corporation asked the attorney general to prevent the proposed changes, but those legal proceedings were not exhausted because construction of the barrier in this area had been de facto frozen by the government. Once construction in the area resumed, the corporation petitioned the court, making a number of arguments: expiration of the requisition orders and their illegal renewal; the disproportionate harm to the corporation's property rights in the area; degradation of unique landscape and nature assets; and an argument that the approved route is not the best alternative from the security perspective. To prove that last argument, the company attached to its petition an opinion by none other than Col. (Res.) Danny Tirzah, who was in charge of planning the separation barrier for the Defense Ministry, and the person who was in charge of suggesting the route against which the Givat Yael Corporation is appealing.

Even though it looks on the surface as if the Givat Yael Corporation shares many of the same arguments of the residents of Walajeh against the route of the separation barrier in the area, it is important to stress that the construction project the corporation wishes to advance in the area poses no less, and in fact a much greater threat to the village. The construction of 13,000 housing units will fatally and irreversibly destroy the area's agricultural nature and unique landscape (in the name of which the Givat Yael Corporation is ironically petitioning against the current route), and worse, it will "suffocate" the village from three sides and exhaust all of the village's land reserves, disconnecting it from its surroundings almost completely. In a sense, the claim by the Givat Yael Corporation embodies the tragedy of the residents of Walajeh: if the petition is rejected and the present route of the barrier remains intact, it will isolate the village in a stranglehold that separates it from most of its land; if the petition is accepted, the village will be surrounded by a giant Israeli neighborhood from all sides, and lose its last land reserves.

In the Jerusalem 2000 Master plan, the area on which construction of the Givat Yael neighborhood is planned appears as a green zone where construction is forbidden. However, there is concern that this decision could change due to pressure by political parties who want to expand Israeli construction beyond the Green Line in the Jerusalem area. The plan's architect, Eli Reches, has already approached Interior Minister Eli Yishai, asking him to intervene on behalf of the plan in the planning agencies.

Degradation of landscape and nature

Along with the obvious political ramifications and the severe humanitarian violations, the present route of the separation barrier also threatens to fatally degrade the unique landscape of the Walajeh area.

In an opinion submitted to the court ahead of the hearing on the petitions against the barrier's route in the Walajeh area, the Society for the Protection of Nature in Israel (SPNI) said: "Unlike most of the area of the Judean Mountains, the slopes of the hills on the southern side of Refaim River, along 10 km between Gilo River and the village of Walajeh and the Ma'ayanot River and the village of Batir, preserve in all its vitality the traditional cultural landscape of the Judean Mountains. The continuity that characterizes the two villages (the village of Walajeh was reestablished on its farming land on the southern side of Refaim River after it was uprooted in 1948 from its historic location on the northern bank of the river), the continued agricultural

cultivation on the agricultural terraces that were renewed again and again, the traditional crops (olive trees and vines) and the use of traditional irrigation based on the many tunnel springs, justify calling the landscape a 'contiguous organic landscape' [...] This is the most unique and most important part of the landscape of the culture of agricultural terraces in the Judean Mountains and we think it is most worthy of being preserved and declared a 'world heritage' site."

Avraham Shaked, representative of the environmental organizations on the District Planning and Building Committee, said the "terrace agriculture" that still serves the residents of the village as well as the ancient irrigation methods in the area are part of a continuous and contiguous organic landscape whose historic roots go back hundreds or even thousands of years. Shaked considers the area's importance to be "on the scale of the pyramids or Machu Picchu but in this case this is a living site, the landscape of our ancestors."

The environmental organizations have many reservations both about the route of the barrier and about the construction plan of the Givat Yael neighborhood, which they perceive as a much greater violation. As to the route of the barrier, on May 18, 2010, about two weeks after resuming work at the site, the board of the SPNI sent a letter to Defense Minister Barak saying: "We regret that the national and universal importance of this natural landscape asset that requires preservation was not reflected in the planning of the seamline barrier in the area in question. The work, which has begun, is completely destroying hundreds-years-old agricultural terraces, agricultural facilities and ancient water systems, and fatally violating a landscape of Jewish, Israeli and world heritage."

Therefore the SPNI says in an opinion it submitted to the court that "unfortunately, it appears that the national and universal importance of this natural landscape asset that should be preserved was not reflected in the planning of the security barrier in this area," and states that "considering the severe damage expected by the continuation of the work, we think the government of Israel must order a stop and freeze of the work for enough time to allow reconsideration of the desired nature of the separation barrier in this area and technological alternatives or route alternatives for the planned barrier, which will considerably minimize the expected damage."

