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SETTLEMENT MONITOR

EDITED BY GEOFFREY ARONSON

This section covers items—reprinted articles, statistics, and maps—pertaining to Israeli settlement activities in the West Bank, including East Jerusalem, and the Golan Heights. Unless otherwise stated, the items have been written by Geoffrey Aronson for this section or drawn from material written by him for Report on Israeli Settlement in the Occupied Territories (hereinafter Settlement Report), a Washington-based bimonthly newsletter published by the Foundation for Middle East Peace. JPS is grateful to the foundation for permission to draw on its material.

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UNDIPLOMATIC SETTLEMENT EXPANSION

“SETTLEMENT THRIVES AS DIPLOMACY STALLS”

From Settlement Report, March–April 2012

“There is no need to look any further,” crows a newspaper advertisement jointly published by Israel’s Land Authority and the Ministry of Housing and Construction. “More land, More apartments, More possibilities.” Permits for 6,000 dwelling units are listed, including 500 in the settlements of Har Homa (East Jerusalem), 180 in Givat Ze’ev, and 351 in Betar Illit.

The threat to Israeli settlement expansion posed by the Barack Obama

administration’s initial demand for a settlement freeze has long passed. Recent figures published by Israel’s Central Bureau of Statistics show a complete recovery from the limited and short-lived effects of the U.S. policy. The Jewish population in the West Bank soared to 342,414 last year, representing an annual increase of 4.3 percent. Not included in this figure are more than 200,000 Israelis living in East Jerusalem.

Prime Minister Benjamin Netanyahu has succeeded in setting a diplomatic agenda that deflects effective diplomacy aimed at curbing Israel’s settlement drive and continuing occupation. Months before the Arab Spring and the U.S. election season presented a ready explanation for U.S. inaction, the White House was out of ideas about how to proceed in the aftermath of the

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settlement freeze fiasco. Today, concern about Iran has pushed everything else from senior-level U.S.-Israeli bilateral discussions.

Netanyahu's ability to stymie negotiations and continuing Palestinian division have convinced many in Israel and the international community, if not the Palestinians themselves, that there is no point today in trying to resolve the conflict. The Israeli public is overwhelmingly complacent about continuing occupation. In the absence of international leadership, incrementalism dominates. The diplomatic course pursued by the Quartet and the European Union focuses on self-limited, tactical fixes to the occupation—for example, trying to curb Israel's powers over Palestinian development in Area C, comprising 60 percent of the West Bank. Even if successful, such advances amount only to tinkering with the status quo.

Settlers have their own response to such half-measures. As *Ha'Aretz* reports, "Naftali Bennett, the former head of the Yesha Council of settlers, is proposing a temporary diplomatic plan for managing the conflict. Bennett's idea sounds logical: Since it's impossible to solve the conflict or annex the West Bank as it is, Israel must unilaterally annex Area C and give the 55,000 Palestinians living there full Israeli citizenship."

Reuters, quoting a Palestinian source, reported that in informal discussions earlier this year in Jordan, the Israeli team had suggested that any solution creating a Palestinian state needs to "preserve the social and economic fabric of all communities, Jewish or Palestinian." In other words, Israel wants settlement interests to be acknowledged and preserved as part of a final status agreement.

"The only negotiations that Netanyahu implemented was the Hebron agreement [of 1996]," explained Palestinian negotiator Nabil Sha'ath. "He didn't do anything after this. I don't believe that Netanyahu is ideologically a radical. He is pragmatic. He believes that one day he will need to return to the peace process, but until then he will take as much land as possible in order to establish facts on the ground."

On 28 March 2012, more than 100 settlers moved into a three-story

building in Hebron that they claim to have purchased legally from a Palestinian owner. The area where the building is located has been all but emptied of Palestinian residents, and ownership of building itself is mired in a Palestinian family dispute.

"Four-thousand years after Abraham, our forefather, bought the Tomb of the Patriarchs, we are coming to continue in his path and are building the city of our forefathers," said Shlomo Levinger, who moved into the building in Hebron along with his wife and seven children. Levinger's parents were among the founders of the settlement movement in Hebron and Elon Moreh almost five decades ago. Their Passover Seder at the Park Hotel in 1968 marked the beginning of the Jewish re-settlement of Hebron.

Levinger told Walla! News that "the police have received all of the necessary documents, and we have no doubt that once they have examined them, they will authorize our continued presence here. We hope that, just as we did last night, the Israeli government will continue to buy and build houses here in the city of our forefathers and will continue to populate all parts of Hebron and the Land of Israel."

In a display of uncharacteristic determination, the Netanyahu government peacefully removed the settlers on 4 April 2012.

"We are determined to make sure that the rule of law and the authority of the state of Israel over all its citizens will be assured. When there is a violation, it will be put back to track," Defense Minister Ehud Barak told reporters shortly after the operation, explaining that "the house was taken over by citizens against the law."

