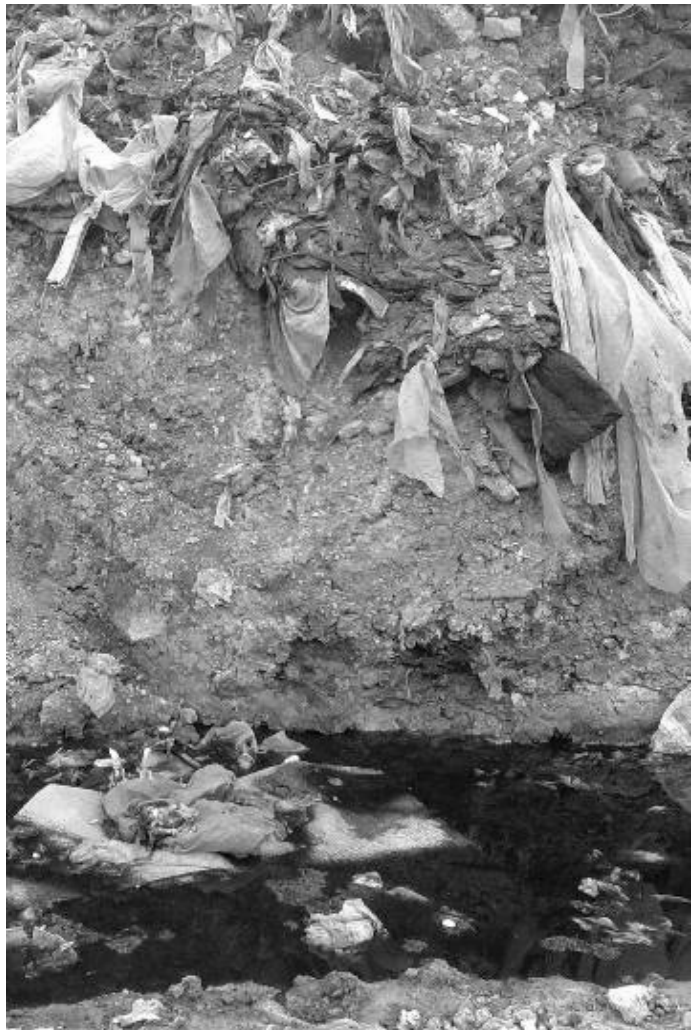

Abu Dis: from Land Expropriation to Landfill

Israel's waste disposal site
beyond the Green Line

The Palestinian Human Rights
Monitoring Group (PHRMG) and
The Camden Abu Dis Friendship Association
(CADFA)



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Executive Summary

This report assesses the legality of the Israeli landfill site that is located in Abu Dis, within the occupied Palestinian territory (oPt). It discusses three issues: Israeli land expropriation within Abu Dis for the purpose of constructing a landfill site; the disposal of Israeli waste within the occupied territory; and the environmental damage caused to the oPt as a result of the site.

According to International Humanitarian Law (IHL), the expropriation of land within occupied territories can only occur when due to military necessity or for the benefit of the local population. Israel claims that the expropriation of Abu Dis land has been for 'public purpose'. However, the higher percentage of Israeli waste being disposed of at the site, compared to the percentage of Palestinian waste being disposed of, suggests that the primary benefit of the site is not experienced by the local Palestinian population but rather by the Israeli population. Further, the inclusion of the Abu Dis waste disposal site within an area, E1, which is demarcated for Israeli residential and commercial development, to benefit Israeli settlers living within Ma'ale Adummim and Qedar settlements, suggests that the ongoing expropriation of this land is being partially motivated by its strategic location rather than solely due to any 'public purpose' that the waste disposal site may have. Therefore, the primary objective of the site is to serve the population of the occupying power, Israel, and the developmental interests of that power. The Israeli High Court of Justice has previously ruled that it is the primary objective of an undertaking which determines its legality; the waste disposal site in Abu Dis should therefore be considered to be illegal.

The disposal of Israeli waste within the oPt has also been justified by the fact that Palestinian local councils are able to dispose of their waste at this site. However, Palestinian access to the site is often directly or indirectly restricted. Firstly, the landfill levy imposed on waste disposal at the site is higher than Palestinian local councils are able to finance, given the weaker economy of the oPt, compared to that of Israel; this disincentivises local councils from disposing of their waste at the site. Secondly, the Israeli authorities intermittently prevent Palestinian local council access to the site, whether due to the fact that local councils have not paid the landfill levy or for often unspecified 'security reasons'. The result of both of these restrictions is the accumulation of Palestinian waste in Abu Dis town, attracting pests and emitting a foul smell. Local solutions to this waste management problem include the illegal dumping of waste and the burning of waste within residential areas, leading to inappropriate waste treatment and subsequent health risks.

The management of the site itself fails to meet both international and national standards. The site is inadequately gated, fenced and signed. The result is that areas of the landfill site are readily accessible to local residents and that illegal dumping can occur. The uncontrolled collection of some fluid flowing off the landfill site and collecting around its base is also of concern as is the questionable maintenance of the site, including the maintenance of leachate pipes leading to the leachate tank. The fact that the site is located above a mountain aquifer, providing water for both Palestinians and Israelis, makes such potential lapses in the environmental standards at the site of particular importance. Further, that it has been built within close proximity of a Bedouin encampment which suffers from the stench and associated nuisances of the site, including stray dogs which descend into the encampment and savage livestock, raises specific concerns about the impact that this site may be having on the health and safety of local residents.

Although a plan to close the site was announced in 2003, the site has since been expanded without a clear timeframe for its closure being given. The site is now at or nearing full capacity but an alternative site has yet to be decided on. Whilst the construction of a new site within the industrial area of Ma'ale Adummim has been ruled as illegal, due to the fact that Palestinians would be unable to benefit from it, the construction of a site within Israel seems unlikely due to the increased waste disposal costs that such a site would involve. The result is that the Abu Dis site continues to operate, the land that it is built on remains unavailable to its Abu Dis owners, and the environmental and health hazards of the site increase.

This report calls for the Israeli Government to issue a timeframe for the closure and rehabilitation of this site and the subsequent return of the expropriated lands to its owners. Plans to include the land within the E1 Israeli development area should be withdrawn. Whilst the site remains in operation, in the interim, the Israeli Government should upgrade it to ensure that it meets Israeli standards for landfill site management and withdraw any plans to relocate more Bedouins to nearby areas. The Ma'ale Adummim Company for Planning and Development should be investigated for mismanagement of the site and, where necessary, prosecuted for its failures to meet national laws. Further, the landfill levy should be reduced for Palestinian local councils and their access to the site should be unrestricted. It should be emphasised that these measures are interim measures, to be implemented whilst the complete and safe closure of the site is being planned for and carried out.

Introduction

In 1998, Hiriya landfill, serving the greater Tel Aviv area since 1954, was closed down and plans for its rehabilitation were drawn up. It was closed on account of the fact that it had reached “full capacity” and because there was “potential contamination of groundwater sources, stench, air pollution [and] aesthetic blight...”¹ Since January 2005 its rehabilitation has been implemented, with a completion date of December 2011. The site now comprises a visitor's centre, recycling plant and technologies to convert waste matter into green energy. In the future, it is likely to become the site of an extensive Israeli park land; Ayalon park. The waste that was formerly taken to Hiriya is now taken to new, or upgraded, state-of-the-art landfill sites in Israel. The closure of Hiriya landfill was part of a government plan introduced in 1993, to close down unregulated waste dumps and to upgrade existing landfills. There were to be 15 regulated landfills under Israeli authority, two of which were located within the West Bank: Tovlan and Abu Dis. The Tovlan site was upgraded in 2004; the upgrading of the Abu Dis site, serving the Jerusalem area, has not yet occurred. As stated by Deputy Prime Minister, Ehud Barak, the Abu Dis site “is the only site in the country that continues to operate according to primitive norms.”²

This report highlights the urgent need to upgrade the Abu Dis waste disposal site, as an interim measure whilst planning for the site's decommissioning and rehabilitation. The Abu Dis site has not been dealt with in accordance with Israel's guidelines for the upgrading of other landfill sites. This failure to improve the site's environmental standards is of particular concern given that the site has been built and continues to expand on land situated within the occupied Palestinian territory (oPt) and expropriated from local Palestinian residents for ‘public purpose’.

