



**B'TSELEM**

The Information Center for  
Human Rights in the Occupied Territories

**בצלם**  
**ביירי**

*Information Sheet: JULY 1999*

**ON THE WAY TO ANNEXATION**

**Human Rights Violations  
Resulting from the Establishment  
and Expansion of the Ma'aleh  
Adumim Settlement**

מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)

مركز المعلومات الاسرائيلي لحقوق الانسان في الاراضي المحتلة

Researched and written by Yuval Ginbar

Edited by Na'ama Carmi

Fieldwork by Najib Abu-Rokaya, Marwah I'bara-Tibi, and Yuval Ginbar

Translated by Zvi Shulman

Graphic design by Dina Sher

Cover and page 4: Ma'aleh Adumim 1997 (Photo: Alex Libeck)

B'Tselem thanks the following for their assistance in the preparation of this report:

Attorney Shlomo Lecker, Attorney Avigdor Feldman, Attorney Micha'el Safarad, Architect Shmuel Groug, Gila Svirsky, Lior Yavneh, Attorney Netta Amar (of The Association for Civil Rights in Israel), Abu Dis Local Council, al-'Izariyyeh Local Council, Al-Quds Human Rights Center, LAW

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*I n f o r m a t i o n   S h e e t :   J U L Y   1 9 9 9*

***ON THE WAY TO ANNEXATION  
Human Rights Violations Resulting  
from the Establishment and  
Expansion of the Ma'aleh Adumim  
Settlement***

43 Emek Refaim St., Jerusalem 93141

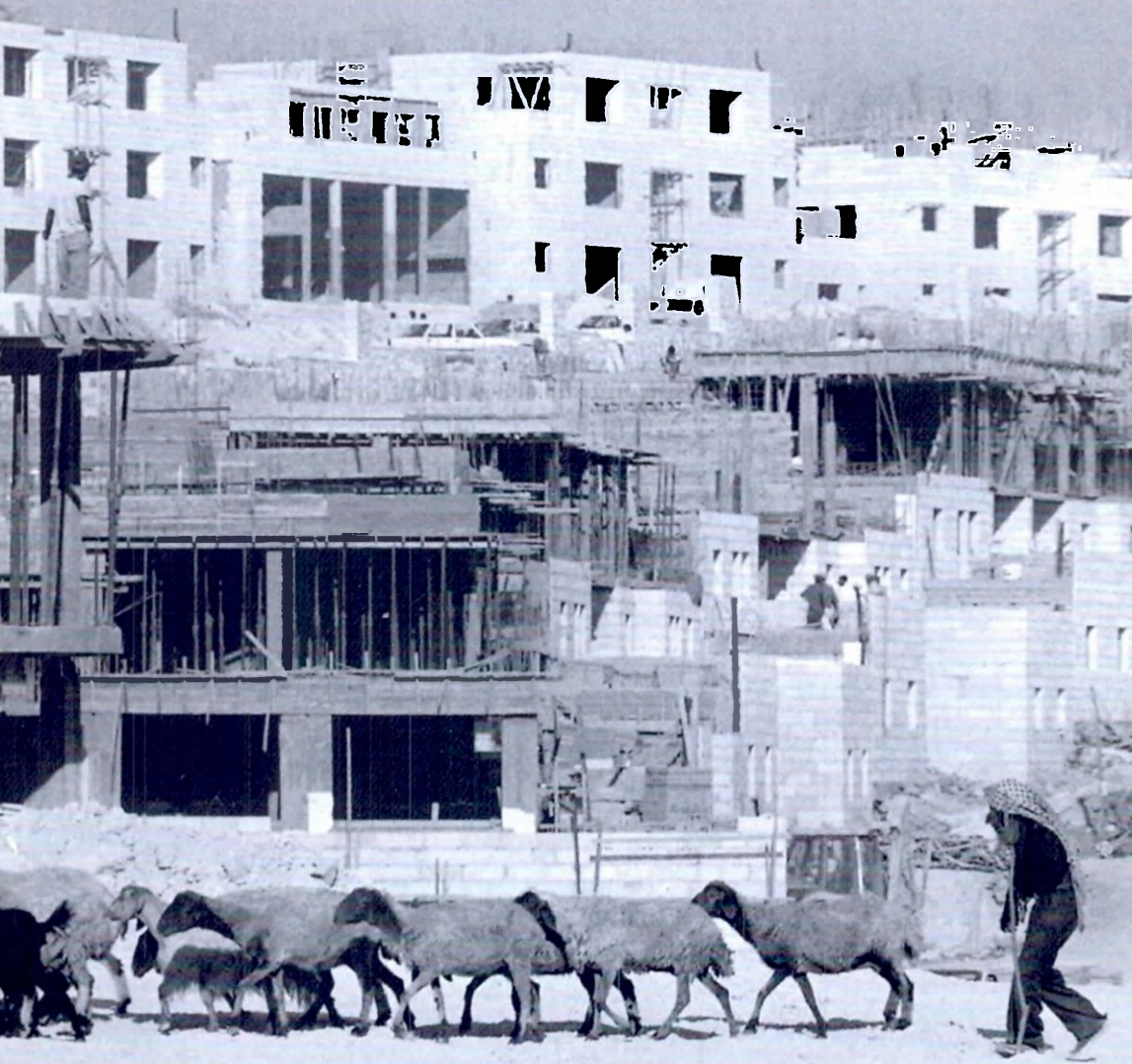
Tel. (02) 5617271 Fax. (02) 5610756

E-mail: [mail@btselem.org](mailto:mail@btselem.org)

Website: <http://www.btselem.org>

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**B'Tselem** – The Israeli Information Center for Human Rights in the Occupied Territories was founded in 1989 by a group of lawyers, authors, academics, journalists, and Members of Knesset. **B'Tselem** documents human rights abuses in the Occupied Territories and brings them to the attention of policymakers and the general public. Its data are based on independent fieldwork and research, official sources, the media, and data from Palestinian and Israeli human rights organizations.





*And it came to pass after these things, that Naboth the Jezreelite had a vineyard, which was in Jezreel, hard by the palace of Ahab king of Samaria. And Ahab spoke unto Naboth, saying, Give me thy vineyard, that I may have it for a garden of herbs, because it is near unto my house: and I will give thee for it a better vineyard than it; or, if it seem good to thee, I will give thee the worth of it in money. And Naboth said to Ahab, The Lord forbid it me, that I should give the inheritance of my fathers unto thee.*

1 Kings 21, 1-3

## Introduction

This report presents the human rights violations resulting from the establishment of settlements in the Occupied Territories and its consequences for the area's Palestinian residents. The founding and expansion of Ma'aleh Adumim, the largest of the settlements, are used to portray these violations and consequences.

Ma'aleh Adumim, founded in 1975 and currently having some 25,000 residents, continues to grow. Classified as a high-priority development area, governmental benefits, like tax breaks and favorable mortgage terms, flow into the settlement. The settlement has a large industrial zone. Its residents enjoy a high standard of living, modern infrastructure, green areas, advanced educational and cultural institutions, and numerous other services and institutions, all of which were established to benefit its residents and nearby Israeli settlers.

But this is only part of the story. The area on which Ma'aleh Adumim was established and expanded is not under Israeli sovereignty, but lies on the West Bank, in occupied territory. Ma'aleh Adumim's residents are not from the locale; they are citizens of Israel, the occupant. The territory comprising the settlement was taken from the villages Abu Dis, al-'Izariyyeh, al-'Issawiyyeh, a-Tur, and 'Anata. Other expropriated lands are property on which the Iahalin and Sawahareh Bedouin tribes once lived.

Ma'aleh Adumim's establishment did not lead to a wave of development, a high

standard of living, comfortable living conditions, and tax breaks for these Palestinian villages and their residents. Rather, the settlement meant loss of grazing and farming land and, in effect, loss of the agricultural way of life. Establishment of Ma'aleh Adumim also denied these villages the land reserves they needed for housing, industry, and public institutions. The settlement – with all the "regional services" that it offers – is closed to Palestinian residents of the area, except for those holding a special permit to enter the settlement for work only. The Bedouin who lived in the area also lost their homes and the land on which they were constructed, and were expelled from the area by threats and physical force.

This report examines the various components of Israel's policy within the context of international law. It also describes the condition of the Palestinian villages in the area prior to and after the land expropriation, as well as the expropriation procedure itself. The report also discusses the Israeli legislation – civil and military – that enabled establishment of the settlements and their gradual annexation into Israel. A separate section deals with the fate of the Iahalin Bedouin tribe, for whom expansion of Ma'aleh Adumim meant expulsion from the territory that provided their subsistence. The report then examines the plan to expand Ma'aleh Adumim, and ends with conclusions.

## Chapter One: The Region, Residents, Land, and Land-Use Prior to 1967

The Ma'aleh Adumim settlement was established on the Jerusalem-Jericho Road as a "work camp" in the winter of 1975. Initially, twenty-three families settled there, for whom housing was constructed near an industrial area that had been established a year earlier.<sup>1</sup> In 1979, the West Bank military commander issued an order calling for the establishment of a local council in the settlement.<sup>2</sup> The number of settlers in Ma'aleh Adumim rose rapidly "with the help of a massive flow of resources" from the government.<sup>3</sup> In October 1992, it became the first settlement to be proclaimed a town.

Ma'aleh Adumim currently has some 25,000 residents and continues to develop.<sup>4</sup> Classified a high-priority development area, Ma'aleh Adumim enjoys governmental benefits like tax breaks and favorable mortgage terms.<sup>5</sup>

The settlement has educational and cultural institutions, a large industrial area, and numerous other services and institutions benefiting Israeli residents and nearby Israeli settlers. Ma'aleh Adumim has no unemployment problem.<sup>6</sup>

A plan for the massive expansion of the settlement has already been approved but not implemented. The plan calls for expansion of residential areas, development of a hotel area, and more. However, construction in other areas of the settlement continues at a rapid pace. On 9 January 1998, *Ha'aretz* reported that the Ministry of Housing plans to build 4,478 housing units in the settlement. According to the Ma'aleh Adumim Municipality, the population of the settlement is expected to reach 45,000 within a few years.<sup>7</sup>

The Ma'aleh Adumim settlement was established on land belonging to the Palestinian villages of Abu Dis, 'Anata, al-Izariyyeh, a-Tur, and al-Issawiyyeh.<sup>8</sup> The villagers had used these lands for grazing and

farming, and as reserves for village development and expansion. The farmland of these villages extended from the border of Jerusalem on the west to al-Khan al-Ahmar, at the approach to the Dead

1. See the website of the Ma'aleh Adumim Municipality, [www.jr.co.il/ma/ma-hist.htm](http://www.jr.co.il/ma/ma-hist.htm); Ma'aleh Adumim Municipality, *Ma'aleh Adumim 1998 Profile of the Town* (in Hebrew), p. 8.

2. Order on the Administration of Ma'aleh Adumim (Judea and Samaria) (No. 788), 5739-1979. An order was also issued relating to the code for the administration of the council. In 1981, this order was replaced by a general order for administration of Jewish local councils in the West Bank, the Order on Administration of Local Councils (Judea and Samaria) (No. 892), 5741-1981.

3. *Ma'aleh Adumim: 1998 Profile of the Town*, p. 6.

4. *Ibid.*, p. 1.

5. *Ibid.*, p. 9.

6. *Ibid.*

7. *Ibid.*, p. 1.

8. The term "village land" was also used by the Israeli planners of the settlement and its expansion, though they do not, of course, recognize the ownership of the land by the villages or their residents. See, for example, Civil Administration for Judea and Samaria, *Spatial Local Planning of Ma'aleh Adumim*, "Local Planning Scheme No. 420/4" (January 1995) [hereafter the expansion plan], sec. 1.1.6.

Sea, on the east. Ownership determined land usage, i.e., each family worked the land that it owned.<sup>9</sup>

For lack of a modern system of irrigation and farming, most of the farming relied solely on rainfall. The small amount of rainfall in the area, some 300 millimeters a year, allowed relatively minimal farming.<sup>10</sup> For this reason, most of the land was used for grazing, with only a small amount used to raise crops.

The head of the Abu Dis Local Council, Salah Abu Hilal, described to B'Tselem life in the village prior to 1967:

The residents divided the land among themselves. Each family had a small plot. The village comprised some fifty square kilometers of land, which extended as far as the Dead Sea.

Almost all the land was in use for grazing or farming – primarily wheat and barley. The farming was primitive. Where it was possible to bring in a tractor, they brought one in, and where it wasn't possible, they used the land for grazing. All farming was done in the winter.

Abu Dis was famous for raising livestock, mostly sheep. The shepherds would descend into the Jordan Valley in the winter and return here in the summer.<sup>11</sup>

Even with urbanization and travel to the Gulf States by Palestinian youth in search of jobs, which began in the 1960s, farming and grazing remained the primary source of income for many families. For others, this was a secondary source of income that ensured sustenance during difficult times.

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9. Arabtek-Jordana Company, *Al-Quds [East Jerusalem] Project, Phase One Regional Research*, Ramallah, 28 May 1996, p. 31. See, also, Shaul Ephraim Cohen, *The Politics of Planting: Israeli-Palestinian Competition of Land in the Jerusalem Periphery* (Chicago: Univ. of Chicago Press, 1993), p. 179.

10. *The Politics of Planting*, p. 168.

11. From his testimony given to B'Tselem researcher Yuval Ginbar in Abu Dis on 17 June 1998.



## Chapter Two: The Land Expropriation

As noted, an Israeli civilian industrial area was established in 1974 on land that is now part of the Ma'aleh Adumim settlement. The first settlers lived there for some twelve months.

According to the Ma'aleh Adumim Municipality, "in October 1977, a thorough survey was conducted of the entire area, 35,000 dunam [3.5 sq. Km; 4 dunams = 1 acre] of state land."<sup>12</sup> This source describes the selection of territory based on five criteria: factors related to land, environment, function, "availability of land for development: state lands," and the cost of development.<sup>13</sup>

Hence, the land on which the Ma'aleh Adumim settlement lies was expropriated from its owners – local Palestinian residents of the area and the overall Palestinian population, in general – by proclaiming it "state land." The aforementioned criteria for selection of a site for the future settlement did not take into consideration any needs, public or private, farming or development, of the Palestinian owners of the land.

The procedure of declaring property "state land" took place primarily in the 1980s. Through the early 1990s, Israel annexed to the settlement additional property that had been expropriated as "state land." The settlement

of Ma'aleh Adumim now comprises some 43,500 dunam.