JUDAIZING BEIT HANINA WITH AMERICAN BACKING

The following report by Jeff Halper was originally posted on Mondoweiss on 31 March 2012 with the title "Judaizing' Beit Hanina in East Jerusalem, with Backing from Americans." The original text can be obtained at <http://mondoweiss.net/2012/03/judaizing-beit-hanina-in-east-jerusalem-with-backing-from-americans.html>.

Driving Palestinians out of their homes in “east” Jerusalem is, as you can imagine, a dirty business. But it’s not terribly difficult. The Palestinians are a vulnerable population, poor (70% subsist on less than \$2 a day), completely unprotected by the law or Israeli courts, and targeted by determined Jewish settlers with all the money and political backing in the world—much of its coming, of course, from the United States, mainly from orthodox Jews and Christian Zionists.

Over the past few days settlers led by Arieh King have been harassing Palestinian residents of Beit Hanina where, according to King, settlers will “very soon” take over four houses, plus an additional two houses in the Palestinian neighborhood of Sheikh Jarrah, where violent nighttime evictions aided by the Israeli police have become commonplace. The immediate target of window-breaking, curses, violent encounters and now a police search of the home “for weapons” is the Natche family of Beit Hanina.

King is the front-man for Irving Moskowitz, a wealthy owner of bingo casinos in Hawaiian Gardens, a poor Latino community near Los Angeles, who is bankrolling some 17 settlements around East Jerusalem to “buffer” the Old City and “Judaize” East Jerusalem (see the StopMoskowitz website). A friend and benefactor of Netanyahu, Moskowitz was behind the opening of the tunnels under the Muslim Quarter of Jerusalem in 1996 that resulted in the deaths of 80 Palestinian protesters.

The Moskowitz/King strategy is to establish settlements in the heart of Palestinian neighborhoods, often in houses acquired by dubious and violent means. Among the settlements established or on the way are the City of David (Silwan), just below the al-Aqsa mosque; Ma’ale Zeitim and Ma’ale David in the Ras-el-Amud quarter on the southern side of the Mount of Olives; Beit Hoshen on the Mount of Olives, where several Palestinian families were violently evicted from their homes and which flies an enormous Israeli flag; Beit Orot, on the northern part of the Mount of Olives, where last year Mike Huckabee laid the foundations for an expanded settlement; the Shepherds

Hotel and Sheikh Jarrah, now renamed Shimon Hatzadik; a plot in the village of Anata to the east of the Hebrew university; and now the homes in Beit Hanina.

While King, Moskowitz and other organized settler groups frame their taking of Palestinian homes as “reclaiming” Jewish properties from before 1948, Palestinians are legally prevented from even approaching the courts to reclaim their lost properties in “west” Jerusalem—the homes, businesses and lands that once comprised 40% of the now all-Jewish part of the city. King works through a company called The Israel Land Fund [ILF] that, according to its website, “is dedicated to enable all Jews (Israeli and non-Israeli citizens) to own a part of Israel. It strives to ensure that Jewish land is once again reclaimed and in Jewish hands. House by house, lot by lot, the Israel Land Fund is ensuring the land of Israel stays in the hands of the Jewish people forever.”

Just how sleazy the settlement racket is can be gleaned from The Israel Land Fund’s website. It employs, we learn, three full-time employees who “are well versed in Arabic, and all served as officers in the Israel Defense Force.” It adds menacingly and tellingly: “These skills are frequently called into play in their dealings with Arab sellers and with the local population in areas that the Fund is active.” The Fund’s employees are proficient in English, we are told, “since the Fund’s main proponents are from the English speaking public.”

The “process” of acquiring an Arab property, described on the website, also offers insights into King’s methods. First, “the buyers [i.e., Jews] will be shown properties or land they may be interested in purchasing, without directly identifying the property. This is to prevent the possibility of over-exposure of the property [read: the neighbors, or even the people living in the home who think they own it, might find out] which may result in the cancellation or withdrawal of the property by the seller [not necessarily the owners nor the people who believe the home belongs to them] or cause damage to the deal.” Only when “the buyers” are sufficiently committed will The Fund then conduct negotiations on their behalf. “It

is only at this stage, once the ILF is convinced of the seriousness and authenticity of the buyers, that the ILF will reveal the seller and enable the buyer to visit the property.”

The “settlement business” cannot function, of course, without extensive official support. Settler groups and their lawyers are able to keep even weak or non-existent cases in court for years with the help of their deep pockets and compliant judges. Palestinians, even those with strong cases, simply cannot afford the expenses of litigation. If a Palestinian or his children run afoul with the law, especially in cases of alleged stone-throwing, the settlers, through their lawyers and sympathetic police, can extricate the person—for a price, often his home. The municipality is enlisted either to threaten families who are targeted for various building violations with fines or to issue demolition orders against their homes, and building permits elsewhere are used as inducement to get Palestinians to leave targeted areas, such as Silwan.