Whilst the Abu Dis site has been brought to the attention of NGOs and the UN previously, international pressure has, thus far, had little success in ceasing Israel's use of the site. This year, however, two developments may allow for an opportunity to affect Israel's attitude towards this dump site. Firstly, in January 2010, Ehud Barak acknowledged the inadequacies of the site and its failure to meet Israeli standards for landfills. He announced the planned transfer of Jerusalem's waste to alternative sites and the eventual closure of the Abu Dis landfill. The closure of the Abu Dis site has been planned and

¹ Israeli Ministry of the Environment (2008). *Hiriya and Duda'im – A tale of two landfills*. [Online]. Available from: http://www.sviva.gov.il/Environment/Static/Binaries/Articals/hiriya_dudaim_1.pdf

² Waldoks, E.Z. (2010). ‘Barakat announces plans to overhaul waste disposal in capital’ in *Jerusalem Post*. [Online]. 25 January. Available from: <http://fr.jpost.com/servlet/Satellite?cid=1263147977568&pagename=JPost%2FJPArticle%2FPrinter>

postponed since the 1990s; the challenge in light of this new announcement is to maintain pressure on the Government to ensure the realisation of this plan. Secondly, in May 2010, Israel was accepted as a member of the Organization of Economic Cooperation and Development (OECD).³ As such, Israel will be required to meet specific international standards and will be subject to regular analysis by the OECD. This external monitoring of Israel's development should encourage the State to improve its environmental standards. It may now be that the closure and rehabilitation of the Abu Dis site is preferable for Israel, as well as for the oPt.

This report will address three issues of legality arising from the continuing use of the waste disposal site in Abu Dis. Chapter 1 discusses the expropriation of Palestinian private property from within the occupied territory for the construction of the waste disposal site. The Israeli Government's justification for the site's location is that the local population benefits from it; this report questions the extent of this benefit for Palestinians. The chapter also places the expropriation of the land within the context of Israel's plans for future development in the area and discusses Israel's 'primary objective' for the site and the impact that this has on its legality. Chapter 2 discusses the issue of an occupying power disposing of its waste within occupied territory. Although Israel states that Palestinian usage of the area validates its existence in the oPt, restrictions on Palestinian access to the site result in such usage being limited. Chapter 3 of the report examines the site's failure to meet both Israeli and international standards for the appropriate management of landfills. It discusses how inappropriate management of the site has led to environmental and health hazards in the surrounding area which puts the local population at risk.

When discussing the legality of the waste disposal site, the report will refer to three areas of law. Firstly, it will discuss international law. Within this, it will refer to International Humanitarian Law (IHL) which protects civilians at a time of war or occupation and which Israel, as an occupying State, is obliged to abide by. The 1907 Hague Regulations and the 1949 Geneva Conventions are the main instruments of IHL that will be discussed in this report. Also, under international law, the paper will refer to various international agreements, outside of IHL, which regulate the conduct of States regarding specific undertakings, such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, which Israel has ratified. Secondly, the paper will discuss what will be broadly referred to as the 'Oslo Accords', meaning those agreements formed under the Oslo I and Oslo II Accords, in 1993 and 1995 respectively, between the Israeli Government

³ Organisation for Economic Cooperation and Development (2010). *Accession: OECD Welcomes Chile, Estonia, Latvia and Israel*. [Online]. May. Available from: http://www.oecd.org/document/4/0,3343,en_21571361_44315115_45335108_1_1_1_1,00.html

and the Palestinian Liberation Organisation. Finally, the paper will discuss aspects of Israeli civil and military law which provide standards for the conduct of Israeli affairs, internally and in the oPt.

Chapter 1: Israeli expropriation of Palestinian land

1.1 Location and development of the Abu Dis site



Figure 1 - Map of Jerusalem and the Abu Dis Dump Site⁴

The landfill site is located on lands between Abu Dis and Ayzrya on the eastern side of the separation barrier (Figure 1). It lies between two Israeli settlements; Ma'ale Adummim and Qedar. The site is within Area C, an area demarcated under the Interim Agreements of the Oslo Accords, over which Israel has complete authority, including authority for planning and zoning.

The site was first developed in accordance with the 1987 *Solid Waste Disposal Master Plan for Judea and Samaria [the West Bank]*, developed by the Israeli Civil Administration. The plan stated

⁴ Jerusalem Policy Forum (2008). *Solid Waste Management Policy in the Jerusalem District*. [Online]. September. p 32. Available from: <http://www.pdf-palestine.org/wast.pdf>

that seven landfill sites were to be located within the West Bank and would operate for a twenty year period. Abu Dis was one of these seven landfills and came into operation in the late 1980s. This site and the Tovlan site, located in the Jordan Valley, are the only two landfills implemented under the 1987 plan that remain in operation.⁵

A detailed plan for the site, Plan 58/1603, was released in 1992. A further plan for the site, Plan 58/1603/1, was released in 2003. According to the latter plan, the Abu Dis site would be closed within a few years. Until that time, the borders of the site would be expanded and the waste dumped per day would increase from approximately 1000-1200 tons to 1,800 tons.⁶ The closure of the Abu Dis site would occur once a replacement waste disposal site at Mishor Adummim had been opened.⁷ The plan for this new site, Plan 58/420/7, prepared by Geo-Prospect Ltd and submitted by the Ma'ale Adummim Municipality, comprised 87 hectares of land (making it twice the size of the valid plan for the Abu Dis site) and would be built on lands belonging to the Palestinian villages of 'Anata, Khan al-Ahmar and Nabi Musa.⁸ However, this plan was cancelled after the Attorney General's office forbade "disproportionate" disposal of waste beyond the Green Line (the pre-1967 boundary between Israeli and Palestinian territories), within occupied territory, at a site which the Palestinian population would be prohibited from using.⁹ Whilst it is encouraging that the Attorney General recognises the legal issues involved in having an Israeli disposal site within occupied territory, the failure to decide on an alternative site, within Israel, has meant that the current Abu Dis site, still located within occupied territory, continues to be used for Israeli waste.

1.2 Legal Framework

i) International law

⁵ Israeli Ministry of Foreign Affairs (1998). 'Chapter 2: Environmental Infrastructure' in *Regional Environmental Cooperation*. [Online]. July. Available from: <http://www.mfa.gov.il/MFA/Peace+Process/Regional+Projects/Chapter+2-+Environmental+Infrastructure.htm?DisplayMode=print>

⁶ B'tselem and Bikom (2009). *The Hidden Agenda. The Establishment and Expansion Plans of Ma'ale Adumim and their Human Rights Ramifications*. December. p 32. Available from: http://www.btselem.org/Download/200912_Maale_Adummim_Eng.pdf.

⁷ Ecopeace / Friends of the Earth Middle East (2006). 'A Seeping Time Bomb – Pollution of the Mountain Aquifer by Solid Waste', in *Investigative Report Series on Water Issues No. 3*. [Online]. January. p 16. Available from: http://www.foeme.org/index_images/dinamicas/publications/publ59_1.pdf

⁸ B'tselem and Bikom, op. cit., p 33.

⁹ Zafirir Rinat (2009). 'Capital's Garbage Dump Close to Overflowing' in *Haaretz*. [Online]. 13 May. Available from: <http://www.haaretz.com/print-edition/news/capital-s-garbage-dump-close-to-overflowing-1.275897>

The 1907 Hague Regulations (the Regulations) state that the property of the occupied State must not be seized or destroyed unless “imperatively demanded by the necessities of war”. A prohibition is also placed on the confiscation of private property, which the occupying State is obliged to respect.¹⁰ Article 147 of the Fourth Geneva Convention (the Convention) affirms this, stating that “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” is to be considered a grave breach of the Convention.¹¹ Land appropriated due to military necessity is therefore permitted under this article.

The Regulations state, however, that the occupying State has a duty to protect land within the occupied territory. The occupying State is considered to be the “administrator or usufructuary” of such land and, as such, must “safeguard the capital of these properties”.¹² Any significant and long lasting changes made by the occupying State to the land of occupied territory is therefore prohibited, under Article 55.