Declaring an area "state land" is the role of the Civil Administration's supervisor of government property following an examination conducted by the Civil Division of the State Attorney's Office. This examination relies on the Israeli government's interpretation of the Ottoman Lands Law of 1855. The supervisor's representative informs the local village mukhtars about the intention to declare the land as "state land" and the residents have the right to appeal to the Military Appeals Committee.<sup>14</sup>

This procedure is flawed for many reasons, among them:

- It is not based on Jordanian law, which an occupying army should apply.
- It bypasses the procedure for registering lands provided for in Jordanian law, suspended by the West Bank military commander himself in 1968, and which has not been renewed since, more than thirty years later.<sup>15</sup>
- It manipulates the law – primarily Ottoman law – by applying an extremely broad and unreasonable interpretation to the state's rights to land. The Ottoman sultan's

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12 *Ma'aleh Adumim: 1998 Profile of a Town*, p. 4. As mentioned, the settlement has in the meantime expanded beyond this area.

13 *Ibid*.

14 On this procedure, see Pliyah Albeck, *Lands in Judea and Samaria* (in Hebrew) (Tel-Aviv: Tel-Aviv - Jaffa District Comm., Israel Bar Assoc., 1985), pp. 7-9. Attorney Albeck, who for many years played a key role in this procedure, explicitly mentions that examination of property for the purpose of declaring it "state lands" was conducted for "any area that was required for the purposes of establishing a Jewish settlement or for adding to a settlement" (at p. 3). The argument that the declaration was made to safeguard public property is, therefore, unsustainable. See, also Eyal Zamir, *State Lands in Judea and Samaria: A Legal Survey* (in Hebrew) (Jerusalem: The Jerusalem Institute for Israel Studies, 1985), pp. 31-34; Menachem Hofnung, *Israel State Security versus the Rule of Law* (in Hebrew) (Jerusalem: Nevo, 1991), pp. 307-309; Raja Shehadeh, *Occupier's Law*, Revised Edition (Washington, D.C.: Institute for Palestinian Studies, 1988), pp. 22-33; Raja Shehadeh, *The Law of the Land: Settlements and Land Issues under Israeli Military Occupation* (Jerusalem: PASSIA, 1993), pp. 11-30.

15 *Order on Land and Water Arrangements (Judea and Samaria)* (No. 291), 5729-1968 (KMZT 5729, 591).

theoretical ownership of all land within his dominion was interpreted by Israel as license to control an enormous amount of land, expropriate it from its users, and transfer it to the use of foreigners, an interpretation never made by the Ottomans, the British, or the Jordanians.<sup>16</sup>

- The Israeli government did not take measures to register traditional land ownership in the modern land registry. Rather, it cynically took advantage of an undeveloped, pre-modern system of land ownership in order to steal property from the owners. In his testimony to B'Tselem, 'Abd al-'Aziz 'Iyad, a resident of Abu Dis, succinctly described the registration situation:

The land here is not registered in the *Tabu* [Israel's land registry]. The Turks and the British did not register the land, the Jordanians registered the lands of al-'Izariyyeh but did not get to Abu Dis, and Israel disregarded everything

- It imposes the burden of proof regarding land registration and use on the Palestinians who claim ownership. As a result, Palestinians whose property is declared "state land" have to muster their meager means to battle the Israeli system. This system is not only foreign to Palestinians, it is also undemocratic in that it is military, fails to represent the public to which the claimant belongs, and is motivated by irrelevant considerations. The system is also buttressed by sophisticated technology (aerial

photography, computerization, and the like) used to refute Palestinian proof of ownership. In addition to all this, as noted, legislation was drafted to permit the expropriation of as much land as possible to enable the establishment and expansion of Israeli settlements.

Even if the above procedure for expropriation was legitimate and lawful, the result would be that those lands become "public property," in the words of the High Court of Justice.<sup>17</sup> However, the public owning the property in the West Bank consists of Palestinians, not the Israelis who settle in the West Bank. Declaring land "public" cannot be part of the procedure to deny Palestinians their rights to that land, and even prevent their entry to it (see below).<sup>18</sup>

Under article 55 of the Hague Regulations, the occupying power must act to safeguard public property, and has only limited rights to enjoy its fruits [usufruct], provided that no significant – and certainly no permanent – changes are made.<sup>19</sup> Building houses, paving roads, establishing industrial structures and cemeteries, and the like must clearly be considered "infrastructure investments" leading to "permanent change." Such activities, as Israel's Justice (now Supreme Court President) Aharon Barak stated, are allowed only "when reasonably necessary to meet the needs of the local population."<sup>20</sup>

Since all construction of houses, roads, and the like in the Ma'aleh Adumim settlement were done for a population that was brought

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16. See, for example, Shehadeh. *The Law of the Land*, pp. 14-30. Anthony Coon, *Town Planning under Military Occupation: An Examination of the Law and Practice of Town Planning in the Occupied West Bank* (Ramallah: al-Haq, 1992), p. 165.

17. HCJ 285/81, *Fadel Muhammad al-Nizar et al. v. Commander of Judea and Samaria et al.*, *Piskei Din* 36(1) 701, 704.

18. For an extensive discussion of the flaws in proclaiming areas of the Occupied Territories "state lands," see B'Tselem, *Israeli Settlement in the Occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects* (March 1997).

19. *Regulations Annexed to the Fourth Convention Respecting the Laws and Customs of War on Land* (The Hague, 18 October 1907). For its text, see, e.g., A. Roberts and R. Guelff (eds.), *Documents on the Laws of War* (Second Edition) (Oxford: Clarendon, 1994), pp. 44 ff.

20. HCl 392/82, *Iam iyat Iskan al-Mu'aliman al-Mahddudat al-Mus'uliyah, Teachers' Housing Cooperative Society, Duly Registered at Judea and Samaria Headquarters v. Commander of IDF Forces in Judea and Samaria et al.*, *Piskei Din* 37(4) 785, 804 [hereafter: *Teachers' Society*]. On this matter, see an extended discussion in B'Tselem, *Israeli Settlement in the Occupied Territories*.

in from the occupying power, and is not local. Israel here, too, has breached its obligation under international law

It is not difficult to illustrate the proper policy that an occupier, or other caretaker, must follow regarding land whose ownership is unclear, but whose ties to nearby villages are evident. The historian Gabriel Barr described British policy relating to lands that belong to a village [*masha*] but are not registered in the name of a specific individual, whose use was allocated by consent:

These [*masha*] lands, held jointly by the village residents, constituted just prior to World War I some seventy percent of all the land of Eretz Israel. During the Mandate, a land settlement arrangement took place, during which these lands were parcelized and registered in the names of the new landowners. According to the Ottoman Lands Law, the registration of property in the name of an entire village was prohibited, and the Mandatory government continued this practice. Therefore, the Mandatory government registered these lands in the name of the State Treasury or the High Commissioner and *held them in custody for the village* <sup>21</sup> [our emphasis]

## Results of the Land Expropriation: Local Palestinian Towns and Villages Compared to the Ma'aleh Adumim Settlement

The massive land expropriation to establish and expand the Ma'aleh Adumim settlement

severely affected the local Palestinian villages. These effects will be described here and compared with the situation in the Ma'aleh Adumim settlement, where relevant.

### Planning and Development

The extensive land expropriation enabled the establishment and expansion of the largest Israeli settlement, and conversely, drastically reduced the land Israel could allocate for the natural expansion of local Palestinian villages. The result has been plentiful construction and land for one party, and a severe housing and land shortage for the other.

The head of the Abu Dis Local Council, Salah Abu Hilal, described to B'Tselem the housing situation in his village after land had been expropriated for the Ma'aleh Adumim settlement:

There is not enough land for construction... We are very close to having no land at all for building. People are uprooting trees and building on the site. During the year the Council has been in operation, ten building permits were issued. There is no land and also no money to build. Many people live with their parents even after marriage. <sup>22</sup>

The data illustrate this distress and the magnitude of the discrimination between Palestinians and Israeli settlers created by Israeli policy.

"Demarcation plans" were approved by Israel in 1992 for three of the adjacent villages. <sup>23</sup> Table I compares land allocation for these villages and the allocation to Ma'aleh Adumim in the town planning scheme and expansion plan.

21 Gabriel Barr, *The Village Mukhtar in Eretz Israel (in Hebrew)* (Jerusalem: Y.L. Magnes Press, 1979), p. 48.

22 The testimony was given to Yuval Ginbar on 17 June 1998.

23 On demarcation plans, see B'Tselem, *Demolishing Peace: Israel's Policy of Mass Demolition of Palestinian Houses in the West Bank* (September 1997). The following figures are taken from the expert opinion prepared by architects Jan de Jong and Shmuel Groug appended to the petition in HCI 3125/98, 'Abd Al-'Aziz Muhammad 'Iyad et al. v. Commander of IDF Forces in Judea and Samaria et al., Petition for Injunction and Interim Order (see below, Chapter Five, p. 36), p. 8.



Table 1

*Average area per resident in Ma'aleh Adumim compared to adjacent villages*

Name of town/village	Number of residents	Total area allocated, in dunams	Average area per resident, in sq. meters
Abu Dis (Plan 1603/92)	12,000	1,302	76.5
Anata (Plan 1503/92)	12,000	1,156	102
al-'Izariyyeh (Plan 1634/92)	18,000	2,133	118.5
Ma'aleh Adumim (Plan 420. 420.4)	25,000	53,000 (including the expansion plan) <sup>24</sup>	2,120

As Table 1 indicates, the planning area for the three villages together, with a population of some 40,000, is approximately 4,600 dunam. The area of the Israeli settlement, with only 25,000 residents, is 11.5 times greater than that of the villages, although the population of the villages is more than fifty percent greater.<sup>25</sup> Even by Israeli standards, the Ma'aleh Adumim settlement is huge, its area exceeding that of Tel-Aviv.<sup>26</sup>

#### **Handling of Cases of Building Without a Permit**

Like most Palestinian villages in the West Bank, many residents of the local villages have been compelled, because of the land shortage and the difficulty in obtaining building permits from the Israeli authorities, to build without a permit. Also, like most villages in the West Bank, the land reserves of these villages are located in "Area C," the area

totally under Israeli control, where Israel implements a policy of mass demolition of houses.<sup>27</sup> In al-'Issawiyyeh alone, twenty-five houses were demolished since 1975 (the year the Ma'aleh Adumim settlement was founded).<sup>28</sup>

There has been widespread illegal building in the Ma'aleh Adumim settlement. The State Comptroller found that:

In the area of the town there is much additional construction, for which the [Local Planning and Building] Committee granted permits, even though the detailed plans for the planning, deposited with the Supreme Planning Council, do not allow for such building additions. At the time of the investigation, the Town Council was amending the plans to enable building additions.

<sup>24</sup> See Chapter Five

<sup>25</sup> The Objections Committee of the Supreme Planning Council in the West Bank rejected these data, arguing (incorrectly, as these figures show) that they do not include the Palestinian villages' public areas. However, the Committee refrained from offering its own data to refute the above figures. See Civil Administration for Judea and Samaria, Supreme Planning Council, Objections Subcommittee, Committee Minutes no. 2/98, of 21 January 1998, relating to objection to Plan 420/4, Ma'aleh Adumim, Decision, sec. 10

<sup>26</sup> According to the figures of the Tel-Aviv Municipality, as provided to B'Tselem by the Municipality's spokesperson, Tel-Aviv's geographic area totals 50,553 dunams

<sup>27</sup> See B'Tselem, *Demolishing Peace*

<sup>28</sup> *Kol Ha'ir*, 5 February 1999.



The investigation revealed that numerous structures were built within the town's jurisdiction, including hundreds of housing units, public structures, and industrial buildings, without having properly received building permits. The Ministry of Construction and Housing built a large percentage of them.<sup>29</sup>

The solution for widespread illegal building in the Israeli settlement is to provide retroactive permits rather than demolish the structures.<sup>30</sup> This is not unique to Ma'aleh Adumim: according to the State Comptroller, illegal building is also approved retroactively in other Israeli settlements.<sup>31</sup> In sharp contrast, the practice on the Palestinian side is refusal to grant building permits and then demolition of houses built without one

### **Farming**

Land expropriation has, in effect, destroyed farming in the local Palestinian areas. In its research report, the Al-Quds Project found that:

The agricultural sector in the area researched is considered weak, and its contribution to income and work is extremely limited. This results primarily from the expropriation and closing of lands after 1967... During the occupation, most of the land was expropriated for military purposes and to establish [Israeli] settlements, and the result was that today no farming of any type is done on the land of al-'Izariyyeh and Abu Dis, except for olive trees, even though the land of Abu Dis is well known as fertile for grain crops.<sup>32</sup>

### **Industry**

The Ma'aleh Adumim settlement is well-endowed with an industrial zone that "spreads across 7,500 dunam, among the largest industrial parks in Israel," and is located on "an area containing unlimited land reserves."<sup>33</sup> The situation in the local Palestinian villages differs totally. According to the Al-Quds Project, the area lacks a planned industrial zone. The result is a concentration of factories and workshops within residential neighborhoods, creating ecological problems and health nuisances for the residents.<sup>34</sup>

### **Employment**

Destruction of the farming sector and elimination of possibility of industrial development, both consequences of the land expropriation to establish the Ma'aleh Adumim settlement, inevitably compelled the Palestinian residents to make a living by working in Israel, in the Israeli settlements, or in East Jerusalem.<sup>35</sup>

According to the Ma'aleh Adumim Municipality, sixty percent of the two thousand employees in the settlement's industrial park, i.e., 1,200 people, are "Arabs."<sup>36</sup> It is superfluous to add that most of them are laborers, and that none of the approximately one hundred factories in the industrial zone is Palestinian-owned.

### **Testimonies of Residents**

In testimonies to B'Tselem, residents described life before their farmland was expropriated to establish the Ma'aleh Adumim settlement, the frustration and despair that accompanied the loss of their

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29 State Comptroller, *Annual Report no. 38* (1987), p. 916

30 For an extended discussion on this point, see B'Tselem, *Demolishing Peace*

31 For example, in Oranit. See State Comptroller, *Annual Report no. 47* (1996), p. 1025

32 Al-Quds Project, p. 31

33 Ma'aleh Adumim: 1998 Profile of the Town, p. 8

34 Al-Quds Project, p. 30

35 *Ibid.*, p. 44

36 Ma'aleh Adumim: 1998 Profile of the Town, p. 8

land, and with it the farming way of life, and the other destructive effects of the Israeli settlement had on Palestinian lives.