Deals are also struck. Rumors are that the Natche home in Beit Hanina will be offered to a poor Palestinian family in the Old City whose home is small and cramped but is strategically located for purposes of judaization. Poor and vulnerable families are enticed to sell for exorbitant sums (hence we don’t want to “over-expose” a potential property), or houses are “bought” from an absentee relative in some far-off country and the family evicted in the middle of the night without even knowing their home was sold. (Good lawyers can solve any legal complications.)

So from the Natche family to the judaization of Jerusalem, compliments of a California bingo parlor-cum-casino operated on the backs of low-income Latinos and English-speaking Jewish “buyers.”

ISRAELI GOVERNMENT APPROVES THE ESTABLISHMENT OF NEW SETTLEMENTS FOR THE FIRST TIME SINCE 1990 [EXCERPTS]

The following Peace Now report, including maps and aerial photographs not reproduced here, was published on the Peace Now website on 19 April 2012 with the title “For the First Time since

1990 the Government Is to Approve the Establishment of New Settlements.” The full text can be obtained at <http://peacenow.org.il/eng/rechelim-bruchin-sansana/>. The Israeli cabinet decision to legalize the three outposts mentioned was made 22 April.

According to reports, Prime Minister Netanyahu stated this week that the Government will approve the establishment of three settlements (Bruchin, Sansana and Rechelim), in the upcoming cabinet meeting on Sunday, 22 April. This decision is required in order to legalize the illegal outposts. Eventually, the government made a trick, and nominated four ministers to take the decision in the name of the government, and two days later, the new settlements were approved. . . .

Sansana is an outpost with some 240 settlers, 21 houses and 58 mobile homes.

Bruchin is an outpost with some 350 settlers, 52 houses and 53 mobile homes.

Rechelim is an outpost with some 240 settlers, 24 houses and 41 mobile homes.

The Need for an Official Decision by the Plenary of the Government

On 2 August 1996, the first Netanyahu Government decided that because Israel is obliged to peace and to the Oslo Process, no new settlements will be established unless there is an explicit decision by the plenary of the Government. . . .

Since 1996, Israeli Governments have allowed the establishment of some 100 new settlements which were called “Outposts” or “Unauthorized Outposts.” All of those outposts were by definition illegal because they lacked government authorization. In addition, they lacked proper planning, and some of them were established on private Palestinian lands or on lands that were never allocated for settlements.

All Israeli governments have promised to evacuate the illegal outposts. According to the Roadmap, for example, Israel is obliged to immediately remove all of the outposts that were built after March 2001. However, until now, no real outpost has been ever removed.

Unlike previous governments, which promised to remove the outposts, the

Netanyahu government declared in court on March 2011 that it intends to legalize outposts that were built on State Land, and to evacuate the outposts that are on private Palestinian lands. . . .

According to Peace Now's count there are 17 outposts under court hearings. The Netanyahu government had promised to remove 4 of them (Migron, Givat Assaf, Amona, Jabel Artis (the Ulpena Hill)), and to seek to legalize the others.

The Trick That Failed: Legalization as a Neighborhood of an Existing Settlement

In order to avoid the need for an official decision by the Government to establish the outposts as new settlements (which would likely generate internal and international condemnation), the government tried to approve the outposts as neighborhoods of existing settlements. Expanding an existing settlement needs only approval of the plans. However, according to a ruling of the Higher Planning Council of the Civil Administration in the Sansana case, this subterfuge no longer works.

. . . On 20 January 2009, a plan for the approval of the illegal outpost of Sansana (south of Hebron) was deposited for public review. The plan suggested approving Sansana as a neighborhood of the existing settlement of Eshkolot. Three objections were filed: by Peace Now, by Bimkom, and by the attorney Kais Nasser in the name of Palestinians from the area. Peace Now's main argument was that Sansana is actually a new independent settlement and cannot be called "a neighborhood" of Eshkolot: (1) Sansana is 3 km from Eshkolot without any territorial continuity or road connecting them; (2) both the Separation Barrier and the Palestinian village of Ar-Ramadin physically divide the two settlements; (3) Sansana is a religious community while Eshkolot is a community of secular families.

On 30 January 2012, the Higher Planning Council accepted the objections, and rejected the plan, ruling that: "*There is no room to approve a plan for additional development in an area non-adjacent (that is, not in direct continuation) to the area that is to be developed or built.*"

This decision unmasked the subterfuge of establishing new settlements by claiming "only" the expansion of existing settlements, and forced the government to officially declare the establishment of new settlements when trying to legalize outposts. . . .