Further, Article 43 of the Regulations provides that the occupying power should “restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”.¹³ This article thus gives a provision for the occupying state to implement projects that are for the benefit of the local population and which promote public order and safety.

Therefore, any land destroyed or appropriated by the occupying power for reasons other than military necessity or for the benefit of public order and safety, constitutes a grave breach of the Convention and, as such, a war crime¹⁴. It is incumbent upon State parties to criminalise such grave breaches and to prosecute those responsible for committing them or ordering their commission.

ii) Israeli Law

¹⁰ Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulations Concerning the Laws and Customs of War on Land (1907). The Hague, 18 October 1907. Article 23 (g) and Article 46.

¹¹ Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949). Geneva, 12 August, Article 147.

¹² Convention (IV) Respecting the Laws and Customs of War on Land, op. cit. Article 55.

¹³ Convention (IV) relative to the Protection of Civilian Persons in Time of War, op. cit. Article 43.

¹⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol (I)) (1977). 8 June *entered into force* Dec. 7, 1978. Article 85 (5).

Israel has made provisions for land expropriation within the oPt by means of various Military Orders. In particular Military Order (MO) 321, issued in 1969, provides for the expropriation of lands for “public purposes”. A provision is given for an Objections Committee to receive objections to expropriation but the Military Order states that the decision of the Committee is final and cannot be challenged. MO 949, issued in 1991, provided an amendment to MO 321, stating that no prior warning of expropriation needs to be given to the owner of the land but instead it may be given to the village chief (*mukhtar*) or published in the “Compilation of Proclamations.”¹⁵

The Israeli Supreme Court (the Court) has ruled in support of the provisions given by these Military Orders. In 1974, the former Court President, Meir Shamgar, stated: “With respect to expropriation in Judea and Samaria, it should be mentioned that international law generally denies the military government the authority to expropriate land in occupied territories; however, there is evidence supporting the position that *it is permissible to expropriate land for the needs of the local population* upon payment of compensation.”¹⁶ Similarly, in 1982, the Court stated that it was illegal to build infrastructure in the West Bank that was not to be used for military purposes or to serve the needs of the local population.¹⁷ Eyal Zamie, former deputy Legal Advisor for Judea and Samaria affirmed this by stating, in 1985: “Expropriation of land for public purposes [in the West Bank] is not prohibited. Three pre-conditions must be met: first, the acquisition is made in accordance with the local law; second, the landlord is fully compensated; and third, the acquisition is for a public purpose.”¹⁸

1.3 Land expropriation in Abu Dis – for public purpose?

i) Who dumps what?

The waste disposal site serves both Israeli and Palestinian populations living within the Jerusalem area, on both sides of the separation barrier.

¹⁵ COHRE and BADIL (2005). *Ruling Palestine – A history of the legally sanctioned Jewish-Israeli seizure of land and housing in Palestine*. [Online]. May. p 98. Available from:

<<http://www.cohre.org/store/attachments/COHRE%20Ruling%20Palestine%20Report.pdf>>.

¹⁶ Meir Shamgar cited in B'tselem and Bikom, op. cit., p 17.

¹⁷ Ecopeace / Friends of the Earth Middle East, op. cit., p 8.

¹⁸ Eyal Zamie cited in B'tselem and Bikom, op. cit., p 16.

The Israeli population utilising the Abu Dis site lives in Jerusalem and in West Bank settlements including Mevaseret Zion, Gush Etzion RC, Efrat, Beitar Ilit, Giv'at Ze'ev and Ma'ale Adumim.¹⁹ The Palestinian populations utilising the site live in Jerusalem, the Jerusalem suburbs located on the eastern side of the separation barrier, including Abu Dis, Sawahrih and Ayzrya, and in the Bethlehem area.²⁰ The Israeli Ministry of Foreign Affairs states that the Abu Dis site serves Jerusalem, Bethlehem, Beit Jalah, Beit Sahur and A-Ram and does not provide disaggregated data on the quantity of Israeli and Palestinian waste disposed of at the site.²¹

The majority of waste deposited at this site is produced in Jerusalem, including East Jerusalem. Recent statistics suggest that 90 per cent of the waste deposited at the Abu Dis site originates in Jerusalem, 4 per cent originates from nearby settlements and the remaining 6 per cent is contributed by Palestinian communities.²² Considering that the Israeli population, in 2005, constituted 67 per cent of the Jerusalem population,²³ and considering that the Palestinian population produces, on average, two thirds of the quantity of waste per day that the Israeli population produces,²⁴ the Israeli population is dumping significantly more waste at the Abu Dis site than the Palestinian population.

According to the Israeli Court, allowing the local population to dispose of their waste at the site, is 'benefiting' them and legitimizes the expropriation of land for 'public purpose'. This does not take into account the benefit for the Palestinian population *relative to* the benefit for the Israeli population and neither does it take into the account the environmental damage caused to the occupied Palestinian territory which may, over time, counteract the limited benefit realised by the Palestinian population.

ii) The Development of E1

The Israeli authorities issued Expropriation Order 41/80 in the 1980s to assume ownership of 53 hectares of Abu Dis land on which the waste site would be constructed.²⁵ The waste disposal site has, since then, been included within the southern section of an area referred to as "E1" (see

¹⁹ Ecopeace / Friends of the Earth Middle East, op. cit., p 22.

²⁰ Ecopeace / Friends of the Earth Middle East, op. cit., p 23.

²¹ Israeli Ministry of Foreign Affairs, op. cit.

²² B'tselem and Bikom, op. cit., p 32.

²³ Ecopeace / Friends of the Earth Middle East, op. cit., p 22.

²⁴ B'tselem. *East Jerusalem*. [Online]. Available from: <http://www.btselem.org/English/Jerusalem/>

²⁵ Information provided by Captain Aryeh Sahaya in response to a freedom of information request submitted by B'tselem in 1999. Cited in B'tselem and Bikom, op. cit., p 7 and 31.

Figure 1). This area lies within the municipal jurisdiction of the Israeli settlement, Ma'ale Adummim. The outline plan for E1, plan 420/4, includes approximately 1,200 hectares designated for “residential use, tourism, regional commerce and services, a regional cemetery, roads...” and was approved in 1999.²⁶

Although E1 is currently in two non-contiguous areas, with Palestinian lands that are continually cultivated dividing them, B'tselem notes that “if the residential neighbourhoods planned in E1 are built, it is very doubtful whether the Palestinian landowners will be able to continue to reach these enclaves and cultivate them, given the spatial reality created by the outline plan and given that the jurisdiction areas of all the settlements were declared by the army Commander as a closed military zone for Palestinians.”²⁷ B'tselem has stated that the selection of this area for a waste disposal site was made by Israel's Ministry of Housing and Construction in order to limit Palestinian building in this area.

The waste disposal site is now therefore part of a larger Israeli development within the West Bank that has involved the expropriation of more lands and threatens to cause the stagnation of Palestinian communities living within it.

1.4 Case Study: Landowner – Salah Ayyad, Abu Dis²⁸

Salah works in real estate and holds a number of positions in civil organisations and societies in Abu Dis. He owns approximately 60 dunams of land that has been expropriated by the State for the waste disposal site. He also owns approximately 100 dunams of land within Ma'ale Adummim which, as a Palestinian, he is unable to access.

“My family is one of the three main families in Abu Dis. The Ayyad family own a lot of land that has been confiscated by the Israeli State in order to build Ma'ale Adummim and the Abu Dis dumpsite. We used to use the land to grow barley, beans and other crops.

In 1979, we found out that about 30 dunams of our land had been expropriated by the State for “public purpose”. We found out through village chiefs, *mukhtars*, who the Israelis informed, and through specialist publications that we rarely saw. We were offered compensation but we didn't take it; we won't accept that Israel takes our land.

²⁶ B'tselem and Bikom, op. cit., p 25.

²⁷ B'tselem and Bikom, op. cit., p 27.

²⁸ Ayyad, Salah. Personal interview. 14 August 2010.

About 20 small families, all belonging to the three main families in Abu Dis, appointed a lawyer, Darwish Nasser, to petition the expropriation in Court. The case took over a year and we paid over \$25,000 in legal fees. The Court ruled that we did not own the land and that it was State Land that was going to be used for public purpose. We cannot appeal the decision.