The court's position

On July 25, 2010 the High Court of Justice, in a bench including Justices Beinisch, Fogelman and Meltzer, heard petitions submitted against the route of the barrier in the Walajeh area, which were consolidated into one hearing. The Givat Yael Corporation withdrew its petition because it said there were technical errors regarding the requisition orders against which it was appealing.

As for the petition by the village council, the court issued an order nisi ordering the state to explain within 45 days why the requisition orders for building the separation barrier in the Walajeh area had not expired (as the residents claim), and why they would not reconsider the route of the barrier according to the proposal by the residents, backed by the opinion of Col. (Res.) Yuval Dvir from the Council on Peace and Security. According to the residents' proposal, the route of the barrier would be relocated to the path of the river along the Green Line, in a way that would not isolate the village from its surroundings or take away most of its land. The court also accepted the request by the SPNI to join the hearing with the status of *amicus curiae*

Conclusion

Since the government of Israel decided to build the separation barrier, the barrier's route raised substantial questions of security, humanitarian harm to the Palestinian population, degradation of nature and landscape assets and more. These questions all come to a head in the area of the village of Walajeh south of Jerusalem.

The idea to build a physical barrier to separate Israeli and Palestinian space was intended from the start, according to official statements, to provide as much security as possible to the citizens of Israel. But the security consideration is far from being the only consideration regarding the route of the barrier in the Walajeh area; the impossible situation in which the village has found itself derives from a series of varying and even conflicting interests that different parties wish to advance in this place.

Thus, the position of the state, which continues to insist on the present route that would surround the village in a 360° stranglehold, is motivated by the wish to defend the settlement of Har Gilo and the access roads to it, even if it means the complete disconnection of Walajeh from its surroundings and severe harm to its residents. The state's considerations are purely political, as opposed to the official reasons for building the separation barrier. In fact, as far as the security considerations, the two opinions attached by the residents of the village and the Givat Yael Corporation to their petitions, one by Col. Yuval Dvir and the other by Col. Danny Tirzah, who planned the original route of the barrier, establish clearly that the present route does not provide the optimal security solution. Furthermore, even after approving the route of the barrier in the area, the security system took no measures to further the work and it was not undertaken for more than six years. Now, with no indication of an increase in the security threat from this area, work has begun to build the separation barrier on a route that is supposed to surround the village completely and separate it from its environment and most of its farming land.

But it is not only political interests that are going to decide the future of the village and its surroundings but also clear economic interests of influential real estate sharks, who want to build a giant neighborhood in the area for tens of thousands of residents. This plan, which we have reason to believe has supporters in the corridors of City Hall and the Ministry of the Interior, may not only irreversibly degrade the rare agricultural landscape of Walajeh, but also change the political map of the area in a way that will seriously impede the possibility of reaching a political solution in the area. The planners of the neighborhood may have withdrawn their petition against the present route of the barrier in the Walajeh area at the last minute, but probably have not abandoned the idea of building the neighborhood they want. If this does go forth, it will be hard to overstate the political and environmental damage it is going to cause.

The court gave the state a 45-day extension to explain why it should not consider relocating the barrier in the Walajeh area to a more reasonable route – security-wise as well as in terms of the degree of damage it causes the residents of the village and the landscape. This decision is an opportunity to reconsider all of the issues on the agenda, to give them the proper weight and to come up with an alternative solution that provides the necessary security but does not involve brutal and disproportionate

harm to the fabric of life of the Palestinian residents and the ecological systems of the area, and without serving as an excuse to promote political and real estate interests.

In a discussion that was held in the High Court of Justice on November 8, 2011 following the state's response, the Court announced its decision as follows:

“We put on the record before us that the State's Attorney gave notice that the work in the eastern part of the route will not continue, until the issue of possible narrowing of the route, which injures the natural surroundings, will be determined. Within 45 days, the respondents will notify what is the normative status of the land designated for confiscation.”

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What the authorities failed to do, the residents of the village decided to do themselves, and with the help of the Jerusalem architects Claude Rosenkovich and Dahlia Klemes, they began to draw their own outline plan for the village.⁹ The plan sought to resolve the problem of building without permits in the village, while preserving the unique agricultural terraces and maintaining Walajeh's unique rural character, with a modest expansion of the existing construction, erection of proper public buildings, and access roads to the village. One of the first questions that faced the residents was whether to plan

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Legal proceedings

Caught between the hammer of planning omissions and demolition orders and the anvil of the separation barrier that was about to hem them in from all sides, the residents of the village turned to legal channels to fight the route of the separation barrier that was going to completely isolate them from their surroundings and detract most of the village's agricultural land.