THE SETTLERS AND THE IDF

"DON'T SHOOT, WE'RE SETTLERS"

From Settlement Report, March–April 2012

"During the next decade, our goal is for the religious Zionist population to be able to feel comfortable serving in the police forces," explained Nachi Ayal, a top official in the right-wing National Home Party and leader of an organization working to increase the presence of Israel's religious and ultra-orthodox communities in the country's national police forces. "So that those serving will know what it means to send forces in order to evacuate settlers. Who decided that the police belong to only one sector of the nation and not another? I am part of the state and it is incumbent upon me to also be part of the police.

"My goal is that in another ten to twenty years, the police commander in Judea and Samaria will be a religious person, a resident of Judea and Samaria, and in the higher ranks there will be four or five kippot-wearing [religious] commanders representing us."

For the time being, these new recruits are not being posted in the West Bank, explicitly because of concerns not to force a potential confrontation centering on their religious convictions supporting settlement. This effort is emblematic of increasing numbers of Israelis, drawn primarily from the growing settler community and its allies in the ruling right-wing coalition, who hope to harden today's political consensus favoring settlement in key Israeli security institutions. Their objective is to increase the numbers of religious settlers and like-minded Israelis in the officer corps of the police and security forces, and to swell the ranks of religious conscripts prepared to follow the rulings of their rabbis rather than their commanders on issues related to

settlement evacuation, and more recently, the presence of women in their ranks.

Likud Succeeds Labor

Four decades ago, Menachem Begin declared his intention to assure the preeminence of the Likud Party, long a perennial parliamentary outcast, by establishing a natural and permanent electoral majority based on settlement throughout the occupied territories. He aimed at repeating the success of Israel's Labor establishment, which before 1967 rose to political prominence by creating an electoral majority rooted in the country's rural settlement movements. The goal of today's two-pronged effort is to broaden the front committed to settlement expansion throughout the West Bank by increasing the representation of national religious officers in the military's top ranks so that settlers and their interests are treated even more benevolently than is now the case, and to raise the specter of wide-scale refusal by conscripts and lower-ranking officers to implement orders to constrain or evacuate settlements. A recent study revealed that while only 13.7 percent of all soldiers graduated from state religious schools, almost one-third of infantry officers are religious, with the proportion jumping from only 2.5 percent in 1990 to 31.4 percent in 2007.

An effective military force is built upon discipline. An army without discipline and the willingness to execute commands and to fulfill a mission is an institution in crisis. The Israel Defense Forces [IDF] and civilian police have, when called upon, obeyed decisions by Israel's political leadership to evacuate settlers and settlements, beginning with the evacuation of the Sinai and the 2,500 settlers from Yamit in 1982. More recently, however, the effective implementation of two politically controversial decisions—that of the government of Prime Minister Ariel Sharon in 2005 to evacuate 17 Gaza settlements and their population of 7,000 and another by the government of Prime Minister Ehud Olmert to demolish a few permanent homes (but not the settlement) at the unauthorized outpost of Amona in 2006—was accompanied by politically potent indications of isolated opposition

within the ranks, abetted by political leaders and prominent rabbis, to executing military orders considered to represent a repudiation of the political and religious dictates of Greater Israel.

While a large majority of Israel's Jewish citizens favors Israel retaining a Jewish majority, many Israelis do not accept the view that Israel's control of the occupied territories poses a threat to this objective. The West Bank, including East Jerusalem, has been occupied by Israel for almost half a century. It is viewed by many Israeli Jews as an unremarkable part of the fabric of Israel's communal and national existence. Israel's security establishment and the young male conscripts serving mandatory, three-year terms of national military service are a critical element of this national consensus.

"Military service in the West Bank," wrote David Zonshein in *Ha'Aretz* on 1 February 2012, "is the central political tool legitimizing for all Israelis, including those in the left, acceptance of the logic of Greater Israel."

Israel's security forces mirror the significant if evolutionary changes in Israeli society supporting extensive settlement throughout the occupied territories. Settlers and their supporters can be found throughout Israel's governing institutions. Both the Labor and Likud parties seek the support of observant Jews. Labor hopes to reestablish a political alliance that collapsed in the 1970s.

"For a long amount of time, the Labor Party made light of religion and tradition, and Labor Party leaders treated this public disrespectfully," explained MK Avishai Braverman, an ally of Labor leader Shelly Yachimovich. "We should continue in the footsteps of Ben-Gurion, who advocated the path of the Bible, Jewish sources, and the prophets Isaiah and Amos."

The Likud not only welcomes leaders of the conventional settlement movement, but also boasts a young leader of the "outpost youth," now under house arrest, and another who heads the settlement outpost of Migron.