We had tried to prove our ownership of the land by providing the Court with a number of documents that showed we had registered the land in our name and that we had paid taxes. We paid experts over \$5,000 to work with us in proving this. The British had introduced land registration in 1938, under the mandate. They had also required land owners to pay taxes, just as the Jordanian administration did after them. My family registered our land and we have documents to prove that and to prove our tax payments. The Court said that our tax payments were actually rental payments and that it was State land that we were renting.

In the last 10 years the dumpsite has really expanded. It now uses more land than the area announced to be expropriated in 1979. In 2005, the dumpsite began to use more of our land than was originally taken. On this land they built a lake that collects fluid from the dumpsite. I have heard that one drop of this fluid can kill 3 camels. The area of the land they took for this is approximately another 30 dunams. This time, they didn't tell us or the *mukhtars* about the land expropriation; we just saw it happening. In 2007, we went to Court again to try and stop them taking more land. We knew we would lose but at least if we try, we can explain to other people the full expropriation process. The Court again told us that this was State land, not our land, and that it was being used for public purpose.

But the Israeli authorities clearly don't think it is State land because they repeatedly tell my family, and others who own land there, that they will pay us any amount we want in order to *buy* the land from us. Why would they need to *buy* it from us if they already own it?! They offer us a blank cheque; we can name the price. But I will never sell my land to them; it's mine. Even if we did want to, we would face problems with the Palestinian Authority (PA). Two months ago, the PA arrested 3 people, one from my family, who had tried to sell land being used for the dumpsite to Israel.

This area of land that they have been using since 2005 used to be called "the bread basket" of Abu Dis. I remember when I was young, rain water used to run through the valley and everywhere was green. It was the main source of Abu Dis' food. We continued to use this land until about 1994 when we had to stop. The Israelis forbade us from digging wells and installing pipes to deliver

water to our crops. They also forbade us from building any structures, including even a shelter, so it became difficult for us to work there. The PA did nothing to help us.

I read last month that the dumpsite will be closed by the end of this year. I know they have said they will close the dump before and then they haven't but this time I think they really will. They will close it because the environmental impact is now affecting Israelis living in settlements; I don't think it's anything to do with the environmental impact it has already been having on us. I have heard that, when they close it, the land will be included in Ma'ale Adummim – my land is lost.”

1.5 Summary

The waste disposal site is of some benefit to the local Palestinian population due to the fact that it can dispose of its waste there. However, the primary objectives of the waste disposal site being built in Abu Dis appear to be to serve the nearby Israeli Jerusalemite and settler populations and to prevent Palestinian building in an area earmarked for Israeli development. Both of these objectives can be seen as being at the expense of the Palestinian population and not for their benefit. The Israeli High Court of Justice has previously stated that the dominant objective of an administrative action determines its legality.²⁹ Given this, the Abu Dis waste disposal site, located within the occupied Palestinian territory, and primarily for the benefit of the Israeli population, is illegal.

²⁹ B'tselem and Bikom, op. cit., p 34.

Chapter 2: Waste being deposited by the occupying power within the occupied territory

2.1 Waste disposal site usage

Although both Israeli municipalities and Palestinian local councils use the Abu Dis site, they arrange their usage separately. It is the responsibility of each Israeli municipality to collect the municipal solid waste (MSW) from the relevant locations and to deliver it to Abu Dis. Israeli construction waste is also permitted to be dumped at the Abu Dis site but the collection and transportation of such waste is the responsibility of the individual building contractors and not that of the municipality. Similarly Palestinian local councils are each responsible for organising waste collection and depositing it at the waste disposal site.

Both Palestinian and Israeli waste disposal trucks are charged 40 NIS per ton of waste dumped at the Abu Dis site. Since 2007, the Israeli Government has imposed an additional levy on waste dumping in an attempt to internalise the environmental costs of using landfills sites.³⁰ The levy increases each year but currently stands at 30 NIS per ton of mixed municipal waste and 2.4 NIS per ton of construction waste; in 2011, the levy will increase to 50 NIS and 4 NIS, respectively.³¹ Whilst Palestinian local councils are also obliged to pay this levy, there is currently a case before the Israeli courts requesting an exemption (see Section 2.2.iii). Palestinian councils have been unable to pay the levy and are therefore in debt to the Ma'ale Adummim Company for Planning and Development, which is responsible for the site.

The revenue from the landfill levy is passed on to the Maintenance of Cleanliness Fund, administered by the Israeli National Government. Municipalities are able to apply to this fund to receive grants to mediate against environmental damage by, for example, implementing a recycling program. Whilst the Ministry of Environmental Protection website states that the Fund can benefit areas within or without municipal boundaries, it is unclear whether Palestinian communities are able to apply to the fund for assistance or if they have done in the past.³²

³⁰ Maintenance and Cleanliness Law 5744 (1984). [Online]. Article 11B. and 11C. Available from:

<http://www.sviva.gov.il/Environment/Static/Binaries/Articals/maintenance_of_cleanliness_law_1984_1.pdf>

³¹ Israeli Ministry of the Environment (2008). 'Planning for integrated solid waste management in Israel' in *Israel Environment Bulletin*, vol. 32. [Online]. May. p 15. Available from:

http://www.sviva.gov.il/Environment/Static/Binaries/ModulKvatzim/32.14-19_1.pdf

³² Ministry of Environmental Protection (2010). *Landfill levy*. [Online]. 29 July. Available from:

<http://environment.gov.il/bin/en.jsp?enPage=e_BlankPage&enDisplay=view&enDispWhat=Zone&enDispWho=landfill_levy&enZone=landfill_levy>.

2.2 Legal Framework

i) International Law

It is useful here to consider again Article 55 of the Hague Regulations, which states that the properties of the occupied territory must be “safeguarded” and the occupying power can act only as “administrator.”³³ Any waste created by the occupying power must therefore be appropriately dealt with by that power.

Further, the Basel Convention, ratified by Israel in 1994, states that the exporting of waste from one state to another requires written consent from the state of import.³⁴ It further requires that such exporting of waste should only occur if the party of export: “does not have the technical capacity and the necessary facilities, capacity or suitable disposal sites”; if the materials exported are of use to the party of import; or if both parties agree with the criteria for exporting the waste.³⁵

ii) Oslo Accords

The Oslo I (1993) and Oslo II (1995) Accords between the Israeli Government and the Palestinian Liberation Organisation (PLO) laid out provisions for the two Parties cooperation and communication on environmental projects. According to Annex III of the Declaration of Principles on Interim Self Government Arrangements, 1993, an Israeli Palestinian Committee for Economic Cooperation would liaise on all projects of mutual interest, and work to establish, *inter alia*, an Environment Protection Plan.³⁶ Annex IV provided for the establishment of a Regional Development Program which would include an Economic Development Programme for the West Bank, dealing with, amongst other things, a project for infrastructure development.³⁷

The 1995 Israel-Palestinian Interim Agreements on the West Bank and Gaza Strip set out further provisions for environmental cooperation between the two sides. Article 12 calls for

³³ B'tselem and Bikom, op. cit., p 33.

³⁴ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1992). Article 4.1 (c).

³⁵ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, op. cit. Article 9.2 (c).

³⁶ Oslo I: Declaration of Principles on Interim Self Government Arrangements (2003). 13 September. Annex III, paragraph 10.

³⁷ Oslo I, op. cit. Annex IV, paragraph 10.

each side to establish an Environmental Experts Committee to ensure “environmental cooperation and understandings.”³⁸ This Committee would implement an Environmental Impact Assessment for major development programs, including programs for solid waste disposal.³⁹ In order to implement the type of cooperation and communication outlined in Article 12, the two sides established the Joint Israeli Palestinian Environmental Experts Committee.

Article 12 further states that the territorial responsibilities within Area C, including solid waste and planning and zoning, would be transferred to Palestinian jurisdiction within 18 months of when the Palestinian Interim Self-Government Authority was established.⁴⁰

iii) Israeli law

The Abu Dis waste disposal site falls under Ma’ale Adummim Municipal control and is therefore subject to Israeli jurisdiction. In 1997, the Israeli Ministry of Justice ruled that the disposal of waste by Israel in the West Bank is illegal. However, in the case of the Abu Dis waste disposal site, its accessibility to the Palestinian population has been used to justify its presence beyond the Green Line.