The main argument of the residents' petition focuses on the expiration of the requisition orders that were issued in order to build the separation barrier. After the route of the separation barrier was approved, two requisition orders were issued: one for the part of the route that goes through the territory of Jerusalem,¹¹ and the other for the part of the route that runs through the West Bank, in the Har Gilo area.¹² As for the rest of the route that lies south of the village, the state argued that the land in question was state land and did not require any requisition orders.¹³ The requisition order for the segment of the barrier that runs through the West Bank was signed on April 15, 2004 and was valid until the end of 2005. The validity of this order was extended several times until August 14, 2009, and was extended again until December 31, 2009. About two months after the order expired it was extended again until December 31, 2011, meaning that the extension was made for an order that had already expired. The fact that the requisition orders had not been realized for years since they were issued led to a number of petitions by various parties.

The Walajeh village council petitioned against various segments of the route represented by the lawyer Jiat Nasser. The petitions focus on two main arguments: the fact that no requisition orders were issued for large parts of it (the southern part of the barrier) and therefore the residents were not given the opportunity to appeal them, and the fact that the requisition orders that were issued (for the northern part of the barrier) had expired and were renewed after they were no longer valid.¹⁴ The Walajeh village council did not receive a copy of the map of requisition orders in the village area. The residents of the village filed their petition on March 29, 2010, immediately after receiving notice that work had begun to level the route for the separation barrier, which was expected to seriously damage the village's main road. In the petition they requested an interim order to stop the work until their claim was heard. This request is still pending in court and the

¹¹ Requisition Order under the Law Regulating Land Requisition in Times of Emergency, 1949, RO 06-67.

¹² Land Requisition Order T/32/04.

¹³ "...the land that is the subject of this petition is in the realm of the state land within the boundaries of the outline plan of the settlement of Har Gilo and on the basis of the route of the settlement barrier. Therefore no requisition order was issued for the area of the aforementioned work." Section 18 of the state response to the petition by the residents of Walajeh.

¹⁴ HCJ 2556/10.

work continues. Other petitions against the route of the barrier were made by the municipality of Beit Jala and residents of the city who own land in the area in question, as well as the Givat Yael Corporation (more about this petition below).

Ahmad Barjout's Petition

Along with the petition by the Walajeh village council, another petition was made by Ahmad Barjout, who lives in the northern part of the village,¹⁵ near the area where construction of the barrier was planned. According to the planned route, and requisition order 67/06, the barrier was supposed to "cut" through the Barjout family's burial grounds where the petitioner's parents and grandmother are interred, and completely destroy them. The Barjout family, along with other residents of the village, appealed against the aforementioned requisition order right after it was issued.¹⁶ Their appeal was rejected by the appeals committee, in the absence of Ahmad Barjout who did not receive an entry permit to Israel and therefore could not argue before the committee. Even though the appeal did not focus on the issue of the graves, the committee stated that "we have taken note of the commitment by the respondents that if graves are found on the land, the respondents will find them a local solution. We add that the solution must of course honor the feelings of the family members and be coordinated with them."

Since the state committed to coordinate work in the burial grounds with the family, the issue of the burial grounds was not included in the petition submitted by the Walajeh village council. But despite that commitment to the appeals committee, and despite the specific instruction by the committee that work in the burial grounds should be coordinated with the family, in early May this year the security authorities began construction of the barrier in the area without making any contact with the Barjout family about the aforementioned burial grounds.

The request to issue an injunction against continuing the work on this segment until a hearing in the court was rejected on June 1, 2010. Ahmad Barjout said that a representative of the defense establishment who visited the site promised him that a gate would be built in the barrier, allowing access to the family burial grounds. Even though Barjout knows Hebrew well, the representative chose to use an interpreter, who, upon hearing his statement, commented, according to Barjout's testimony: "Why are you making a promise you can't keep?"

The Givat Yael Corporation's petition

Besides the petitions by the Palestinian residents against the route of the separation barrier in the Walajeh area, another petition was made by the Givat Yael Corporation Ltd.

Givat Yael Corporation is an Israeli-owned commercial business that claims to own 2,000 dunams in the Walajeh area, where it wants to build a new neighborhood with 13,000 housing units that would close in the village from the east, north and west. The

¹⁵ HCJ 4119/10

¹⁶ Appeal 738/06

neighborhood would also include commerce and entertainment areas, a country club and roads, and will serve as a link between Jerusalem and the outskirts of Gush Etzion. The planner is architect Eli Reches, who was the partner of Shlomo Eshkol, the current city engineer, in the Reches-Eshkol architectural firm. Despite the corporation's claims of land ownership, and even though it has demonstrated presence on the ground by fencing off areas to which it claims ownership, to date the company has presented concrete ownership papers (in the form of registration in the land registry) for only two dunams.