The newest member of Israel's High Court, along with Foreign Minister Avigdor Lieberman, lives in a West Bank settlement—that is, outside the boundaries of the state itself. Not surprising then

are the growing numbers of officers drawn from the national religious community and from the settlement sector, which now numbers more than 500,000. There are not only officers who live in settlements, but also others who live in the unauthorized “outposts” that the army, when it is not protecting and enabling them, implements *pro forma* orders to evacuate. Recent studies report that settler youth enlist in combat units in larger percentages than their peers, reprising an honored military role once claimed by the kibbutz movement.

A Changing Israel

“There can be no doubt,” wrote Nahum Barnea in *Yediot Aharonot* on 20 December 2011, “the religious-settler sector is taking an increasingly large role in manning top positions in serving the state—in the army, the intelligence branches and the legal establishment. The fact that the coalition and the Likud as a part of it are identified with this sector has contributed to that change, but that isn’t the main reason. There are processes that are far deeper and more significant under way before us. The demographic make-up of Israeli society is changing; the elites are being replaced: settlers and Haredim now have more influence than in the past. There is nothing more natural than that.”

While the influence of religion is an indelible part of the very fabric of Israel’s political life, there are noteworthy instances of the growing influence of extremist religious views affecting not only the conduct of military operations in the West Bank but also the role of women in the military.

At a recent ceremony marking the end of basic training somewhere in Israel, the keynote speaker quoted biblical verses, reported Avner Shalev, in *Ha’Aretz*:

The verses he chose did not come from the prophets’ visions of peace and morality. Nor did he speak about our right to the land in the narrow sense of the term. Instead, he cited maximalist verses from the Book of Joshua: “Every place that the sole of your foot shall tread upon, to you have I given it, as I spoke unto Moses. . . . From the wilderness, and this Lebanon, even unto the great river, the river Euphrates.”

Suddenly, when they speak about one state from the sea to the river, it is no longer clear

which river they are talking about. If this is the message being sent by the Israel Defense Forces at this very moment, how can we complain about the hilltop youth?

It’s Zionism

Veteran settlement leader Israel Harel argues, however, that such exhortations are as old as the Zionist movement itself.

David Ben-Gurion—and not [Gush Emmunim leader] Hanan Porat—declared “the supreme aim of the State of Israel is the redemption of Israel [meaning the Jewish people].” He also said that the right to the Land of Israel is “the nation’s right across the generations, a right that cannot be appropriated under any condition.”

The roots of the ideology, which still drives the state, albeit less so, lie in [the Israeli kibbutzim of] Ein Harod and Nahalal, not [the West Bank settlements of] Elon Moreh and Kedumim. Gush Emmunim adopted these roots and tried, with its own additions, to proceed in their light. As we know, its success was only partial. Israel’s governments established settlements in Judea and Samaria due to these roots—not because of Gush Emmunim’s magical power. And it was not in order to realize Gush Emmunim’s religious ideology that the Supreme Court validated the settlement enterprise. It did so because the justices still have Zionist feelings in their hearts.

There are those who fear, and others who hope, that when and if Israel’s political establishment decides to remove settlements, the security forces will either rebel or simply refuse a politically or religiously untenable command. The record, however, suggests that when the state’s leadership makes a decision, however controversial, the army implements it. When it hesitates, it cedes the initiative to others.

It should be of less concern that the army will not follow an order to evacuate settlements than that such an order will never be given by a political establishment wedded to settlement and the marginalization of Palestinian national aspirations.

“LEGALIZING” SETTLEMENT OUTPOSTS

“AS THE ILLEGAL OUTPOST OF MIGRON GOES, SO GOES ALL OF ISRAEL”

Lara Friedman, director of policy and government relations of Americans for Peace Now, published the following

commentary in the Huffington Post on 14 February 2012 (http://www.buffingtonpost.com/lara-friedman/israeli-settlements-migron_b_1273726.html). It concerns the continued debate over the Migron outpost; for further details, see "What's All the Fuss over Migron" in the Settlement Monitor of JPS 163.

The fate of Migron, an illegal outpost in the heart of the West Bank, is about to be decided. The implications of this decision are about far more than the future of a handful of settlers in a single outpost. This decision will be a litmus test of Israeli rule of law and, ultimately, of Israel's capacity to make peace with the Palestinians.

How can one outpost be so important?

Outposts are settlements that have been built in the West Bank without Israeli government authorization, in violation of Israeli law. Migron is the flagship of the settlers' illegal outpost enterprise, one of the largest and most developed outposts and the shining symbol of the settlers' determination to overcome the Israeli government's longstanding policy against establishing new settlements.

Migron is an open-and-shut case of theft, the physical embodiment of the settlers' contempt for Israeli law. Migron is built entirely on land that Israel recognizes as privately-owned by Palestinians. Its establishment and expansion over the past decade epitomizes the corruption that is endemic in Israel's rule in the West Bank, since neither could have taken place without Israeli government officials aiding and abetting settlers' law-breaking.