In 2009, Ma’ale Adummim Municipality requested that it be exempt from paying levies for Palestinian waste disposal because Palestinian local councils had not been paying their levies at the site. When the request to be exempt was denied, the Ma’ale Adummim Municipality attempted to prevent Palestinian local councils from dumping their waste at the waste disposal site. The response of the State Attorney was that if Palestinian communities were no longer permitted to dispose of waste at the site, it would negate “the very legal justification for the existence of the site”. He stated “the Abu Dis waste disposal site’s legitimization stems from the fact it provides a solution for the lawful disposal of Palestinian refuse. That is, it is unreasonable to build and operate a waste disposal site in the heart of a certain population, without that population gaining benefit from the site, while it only bears the environmental costs.”⁴¹

³⁸ Annex III Protocol Concerning Civil Affairs - Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995). 28 September. Article 12. A) 22.

³⁹ Annex III Protocol Concerning Civil Affairs - Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, op. cit. Article 12. A) 7.

⁴⁰ Annex III Protocol Concerning Civil Affairs - Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, op. cit. Article 12. A) 2.

⁴¹ *Ma’ale Adummim Municipality v. Commander of IDF Forces in Judea and Samaria et al.* [2009]. February 22, H CJ 10611/08, sections 55 and 56 of the state’s response.

2.3 Palestinian involvement at the waste disposal site

i) Palestinian consent

Communication and cooperation between the Palestinian and Israel sides, in accordance with the plans set out in Oslo I and II, have largely broken down since the Second Intifada. Since that time, the Committees and plans provided for at Oslo have largely ceased to operate.⁴² The Joint Israeli Palestinian Environmental Experts Committee, for example, has not met since 1999.⁴³

Further, despite the establishment of the interim self-government, the Palestinian National Authority (PNA), Area C has not been transferred to Palestinian jurisdiction and remains under Israeli control. The failure to continue the implementation of committees for cooperation and communication between the Palestinian and Israeli sides, in addition to the fact that Area C remains under Israeli control, has meant that Palestinian consent regarding the waste disposal site has not been addressed. Israel is therefore disposing of its waste within the oPt without the consent required to do so under international law.

ii) Palestinian access to the site

Israel has stated that the dumping of its waste within the occupied territory is legal as long as Palestinians are also able to dump their waste at the site. Although, in theory, Israel permits dumping of waste at the site by Palestinian local councils, in practice two factors restrict Palestinian councils' ability to do so: the cost of the levy for dumping waste at the site; and the intermittent Israeli closure of the site to Palestinian local council trucks.

a) The landfill levy

Although the implementation of levies at landfill sites is intended to internalise the environmental cost of waste disposal, it has been also been recognised as a disincentive for legal waste disposal within poorer communities.⁴⁴ Israeli and Palestinian waste disposal trucks are charged the same tipping fee and the same levy for using the site. However, the difference in wealth between Israel and the oPt is vast: within the West Bank, the GDP per

⁴² UNEP (2003). *Desk Study on the Environment in the Occupied Palestinian Territories*. [Online]. p 19. Available from: http://www.unep.org/download_file.multilingual.asp?FileID=105.

⁴³ Mel Frykberg (2009). 'West Bank Becomes Wasteland' in *ISP News*. [Online]. May. Available from: <http://ipsnews.net/news.asp?idnews=46858>

⁴⁴ Jerusalem Policy Forum (2008). *Solid Waste Management Policy in the Jerusalem District*. [Online]. September. p 10. Available from: <http://www.pdf-palestine.org/wast.pdf>

capita, in 2008, was \$1,485.3⁴⁵ whilst in Israel, for the same year, the GDP per capita was \$28,291.9.⁴⁶ The disparity in the wealth of the two areas has meant the cost of waste disposal for Palestinians is significantly higher, relatively, than it is for Israelis. This has been illustrated by the fact that Palestinians have ceased paying the landfill levy. Although the Court has ruled that Palestinians cannot be prevented from dumping at the site, in practice, the company managing the site intermittently blocks Palestinian entry to the site as a result.⁴⁷



Figure 2 - Municipal Solid Waste being dumped illegally at the back of the Abu Dis waste dumpsite.

b) Restricted access

Palestinian access to the waste site is intermittently denied at times of conflict or for 'security concerns', as well as at times when local councils have not paid the levies.⁴⁸ During the second intifada, the IDF classified waste issues as humanitarian, in order to allow waste trucks to be treated as emergency vehicles and to allow them to reach necessary waste disposal sites. However, in practice, the directive does not seem to have been implemented on the ground, as the case study below illustrates.⁴⁹

⁴⁵UN Data (2010). *The occupied Palestinian territory*. [Online]. Available from: <http://data.un.org/CountryProfile.aspx?crName=Occupied%20Palestinian%20Territory>

⁴⁶ UN Data (2010). *Israel*. [Online]. Available from: <http://data.un.org/CountryProfile.aspx?crName=Occupied%20Palestinian%20Territory>

⁴⁷ Zafirir Rinat, op. cit.

⁴⁸Ecopeace / Friends of the Earth Middle East, op. cit., p 4.

⁴⁹Ecopeace / Friends of the Earth Middle East, op. cit., p 8.

iii) Impact of limited Palestinian access to the site

When waste cannot be disposed of at the site, it collects in communal areas for prolonged periods of time, attracting insects, stray cats and dogs and emitting a putrid stench. As one solution, local Abu Dis residents now illegally dump their waste at the site, using the back entrance, which is unmanned and easily accessible from the ring road that circles Ayzarya, Abu Dis and Sawahrih and connects to Bethlehem. Evidence of illegal dumping is clear: piles of black bags and household waste are visible (Figure 2), as are collections of broken electronic items, such as computers (Figure 3). Such waste is not appropriately treated and is a health hazard for local Bedouin residents who access this area of the site in order to retrieve reusable waste. Another solution adopted is the burning of waste by local councils or members of the public. This puts local residents at risk due to the toxins subsequently released into the air.



Figure 3 - Electronic waste and household waste being dumped around the site

2.4 Case Study: Community Centre Coordinator - Abed al-Wahab Sabbah

Abed is a resident of Abu Dis, influential in the local community as Coordinator of the Abu Dis Community Centre – Dar Al Saddaqa. He has been following the development and expansion of the waste disposal site and its impact on Abu Dis.

“In 1996, the Palestinian Authority created an Abu Dis local council. Each household pays 15 NIS to the local council for them to pick up their rubbish each month and it then collects the rubbish each week. The refuse is collected from communal skips located in various places around the village.

Sometimes the rubbish is collected each week, sometimes the local council says it has problems with the collection trucks and sometimes the rubbish dump itself doesn't allow the local council access. The trucks then have to drive to Ramallah or Bethlehem. If the rubbish cannot be disposed of, the local council or local residents set fire to the bins around the village.

I remember it was particularly bad in September 2004, during the second intifada. All of Abu Dis was under curfew for most of the day. From September until the end of that year, they [the Israeli authorities] refused to allow trucks to go to the disposal site.

In 2007, we experienced another waste crisis, for 3 months. The local council trucks were refused access to the site. When we contacted the local council to ask why the rubbish was accumulating in the streets, they told us that the Israeli authorities had prevented access because the Council had been unable to pay the levies imposed. During that time, rubbish just piled up on our streets and roads. People couldn't tolerate it so we set fire to the bins.

But this happens repeatedly. Every two or three months we have a similar problem; they stop our access for a few days or a week. When we ask the Council why, they tell us the Israeli authorities tell them it is for 'security reasons'. We always expect the problems to get worse during the summer months. It's true that sometimes the Council doesn't collect the rubbish because it has problems of its own, as I have said, but most of the time it is due to the Israeli authorities."⁵⁰

2.5 Summary

Whilst Israel claims that it can legally dispose of its waste within the oPt as long as Palestinians also use the same waste disposal site, in reality Palestinian access to the site is often restricted. If Palestinian local councils are allowed access to the site, the financial strain on the Council and the local residents is debilitating. The result is that Israel can dispose of its waste away from its own residential areas, changing the natural environment within the oPt, whilst Palestinian residents are unable to use the waste disposal site within their local area but are subjected to its environmental impact. Further, the restrictions on Palestinian access to the dumpsite have caused the adoption of alternative waste-management methods which put local residents at risk and are likely to increase environmental damage to the area.