'Abd al-Aziz Muhammad 'Iyad, 68, resident of Abu Dis:

I was born in Abu Dis. Prior to 1967, my father's house, which has twenty families, was called 'Iyad al-Khalbiyyeh. The *hamula* was called Khalbiyyeh and father's family, called Iyad. We were all farmers, though as time passed some of the young members went to the Gulf [States] and other places.

Father's family had some 3,000 dunam of farm land, where we grew wheat and barley, and also grazing land for sheep and cows. My father had 300 dunam, both fields and grazing areas. We had 150 head [of sheep and cows]... I lost all the land. I have no land for grazing the sheep. We had sheep until 1994. Other than the house, I have no land at all at this time. I am still working the [expropriated] parcels that are intended for expansion of Ma'aleh Adumim. My children work elsewhere, and after they finish their jobs, they join me in the fields. My grown children live with me because they have nowhere to build.<sup>37</sup>

Muhammad Saleh Qatamireh, 67, resident of al-'Izariyyeh:

Before they expropriated my land, I worked it. We grew lentils, barley, chick peas [for *humus*]. I used to go to the field together with my wife. We worked together, sowed and planted together, harvested together. We had thirty goats – we milked them, made cheese, sold the milk and the cheese. During the harvest, we all worked together, the entire family, and when we finished, we would help the neighbors.

Although conditions were much more difficult, we lived a quieter and happier life, and we were our own masters.<sup>38</sup>

Abd al-Majid Hussein Darwish, 86, resident of al-'Issawiyyeh:

We always worked the land. We grew lentils, wheat, and chick peas. Each season we filled thirteen trucks with wheat and sold it all, and some was even left for the family until the next season. We also had fifteen Dutch cows. The land was my life. I arose, slept, and worked on the land.<sup>39</sup>

Muhammad Ahmad Abd al-Baqi Zidan, 53, resident of 'Anata:

My father, the children, and I used to work the land. We planted wheat, lentils, chick peas, and even vegetables during the summer. We sold the harvest and had some left over for ourselves, enough for the whole family for an entire year. We also raised cows and sold their milk.

The whole family worked together. We planted together, plowed together, felt what it meant to work together. This drew the entire family and even the village together, because when we finished working our land, we would go to another's land and help. During the harvest, the entire village celebrated. It was not some simple event. Life revolved around it, socially and economically...

Expropriation of the land also took away our way of life. When I lost the land, I also lost my way of life. Now somehow I feel off on the side, not involved as before. There is a big vacuum in my life, a vacuum that the land and working it had previously filled.

For my children, the land is a symbol, but for me it is a way of life. It is nostalgia, it is memories, it is belonging. Once I knew

37 The testimony was given to Yuval Ginbar in Abu Dis on 22 June 1998.

38 The testimony was given to Marwah Ibara-Tibi on 7 August 1998.

39. The testimony was given to Marwah Ibara-Tibi on 13 August 1998.

where each stone lay on the ground.  
Now, without the daily connection I once  
had, I barely remember it.<sup>40</sup>

Ali Ahmad Muhammad Khalbiyyeh, resident  
of Abu Dis:

Only my house remained. They took all  
the rest. My children do not farm – there

is no land. They took it. We had land in  
the Israeli settlement of Keydar, and the  
land that they took when they expanded  
Ma'aleh Adumim. I was only left with a  
parcel of land in Abu Dis. We wanted to  
build a house for the children, but my  
children live with me in the house.<sup>41</sup>

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40 The testimony was given to Marwah Ibara-Tibi

41 The testimony was given to Yuval Ginbar on 22 June 1998

## Chapter Three: "The Enclaves Method" – Annexation of Israeli Settlements into Israel<sup>42</sup>

It is impossible to understand the Israeli settlers' way of life in Ma'aleh Adumim and other settlements in the Occupied Territories without understanding the annexation of the settlements and settlers into Israel. This absorption is accomplished, as described in this chapter, by all the bodies holding power in Israel and the Occupied Territories – the government, the Knesset, and the military – all with the blessing of the High Court of Justice. These bodies gradually created two types of enclaves of Israeli civil law in the Occupied Territories – personal and territorial.

1. *Personal enclaves*: Every Israeli citizen and every Jew (see below) in the Occupied Territories is subject, wherever he or she goes, to Israeli civil law in almost every circumstance, and not to the military law that ostensibly applies there. The Oslo Accords perpetuate this situation by denying the Palestinian Authority any power to deal with Israeli civilians in the Occupied Territories, including Israelis who enter territory under PA control<sup>43</sup>
2. *Territorial enclaves*: Local authorities were set up in the settlements. These bodies manage life within the settlements according to Israeli civil law. The boundaries of the settlement, which Palestinians are prevented from entering without a special permit, mark the area of jurisdiction of that law

### A. Agents of the Annexation and Segregation: The Government, the Knesset, and the Military Commanders

All Israeli bodies having primary or secondary legislative power in the Occupied Territories, from the Knesset to the government, the military, and the local authorities in the Occupied Territories, contributed to the system of laws and military orders that distinguishes between Israeli settlers and Palestinian residents and applies Israeli civil law only to the settlers and settlements in the Occupied Territories. Military law governs only the Palestinian residents. The Oslo Accords perpetuate this distinction.

#### I. Government Regulations

The Israeli government played a decisive role in applying Israeli law to Israeli settlers, in particular, and to Israeli civilians in the Occupied Territories, in general. It accomplished this first by means of the Emergency Regulations (Offenses in the Occupied Territories – Jurisdiction and Legal Assistance), 5727-1967, issued by the Minister of Defense on 2 July 1967.<sup>44</sup> According to these regulations, Israeli civilians who committed offenses in the Occupied

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42 For comprehensive research on the subject conducted in the late 1980s, see Eyal Benvenisti, *Legal Dualism. The Absorption of the Occupied Territories into Israel* (Jerusalem: West Bank Data Base Project, 1989).

43 Oslo I Interim Agreement, 4 May 1998, article V(3).

44 *Kovetz Takkanot* 2069, p. 2741. In 1977, the name was changed to "Judea and Samaria, Gaza Strip, Golan Heights, Sinai, and South Sinai."



Territories would be tried in Israeli civil courts. Despite its non-binding language, the regulations in effect restricted the power of the military commander and local courts in the Occupied Territories,<sup>45</sup> and created for the first time an extra-territorial personal status for Israeli civilians in the Occupied Territories.

In 1969, the Minister of Justice issued regulations that empowered Israeli civil courts to adjudicate suits between Israeli settlers (and Israelis in general) and Palestinians, or between settlers.<sup>46</sup>

These cases are adjudicated, of course, according to Israeli law and not local law, which is supposed to apply in the Occupied Territories. Local courts have been denied – in practice, if not by law – jurisdiction over Israeli settlers.<sup>47</sup> On the other hand, Israeli courts refrain from dealing with matters between Palestinians.<sup>48</sup>

Another regulation, issued by the Minister of Finance in 1982, grants Israeli settlers who are farmers the right to compensation in accordance with Israeli law for famine-related damages. This right is not granted to Palestinians.<sup>49</sup>

Military orders, which will be discussed below, were, of course, also issued with the

approval and responsibility of the government.

## 2. Knesset Legislation<sup>50</sup>

The Knesset periodically extends the validity of the Emergency Regulations (Offenses in the Occupied Territories – Jurisdiction and Legal Assistance), mentioned above

In 1984, in the framework of the renewal of these regulations, the Knesset made more laws applicable to the Israeli settlers. These included, in part, laws related to security services, the income tax ordinance, population registry, and national insurance.<sup>51</sup> The law also granted the Minister of Justice authority to change the annex to the regulations, by order and with the approval of the Knesset Constitution, Law, and Justice Committee of the Knesset.<sup>52</sup>

It should also be noted that "resident of Israel" is defined in the regulations, as follows:

For purposes of the legislation cited in the annex, the phrase "resident of Israel" or other phrase related to residency, residence, or living in Israel therein mentioned shall include a person whose

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45 In this context, Hofnung writes: "Although the regulations use the language 'may,' I know of no Israeli civilian who was tried for a criminal offense in a local court in the Occupied Territories." Hofnung, *Israel - State Security*, p. 294

46 Procedure Regulations (Service of Documents in the Occupied Territories), 5730-1969, *Kovetz Takkanot* 2482, p. 458. A similar regulation was issued for the labor courts (*Kovetz Takkanot* 2482, 5730, p. 460). According to Eyal Benvenisti, the High Court of Justice contributed decisively in this measure by interpreting very broadly these essentially technical regulations. See Eyal Benvenisti, *The International Law of Occupation* (Princeton: Princeton Univ. Press, 1993) pp. 129-134, esp. fn. 123.

47 See, for example, Shehadeh, *Occupier's Law*, pp. 91-94.

48 Benvenisti, *The International Law of Occupation*, p. 133. According to Benvenisti, the courts ruled that local law controls only in cases of employment contracts between Israeli employers and Palestinian employees (which serves to justify lower wages for Palestinians). See pp. 133-134.

49 Property Tax and Compensation Fund Regulations (Payment of Compensation for Damages) (Property Outside of Israel), 5742-1982, issued 7 March 1982.

50 On the performance of the Knesset, see, for example, Hofnung, *State Security*, pp. 293-296; Amnon Rubinstein, "The Changing Status of the 'Occupied Territories': From a Deposit-in-Keeping to a Legal Hybrid" (in Hebrew), 11 *Iyunei Mishpat* (1956), pp. 439, 440, 442, 447-450; Amnon Rubinstein, *The Constitutional Law of Israel* (in Hebrew) (Jerusalem: Schocken, 1991), pp. 104-107; Benvenisti, *The International Law of Occupation*, pp. 135-136.

51 Amendment and Extension of Validity of Emergency Regulations (Judea and Samaria, Gaza Strip, Sinai, and South Sinai - Jurisdiction over Offenses and Legal Assistance), 5744-1984, section 6.

52. Regulation 6B(b), section 4 of the extension law.

residence is in the region and who is an Israeli citizen or who is entitled to immigrate to Israel pursuant to the Law of Return, 5710-1950, and who, if his place of residence were in Israel, would fall within the aforesaid phrase.<sup>53</sup>

In other words, the Knesset established that, in addition to all Israeli citizens, every Jew, whether or not an Israeli citizen, would also benefit from the special status of settlers in the Occupied Territories.

Prof. Rubinstein summarizes the ramifications of this law:

The said extension law essentially provides an opening through which the Minister of Justice can, with only the approval of the Knesset Constitution Committee (and with no need for approval of the Knesset plenum), introduce the entire Israeli statutory law into the region and apply it to Israeli citizens living there.<sup>54</sup>

Numerous other laws were amended to make them also applicable to settlers in the Occupied Territories. Among these are the Knesset Elections Law, the Income Tax Ordinance, the Citizenship Law, the VAT Law, and the Supervision of Commodities Law.<sup>55</sup>

In 1988, the Knesset empowered the government to apply the Development Towns and Districts Law also to "local authorities and Israeli citizens" in the Occupied Territories.<sup>56</sup> In so doing, the Knesset for the first time applied its law to the settlements *as territories*, and not just to settlers as individuals, as it had done previously.

In recent years, the Knesset enacted several laws containing provisions that apply directly to the settlements, and not the settlers as individuals. These laws relate to local authorities and elections to these bodies.<sup>57</sup>

### 3. Israeli Military Orders

Israel's military commanders in the West Bank have so far issued more than 1,400 orders. One order concerned with interpretation that was issued by the military commander of the West Bank states that security legislation "overrides every law, even if it does not explicitly cancel it."<sup>58</sup> Military orders thus constitute legislation for all intents and purposes, even instantaneously changing or overriding existing legislation. While these orders at first related to security matters, over the years they have covered most areas of civilian life.<sup>59</sup>

Military orders serve as an extremely efficient tool in implementing the policy of applying Israeli law to the settlements and settlers, distinguishing them from Palestinians as individuals and from Palestinian localities and lands. In these orders, the military commander often "relinquished" his power over the settlements to Israeli civilian authorities, either within the settlements or in Israel itself.

In most instances, the language of the orders themselves did not indicate that any specific order applied only to the settlements or settlers, in contrast with Palestinian localities or residents. In practice, applicability of the order was established in an appendix or

53. Regulation 6B(a), section 4 of the extension law.

54. Rubinstein, "The Changing Status of the 'Occupied Territories,'" p. 450.

55. For details, see *ibid.*, pp. 448-450.

56. Development Towns and Districts Law, 5748-1988, section 3(E).

57. District Councils (Time of General Elections) (Amendment) Law, 5757-1997, Amendment of Local Councils (No. 21) Law, 5757-1997, Local Authorities (Special Elections) (Legislative Amendments), 5758-1998.

58. Order Concerning Interpretation (West Bank Region) (No. 130), 5727-1967 (Amendment 5728), section 8(A).

59. For the text of these laws, see Zvi Preisler (ed.), *Legislation in Judea and Samaria* (Jerusalem, 1987), and the subsequent revised editions. Parallel orders were issued in the Gaza Strip, most in identical language.

annex to the order that listed the localities where it applies, and sometimes only as a matter of practical policy.

As a result, the Order on Administration of Local Councils could, theoretically, provide for the establishment of Palestinian local councils. In parallel, the Order on Appointments Pursuant to the Mukhtars Law could be used by the military commander to appoint mukhtars in rural settlements. The Order Concerning Employing Workers in Certain Locations could ostensibly be applied to Palestinian towns and villages as it is to Israeli settlements, and the special planning committees the regional commander is empowered to appoint could also be established in Palestinian villages.

In effect, only Israeli local councils have been set up, mukhtars have only been appointed for Palestinian villages, the "certain places" were all Israeli settlements, and the special planning committees were set up only in Israeli settlements.

Beginning in 1979, the military commanders established by order local authorities in the settlements. These authorities were of the Israeli type: district councils,<sup>60</sup> local councils,<sup>61</sup> and later municipalities (see below). The orders included maps that demarcated the area of jurisdiction of the councils, and stated that "the regional commanders [may] establish a court for local matters," whose composition and powers

"shall be set forth in a code."<sup>62</sup> The list of towns and villages included in the annexes of the orders did not, of course, include Palestinian towns and villages.

In 1983, secondary legislation, which expanded the powers of the courts for local matters, enabled application of twenty-nine more Israeli laws to the settlements. These laws dealt, in part, with welfare, education, personal status, family law, and inheritance. The judges of these courts are Israeli civilians appointed by the military commander.

Because the councils were established by order of the military commander, who also issued the secondary legislation (orders that override "every law", as noted above) local (Jordanian) law did not apply to the councils and the local courts had no jurisdiction over them.