And the persistence of Migron's existence—despite its blatant illegality and despite repeated Israeli government promises to dismantle it imminently—discloses the settlers' and the Israeli government's flagrant disregard for Israeli law and the Israeli High Court.

Last August, after more than 5 years of Israeli government foot-dragging in various legal proceedings, that Court finally laid down a deadline for dismantling Migron: 31 March 2012. With that date fast approaching, the Netanyahu government and the Knesset are now scrambling to find a way to circumvent Israeli law and the Court's decision.

They are trying to find a "compromise" to appease settler law-breakers (not the first such effort), or to come up with a way to twist Israeli law to kosher the settlers' criminal acts. This response to the Court points to an increasingly alarming problem in Israel: sacrificing rule of law to further a far right-wing, anti-democratic ideology. It highlights a longstanding reality that few have wanted to admit: the Israeli political system has to a great degree been hijacked by the settlers and their supporters, in the service of an agenda that openly seeks to keep all or most of the West Bank in Israeli hands in perpetuity, at the cost of any chance for Israeli-Palestinian peace.

Any future Israeli-Palestinian peace agreement will require the establishment of a viable, contiguous state of Palestine alongside Israel. Land swaps may allow most Israeli settlers to remain in their homes, but even the best agreement (from an Israeli perspective) will necessitate the evacuation of settlements located deep inside the West Bank. Migron is located deep inside the West Bank, in an area that cannot possibly remain under Israeli sovereignty in any future agreement.

If the government refuses to remove Migron, even with law and the rulings of the court requiring it to do so, it will send an unmistakable message: Israel today prefers settlements to peace. If Netanyahu claims he can't remove Migron, because taking on the settlers will bring down his government, it will send another message: Israel is today so deeply in thrall to the settlers that it is incapable of making peace, even if it wanted to.

Finally, should the Israeli government find a way to "kosher" the settlers' land theft in Migron, it will give a green light for the settlers to build illegally everywhere in the West Bank, knowing that no one, not even the High Court, can or will stop them. In such a case, even if a future Israeli government is more serious about peace than the current one, settler actions on the ground will undoubtedly seek to block any agreement.

The case of Migron is thus not simply about the fate of one outpost. It is a test whose results will reveal whether

Israel can continue to uphold even the pretense of being a nation of laws, in which the rule of law reigns supreme, or if it will instead openly embrace “rule by law”—an ugly characteristic of a totalitarian state. Likewise, the fate of Migron will disclose whether settler influence has so deeply penetrated Israeli policy and governance that Israel is no longer capable of upholding even the pretense of a commitment to the two-state solution for the Israeli-Palestinian conflict.

“UNDER THE GUISE OF LEGALITY: ISRAEL’S DECLARATIONS OF STATE LAND IN THE WEST BANK” [EXCERPTS]

B’Tselem published the report excerpted below in March 2012, focusing on the compatibility of the Israeli policy of declaring West Bank property as “state land.” It expands on earlier B’Tselem reports on the mechanisms by which Israel takes Palestinian land for settlements issued in 2002 (see Settlement Monitor in JPS 124) and 2010 (JPS 157, Settlement Monitor and Document C4). The complete report is available at http://www.btselem.org/download/201203_under_the_guise_of_legality_eng.pdf

Introduction

The claim that the land allocated to settlements is mostly state land has been made by successive Israeli governments to counter criticism of their settlement policy. Since settlements are built for the most part on state land, it is argued, they have not infringed the property rights of Palestinians, and, therefore, have not harmed Palestinians at all. This claim is simplistic. . . .

What are those state lands, on which most of the settlements have been built, and what are the procedures that led to their classification as government property? . . . State land in the West Bank is of two principal kinds: first, land that belonged to the Jordanian government and was transferred to the Israeli authorities when Israel conquered the area in 1967; and second, land that Israel classifies as state land, even though it did not have this status under Jordanian rule. This report focuses on the second type and examines whether the

classification of these lands as government property was made in accordance with the local land laws, or whether some of them were taken from their private owners in breach of these laws. . . .

. . . The main mechanism Israel used to gain control of most of the land on which settlements were built was declarations of state land (hereafter: “the declarations policy”). . . .

[T]he main objective of the declarations of state land was to gain control of land to build or expand settlements. For this reason, Israel included the vast majority of declared state land within the jurisdiction areas of the settlement municipal bodies—the regional and local councils. Since the settlements themselves are illegal under international law, this objective is not legitimate. Indeed, to the best of our knowledge, the Custodian [for Government and Abandoned Property in Judea and Samaria] has rarely allocated state land for use of Palestinians. Therefore, the policy was applied in a way that constituted unlawful racial discrimination. . . .

[T]his report will analyze the declarations policy from the perspective of the local Law, with only limited reference to international law. The primary question we seek to examine is whether Israel’s declarations of state land are consistent, in whole or in part, with local Law in general, and with the [Ottoman] Land Code [of 1858] in particular. . . .