⁵⁰Sabbah, Abed Al-Wahab. Personal interview. 25 July 2010.

Chapter 3: Landfill Management and environmental damage

3.1 The site and its geological location

The private Ma'ale Adummim Company for Planning and Development, established in 1993, took control of the Abu Dis landfill site in 1998. The Company itself comes under the authority of the Ma'ale Adummim Municipality; the Company “manages and develops a number of projects within the municipality's jurisdiction, and has been authorized by the municipality to implement on its behalf business plans and conduct all types of economic activity.”⁵¹

The effective management of this site is critical due to its position above the mountain aquifer recharge area. This aquifer is a valuable source of freshwater for both Israel and the oPt. The area is susceptible to pollution due to the limestone ground above the aquifer, which has been partially dissolved by water containing acidic elements. The risk of pollution from landfill sites largely emanates from the seepage of leachate into the groundwater. Leachate is a liquid in which toxins, such as chloride, arsenic and heavy metals, including lead and mercury, are dissolved.⁵² It is a product of rain water and other liquids mixing with waste compacted within a waste disposal site. Due to the limestone ground above the aquifer, the percolation of this leachate into the groundwater can be relatively fast in this area.⁵³

The Abu Dis waste disposal site is one of nine waste sites located above the mountain aquifer; the Abu Dis site and the Tovlan site are under Israeli control whilst the remainder are under Palestinian control. Tovlan is now considered to be a “sanitary landfill site” whilst Abu Dis is still considered to be an “unsanitary waste dumpsite.”⁵⁴

3.2 Legal Framework

i) International Law

As discussed, Article 55 of the Regulations requires that the occupying power act only as “administrator” of the occupied territories and that the capital and property of those territories should be “safeguarded”. This provision requires the occupying power to preserve the natural environment of the occupied territories and to protect it from degradation.⁵⁵ This is affirmed by

⁵¹ Adummim Industrial Park (2009). *Economic Company*. [Online]. Available from: <<http://www.parkedom.co.il/Edomim/Templates/ShowPage.asp?DBID=1&LNGID=1&TMID=84&FID=318>>.

⁵² Ecopeace / Friends of the Earth Middle East, op. cit., p 3.

⁵³ Ecopeace / Friends of the Earth Middle East, op. cit., p 6.

⁵⁴ Ecopeace / Friends of the Earth Middle East, op. cit., Map 1.

⁵⁵ B'tselem and Bikom, op. cit., p 33.

the Rio Declaration which notes that States are obliged to ensure that no damage is caused to environments of other States that fall under their jurisdiction or control.⁵⁶

The Basel Convention also requires that waste that is exported to another State is “managed in an environmentally sound manner”⁵⁷ and that the quantity of waste exported is “reduced to the minimum consistent with the environmentally sound and efficient management of such wastes”. The Convention emphasises the need to “protect human health and the environment against effects which may result from such movement [of waste].”⁵⁸

ii) Oslo Accords

Under Article 12 of the 1995 Interim Agreements, both parties agree to “adopt, apply and ensure compliance with internationally recognised standards” regarding treatment of waste, and to agree on the means of disposal and transportation of such waste. Article 12 also calls for the “protection of the environment and the prevention of environmental risks, hazards and nuisances including all kinds of soil, water and air pollution.” Further, the article recognises the “unsatisfactory situation of the environment in the West Bank” and the “mutual interest in improving this situation” for which Israel’s active assistance to the Palestinian side is required.⁵⁹

iii) Israeli Law

Israeli law places specific obligations upon site operators regarding the correct management and upkeep of waste disposal sites. The Maintenance of Cleanliness Law (1984) gives provisions for the adequate record keeping of waste reaching the site. These provisions have not been considered in this report as they are not of direct impact to the Palestinian environment or to the local Palestinian population.

The Prevention of Nuisances Regulations (1990) provides specific regulations regarding the management and upkeep of waste disposal sites. The regulations prohibit, *inter alia*: the burning of waste (Regulations 2 and 4); unreasonable air and odour pollution (Regulation 3);

⁵⁶ The Rio Declaration on Environment and Development (1992). Principle 2.

⁵⁷ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, op. cit. Article 4. 8).

⁵⁸ Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, op. cit. Article 2.d).

⁵⁹ Annex III Protocol Concerning Civil Affairs - Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, op. cit. Article 12.

and the dumping of waste within the grounds of the site but outside of the specified dumping area (Regulation 8 b). According to Regulation 9, the operator is also obliged to install: a gate at the entrance which is locked outside of working hours; a fence around the site; a clear sign detailing the name of the site, work hours, and the name, address and telephone number of its operator; and signs stating “Burning is Prohibited – Violators will be Punished.” Under these Regulations, the site operator is also obliged to maintain the site in “proper condition” and to “repair, as soon as possible any harm, wear and tear, or damage caused”. Regulation 12 states that any person in contravention of these Regulations can be imprisoned for 6 months or fined.

It is useful here to also consider two Israeli national plans regarding waste management; although they have non-binding legal status, they outline the standards and norms expected to be implemented when managing Israeli waste. The 1993 plan focussed on the closure of unregulated dumpsites and the upgrading of landfill sites. According to the Israeli Ministry of the Environment, in 2006, “all regulated landfills in the country have installed systems for the prevention of leachate leakage and for leachate collection and treatment. Most of the landfills have also installed, or will soon install, systems for the collection and treatment of landfill gases.”⁶⁰

Another significant national plan to consider is the 2006 *Solid Waste Management Master Plan*. This plan aims to reduce the environmental and economic costs of solid waste treatment. It takes into consideration the difficulty in quantifying environmental damage, including damage to “quality of life, safety and human and environmental health”. The strategic goals listed for this plan are: the sustainable management of land resources in Israel; the protection of the physical environment; the repair of historic damage (occurring within the last 5 years); and partnership and contribution to global environmental trends.⁶¹ The Plan has led to the writing of certain environmental laws, including the landfill levy law, and laws regarding recycling and waste separation, which are not discussed in this paper.

⁶⁰ Ministry of Environmental Protection (2006). *Solid Waste Management in Israel: Facts and Figures 2006*. [Online]. Available from: http://www.sviva.gov.il/Environment/Static/Binaries/ModulKvatzim/f&f2006_1.pdf

⁶¹ Ministry of Environmental Protection (2006). *Compendium of Articles from Israel – Environmental Bulletin*. [Online]. p 2. Available from: http://www.sviva.gov.il/Environment/Static/Binaries/ModulKvatzim/p0461_1.pdf

3.3 Environmental concerns at the landfill site

i) Site mismanagement

In 2001 the State comptroller reported environmental nuisances, stating that there were “defects in the operation of the [Abu Dis] site.”⁶² In 2010, the UN General Assembly affirmed the damage done by Israel to the environment of the oPt and urged “Israel, the occupying Power, to cease all actions harming the environment, including the dumping of all kinds of waste materials in the Occupied Palestinian Territory...which gravely threaten their natural resources, namely water and land resources, and which pose an environmental, sanitation and health threat to the civilian populations.”⁶³



Figure 4 - Land on which waste has been burnt at the Abu Dis waste disposal site

The Abu Dis site violates a number of the provisions of the Prevention of Nuisances Regulations. Contrary to Regulations 2, 4 and 9, evidence of waste being burnt on site is apparent (Figure 4) and no signs prohibiting it are visible. Contrary to Regulation 3, the stench of the waste disposal site pervades the nearby environs, including the area of two Bedouin encampments, one of which was relocated to this area by the Israeli Government (see Section 3.4). Contrary to Regulation 9, signage indicating the work hours is provided largely in Hebrew (Figure 5) meaning that the information provided by the signs is largely incomprehensible for Arabic-speaking Palestinian users of the site.

⁶² State Comptroller cited in B'tselem and Bikom, op. cit., p 31.

⁶³ UN General Assembly (2010). *Resolution 64/185 - Permanent Sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources*, A/RES/64/185. January. para 6.