## **B. Two Examples: Establishment of Municipalities, Prohibiting Entry of Palestinians into Israeli Settlements**

Previous B'Tselem reports described various aspects of the discrimination practiced by all Israeli governments against Palestinians and in favor of the Israeli settlers.<sup>63</sup> Two brief examples follow.

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60 Order on Administration of District Councils (Judea and Samaria) (No. 783), 5739-1979 (KMZM 5741 |1981| 88, 122, 200, 5742 |1982| 450, 866, 867, 5744 |1984| no. 60, p. 14) Pursuant to the annexes of this order, four district councils were established in the West Bank: Biqat Ha'Yarden, Mateh Binyamin, Samaria, and Etzion.

61 Order on Administration of Local Councils (Judea and Samaria) (No. 892), 5741-1981 (KMZM 5741 |1982| 864, 5742 |1984| no. 60, p. 12, no. 66, p. 170) This order revoked earlier orders relating to Kiryat Arba and Ma'aleh Adumim, and established five local councils: Elkana, Ariel, Ma'aleh Adumim, Ma'aleh Ephraim, and Kiryat Arba.

62 Identical language is found in section 2(B) of the Order on Administration of Local Councils and 2(C) of the Order on Administration of District Councils.

63 See, for example, B'Tselem, *Law Enforcement vis-a-vis Israeli Civilians in the Occupied Territories* (March 1994); B'Tselem, *Impossible Coexistence: Human Rights in Hebron since the Massacre at the Cave of the Patriarchs* (September 1995); B'Tselem, *Demolishing Peace*. In a less direct manner, most B'Tselem reports deal with this or another type of discrimination against Palestinians in comparison with Israeli settlers, as they describe a policy of human rights violations applied almost solely against Palestinians.



## **I. Establishment of Municipalities in the Settlements: Two Kinds of Towns**

The proclamation making Ma'aleh Adumim a town illustrates the flexibility that military orders provide the Israeli government for annexing settlements without "undesirable" implications for the obligations of Israeli authorities toward the Palestinians.

In 1991, the decision was made to declare the Ma'aleh Adumim settlement a town. This was ostensibly the task of the military commander under Jordanian Municipalities Law Number 29, of 1955. If that law were applied, however, the Ma'aleh Adumim Municipality would be subject to Jordanian law, and the Israeli administration would have to use the same criteria that apply to Palestinian municipalities and cities with regard, for example, to the allocation of resources, the level of services, development benefits, provision of mortgages, and elections for the municipal council.

For this reason, Brigadier Dani Yatom, the IDF commander of the West Bank, issued an order amending the Local Councils Code of 1981 (which had also been amended by a military order), to regulate the activity of the councils in the settlements, which in practice made them subject to Israeli law.

The order stipulates, in part:

140.c The commander of IDF forces in the region may, upon recommendation of the person in charge, proclaim by order that a specific local council be called a "municipality."

140.d Where an order is issued pursuant to section 140c –

(a) The provisions of the [Local Councils] Code and legislation pursuant thereto will apply to the said local council.

In other words, the order created two types of towns: Palestinian, administered in accordance with Jordanian law and military orders, and Israeli (or, in the language of the order, "local councils called municipalities"), administered in accordance with Israeli law and entitled to all the benefits and allocations that this law provides. Thus, the law enabled discrimination between two kinds of towns by means of the different definitions. The Palestinian municipalities were administered with minimal budgets and a low level of infrastructure and services. In contrast, the Ma'aleh Adumim settlement, and later Ariel – "local councils called municipalities" – and their residents benefited from everything a modern welfare state can offer, and more, in practice, because of the high priority that Israeli governments gave to Israeli settlement in the Occupied Territories.

All Israeli governments and public authorities recognize the Ma'aleh Adumim settlement, like all the Israeli settlements in the Occupied Territories, in various ways. In 1993, Ma'aleh Adumim was given the environmental quality award for that year at a gala celebration in the Knesset.<sup>64</sup> In 1995, it received this award a second time, and, in 1998, it was granted the Minister of Education Prize.<sup>65</sup> The text of tenders published by the Israel Lands Administration for a town within Israel is absolutely identical to that of a tender dealing with the Ma'aleh Adumim settlement, whose construction in occupied territory contravenes international law.<sup>66</sup>

## **2. Prohibiting Palestinians to Enter the Settlements**

As noted above, almost all the Israeli settlements were established on land declared to be public property. The

64. *Ma'aleh Adumim: 1998 Profile of the Town*, p. 6.

65. *Mekor Rishon* [weekly newspaper], 25 September 1998.

66. As is the case with two identical tenders, one for Kiryat Malachi and the other for Ma'aleh Adumim, in *Yediot Aharonot*, 6 August 1998. See Appendix I.



Palestinian public, who had actually owned these lands, were removed from them. Furthermore, they were prohibited from entering the Israeli settlements – from entering their own land – unless they possessed a special permit.

This situation has existed in practice since the first settlements were founded. In recent years, the prohibition has been regulated by military order. In a 1996 order, Brigadier Ilan Biran, commander of IDF forces in the West Bank, declared all Israeli settlements to be "closed military areas." This order, extended by identical orders issued by IDF commanders in the West Bank on 28 March and 30 July 1997, are regularly extended. The reason for the order, in the words of all the commanders, is that, "it is reasonable that such action is necessary for security reasons and in light of the special circumstances currently prevailing and the need to take immediate emergency measures"<sup>67</sup> The order prohibits entry into the Israeli settlements except for persons with a special permit.<sup>68</sup> However, the order provides (in paragraph 2) a "general permit," according to which "the provisions of this proclamation do not apply to Israelis."

The definition of "Israeli" at the beginning of this order is extremely discriminatory, and accurately reflects the objectives of Israel's settlement policy

In this proclamation –

"Israeli:" a resident of Israel, a person whose place of residence is in the region and is an Israeli citizen or is entitled to immigrate to Israel pursuant to the Law of Return, 5710-1950, as in effect in Israel, and also a non-resident of the region who holds a valid permit to enter Israel

'Security reasons,' then, led the military commander in the West Bank to turn the settlements into a "closed military area" by "emergency measure." Entry into the "closed"

area is allowed to Israeli citizens and Jews in general, but also to anyone who enters Israel as a tourist with a valid entry visa. Thus, a billion people from throughout the world can, with a visa stamped in their passport, become Israelis (as defined by the order) and enter the settlements. In practice, hundreds of thousands of tourists become "Israelis" according to the definition of the military commander.

Only Palestinians, on whose land the settlements were built, are prevented from entering them. Only Palestinians require a special permit to enter this "public land."

### **C. Annexation of the Settlements in Practice**

In B'Tselem's opinion, the lack of formal annexation of these lands (for reasons described below) does not change the fact that the role of the IDF in controlling and administering the settlements has become token, while Israeli civil authorities and law have taken over. The change has reached a critical mass that it must be stated that Israel has annexed the settlements.

In other words, the seemingly complex mosaic of laws, regulations, and orders that the civil and military authorities have enacted relating to settlers in the Occupied Territories forms a rather simple picture of annexation.

In almost every way, the lives of settlers are like those of Israelis living in Israel. The settler elects the local or district council, votes in Knesset elections, pays taxes, national insurance and health insurance, and benefits from all the social rights that Israel grants its citizens. If suspected of violating the law, the settler is arrested by a civilian police officer and tried in accordance with Israeli criminal law.

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67 Order Relating to Security Directives (Judea and Samaria) (No. 378), 5730-1970, Proclamation on Closing Area (Israeli Towns and Villages), issued 5 March 1996

68 Paragraph 2 of the order

Thus, the settlers benefit from all the rights of free citizens in a democratic country, but within legal enclaves – personal and territorial – and on land that is held entirely under belligerent occupation.

Only faint traces remain of the military government with regard to the settlements and settlers the military government within a totally Israeli civilian system. The Ma'aleh Adumim Municipality explained this situation succinctly:

Ma'aleh Adumim is subject to Israeli law as a result of [military] orders, and the IDF is sovereign in the area. In everyday life, this presence is not felt, and the towns' residents are Israeli citizens with the same rights and obligations.<sup>69</sup>

Over time, the settlements and settlers have gradually been annexed both *de jure* and *de facto* (in law and practice). In contrast with East Jerusalem and the Golan Heights, however, Israel did not declare the area annexed, and thereby gained two advantages:

1. Israel was spared the censure of the international community, and possibly even international sanctions, by preserving the appearance of a military government, as ostensibly required under international law.
2. Israel circumvented the obligation to treat all residents of the Occupied Territories equally. The technique of annexing the settlers and territorial enclaves enabled it to shower them with liberties, services, and budget allocations, while continuing to impose a harsh military government on the Palestinians.

The Oslo Accords perpetuate this situation. Within Areas A and B, Israel does not consider itself responsible for the civil administration of legal, governmental, and economic matters. However, Israel continues to impose its military authority where possible. In Area A, this control takes the form of closures, arrests, denial of the right of other Palestinians to return to the West Bank, and severe restrictions on movement, family visitation, and family unification. In Area B, in addition to these Israeli actions, the Israeli authorities demolish houses for alleged security reasons, search houses, and impose curfews. In Area C, in addition to all the above, Israel expropriates land and demolishes houses on the grounds that no building permit was obtained, i.e., a total military regime. Such control is also exerted over residents of Areas A and B when using the main roads of the West Bank.

In contrast, the settlements and their residents – who are also ostensibly under total military control in Area C – are annexed to Israel and find themselves in practice, and even by law, under the same civil governance that applies in Israel.

Because this territory constitutes one occupied area and not two distinct states, a particularly harsh reality results from this annexation: Israel maintains in the West Bank a regime of segregation with lawfully-sanctioned discrimination. Such a situation has probably not existed since the apartheid regime in South Africa came to an end.

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69 *Ma'aleh Adumim: 1998 Profile of the Town*, p. 12.

## Chapter Four: Expulsion of the Jahalin Tribe to Establish and Expand the Ma'aleh Adumim Settlement

The Jahalin Bedouin tribe, which grazed their flocks in the area on which the Ma'aleh Adumim settlement was built and expanded, fell victim to Israel's settlement plans in the region. This chapter describes the process by which the tribe was forced to leave the land that had provided it with sustenance to give way to expanding Israeli settlement.

### A. Background – the Jahalin between 1948 and 1967

Prior to the 1950s, the Jahalin Bedouin lived in the Tel Arad region of the Negev,<sup>70</sup> which became part of Israel in 1948. According to Professor Emmanuel Marks, the Jahalin comprised a separate family of some 750 members prior to 1948.<sup>71</sup>

In the early 1950s, the Jahalin were among the tribes which, according to Marks, "moved or were removed by the military government,"<sup>72</sup> and according to Sharon, "moved or were transferred to the West Bank."<sup>73</sup>

There is disagreement as to when the tribe reached the area on which the Ma'aleh Adumim settlement currently lies. The High

Court of Justice described the disagreement, as follows:

While the petitioners [from the Jahalin tribe] claim that they have resided there since the 1950s with the consent of the landowners from Abu Dis and al-'Izariyyeh, the respondents [the Minister of Defense and the Civil Administration] claim that it was only around the year 1988 that groups of the Jahalin tribe began to settle there and on adjacent lands.<sup>74</sup>

The Court did not attempt to settle the dispute, which may be more semantic than factual. As the seasons change, Bedouins customarily move with their flocks within a broad subsistence region that they call "abode," and the said region was part of the tribe's "abode" as far back as the 1950s. According to Sharon, when the Jahalin reached the West Bank, the tribe "dominated the region between Ramallah, Wadi Qelt, and the Jerusalem Road."<sup>75</sup>

In his testimony to B'Tselem, Sheik Khamad Muqbal 'Abdullah Basis, a head of the Jahalin tribe, stated:

We are Bedouin. By nature, we move about and do not remain in one place for

70 See, for example, Emmanuel Marks, *Bedouin Society in the Negev* (in Hebrew) (Tel-Aviv: Rashafim, 1974), p. 17; Moshe Sharon, "The Bedouins of the Judean Desert," in Yitzhak Bailey (ed.), *Notes on the Bedouins* (2) (in Hebrew) (Midreshet Sde Boker field school, undated) [based on the latest booklets in the series, the book was apparently published in the 1970s], p. 181.

71 Marks, *Bedouin Society in the Negev*, p. 17.

72 *Ibid*.

73 Sharon, "The Bedouins of the Judean Desert," p. 181.

74 HCJ 2966/95, *Muhammad Ahmad Salem Harash and nineteen others v. Minister of Defense et al.*, *Takdin Elyon* 96(2) 866 (1996), par. 2.

75 Sharon, "The Bedouins of the Judean Desert," p. 181. On p. 184, Sharon explicitly mentions al-Khan al-Ahmar, which currently lies within the jurisdiction of the Ma'aleh Adumim Municipality, as part of the area that the "refugee tribes" dominated.



a long time, so we move between al-Izariyyeh, Abu Dis, al-Khan al-Ahmar, Anata, 'Aqabat Jabber. It is difficult for us to stay in one place for a long time, because we look for water and vegetation for our flock.<sup>76</sup>

In other words, the Jahalin did not remain permanently in the area mentioned (or in any other territory), but came there periodically while moving from place to place, and considered it part of their subsistence area.

Until 1967, the Jahalin maintained a traditional Bedouin way of life, thousands of years old, making a living primarily from raising sheep. They grazed on village land in accordance with lease agreements (at times symbolic) with the landowners – including landowners from the villages of Abu Dis and al-Izariyyeh. Similar agreements covered use of the area's wells.

It should be noted that previous occupiers of the region tried, for various reasons, to persuade some Bedouin tribes to settle in one location. This was done by offering land, farming infrastructure, and benefits, but not by force, as Israel has done (see below)

According to the historian Uriel Heyd, the Ottoman authorities in the nineteenth century had tried to settle the Bedouins peacefully by providing benefits:

Attempts were made to settle on the land small nomadic tribes or partially-nomadic tribes by offering tax breaks and *registering the land in their names* [our emphasis].<sup>77</sup>

Even the British mandatory government assisted the Bedouins in rural settlement. According to Professor Avshalom Shmueli,

The tribes of the Jordan Valley settled (with the help of the British mandatory government) along Wadi Far'ah and the Jordan River, and farmed the land with

irrigation, raising grains, vegetables, and citrus.<sup>78</sup>

## B. Expulsion of the Jahalin

Under Israeli occupation, the IDF controlled broad expanses of the Jahalin grazing land in the Jordan Valley, and prohibited entry to Palestinian residents. As a result, the tribe was pushed into the area above the Jerusalem-Jericho Road. According to Sharon, who wrote in the early 1970s,

Large segments of the tribe's areas were closed for security reasons. As a result, most of the "abodes" of the Bedouins and very important sections of the good grazing land, even in poorer years, were closed to them, and they were compelled to move to the area along the central mountain range.<sup>79</sup>

As years passed, Israeli "security needs," which forced the closing of grazing areas, were compounded by land expropriation to build and expand Israeli settlements. As a result, the ability to roam and graze, and hence the ability to make a living from their flocks, were sharply curtailed.