Summary and Conclusions

A few months after release of the ruling in the *Elon Moreh* case [which prohibits taking *private* Palestinian lands for settlement—*Ed.*], Attorney Elyakim Haetzni, a resident of Kiryat Arba and one of the leaders of the settlers at the time, wrote an article titled “The Land Impasse: The Legal Status.” In the article, he called on the government to expropriate private Palestinian land for settlement purposes, while paying the landowners for their land. Haetzni concluded that the government’s plan to build settlements on state land only cannot be realized:

Again and again, we repeat and emphasize: *on the central mountain ridge* (which covers some 4.8 million dunams [1 acre = 4 dunams]) *of Judea and Samaria—excluding the Jordan Valley and the Judean Desert—there is no state land.*

These comments of one of the settlers' leaders accurately reflect land ownership on the ground in the early 1980s: The central mountain ridge and its slopes, which the government designated for the establishment of Israeli settlements, contained almost no state land. To build settlements there, an apparatus was needed to produce additional state land.

In his article, Haetzni also discussed the possibility, raised by some government officials, of classifying uncultivated land that was not registered in the land registry as state property. Haetzni dismissed this option, noting that "The settlement enterprise . . . if its legality is to be based solely on this claim (on which the Ministry of Justice relies) will face great danger."

In retrospect, one may conclude that Haetzni underestimated the government's improvisation abilities in the West Bank and the readiness of the HCJ [High Court of Justice] to grant it freedom of action. Since its ruling in the *Elon Moreh* case, the High Court has not intervened in the steps taken by the government to gain control of West Bank land, and has refrained from ruling on the legality of most of the substantive components of the declarations policy. Petitions filed with the HCJ have generally dealt with the procedural and administrative aspects of the declaration procedure, and were all rejected.

Already in 1981, the HCJ rejected a petition of Palestinians from Tarqumiya against a declaration of state land. The court ruled that "when a dispute arises over the question of whether a given parcel of land is public property or private property, the accepted rule is that the property should be considered public property, until the question of ownership is finally decided." The court also rejected the claims of the petitioners against granting military appeals committees the authority to hear appeals against declarations of state land. In reference to these claims, the court ruled that, had the military appeals committees not been founded, the residents of the West Bank would have no ability to object to the Custodian's decisions.

In another judgment, given in 1986, the HCJ denied a petition of a resident of Beit Ijza against a declaration

on state land. . . . On the merits of the case, the HCJ . . . substantially deviated from the meaning and interpretation . . . the Land Code was given in the Mandatory court ruling (which was cited in the Israeli court judgment), and from the practice during the Mandatory period and under Jordanian rule. In ruling as it did, the Israeli court gave the appearance of continuity in the case law, while, in fact, dramatically deviating from the case law established by Mandatory courts.

The HCJ ended its judgment of the *Beit Ijza* case with reference to the purpose for which the declaration of state land had been made: the establishment of the settlement of Givon Ha-hadasha. On this issue the court ruled that "there is no need for us to discuss this issue here, since this question does not relate at all to the issue before us, and in any case, the petitioner has no standing on this question." In making these statements, the court ignored the substantive aspects of local Law and the limitations placed on the occupying power under international law with respect to the use of public land in the occupied territory. . . .

Professedly, Israel acknowledges that the West Bank is under belligerent occupation and is not part of its sovereign territory. This admission implies acceptance of the obligation to act in accordance with international law, which forbids the occupying power to change the local Law in force in the occupied area on the eve of its occupation, unless necessary for security needs or for the benefit of the local population. The obligation to respect the local Law refers not only to local legislation, but also to the rulings made by the courts of the states that ruled the area prior to its occupation.

Israel's declarations policy does not meet these requirements. It contradicts the Law as interpreted and applied by the British Mandate and the Kingdom of Jordan. This contradiction is evident in three principal aspects:

1. *The type of cultivation that allows a private person to acquire ownership rights in land.* The Mandate authorities and the Jordanian government considered patch cultivation of rocky land to meet the

requirements of article 78 of the Ottoman Land Code. Both concluded that such patch cultivation grants the farmer ownership of the entire parcel. . . . By changing the interpretation of article 78 of the Land Code, which had been customary in the West Bank before 1967, Israel justified its decision to declare large areas of rocky mountain land that were under patch cultivation as government property, despite the position of the states who ruled the West Bank prior to 1967 who considered these lands to be private Palestinian property. In this case, Israel's interpretation deviated so much from that applied in the area prior to its occupation, that it constitutes a change in the statute itself.