Figure 5 - Signage at front entrance to waste disposal site and translation.

Further, there are two signs indicating opening times but which illustrate conflicting hours (Figures 5 and 6). Contrary to Regulation 8, it is clear that waste has been dumped outside of the specified dumping area, at the back entrance to the site (as discussed in Section 2.2.iii). The easy accessibility of this area of the waste disposal site illustrates the failure to install lockable gates and a fence around the perimeter of the site, as required under Regulation 9 (Figure 7).



Figure 6 - A sign at the front entrance to the waste disposal site. It states: "Ayzrya dumpsite. Hours of work: 0600 - 2000"



Figure 7 - The second entrance to the waste disposal site, located at the base of the landfill. This road is accessible from a main road linking nearby towns. There is no gate or fence restricting access from the road.

Further, the main entrance to the site does not have a lockable gate but instead has a lifting barrier on one side of the front entrance (Figure 8) and an open road on the other side (Figure 9).



Figure 8 (left image) - The only gate structure at the site.



Figure 9 (right image) - The unobstructed access road to the site, located to the left of the lifting barrier.

According to a report written by Ecopeace and Friends of the Earth Middle East, published in 2006, the site had a good system of leachate collection and treatment but the levels of seepage prevention were poor.⁶⁴ Whilst the leachate collection tank at the site is visible (Figure 10), insufficient information is available regarding the subsequent treatment of leachate and the efficiency of the tank in preventing leachate seepage into the groundwater.

⁶⁴ Ecopeace / Friends of the Earth Middle East, op. cit., p 20.



Figure 10 - The leachate collection tank at the Abu Dis site



Figure 11 - Fluid draining off the landfill site

The leachate tank itself does not look well-maintained: pipes leading into the collection tank are exposed and badly supported (Figure 12). Further, the location of the leachate collection tank is, again, easily accessible from the road. Local residents have been able to walk around the tank but are not aware of what it is. Locally, the leachate tank is described as an “unexplained black lake” and, as Salah Ayyad’s statement explains, some people believe the liquid in this tank is poisonous; graffitied on the side of the tank walls is ‘Danger of Death’, in English, Arabic and Hebrew. This misunderstanding has arisen as a result of lack of information being provided to local residents about the site’s development. Also of concern is a significant quantity of liquid running off the landfill site that is not collected in the leachate tank (Figures 11 and 13). This liquid has accumulated in slow moving, stagnating pools around the perimeter of the landfill base. Again, this area is accessible through the back entrance to the site. The stench from this liquid is carried in the wind to the Bedouin encampments nearby.



Figure 12 (left image) - Exposed leachate collection pipes leading from the waste disposal site into the leachate collection tank



Figure 13 (right image) - Fluid draining off the landfill site

ii) Health and environmental implications of site mismanagement

The burning of waste at a waste disposal site is strongly deterred internationally, given that the smoke emitted can contain toxic gases, including ammonia and hydrogen sulphate.⁶⁵ In addition to the fumes released from the burning of the waste, the burning itself is liable to cause the site to collapse on itself. This was acknowledged by the State in response to the High Court of Justice, which stated that internal and external fires occur at the site which “may result in the collapse of the mountain of waste.” The State continued “It should be emphasized that a collapse is liable to cause a severe environmental risk and even endanger human life.”⁶⁶

A member of the Israeli Higher Planning Council has also commented on the “explosive” nature of the site, which is “liable to cause very great damage.”⁶⁷ Waste disposal sites are at risk of exploding if methane, emitted by the accumulated waste, is not adequately extracted and dealt with. It is interesting here to consider the *Oneryildiz v Turkey* case,⁶⁸ tried at the European Court of Human Rights (ECHR), in 2004. An expert report had been written, in 1991, stating the risk of the explosion of the site, due to methane gas accumulation. A shanty town, located above the dump, was at risk of being effected by such an explosion. The State did not take any action to reduce the risk of explosion or to relocate the shanty town. The site subsequently exploded, in 1993, and nine members of the applicant’s family died as a result. The ECHR found the State to be in violation of Article 2 of the Charter of Fundamental Rights of the European Union; the right to life. The Court held that the State had a positive obligation to safeguard life and that it had failed to do so.⁶⁹ The ruling highlights the obligation of a State to protect the wellbeing of civilians, including those within occupied territory (according to IHL), and indicates that, if an explosion did occur at the Abu Dis site, the Israeli State could be held accountable, under international human rights law (for example, under Article 6 of the International Covenant on Civil and Political Rights, which affirms the right to life⁷⁰).

3.4 Case study – the Jahalin Bedouin

A number of Bedouin communities live within close proximity to the landfill site, either because they lived there prior to its construction or because they have been forcibly transferred there by the

⁶⁵ Ecopeace / Friends of the Earth Middle East, op. cit., p 14.

⁶⁶ The State cited in B’tselem and Bikom, op. cit., p 42.

⁶⁷ Member of the Israeli Higher Planning Council, cited in B’tselem and Bikom, op. cit., p 42.

⁶⁸ *Oneryiliz v Turkey*. [2004]. 30 November, ECHR 657.

⁶⁹ Right to Environment. *Case Law by the European Court on Human Rights*. [Online]. Available from: <http://www.righttoenvironment.org/default.asp?pid=91>

⁷⁰ International Covenant on Civil and Political Rights (1976). 16 December 1966 *entered into force* 23 March 1976.

Israeli authorities. These communities are particularly affected by the health and environmental impacts of the Abu Dis waste disposal site and their case has been petitioned internationally, as a result.

The Jahalin as-Sara'ia Bedouin have been living in the area of Wadi Abu Hindi since 1948, predating the construction of the waste disposal site. Their camp is only accessible by travelling along the road that runs behind the back of the landfill site and passes the leachate collection tank. Approximately 150 families live in the village; the male population is 250-400 and the female population is uncounted. Muhammad⁷¹, a leading member of the village community, described a number of problems that the Bedouin experience as a result of their close proximity to the landfill site. He described how waste from the site gets carried in the wind and dropped throughout their encampment. As well as being unsightly and hazardous to children, the families' goats then feed on this waste and some die as a result. There have also been incidents of stray dogs that live at the site entering the village and attacking and killing the Bedouins' goats. Muhammad explained that as many as 10 goats per family die each month. The stench of the landfill site also permeates the village when the wind is blowing in the encampment's direction.

35 families of another Bedouin community, the Jahalin as-Salamat, were resettled within 300 metres of the waste disposal site, in 1998, when the land they had settled on was seized for the construction of Ma'ale Adummim.⁷² In the year of their eviction, the Committee on Economic, Social and Cultural Rights remarked: "The Committee deplores the manner in which the Government of Israel has housed these families – in steel container vans in a garbage dump in Abu Dis in subhuman living conditions..."⁷³

Under a new Israeli plan, further members of the Jahalin al-Salamat are to be relocated to within 150 metres of the waste disposal site.⁷⁴ Reflecting on the health risks that living in such close proximity to the site poses, one member of the Israel Higher Planning Committee stated that it was "irresponsible to put people there."⁷⁵

⁷¹ Muhammad*. Personal Interview. 24 July 2010.

*Name changed to preserve anonymity.

⁷² B'tselem and Bikom, op. cit., p 41.

⁷³ Committee on Economic, Social and Cultural Rights (1998). *Concluding Observations: Israel*, E/C.12/1/Add.27. 4 April 1998. para 12.

⁷⁴ B'tselem and Bikom, op. cit., p 41.

⁷⁵ Member of the Israeli Higher Planning Council, cited in B'tselem and Bikom, op. cit., p 42.

3.5 Summary

The Abu Dis waste disposal site is not meeting the standards required by international or national laws and the Company managing it is not being held accountable. The environmental damage being caused to Palestinian land and the health hazards it is causing appear to be going unchecked. The Israeli Government has failed to apply the same standards required by national plans to the Abu Dis site as it has to other Israeli sites that have either been decommissioned or upgraded. Further, by relocating local populations to within such close proximity of the site, Israel has shown blatant disregard for the wellbeing of the local population that are supposedly 'benefiting' from the existence of the site within the oPt and whose right to life they should be guaranteeing, under International Human Rights Law.