Thus, by the late 1980s, the Jahalin were living in a more permanent location than they had previously, on land planned for the expansion of the Ma'aleh Adumim settlement and nearby land. The expulsion began during this period in order to implement the plans for expansion of the Israeli settlement. The Civil Administration forced the Jahalin to sign declarations that their stay on "state lands" was temporary and that, in the language of the High Court of Justice, "the Civil Administration has the power to order that they vacate at any time."<sup>80</sup> In practice, the

76. The testimony was given to Marwah l'bara-Tibi in the sheik's tent on 14 August 1998.

77. Uriel Heyd, *Eretz Israel During the Ottoman Regime* (in Hebrew) (Jerusalem: Akademon, 1976), p. 56.

78. Avshalom Shmueli, "Bedouin Settlements on the Desert Border" (in Hebrew), in Ezra Zohar (ed.), *The Desert. Past Present, Future* (Tel-Aviv: Rashafim 1977), pp. 211, 215.

79. Sharon, "The Bedouins of the Judean Desert," p. 186.

80. *Jahalin*, par. 2. The Court does not describe the process as one of compulsion, but it is unlikely that the Jahalin would have willingly consented to the Civil Administration having the power to remove them whenever it wishes.



lahalin did not accept the "agreement" and did not implement it

The Civil Administration continued to pressure the lahalin to move to "alternative sites" they were offered. In 1993, the lahalin were again compelled to agree to move to an "alternative site." According to the spokesperson of the Civil Administration, an

offer was made to move the entire lahalin family to two dunams on "state lands," with a paved road providing access to the site, link-ups to water and electricity, and the future possibility of building permanent structures there. Each family was also offered NIS12,000.<sup>81</sup>

Israel Defense Forces

**Civil Administration for Judea and Samaria**

**Supreme Planning Committee**

**Supervision Subcommittee**

**File No.:** 'Odeh Maqbel 'Abdullah lahalin Village/Jerusalem-Iericho Road

**Description of the Structure:** tents + tin structure. 4 tents + 3 tin structures

**Date:** 13 April 1995

**Committee No.** 12.95

**Planning File No.:**

**Protocol**

**Present:** 'Odeh and the Mukhtar

Itamar: He identified the photo in my presence.

Yossi: 'Odeh, you live in a place where it is impossible to live.

'Odeh: Where will we go? We have been here for thirty years already.

Yossi: To Abu Dis.

'Odeh: Abu Dis? What!?

Mukhtar: We did not agree. We are not willing to receive half a dunam for each family. He has twenty-five children. What will he do with them?

Yossi: You are also from Tel-Arad?

'Odeh: Yes. I move about and roam between 'Izariyyeh and this place.

Yossi: Do you have anything to say?

'Odeh: No. Nothing.

Mukhtar: As the mukhtar, I want to say something. I do not understand the government. I will not allow anyone to move from this location. I will bring all of our dignitaries and elderly to meet with Rabin. This is not logical. If you want to remove us, give us proper and suitable land. If they don't give it to us, we will not go.

Itamar: Why do you use tin structures?

'Odeh: For the children to live in.

Yossi: This is a demolition order. You have fourteen days.

**Decision:** Demolition + 14

<sup>81</sup> See Notice of the Spokesperson of the Civil Administration, quoted on the Internet website of the Israeli Consul in Los Angeles, downloaded on 8 August 1998 (hereafter: Notice of Spokesperson of the Civil Administration): <http://www.israelemb.org/la/politics.jahalin.htm>

The lahalin refused to comply with the "agreement," intended to remove them from the grazing areas, destroy their way of life, and settle them in Abu Dis without consent of the owners.<sup>82</sup>

On 21 July 1994, the IDF ordered a group of the lahalin to vacate. The group, represented by attorney Linda Brayer and the St. Ives Society, petitioned the High Court of Justice. On 28 May 1995, the Court denied the petition and approved expulsion of the lahalin from their subsistence area in order to enable expansion of the Ma'aleh Adumim settlement (see below). That same year, the group was forcibly moved to the alternative site.

Following the Court's decision and additional pressure, security forces conducted two operations, on 27 January 1997 and 16 February 1998, to expel the lahalin from their subsistence area. The method used to expel them was the same: Civil Administration personnel and dozens, even hundreds of soldiers and police surrounded the encampment. The residents were called upon to remove their property from the structures and leave. Bulldozers totally demolished the site – the tents, tin structures, sheep pens, the chicken coops, storage structures, and the like. Security forces secured the action, preventing with force any attempt by the lahalin to protest or delay the work of the bulldozers. Their property was loaded by foreign workers onto trucks and taken to the "alternative site" in Abu Dis.

Najib Abu-Rokaya, B'Tselem's fieldworker, described the expulsion of 16 February 1998, as follows:

Today, Monday, 16 February 1998, around 10:00 A.M., I arrived at the site on which some ten lahalin families live.

The families live about one kilometer east of the Ma'aleh Adumim settlement, on the right side of the Ma'aleh Adumim road to Jericho. When we reached the site, I noticed a very large number of Police, Border Police, and soldiers,

among them the Military Police. I estimate there were about 300 security forces there.

Some of the security personnel spread out around the tents, and some accompanied the three bulldozers. The bulldozers were used to demolish the tents in which the families lived, the tin structures they used for storage, the pens for their flock, and the fencing used to pen the animals. The lahalin were busy saving what they could before the bulldozers reached the tents.

I spoke with Salem Ka'id Baniyyeh lahalin a father of eighteen children. His family has a flock of some 200 sheep, which provides a source of income for the entire family. Salem told me that his and other families did not receive any order to vacate. The notices were given to them verbally by a representative of the Planning and Building Committee, who always came in a white jeep. He told them that the court had decided that the people and the families have to vacate the site on which they were living because this is state land.

I was present at the time that Salem's family's tent was demolished. Foreign workers, apparently from Africa, loaded the possessions of the vacated families onto the trucks. Civil Administration personnel gave them instructions in English.

When Salem tried to approach a small structure (about the size of a dog house), police pushed him back. He shouted that this structure contained hens he was raising, but they did not understand him because he spoke in Arabic. When he continued to try to approach the structure, the police again pushed him back. The police were tense. I intervened and explained that Salem was saying that he has hens in the structure and wants to save them before the bulldozer crushes them. Only then did the police let him go

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82. See the more detailed discussion on the problem of the "alternative site," below.



*Expelling the Iahalin (Photo: Flash 99)*

to the structure and remove the chickens.

In two instances, families asked to disassemble their tent before the bulldozer destroyed it. They asked the representative of the Civil Administration: "Give us ten minutes to take the tent apart." The representative did not even take the trouble to respond. Only after I went to him and asked if he would allow them ten minutes to take apart the tent did he let them do it before the bulldozers demolished it. He also said that they had had all the time in the world to disassemble everything, but that they had not done it.

As for the other families, the tents that they had lived in were already

demolished when I arrived, so there was nothing for me to do on their behalf. The ones who did the demolition arrived according to Salem, at 8:30 A.M. I saw the tents, together with all the remnants of the demolition that had taken place, torn and destroyed.

All the Iahalin groups who lived near the Ma'aleh Adumim settlement and the Ma'aleh Adumim-Iericho Road who had demolition and expulsion orders against them in 1997-1998 petitioned the High Court of Justice. Attorney Shlomo Lecker filed five petitions on their behalf.

As a result of one petition, filed on 22 February 1998,<sup>83</sup> the Court issued interim orders prohibiting security forces from evacuating, moving, or demolishing tents of

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83 HCI 1242/98. 'Abdullah Salem Sa'ida Iahalin et al. v. Civil Administration for Judea and Samaria and the Military Commander of Judea and Samaria.



any lahalin group. Upon the Court's recommendation, the Minister of Defense appointed Brigadier (Res.) Raphael Vardi to study the conditions of transfer of the lahalin to the "alternative site." The attorney for the group, which comprised thirty-five families and individuals, a total of some two hundred persons, negotiated with the head of the Civil Administration. The negotiations ended in February 1999, when the parties reached an arrangement that was approved by Vardi and the Minister of Defense and presented to the Court.

### C. The Arrangement for the Removal of Thirty-Five Families<sup>84</sup>

The arrangement, signed by attorney Lecker on behalf of the petitioners, and by attorney Yehuda Shefer, of the High Court of Justice Department of the State Attorney's Office, contains the following principal elements:

1. *Vacating the area:* Members of the group will "vacate with all their possessions" the area on which they reside, after destruction of all the structures in which they lived until now, and will move to the "alternative site" and "build their homes there" (par. 7).
2. *Allocation of plots of land for those vacated:* The Civil Administration will lease a parcel of half a dunam to each individual, a one-dunam [one dunam=1/4 acre] plot to each "family" (couple with up to four children), and an one and a half dunam plot to each "large family" (more than four children) – all on "state lands" in the area of Abu Dis in a rent-free forty-nine-year lease with an option to renew the lease for an additional forty-nine years. Three more dunams will be allocated as reserves (pars. 5-6, 8). (Appendix 4 of the arrangement is a copy of the lease.)
3. *Planning and building:* At its expense, the Civil Administration will prepare the site for construction, connect each plot to water, and place on the site "three movable structures for use as a kindergarten, school, and medical clinic" (par. 10). The location of the plots and future planning for the site will be decided in consultation with representatives of the residents (pars. 9, 10). Building permits will be issued free of charge (par. 9).
4. *Monetary payments:* The Civil Administration will pay those who are vacated, "above and beyond what would be required," as "full compensation" for the rights and/or damages related to moving to the "alternative site." Each individual will receive NIS15,000, a "family" NIS28,000, and a "large family" NIS38,000 (pars. 12,13). The payment will be made through a trust fund, to be set by the parties (pars. 14-16). At least sixty percent of the payment "shall not be withdrawn from the fund" except "for the sole purpose of building a permanent structure" (par. 15).
5. *Grazing:* Appendix 2 delineates an area of some 3,000 dunams, in which "the Civil Administration will not prevent the petitioners from grazing their flocks at any time" (par. 17). The Civil Administration also expressed its "willingness to simplify procedures for obtaining grazing permits" in areas adjacent to the "alternative site" (par. 18).

### D. The Legal Aspect

The attempts by the lahalin to avert their terrible fate by petitioning the High Court of Justice resulted in nothing. The petitions to the Court were helpful to the lahalin by

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84 *Ibid.*, Notice of Agreement on Behalf of the Parties, 7 February 1999 (hereafter: the arrangement)



postponing the expulsion and raising public awareness about their situation. The Court also ensured that the authorities act "within the law" (in its narrow meaning, as will be explained below), and encouraged negotiations that led to the arrangement. However, in making its decision, the Court, as it customarily does in matters related to the Occupied Territories, sanctioned the measures taken by the Israeli authorities.

The Iahalin received no notice "declaring" their subsistence area to be "state lands," which was done, as noted, beginning in 1981 (simultaneously with preparation and approval of the first town planning scheme of the Ma'aleh Adumim settlement), as they had never been considered owner of any rights in the land. The Iahalin, in the words of the High Court of Justice, "did not claim in the past and do not claim now that they own the land."<sup>85</sup>

From the moment that the "declaration" procedure for each area is complete, the Bedouin's tenure on the land constitutes an offense. They were "intruders onto state lands," and the dwellings were "illegal construction." The High Court of Justice accepted (in another decision) the state's position that every tent, hut, or pen put up by the Bedouins is considered "a building" under the definition of the law.<sup>86</sup>

The Court also ruled invalid the agreements between the Iahalin and the landowners from the Palestinian villages relating to the Iahalin's stay on the land, and their use of the wells and grazing areas for their flocks, as the right of those landowners to their lands had been revoked by the declaration.

Thus, the High Court of Justice accepted in total the Israeli position that the Iahalin have no right to the land, and that their expulsion to meet the needs of Israeli settlements is lawful.

The claim [of the petitioners, the Iahalin] is that they have an easement on the

land. These arguments must be rejected. According to the decision of the first appeals committee of the appellants from the 1980s, they [the residents of the villages] acquired no ownership rights in these lands. In any event, they could not even secure easement rights for the petitioners on those lands.<sup>87</sup>

## E. Criticism

In the precise, narrow, and literal meaning of local law, i.e., the legal situation created by military orders issued in the West Bank since 1967, the decisions of the High Court of Justice were impeccable regarding the Iahalin and Israel's expulsion of them from their subsistence area.

According to this view, there is no legal foundation for the Bedouin way of life with its focus on raising their flocks in a frequent migration, and establishing their dwellings beside the grazing areas. Inevitably, this way of life led them into state lands on which they built illegal structures. The only way the Bedouin can comply with the law, given the terms of reference of the IDF and the High Court of Justice, is to cease being Bedouin. This is the fate intended for them by the Civil Administration in the alternative site that it established.

International human rights law and the laws of war are intended, in part, to ensure that such a legal situation will never ensue, i.e., that governments – even a military government in occupied territory – will not enact statutes to promote their own aims or interests at the expense of defenseless and impoverished groups who are denied their rights.

Three fundamental principles of international law were violated in expelling the Iahalin from their subsistence area. As will

85 *Iahalin*, pp. 13-14.

86 HCJ 2237/96, *Yusuf 'ibn al-'Aziz Abu Dahuk et al. v. Military Commander of the Region, Takdin Elyon* 92(2) (1997) 353.

87 *Iahalin*, pp. 13-14.



*Expelling the lahaliin. (Photo Flash 99)*

be explained below, the arrangement reached in early 1999 did not substantively derogate from the severity of the violations, even though the expulsion was somewhat eased.

### **I. The Prohibition on Expelling a Population for Reasons other than Security or Military Necessity**

According to article 49 of the Fourth Geneva Convention,<sup>88</sup> an occupying power is allowed to transfer a population within occupied territory only if the security of the population or imperative military reasons so demand.