Even though the plan's developers have not yet began the procedural measures needed to approve the plan and have not opened a town planning scheme (TPS) file for it yet, the plan has bounced around the corridors of the municipality, the District Committee and the Interior Ministry unofficially for years. As far back as 2004, after it learned of the changes the security system was planning to make in the original route of the barrier (which was supposed to leave the entire village on the Israeli side of the barrier), the Givat Yael Corporation asked the attorney general to prevent the proposed changes, but those legal proceedings were not exhausted because construction of the barrier in this area had been de facto frozen by the government. Once construction in the area resumed, the corporation petitioned the court, making a number of arguments: expiration of the requisition orders and their illegal renewal; the disproportionate harm to the corporation's property rights in the area; degradation of unique landscape and nature assets; and an argument that the approved route is not the best alternative from the security perspective. To prove that last argument, the company attached to its petition an opinion by none other than Col. (Res.) Danny Tirzah, who was in charge of planning the separation barrier for the Defense Ministry, and the person who was in charge of suggesting the route against which the Givat Yael Corporation is appealing.

Even though it looks on the surface as if the Givat Yael Corporation shares many of the same arguments of the residents of Walajeh against the route of the separation barrier in the area, it is important to stress that the construction project the corporation wishes to advance in the area poses no less, and in fact a much greater threat to the village. The construction of 13,000 housing units will fatally and irreversibly destroy the area's agricultural nature and unique landscape (in the name of which the Givat Yael Corporation is ironically petitioning against the current route), and worse, it will "suffocate" the village from three sides and exhaust all of the village's land reserves, disconnecting it from its surroundings almost completely. In a sense, the claim by the Givat Yael Corporation embodies the tragedy of the residents of Walajeh: if the petition is rejected and the present route of the barrier remains intact, it will isolate the village in a stranglehold that separates it from most of its land; if the petition is accepted, the village will be surrounded by a giant Israeli neighborhood from all sides, and lose its last land reserves.

In the Jerusalem 2000 Master plan, the area on which construction of the Givat Yael neighborhood is planned appears as a green zone where construction is forbidden. However, there is concern that this decision could change due to pressure by political parties who want to expand Israeli construction beyond the Green Line in the Jerusalem

area. The plan's architect, Eli Reches, has already approached Interior Minister Eli Yishai, asking him to intervene on behalf of the plan in the planning agencies.

Degradation of landscape and nature

Along with the obvious political ramifications and the severe humanitarian violations, the present route of the separation barrier also threatens to fatally degrade the unique landscape of the Walajeh area.

In an opinion submitted to the court ahead of the hearing on the petitions against the barrier's route in the Walajeh area, the Society for the Protection of Nature in Israel (SPNI) said: "Unlike most of the area of the Judean Mountains, the slopes of the hills on the southern side of Refaim River, along 10 km between Gilo River and the village of Walajeh and the Ma'ayanot River and the village of Batir, preserve in all its vitality the traditional cultural landscape of the Judean Mountains. The continuity that characterizes the two villages (the village of Walajeh was reestablished on its farming land on the southern side of Refaim River after it was uprooted in 1948 from its historic location on the northern bank of the river), the continued agricultural cultivation on the agricultural terraces that were renewed again and again, the traditional crops (olive trees and vines) and the use of traditional irrigation based on the many tunnel springs, justify calling the landscape a 'contiguous organic landscape' [...] This is the most unique and most important part of the landscape of the culture of agricultural terraces in the Judean Mountains and we think it is most worthy of being preserved and declared a 'world heritage' site."

Avraham Shaked, representative of the environmental organizations on the District Planning and Building Committee, said the "terrace agriculture" that still serves the residents of the village as well as the ancient irrigation methods in the area are part of a continuous and contiguous organic landscape whose historic roots go back hundreds or even thousands of years. Shaked considers the area's importance to be "on the scale of the pyramids or Machu Picchu but in this case this is a living site, the landscape of our ancestors."

The environmental organizations have many reservations both about the route of the barrier and about the construction plan of the Givat Yael neighborhood, which they perceive as a much greater violation. As to the route of the barrier, on May 18, 2010, about two weeks after resuming work at the site, the board of the SPNI sent a letter to Defense Minister Barak saying: "We regret that the national and universal importance of this natural landscape asset that requires preservation was not reflected in the planning of the seamline barrier in the area in question. The work, which has begun, is completely destroying hundreds-years-old agricultural terraces, agricultural facilities and ancient water systems, and fatally violating a landscape of Jewish, Israeli and world heritage."