Conclusion

A) The legality of the site

The Abu Dis site is illegal according to international and national law on a number of bases. It has been built, and continues to expand, on land illegally seized from Palestinian residents on the premise that the waste disposal site benefits the local population. However, the result of such land seizure has been to prevent Palestinians from using the land to grow crops, as they had done prior to the land seizure. This has had a financial impact on the land's owners and has restricted their livelihoods. Further, whilst Palestinians are able to use the waste disposal site that has been constructed on top of expropriated lands, the majority of the waste disposed of at the site originates from Israeli sources rather than Palestinian sources. The site's more recent inclusion within the E1 area, for which extensive plans for Israeli residential construction have been drawn up, further suggests that this land was expropriated in line with development plans for the Ma'ale Adummim and Qedar settlement area. In this context, the 'benefit' gained by Palestinians by using the site appears as a by-product of the benefit for Israelis, rather than as the site's objective.

The Palestinian areas that are able to dispose of waste at the site do not have regular and indiscriminate access to it, and therefore cannot be guaranteed their 'benefit' from it. The high cost of the landfill levy, which is relatively higher for Palestinian local councils than it is for Israeli municipalities, acts as a disincentive to use the waste disposal site. In instances where local councils do attempt to dump at the site, they can find their access to it restricted for 'security reasons'. The result of such financial disincentives and such restrictions on waste disposal at the site is the development of alternative means of disposing of the waste. The illegal dumping of waste at the site, in areas accessible by the general public, leads to the ineffective treatment of waste and puts the Abu Dis area at increased environmental risk. The burning of waste that has accumulated within residential areas places local residents at risk and is not an effective solution to waste disposal.

Further, the mismanagement of the waste disposal site puts the Abu Dis environment and its residents at risk. The recognition of this from both Israeli and international representatives highlights the severity of the situation. The inappropriate fencing of the area enables local residents to walk around the site and expose themselves to dangers. Inappropriate signage, providing conflicting information and provided largely in Hebrew, suggests that Palestinians using the site are not correctly informed about it, despite it being built within the oPt and supposedly for the

benefit of Palestinians. The burning of waste at the site and the collection of stagnating and putrid fluid around the perimeter of the landfill exposes local residents to significant health hazards, especially Bedouins who have either been forcibly transferred to the area or who have found a waste disposal site built neighbouring their long-term encampment. This external evidence of poor site management raises concerns about the more crucial internal elements of landfill management, such as appropriate waste treatment and leachate collection. The site's location above the mountain aquifer, providing water to both Palestinians and Israelis, makes the effective management of this site an essential concern for all parties.

B) The future of the site

Israel has repeatedly delayed plans for the closure of the site, which is nearing or beyond full capacity.⁷⁶ This has occurred due to the difficulties in identifying an alternative site; the Court has prohibited the development of a site within the West Bank that Palestinians are not able to access but authorities are reluctant to locate the site within Israel due to the increased costs involved in disposing of waste there. The usage of the Abu Dis site has therefore been prolonged due to the legal and financial difficulties for Israel in establishing a new site. For Palestinians, the ongoing use of the site is leading to the expropriation of more land and the increasing pollution of the Palestinian environment, whilst their benefit from the site remains relatively limited. As Ehud Barak's comment in January highlights, Governmental pressure to close the site remains. The task now is to increase that pressure so that the closure of the site occurs within the quickest time possible and that its closure no longer comes secondary to the financial and developmental concerns of Israel.

Whilst maintaining and increasing this pressure, attention should also be focussed on Israeli plans for the rehabilitation of this site. The Abu Dis site must be rehabilitated inline with the 1993 directives for landfill rehabilitation, taking into consideration both the environmental and health implications of the landfill site and its close location to residential areas. Further, once rehabilitated, this land should be returned to its Palestinian owners for their own use. The E1 plans for the incorporation of this area should be challenged and the landfill site area should be withdrawn from them.

⁷⁶ According to the Jerusalem Post, city planners in 2008 believed the site would reach full capacity within a 'few years'. See JJ Levine (2010). 'Oleh: UK recycling doesn't stand a chance in Israel' in *The Jerusalem Post*. [Online]. July. Available from: <http://www.jpost.com/Home/Article.aspx?id=98767>
According to the Jerusalem Policy Forum, the site has reached full capacity. See Jerusalem Policy Forum, op. cit., p 15.

The future of the Bedouin communities living around the site must be integral to Israeli plans to rehabilitate it. The two communities currently living there should not be subjected to more interruptions or more dangers as the rehabilitation occurs. The current plan to relocate more of the Jahalin within 150 metres of the site should be cancelled.

C) Future studies

This report has not been unable to address the engineering of the landfill site itself or the environmental impact, from a scientific perspective, that the site may be having. In order to assess the full impact of this site, such a perspective is required. An assessment would include a thorough analysis of treatment of the waste on site, the infrastructure of the landfill itself, and the infrastructure of the leachate tank. The analysis would also include tests of the groundwater to ascertain if there has been any contamination from the landfill site or its leachate. Such an analysis would take a forward-looking perspective, in order to raise awareness of particular issues that should be addressed during the rehabilitation of the site in order to attempt to reduce ongoing damage.

Recommendations

A) The Israeli Government should,

- i) As a priority, provide a comprehensive timeframe for the closure and rehabilitation of the Abu Dis waste disposal site;

In addition, the Israeli Government should,

ii) Regarding Palestinian land being expropriated for the waste disposal site:

- a) Provide assurance that the land of the rehabilitated landfill site will be returned to its rightful Palestinians owners and that it will not be illegally incorporated into a larger Israeli development area, such as E1;
- b) Cease the expropriation of more privately-owned land for the expansion of the waste disposal site; and
- c) Withdraw Plan 1627/4/05 to relocate Bedouins to the waste disposal site area and permit them to continue to live in their current location;

iii) Regarding Palestinian use of the waste disposal site:

- a) Cease restricting Palestinian local council's access to the waste disposal site for 'security reasons';
- b) Ensure that Palestinian local councils are aware of the Maintenance and Cleanliness Fund and their right to benefit from it, as payees of the landfill levy;
- c) Reduce the landfill levy that Palestinian local councils are obliged to pay, taking into account the weaker economy in the oPt and the lower GDP per capita, in order to encourage a reduction in illegal dumping and the burning of waste in Abu Dis town;

iv) Regarding Israeli management of the waste disposal site:

- a) Investigate Ma'ale Adummim Company for Planning and Development's management of the site and, where necessary, prosecute the Company for any failure to abide by Israel's environmental laws;
- b) Upgrade the landfill site and significantly improve its management to ensure that it complies with Israeli and international environmental standards. This upgrading should include, *inter alia*, the installation of:
 - Appropriate signage, including signs indicating prohibitions on the burning of waste;
 - Secure gates at *both* entrances to the site to prevent unregistered persons from entering it; and
 - A fence around the entire site to prevent unregistered persons entering it.

This upgrading should occur regardless of any timeframe provided for the closure of the site as it poses an immediate environmental and health threat to the local Palestinian population.

B) The Palestinian Authority should:

- i) Make efforts to resume committees established under the Oslo Accords in order to restore the PNA's role in participating in decisions regarding Palestinian lands and the Palestinian environment;
- ii) Communicate with the Israeli Government to achieve a reduced landfill levy for Palestinian local councils using the Abu Dis site;
- iii) Provide financial assistance to local councils in order to ensure the effective use of the Abu Dis waste site and to avoid illegal dumping and the burning of waste; and
- iv) Improve environmental awareness amongst the Palestinian population to alert residents to the dangers of burning waste and to encourage them to reduce waste production as a way of avoiding waste accumulation.

C) The international community should:

- i) Urge the Israeli Government to produce a timetabled plan for the upgrading, closure and rehabilitation of the Abu Dis site;
- ii) Lobby the Israeli Government for the exclusion of the Abu Dis site from E1 development plans and petition for the return of expropriated lands to Palestinian owners;
- iii) Urge the Israeli Government to ensure constant Palestinian access to the waste disposal site, including at times of conflict or heightened security; and
- iv) Request that the Government holds the Ma'ale Adummim Company for Planning and Development accountable for the mismanagement of the site and the subsequent health and environmental risks that it is causing.

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