According to the Commentary of the International Committee of the Red Cross,

Evacuation is only permitted when overriding military considerations make it imperative; if it is not imperative, evacuation ceases to be legitimate.<sup>89</sup>

Such a deportation must be temporary, and article 49 stipulates that,

Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

Establishment of a civilian settlement on public land clearly cannot be considered an overriding consideration. The Ma'aleh

88. Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949. For the text, see *Human Rights: A Compilation of International Instruments* (2nd Part) (New York and Geneva: United Nations, 1994) (ST/HR/1/Rev 5), pp. 803 ff.

89. Jean Pictet, (ed.) *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 280.

Adumim settlement was not founded, and certainly not expanded, on the claim of security needs, and the Israeli authorities have no intention of returning the lahlin to their subsistence area

Furthermore, even the IDF's seizure of tens of thousands of dunams of grazing lands in the 1960s and 1970s for military exercises with live ammunition, which forced the lahlin out of their grazing areas in the eastern part of the Judean Desert and the western Jordan Valley, cannot be considered justification under the rubric of "imperative" military needs.

In this general context, Justice (now Supreme Court President) Aharon Barak held:

Even the military needs are his [i.e., the military commander's] needs and not national security needs in the broad sense.<sup>90</sup>

Because IDF training areas within Israel are in close proximity to the West Bank, i.e., occupied territory, requisitioning territory for training from within this area is done, at best, for convenience and to conserve resources, and cannot be interpreted as meeting *imperative* military needs.

Requisitioning territory in the valley closer to Jordan in order to guard the border during the 1970s and 1980s had a stronger legal justification since it was done to meet real military needs in the occupied area. This justification has diminished following the signing of the peace agreement with Jordan, in 1994, after which the IDF should have returned a large proportion of these areas to their Palestinian owners.

Removal of the lahlin from the Jordan Valley land and along the Jerusalem-Iericho Road, in part to establish and expand the Ma'aleh Adumim settlement, contravenes the prohibition imposed by international law on

the occupier against removing residents of occupied territory except for imperative military needs.

## 2. "Ensuring Public Order and Welfare"

Article 43 of the Hague Regulations obligates the occupier as follows:

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.<sup>91</sup>

This regulation has been interpreted as imposing on the occupier the basic duty to establish a fair and proper administration that acts for the good and welfare of the occupied population. Justice Barak stated this well in *Teacher's Society*, at page 800:

This court operates in accordance with the Hague Regulations as long as they are not changed by new customs or an international agreement that applies in Israel. However, in the framework of those Regulations, we should relate to the powers and functions of proper administration, not the social attitudes of a hundred and more years ago, but that which is customary among civilized people in our times. Therefore, the actual contents given to the provision of article 43 of the Hague Regulations concerning public order and safety should not reflect public order and safety at the end of the nineteenth century, but the public order and safety of a modern, civilized state at the end of the twentieth century.

<sup>90</sup> *Teachers Society*, pp. 794-795.

<sup>91</sup> Regulations Annexed to the Fourth Convention Respecting the Laws and Customs of War on Land (The Hague, 18 October 1907). For the text, see, e.g., A. Roberts and R. Guelff (eds.), *Documents on the Laws of War* (2nd Edition) (Oxford: Clarendon, 1994), pp. 43 ff.



Regarding the expulsion of the lahalin, the High Court of Justice sadly failed to fulfill its true function: implementing international law according to these principles, putting theory into practice and giving content to the principles by defending persons subject to IDF occupation. Statements like those above have been shown over the years to be baseless declarations. The Court's decisions relating to the lahalin, discussed here, well illustrate this lack of implementation.

At the end of the twentieth century, "modern, civilized" states do not expel, with barely a second thought, nomadic tribes from their subsistence area, or compel them to change drastically their way of life and ignore their tradition and culture. Quite the opposite: "civilized people in our times" do everything in their power to protect weak groups and populations, including tribes and peoples whose way of life and unique culture are jeopardized by modernization.

The international community recognizes the rights of individuals and of such tribes and peoples, in particular, to preserve their way of life and tradition. The International Labor Organization adopted a convention in 1989 dealing with "indigenous and tribal peoples in independent countries," which states, in part:

Governments shall have the responsibility for promoting the full realization of the social, economic, and cultural rights of these peoples with *respect for their social and cultural identity, their customs and traditions, and their institutions*, assisting the members of the peoples concerned to eliminate socio-economic gaps between indigenous and other members of the national community, *in a manner compatible*

*with their aspirations and ways of life.*<sup>92</sup> [our emphasis]

States that formerly oppressed such tribes and peoples, dispossessed them of their land, and forced them to live a foreign way of life are currently expending great effort and resources to compensate them for the injustice done to them. These actions have included returning lands to them that they had, in practice, owned, even though they had no "right of ownership," in the dry language of modern law, granting compensation where return of the land to the owners was no longer feasible; and taking actions intended to preserve their traditional way of life as much as possible. All of these actions were done within the context of negotiations between the governments and representatives of the tribes and peoples, while taking their position into consideration. Furthermore, the agreements resulting from these negotiations have often been secured in special legislation.<sup>93</sup>

These activities are not, of course, court functions. The Israeli government, through the IDF, is responsible for the expulsion of the lahalin, in gross violation of their rights. But the High Court of Justice, which professes to implement the law that is "customary between civilized people in our times," could have pointed out these directions and attitudes. The Court also could, and should have invalidated the policy of expulsion, dispossession, and Israeli settlement, based on their contravention of the "accepted and customary" law – i.e., international law – against which Israel's policy in the Occupied Territories should have been measured

92. The quotations are from articles 2(1), 2(2)(b) and 2(2)(c) of the ILO Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries. For the text, see *Human Rights: A Compilation of International Instruments*, vol. 1, pp. 475-489. See, also, World Conference on Human Rights, Vienna, 14-25 June 1993, *Vienna Declaration and Programme of Action*, A/CONF.156, 12 July 1993, art. 20.

93. On this matter, see the website of The Fourth World Documentation Project, which contains the text of numerous agreements between states and indigenous people, among them historic agreements: <http://www.halcyon.com/FWDP/treaties.html>. We do not argue that western countries' treatment of indigenous people on their territory is without blemish, but rather point out the general trend of recognizing the rights of these peoples and tribes.



### 3. Prohibition on Permanent Control of Public Property by the Occupier

Even accepting the position of the Israeli authorities and the High Court of Justice that the land inhabited by the lahalin is public property, their right to inhabit that land, however minimal, is still many times greater than the right of the Israeli settlers to settle on it. The lahalin are part of the public to whom the land belongs: they are "residents of the area," and they lived on the land – if only since 1988, as contended by the Israeli authorities. In contrast, the settlers are strangers in the area, not part of the local public, who settled on Palestinian public land in violation of all relevant principles of international law. Israel's actions are aggravated in that it dispossessed and expelled a part of the local population in order to make room for these settlers.

Although the High Court of Justice recognized the principle that these lands are 'public property,' at the same time it sanctioned the theft of this property from its owners, among them the lahalin, and its transfer to Israeli settlers in a manner contravening international law.

The Court's decision in this case put an end to lahalin efforts to defend their rights through legal action. The High Court of Justice held that the law favored the expellers. Those expelled, having no "right of possession of the land," were left only with the hope that the IDF, out of compassion, would ease the conditions of the expulsion "as an act of grace."<sup>94</sup> The Court's ruling pushed the lahalin into a corner, leaving them a choice between two types of expulsion: a sudden and violent eviction of the type described above, with great material and emotional costs, or a forced acceptance of the expulsion, while haggling with the Civil Administration in an attempt to reduce the damage as much as possible. The lahalin chose, of course, the second.

### F. The Jahalin after the Arrangement

The arrangement should be viewed in light of the above discussion. Its title – Compromise Agreement – is misleading. Israel *forced* the lahalin to leave their subsistence area and settle in an "alternative site" so that the plans to expand Ma'aleh Adumim and other Israeli settlements could be implemented. On these matters, there was no compromise. The compromise dealt solely with the conditions of the expulsion. The Civil Administration compromised on the scope of the infrastructure in the "alternative site," the cost of the building permits, the size of the plots, and the amount of compensation. It did not compromise at all on the plans for expulsion and Israeli settlement.

The future of the lahalin who were expelled, even those who are part of the arrangement, remains unclear. Testimonies given by lahalin members to B'Tselem raise two fundamental problems:

1. The move constitutes one more stage leading to the destruction of the Bedouin way of life. The area allocated to each family in the "alternative site" is not suitable for flocks of sheep and goats, and it is doubtful that the grazing area will be sufficient to sustain them. Should the lahalin stray from the plots and grazing lands allotted to them, the Civil Administration has made it clear that it "reserves for itself the full authority to remove the petitioners."<sup>95</sup>
2. The proposed area is considered "state lands" only by Israel. The Palestinians, including the lahalin, hold that this land belongs to residents of Abu Dis. The Civil Administration did not consult with Abu Dis residents or the Palestinian Authority. Thus, there is disagreement concerning ownership of the land on which the lahalin will settle. If the site is transferred

<sup>94</sup> See Chapter Two for a more extensive discussion on this issue.

<sup>95</sup> Par 6 of the arrangement.

to the PA, difficult problems will likely arise.

In his testimony to BTselem, Muhammad Khalil Muqbil lahalin, 30, married and father of seven, a flock owner and part-time laborer, stated:

I don't agree with the arrangement, but I have no choice. If we don't accept it, the High Court of Justice will rule against us. We already tried that last winter, when the Police and the Border Police came and uprooted us from the area. They left us with nothing. They pulled up all the tents and whatever was attached to the ground, piled it all up where they want to move us to now, and left us here with nothing. We remained here for ten days with nothing, without even a piece of cloth to protect us from the rain, until the Supreme Court decision to let us stay here temporarily. We set up the tents again. I personally do not want to go through this experience again, so I have to accept the agreement even though it is not good.

This agreement is not good in many ways. First of all, they are going to give us land that belongs to people from Abu Dis, which is very problematic. It will lead to disputes between us and the people from Abu Dis. Even if we assume that the land does not belong to people of Abu Dis, it is too small for Bedouins. For example, I am going to receive, according to the agreement one and a half dunams. How is that going to be enough for me and my flock? It is impossible. The land they are supposed to give to us for grazing lies ten kilometers away. We cannot use the same grazing area all the time, and it is so far away. The area that they are giving will not suffice for the entire flock, and even if it is sufficient, it will not remain green all year round. This also does not conform to our way of life – now I roam with my flock and a small tent

and look for green areas. I put up the tent, stay a few days and move on to another location. I can reach the sea like this. With this agreement I can't live my life as a Bedouin. I can't roam with the flock.<sup>96</sup>

From the testimony of Yusuf 'Odi Muqbil lahalin, 22, married with one child, laborer and flock owner:

Such a solution did not occur to us. It conflicted with our way of life. For example, I have four goats. I am supposed to receive one and a half dunams, and that is not enough for my family, the flock, and me. Remember that all those who live three meters away from me also have a similar number of goats. Look here and see how far apart the tents are. How can we live on top of each other? How will we suffer the noise of the flocks of thirty-five families? It will be something like fifty dunams containing about 2,500 goats and thirty-five families with lots of children. How is it going to be possible?

The families here agree to the solution in the agreement, but no one is happy. There is a very serious problem here. The PA says that this land belongs to people from Abu Dis. Israel says it is state land. I personally cannot live on land belonging to someone else. If someone comes from Abu Dis and says it is his, I will not stay there for one day. I cannot stay on another person's property. It is true that I am now on land belonging to Abu Dis, but I did not take it. I do not own the land. It is different. The agreement will drag us into a very risky situation.

Despite the legal and public struggle, Israel's policy of forced settlement of the lahalin by compelling them to abandon their traditional way of life, with the objective of reducing their presence on land Israel covets, has been almost completely realized. Seventy families expelled in earlier waves are already

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96. The testimony was given to Marwah I'bara-Tibi in Khalil Muqbil lahalin's tent, east of the Ma'aleh Adumim settlement, on 11 April 1999.

situated on the "alternative site" and thirty-five families within the arrangement are to move there soon. It is likely that more families will subsequently take part in the arrangement.

Most of the Iahalin, particularly the young adults, no longer make a living from raising sheep and goats. Most work in Israel, even, ironically, in the industrial zone of the Ma'aleh Adumim settlement.

The Civil Administration spokesperson stated that,

Israel promises those [Iahalin] who resettle that, even though they will be outside the municipal borders of Ma'aleh Adumim, they will be able to continue to work within the town, and their resettlement will not affect their employment.

If Israel indeed behaved as "a modern, civilized state at the end of the twentieth century," it would work together with the residents of the area, the Iahalin, in particular, to find a proper solution that combines their traditional way of life with modern life. This solution would require allocation of much less land and resources than were allocated to the Ma'aleh Adumim settlement. Already in the 1970s Prof. Sharon complained about the factors that motivated the Israeli authorities not to implement such a solution:

No attempt was ever made to solve the economic problems of the Bedouins, and possibly even solve the West Bank's problem of the high price of meat, by working out a plan for raising small cattle in large numbers using new techniques – a field the Bedouins consider their

profession. Rather than directing the Bedouins to construction and work in towns, it was certainly possible to solve their problems in a field they consider a respectable form of economic rehabilitation, one that does not conflict with tribal customs.<sup>97</sup>

Instead, Israel decreed slow strangulation of the Iahalin's traditional way of life and sources of income. In his testimony to B'Tselem, Sheik 'Abdullah described the current situation:

Before they built Ma'aleh Adumim, we lived where it is now located, and we had a well there. Now we buy water from Ma'aleh Adumim. But it did not end with them expelling us when they built Ma'aleh Adumim. Now they want to expel us from the entire area. They expelled some of us in 1994, last year they moved some of us, and early this year also.

Now we have nowhere to let our flocks and shepherds move about. This is the end of the world for a Bedouin, because that is his life. A Bedouin's life depends on his flock – on his sheep and goats. Now if we enter a certain area, they arrest us.

This forces us to cease being Bedouins and to look for other work. To be a Bedouin means to choose a place and the name of your son, and if you are not able to choose one of the two, you stop being a Bedouin.

What is happening to us now is this: we are not able to choose either the house or the grazing area, so already we are no longer Bedouin.

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97. Sharon, "The Bedouins of the Judean Desert," p. 187.