Therefore the SPNI says in an opinion it submitted to the court that "unfortunately, it appears that the national and universal importance of this natural landscape asset that should be preserved was not reflected in the planning of the security barrier in this area,"

and states that "considering the severe damage expected by the continuation of the work, we think the government of Israel must order a stop and freeze of the work for enough time to allow reconsideration of the desired nature of the separation barrier in this area and technological alternatives or route alternatives for the planned barrier, which will considerably minimize the expected damage."

The court's position

On July 25, 2010 the High Court of Justice, in a bench including Justices Beinisch, Fogelman and Meltzer, heard petitions submitted against the route of the barrier in the Walajeh area, which were consolidated into one hearing. The Givat Yael Corporation withdrew its petition because it said there were technical errors regarding the requisition orders against which it was appealing.

As for the petition by the village council, the court issued an order nisi ordering the state to explain within 45 days why the requisition orders for building the separation barrier in the Walajeh area had not expired (as the residents claim), and why they would not reconsider the route of the barrier according to the proposal by the residents, backed by the opinion of Col. (Res.) Yuval Dvir from the Council on Peace and Security. According to the residents' proposal, the route of the barrier would be relocated to the path of the river along the Green Line, in a way that would not isolate the village from its surroundings or take away most of its land. The court also accepted the request by the SPNI to join the hearing with the status of *amicus curiae*

Conclusion

Since the government of Israel decided to build the separation barrier, the barrier's route raised substantial questions of security, humanitarian harm to the Palestinian population, degradation of nature and landscape assets and more. These questions all come to a head in the area of the village of Walajeh south of Jerusalem.

The idea to build a physical barrier to separate Israeli and Palestinian space was intended from the start, according to official statements, to provide as much security as possible to the citizens of Israel. But the security consideration is far from being the only consideration regarding the route of the barrier in the Walajeh area; the impossible situation in which the village has found itself derives from a series of varying and even conflicting interests that different parties wish to advance in this place.

Thus, the position of the state, which continues to insist on the present route that would surround the village in a 360° stranglehold, is motivated by the wish to defend the settlement of Har Gilo and the access roads to it, even if it means the complete disconnection of Walajeh from its surroundings and severe harm to its residents. The state's considerations are purely political, as opposed to the official reasons for building the separation barrier. In fact, as far as the security considerations, the two opinions attached by the residents of the village and the Givat Yael Corporation to their petitions,

one by Col. Yuval Dvir and the other by Col. Danny Tirzah, who planned the original route of the barrier, establish clearly that the present route does not provide the optimal security solution. Furthermore, even after approving the route of the barrier in the area, the security system took no measures to further the work and it was not undertaken for more than six years. Now, with no indication of an increase in the security threat from this area, work has begun to build the separation barrier on a route that is supposed to surround the village completely and separate it from its environment and most of its farming land.

But it is not only political interests that are going to decide the future of the village and its surroundings but also clear economic interests of influential real estate sharks, who want to build a giant neighborhood in the area for tens of thousands of residents. This plan, which we have reason to believe has supporters in the corridors of City Hall and the Ministry of the Interior, may not only irreversibly degrade the rare agricultural landscape of Walajeh, but also change the political map of the area in a way that will seriously impede the possibility of reaching a political solution in the area. The planners of the neighborhood may have withdrawn their petition against the present route of the barrier in the Walajeh area at the last minute, but probably have not abandoned the idea of building the neighborhood they want. If this does go forth, it will be hard to overstate the political and environmental damage it is going to cause.

The court gave the state a 45-day extension to explain why it should not consider relocating the barrier in the Walajeh area to a more reasonable route – security-wise as well as in terms of the degree of damage it causes the residents of the village and the landscape. This decision is an opportunity to reconsider all of the issues on the agenda, to give them the proper weight and to come up with an alternative solution that provides the necessary security but does not involve brutal and disproportionate harm to the fabric of life of the Palestinian residents and the ecological systems of the area, and without serving as an excuse to promote political and real estate interests.

In a discussion that was held in the High Court of Justice on November 8, 2011 following the state's response, the Court announced its decision as follows:

“We put on the record before us that the State's Attorney gave notice that the work in the eastern part of the route will not continue, until the issue of possible narrowing of the route, which injures the natural surroundings, will be determined. Within 45 days, the respondents will notify what is the normative status of the land designated for confiscation.”

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