2. *Cessation of cultivation after continuous cultivation for the prescriptive period.* Israel also disregarded the judgments of the Mandatory Supreme Court and of Israel's High Court, whereby a person who cultivated unregistered *miri* land for 10 years acquired ownership rights in the land. . . . By an amendment to the law . . . Israel created a legal situation in which cessation of cultivation for several years completely nullified the person's rights in the land, even if he or his family had cultivated it for decades before.
3. *Classification of designated *matruka* land as government property.* With respect to designated *matruka* land—primarily grazing land used by residents of a specific village for many years—Israeli declarations policy deviated from the way the states that previously ruled the West Bank had applied the law, and disregarded the binding court judgments. Unlike the situation with *miri* land, in which private persons can acquire rights, designated *matruka* is by definition public land assigned for the specific use of members of a particular community and is not government property. Certainly, it cannot be declared state land and allocated for the development

of settlements. These statutory provisions did not prevent Israeli authorities from declaring designated grazing lands as government property, thereby revoking the public rights of residents of Palestinian communities that had used these lands for long periods of time.

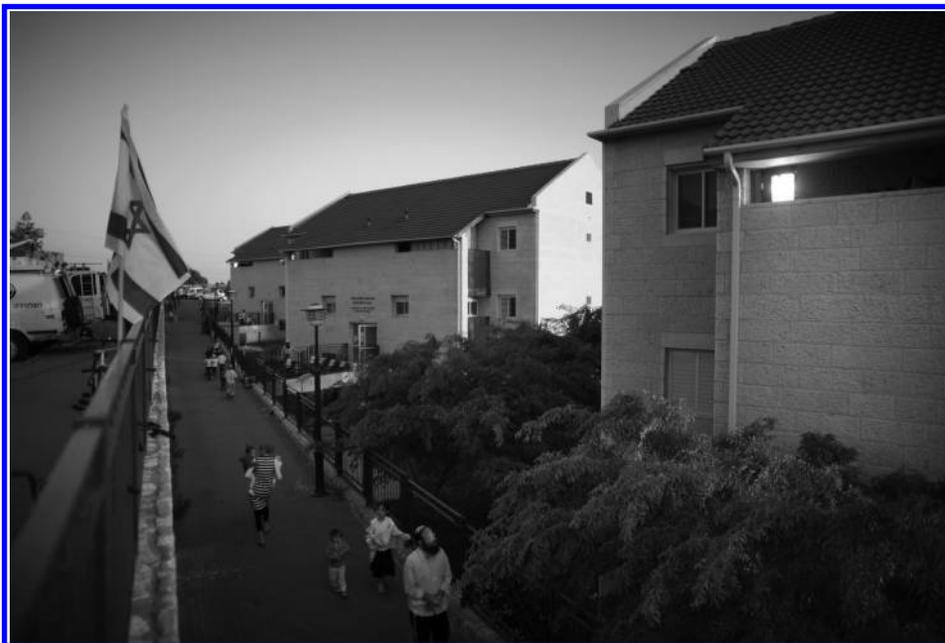
Since the beginning of its rule in the West Bank and until the present, Israel has declared hundreds of thousands of dunams as state land. We do not claim that *all* these lands were private Palestinian property. Clearly, declarations of state land also included land that according to the Law was government property. . . . In contrast, in the central mountain ridge, where most of the land is *miri*, it is to be assumed that only a small portion would have been registered as government property; indeed, this was the result in those villages whose lands underwent land settlement during Jordanian rule. . . .

[T]he percentage of land defined as state land in declarations made by Israel was dozens of times greater than the percentage of area registered as government property in Jordanian land settlements. This fact alone suggests that Israel applied the Law very differently from the way the Jordanians had applied it. And yet, this report does not profess to specify the amount of state land that was improperly and illegally declared as government property, but only points out fundamental problems in the declarations policy and emphasizes its aspects that contradict local land laws.

The declarations policy has therefore three fundamental defects: it contradicts fundamental relevant provisions of substantive Law; it conflicts with the way the states that previously ruled the area applied the Law; and it is incompatible with the rulings of the authorized courts that interpreted the Law. In many cases, declarations made by the Custodian were not merely technical actions of taking possession of land that was anyway government property. Rather, they involved change in ownership status of the land, from Palestinian private or designated public property to state land.

The situation is aggravated by the fact that these declarations were made in order to enable Israel to establish settlements in the occupied territory, an action prohibited under international law. Thus, not only were the declarations unlawful, but their motive was

also illegal: to prevent Palestinian use of the land and to transfer it to the sole use of Israeli citizens. Even had all the declared state land been government property under the substantive Law, the Custodian was not authorized to allocate it for Israeli settlements.



Jewish settlers walk past homes in the unauthorized outpost of Ulpana, built on private Palestinian land near Ramallah, 22 April 2012. On 8 May, Israel's High Court reaffirmed an order to demolish Ulpana by 1 July, despite a personal appeal by Israeli PM Benjamin Netanyahu to legalize it. (Uriel Sinai/Getty Images)