## Chapter Five: The Plan to Expand the Ma'aleh Adumim Settlement

This chapter deals with the plan to expand the Ma'aleh Adumim settlement, formally known as Town Planning Scheme 420/4 (hereafter: the expansion plan).<sup>98</sup> This plan received all the requisite approvals but implementation has been delayed. A petition to the High Court of Justice by residents of the area, filed on their behalf by attorney Avigdor Feldman and the Jerusalem Legal Aid Center, is pending.<sup>99</sup> The expansion plan illustrates Israel's political intentions to establish and expand the Ma'aleh Adumim settlement, and the flagrant discrimination of Israeli policy in favoring Israeli settlers over Palestinians.

### A. The Plan: Land, Objectives, Fundamental Principles

The expansion plan applies to an area of some 12,443 dunams [about 1.24 sq. Km] (section 1.1.4). This area, which was expropriated as state lands, mostly in the 1980s, was annexed into the jurisdiction of Ma'aleh Adumim Municipality following a military order of August 1994.<sup>100</sup>

The expansion plan originated in the Ma'aleh Adumim Municipality and was prepared by a private, Israeli office of planners. The plan defines owner of the land as the Custodian of State and Abandoned Property. The plans objectives are to complete Town Planning

Scheme 420 [the original scheme of the settlement] in light of the lessons learned over the ten years that have passed since approval of the plan (section 1.1.7.1), and to direct development and construction in the area added to the jurisdiction of the Ma'aleh Adumim Municipality (section 1.1.7.2).

The expansion plan

defines and designates the areas, road system, land use, rights, building and development restrictions, residential areas, tourism, special projects, centers for regional maintenance, safety and rescue, sport and recreation areas, cemetery, regional commercial area, land preservation area, open spaces, site for refuse disposal and recycling, area for mining and quarrying, and a purification institute. (section 1.1.7.3)

Thus, this plan is no different than any other Israeli town planning scheme for an urban development, even though the area is a settlement in occupied territory. As noted, international law prohibits such settlements.

### B. The Plan's Treatment of Palestinians

The expansion plan also states that it applies to the lands of Abu Dis, 'Anata, al-'Izariyyeh, a-Tur, and al-'Issawiyyeh (section 1.1.6) The

98. The Civil Administration for Judea and Samaria, Ma'aleh Adumim Local Planning Division. The expansion plan was drafted in January 1995.

99. HCl 3125/98, *Abd al-Aziz Muhammad 'Iyad et al. v. IDF Commander for the Judea and Samaria Region et al.*, Petition for Order Nisi and Interim Injunction (hereafter: *Ma'aleh Adumim Expansion*). The discussion in this chapter is based in large part on this petition and the letter of objection submitted by attorneys of the Jerusalem Legal Aid Center, and the expert opinion submitted by Prof. Jan de Jong and architect Shmuel Groug (see below). These documents note numerous other planning defects in the expansion plan of a more technical nature, and are not mentioned in this report.

100. *Regulations Relating to Local Councils (Map Replacement) (Ma'aleh Adumim)*, 31 August 1994.



parcels are mentioned in their Arabic names. Other than this, no direct reference is made to Palestinian residents of the area or to the Palestinian public in the West Bank.

### **Private Lands**

The expansion plan mentions private lands (belonging to Palestinians, even though this fact is not mentioned) located within the plan's area. But these lands are not part of the expansion plan, and the expansion plan does not designate any use for them. These lands, surrounded on all sides by the area of jurisdiction of the Ma'aleh Adumim settlement, constitute enclaves where planning is absent: islands of "not Ma'aleh Adumim" within Ma'aleh Adumim.

This unusual and aberrant planning situation led attorneys of the Jerusalem Legal Aid Center to file an objection on behalf of sixty-six Palestinian residents of surrounding towns and villages to the Supreme Planning Council for the West Bank.<sup>101</sup> The letter of objection states, in part:

The drawings show enclaves... within the plan itself that exist within a legal vacuum. These enclaves are not included under the jurisdiction of the Ma'aleh Adumim Municipality and do not constitute a planning area. The result is that the lands owned or possessed within these enclaves remain without jurisdiction or planning option. These owners and/or possessors cannot use their lands for any purpose or even submit a request for development (construction, agriculture, or anything

else), since they are surrounded by a foreign jurisdiction and planning area (par. 71 of the letter of objection).

The Objections Subcommittee of the Supreme Planning Council, composed solely of Israelis, including a representative of Ma'aleh Adumim settlers, denied the objection. In its decision, the Subcommittee stated:

The Subcommittee does not consider invalid preparation of a plan (which is not intended to apply to property that is not state land, as noted) that leaves "enclaves" owned by local residents outside its boundaries. This does not create a "legal vacuum," as the objectors contend. As for these enclaves, Plan RJ-5 will continue to apply, with all that entails.<sup>102</sup> The solutions for access to the various areas, both with regard to the plan and the enclaves not included, will be provided in a detailed plan.<sup>103</sup>

In other words, within an area planned in the mid-1990s of a brand-new town that allows high building density, islands were left where the British district plan for 1942 was to apply, a plan that prohibits – at least according to Israel's interpretation – construction of more than one house per lot.<sup>104</sup> In any event, the likelihood that the Israeli authorities would approve any Palestinian construction on these lands is zero. It is more likely that the fate of these lots will be that of the property of 'Abd al-'Aziz 'Iyad, of Abu Dis, who owns an "enclave" in the area annexed to the Ma'aleh Adumim settlement prior to the current

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101. Attorneys Ehyab Abu Ghosh, Hevsham Abu Shehadeh, Maryam Sheik Samiman, Muhammad Dahlah, and Muhammad Eub filed the opposition on behalf of sixty-six residents of al-'Izariyyeh, 'Anata, Abu Dis, al-Issawiyyeh, and a-Tur, Objection to Plan 420//4 Ma'aleh Adumim, to the Supreme Planning Council, the Staff Officer for Interior Matters, and the Settlement Subcommittee, 20 May 1998.

102. The reference is to the British Mandate plan, Jerusalem District Outline Regional Planning Scheme, which was approved in 1942.

103. The Civil Administration for Judea and Samaria, Supreme Planning Council, Objections Subcommittee, Committee Protocol no. 2/98, of 21 January 1998, in the Matter of Objection to Plan 420/4 - Ma'aleh Adumim (Decision, section 7).

104. See Coon, *Town Planning*, pp. 74-78.

expansion. In his testimony to B'Tselem, 'Iyad stated:

In 1981, another order was issued, i.e., a declaration that our property was state land. We went with attorney Darwish Nasser to the Military Appeals Committee. I went there. Three military officers sat [on the Committee] ... We appealed on approximately 3,000 dunams, and the Committee ruled that about 200 dunams were private land. Of this, some fifteen dunams belong to Abu al-Ghozlan, Muhammad Hamed 'Iyad, who is my mother's brother, and others.

But in 1992, after my mother and uncle died, I went to the property and saw bulldozers working there. I said that there is a decision that this land is ours. The driver of the bulldozer took his M-16, aimed it at me, and said that if I don't leave, he would shoot me and bury me with the bulldozer. I went to a lawyer. He tried to do something, but he was told that there are already facts on the ground, and they offered us compensation. Of course, we refused.

The expansion plan itself hints at such a fate. The section headed "Entry to Lands that are Roadway Locations," states, in part:

The local authority or the authority so empowered for this purpose by the Supreme Planning Council may seize possession and enter lands designated for roadways to pave them, expand them, divert them, barricade them or cancel them – as provided by law. Roads that ostensibly pass through private land will be reexamined according to more detailed criteria prior to approval. Through streets on private land will be constructed on existing roadbeds (section 3.1.5).

Thus, the expansion plan grants the Ma'aleh Adumim Municipality (as the "local authority") the power to expropriate private land if a road is planned through it, even where the land is ostensibly outside the boundaries of the plan. In practice, the drawing shows a proposed road, marked in

red. This road is interrupted by the white enclaves (private Palestinian land), and the red line reappears on the other side of the enclaves. The fate of these enclaves is, therefore, certain expropriation.

#### ***Reference to Nearby Towns and Villages and their Residents***

As noted above, other than mentioning the lands that were expropriated, the expansion plan does not relate at all to the local Palestinian towns and villages or their residents. However, the expansion plan does designate broad expanses of land for "regional" needs" and allocates "space for a special project" (section 2.2.3) in which "the following uses and purposes are allowed:"

Key municipal institutions for public, cultural, and administrative use, academic institutions, research institutes and elements of higher education, and any other use for the social and economic benefit of the population of Ma'aleh Adumim and the district (section 2.2.3.1).

The plan also includes expansion of the District Safety and Rescue Center (sections 2.2.11 and 2.2.12), and space for commerce and district services (section 2.2.15) including, for example, "district services in the fields of education, tourism, information, and the like."

In practice, the term "population of Ma'aleh Adumim and the district" refers to the nearby Jewish settlements and Jerusalem, and does not include the Palestinian neighbors of the settlement. B'Tselem knows of no Palestinians who benefit from the library, education, or other "public" services in the Ma'aleh Adumim settlement. Similarly, Palestinian residents of the West Bank are not allowed, unless they hold a special permit, to stay at the hotels planned or to purchase goods in the commercial centers. As noted above, this is in contrast with "Israelis," which includes any foreign visitor to Israel.

The lack of reference to the nearby towns and villages contravenes Jordanian planning

law.<sup>105</sup> This law stipulates that plans be conditional upon prior preparation of a basic topographical analysis of the district and a description of the existing situation (section 14(1)). This would include (according to the subsections of section 14(1)): (a) a topographic and geological survey; (b) climate information; (c) history of construction in the district; (d) land use (housing, agriculture, industry, etc.); (e) land ownership; (f) the value of the land (g) infrastructure (water, sewers, and electricity); (h) roads and transportation survey; (i) communication media; (j) public buildings; (k) description of the residents (by sex, age, income, employment); (l) existing resources (natural, economic, labor force); and (m) any other matter related to the plan.

According to section 4 of the Planning Law, the duties of the Minister of Interior, who is responsible for implementation of the Law (powers that were transferred in 1971 by order no. 418 to the staff officer for interior matters in the military administration) include (a) coordinated planning of all state lands to best promote the general welfare; (b) coordination of land-use plans with economic and governmental planning; (c) planning of all towns and villages in accordance with the government's social policy and the development and advancement of society; (d) supervising the local and district town planning committee and the joint town planning committees (the Israeli order united all of these under the Supreme Planning Council) and ensuring that all these bodies conform to the law.

The expansion plan of the Ma'aleh Adumim settlement meets none of these requirements insofar as the Palestinian surroundings are concerned. This is because the expansion plan assumes that the district or the natural surroundings of the settlement

is "greater Israel," i.e., the other settlements and Israel itself. The Palestinian towns and villages and their residents are foreign to Israeli settlement and are, therefore, conceived as irrelevant to the expansion plan.

All these acts and omissions occur in flagrant and severe violation of international law, including the prohibition on discrimination based on national origin.

### ***Severance of the Ramallah-Bethlehem Road***<sup>106</sup>

The road between the northwest area of the West Bank to the south traditionally passed through East Jerusalem. With the imposition of the general closure since 1991, Israel has severed this road, and Palestinians are forced to use a bypass road, called Wadi a-Nar. This bypass runs from Beit Sahur through Abu Dis and Hizma to Ramallah. According to the expansion plan, this road will pass through the Ma'aleh Adumim settlement, meaning that Palestinians will not be able to use the road. The plan thus aggravates the severance that Israel's closure policy has created between the north and south of the West Bank.

### **C. The Political Objective: Including the Ma'aleh Adumim Settlement within Metropolitan Jerusalem**

According to the Ma'aleh Adumim Municipality,

The political objective in establishing the town was settlement of the area east of Israel's capital along the Jerusalem-Iericho route.<sup>107</sup>

105 Towns, Villages, and Buildings Planning Law (No. 79), of 1966.

106. On this matter, see, for example, par. 3 of the expert opinion of Prof. de Long and architect Groug, annexed to the petition in *Ma'aleh Adumim Expansion*.

107 *Ma'aleh Adumim: 1998 Profile of the Town*, p. 4.



The decision to establish the industrial zone, which preceded the settlement itself and dates back to 1974, states, in part:

The guiding principle was to find a solution for the shortage of industrial area in and around Jerusalem, which was decreasing.<sup>108</sup>

According to this same source, most of the residents of the Ma'aleh Adumim settlement work in Jerusalem,<sup>109</sup> and therefore the settlement is integrally related to Jerusalem.

The expansion plan is part of this objective, incorporated into the master plan prepared by the Jerusalem Institute for Israel Studies known as "Metropolitan Jerusalem – Master Plan and Development Plan" [hereafter: the Metropolitan Jerusalem Plan]. This plan, prepared for the Ministry of Interior, the Ministry of Construction and Housing, the Israel Lands Administration, and the Jerusalem Municipality, sets guidelines for development of the Jerusalem region until the year 2010.<sup>110</sup>

Of grave concern is that, with the settlements' lands closed to Palestinians, the district services forecast by the Metropolitan Jerusalem Plan forecast would be available to Jews only.

The Metropolitan Jerusalem Plan has no official status, but its relationship with the expansion plan is openly stated: the architect of the expansion plan, Shlomo Aaronson, presented that connection during a seminar on the Metropolitan Jerusalem Plan sponsored by the Jerusalem branch of the Association of Architects and Town Planners.<sup>111</sup>

The Metropolitan Jerusalem Plan considers the Ma'aleh Adumim settlement part of the "metropolitan hub" of Jerusalem.<sup>112</sup> The plan forecasts that the Ma'aleh Adumim settlement will grow by 285 percent between 1994 and 2010 – from 17,000 to 60,000 residents. In contrast, the number of Palestinians living in the area will increase by only 17.1 percent, i.e., growth resulting from the natural birth rate.<sup>113</sup> In other words, growth of the settlement is taken for granted, while the Metropolitan Jerusalem Plan ignores possible developments that will affect growth of the Palestinian population, such as implementation of the Oslo Accords and its effect on family unification and the return of refugees from the 1967 war to the West Bank.

The Metropolitan Jerusalem Plan states that the western part of the settlement, as in the expansion plan, "will be developed to combine residences and hotels, commercial areas and regional services."<sup>114</sup> A significant number of regional needs are addressed by the expansion of Ma'aleh Adumim, as a derivative of the aims of the Metropolitan Jerusalem Plan. The proposed hotel area of the expansion plan is described in a brochure for investors as *Ma'aleh Yerushalayim* [Upper Jerusalem]. This brochure explicitly notes that the hotels to be built in Ma'aleh Adumim can also meet the needs of Christian pilgrims who come to Jerusalem and seek inexpensive accommodations near the city, Israeli vacationers and tourists, and tourists who want to include a stay in the Judean Desert during their visit to Israel.<sup>115</sup> Thus, the brochure explicitly states that Ma'aleh

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108. *Ibid.*, p. 8.

109. *Ibid.*, p. 9.

110. Contrary to the expansion plan, the Metropolitan Jerusalem Plan is intended to serve all residents of the district, Jews and Arabs, according to its creators. However, considering that those who prepared the Metropolitan Jerusalem Plan were only Jews (nineteen members of the Steering Committee and thirty-three members of the planning staffs), the claim is rather surprising, if not pretentious.

111. The seminar was held on 2 July 1997 at the Bible Lands Museum, in Jerusalem.

112. Metropolitan Jerusalem Plan, p. 20.

113. *Ibid.*, p. 185.

114. *Ibid.*, p. 189.

115. *Ma'aleh Yerushalayim*.

Adumim provides services to Jerusalem and solves Jerusalem's problem of insufficient hotel rooms. In other words, the settlement in occupied territory serves the needs of the civilian population of the occupier, in contravention of international law

In their expert opinion submitted to the High Court of Justice, de Jong and Groug explain that the expansion plan's allocation of 773 dunams for "hotels and special residence," 277 dunams for "a district safety and rescue center, and a maintenance center," and 393 dunams for "commerce and district services" is more than ten times greater than the needs of the settlement's population.

As for the area allocated for "roadway services," the experts write:

The area provided in Plan 420/4 for road services in the amount of 364 dunams is unreasonable in relation to the needs of Ma'aleh Adumim's current population. A road services area that provides, as detailed in the code, petrol stations, restaurants, and shops should be a maximum of some thirty dunam... A possible explanation for the large size is the demand in the Metropolitan Jerusalem Plan map 121/b for a terminal to be located in the area.<sup>116</sup>

The two experts state:

There is no planning reason for the needs of Jerusalem to be solved in the context of Ma'aleh Adumim.<sup>117</sup>

The reason for the generous allocation of land is not related to planning but to politics. It is intended to serve the stated objective of the Metropolitan Jerusalem Plan, which forecasts

connecting Ma'aleh Adumim, Givat Ze'ev, Gush Etzion, the rest of Jerusalem,

and the Jerusalem corridor by creating a continuous link (also by roadways), with the Jewish population in the Jerusalem region.<sup>118</sup>

The objective of the expansion plan, like that of the establishment and continuing expansion of the Ma'aleh Adumim settlement in general, is, therefore, to extend the sovereignty of Israel to the settlements in the Jerusalem region. To achieve this objective, the annexation legislated by Israel has been supplemented by massive construction that meets political needs rather than true planning considerations.

This objective comes primarily at the expense of the rights of the Palestinian residents of nearby towns and villages and the Palestinian population in general, and by violating international laws intended to protect those rights. The occupier is prohibited from taking actions motivated by factors outside the situation in the occupied area itself, i.e., it is limited to military considerations or considerations related to the population living in the occupied territory.<sup>119</sup>

In *Teachers' Society*, Justice Barak stated:

The military commander may not weigh national, economic, or social interests of his country if they have no ramifications for his security interests in the area, or the interest of the local population.<sup>120</sup>

Development of the Ma'aleh Adumim settlement, which lies in occupied territory and serves not the local population but the Israeli public, the Jerusalem population, the Jerusalem corridor, or any Israeli political, economic, or other interest, clearly violates this prohibition. These Israeli actions are also a gross violation of provisions of international law described above.

116. De Jong and Groug, Expert Opinion, par. 4.

117. *Ibid*

118. Metropolitan Jerusalem Plan, p. 12.

119. Antonio Cassese, "Powers and Duties of an Occupant in Relation to Land and Natural Resources," in Emma Playfair (ed.), *International Law and Administration of Occupied Territories* (Oxford: Clarendon, 1992), p. 419. For an extensive discussion, see B'Tselem, *Israeli Settlement in the Occupied Territories*

120. Pp. 794-795.

Israeli legislation has created a unique "legal" system, which integrates annexation with continued occupation, and segregation with discrimination. Only such a system would allow for establishment of a town in the heart of a Palestinian area and on Palestinian public property, while totally disregarding the

Palestinians. It is this system that allows allocation of extensive lands for "district" services denied to Palestinian residents of the area, and intended solely for the needs of the population of the state occupying the territory.



## Conclusions

Using the example of the Ma'aleh Adumim settlement, this report described how Israel settles its population in occupied territory. In so doing, Israel exploits the occupation – a situation in which the helpless local population is totally subject to regulations set by the military force of the occupation in order to promote its political interests.

Israeli governments took full advantage of this situation, removing every obstacle in its path. Where Jordanian law was an impediment, military orders changed it. Where equal treatment of individuals was required, military legal sophistry was used to segregate Israelis from Palestinians, and Israeli settlements from Palestinian towns and villages. The result is a system of segregation with discrimination by law. As noted, it is doubtful that any comparable system has existed since the end of apartheid in South Africa.

In all this, the views of the international community were ignored. Israel related to international law not as binding rules, but as an obstacle or nuisance to be bypassed to achieve political objectives. Israel acted in this manner even though helpless civilians were being harmed – an absolute prohibition under international law.

In so doing, Israel behaves as if international law allows annexation of occupied territory as long as the act is called an "enclaves law" and not "annexation;" allows flagrant discrimination as long as the word "discrimination" is not used; allows theft of land from their owners as long as it is declared "state property;" allows expulsion of Bedouin tribes from the land that provides their subsistence by destroying their millennia-old way of life, on the grounds that they are not, in the narrow meaning of the law, "holders of an easement in the land;" and prohibits an entire Palestinian public from having access to their land.

International law, however, is intended to protect people and not written formulations. The establishment and expansion of the Ma'aleh Adumim settlement was done through annexation, flagrant discrimination, land theft, expulsion of Bedouins and destruction of their way of life, and a sweeping prohibition on an entire public from entering their land. These acts violate a long list of international agreements that bind Israel.

Even if some responsibility can be placed on those Israelis who chose to live in Ma'aleh Adumim or other settlements, many of them acted upon the explanation of the authorities that such was lawful and proper. Those who cannot hide behind this explanation are the authorities themselves. For dozens of years, various government ministers, Members of Knesset, and military commanders have conducted a conscious policy of exploiting Israel's strength and the Palestinians' weakness in order to control the land in the West Bank. They bear primary responsibility for the numerous violations of international law cited in this report.

A similar burden of responsibility rests upon the justices of the High Court of Justice, who bestowed a cloak of fairness and legality on the act of settlement and the procedures for expropriation, annexation, and discrimination that accompanied it. They did this not only in ostensible accord with local law but also with international law. The justices often made general statements that express the fairness of the language and spirit of international law relating to occupation. In concrete decisions, however, they chose to accept at face value broad Israeli legislation intended to allow Israel to take over Palestinian land in order to establish settlements, and to segregate the settlements from the Palestinian towns and villages and discriminate against the latter.

The justices chose in their ruling to ignore this improper objective that was clear to everyone, and often even articulated. They did this even though the proper implementation of international law would be manifested in judgments prohibiting such

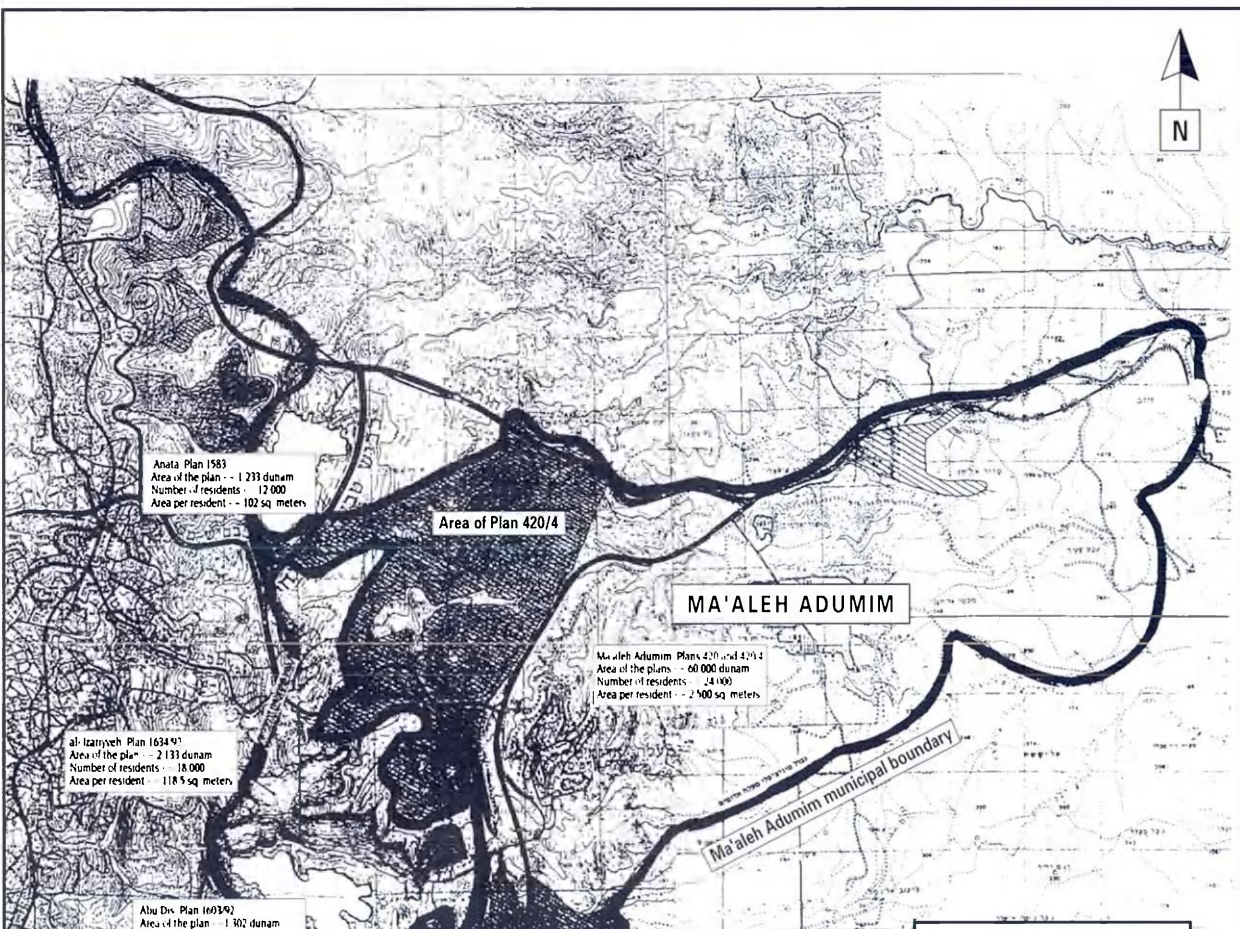
legislation from being enacted. Even if the Court does not have the power to stand up to a government entrenched in its views, it could at least have noted the blatant illegality of the state's actions, and denied them legal sanction.





## Appendix 2

### Map of the Ma'aleh Adumim Expansion Plan



# Response of the Israel Defense Force, Civil Administration Judea and Samaria

-1-

ISRAEL DEFENCE FORCE  
Civil Administration Judea & Samaria



צבא הגנה לישראל  
המנהל האזרחי יהודה ושומרון

B'Tselem  
43 Emek Refaim Street  
Jerusalem 93141

19 7 99

## Re: Response to Report on Ma'ale Adumim

I should first mention that the report is apparently an attempt to "bypass" the High Court of Justice petition (3125/98) that was filed on the matter by the same persons whom appear in the report. The petition raises the same claims stated in the report, and therefore, I shall not relate to the specific claims but will respond at the fundamental level. A specific and detailed response will of course be forwarded to the Supreme Court, which will rule on the matter.

B'Tselem's report is tendentious, not objective, and full of internal inconsistencies and baseless contentions. The persons who "researched" and those who were interviewed are not professionals and are not aware of the history or legislation relating to the region. Thus, most of the claims are based on false and misleading information.

Ma'ale Adumim was founded on uninhabited land, as shown by aerial photographs, and no houses or residents were removed so that the settlement could be established. The report does not indicate any solid negative effects resulting from the establishment and development of Ma'ale Adumim, except for unsubstantiated general claims.

B'Tselem's use of the term "village lands" is an example of the attempt to mislead. The term is a professional planning term. It relates to the physical confines of the villages and not the village or lands owned by the village. This division was made during the British Mandate as a general division of the region. The physical division does not affect the rights to land in any way. The division is solely administrative.

### Development and Future Possibilities for Development for Palestinian Residents

Annexed is a map marking Areas A, B and C and the town planning schemes for Anata, Al'-Izariyeh, Abu-Dis, Sawahreh - Sharqiyeh, Sheikh Sa'ad. They map clearly proves broad expanses of land reserves for the villages in the region. These reserves enable broad development over the long-term. According to the Interim agreement, town schemes in areas A and B can be expanded at the discretion of the PA.

The figures on the population in Table 1 of the report are further proof of B'Tslem's lack of professionalism in the field of the research

The figures are as follows:

Name of the town	Number of Residents According to the Palestinian Central Bureau of Statistics	Area of the Town Planing Scheme	Available Reserves in Area B beyond those in the Town Planing Scheme	Total
Anata	3'173 (and not 12,000?)	1,156	377 dunam	1533 dunam
Al-'Izariyyeh	Al-'Izariyyeh - 10,491 (and not 18,000)	2373 dunam (not 2133)	3894 dunam	7500 dunam
Abu -Dis	Abu-Dis - 7332 (and not 12,000)	1233 dunam (not 1302)		
Sawahreh-Sharqiyeh	3010	1089 dunam	5482 dunam	7150 dunam
Sheikh Sa'ad	852	579 dunam		
Total	24,852 persons	6430 dunam	9753 dunam	Total area: 16183

The map shows that Al-'Izariyyeh, Abu -Dis, Sawahreh Sharqiyeh and Sheikh Sa'ad comprise contiguous territory within Area B, this enables the PA to develop without any Israeli restrictions. In the above table, I did not note the amount of land in Area C that is not state owned. These lands amount to another 12,000 dunam that may be put to use

I would like to mention that the PA now has responsibility for the population and determines the number of residents. The lack of precision raises doubts about all of the data presented in the report.

#### Agriculture, Employment and Industry

Ma'aleh Adumim is situated on the edge of the Judean desert and is unsuitable for farming, and certainly insufficient to support a family. The only agriculture in the region is grazing and this of course is seasonal. Establishment of Ma'aleh Adumim and the industrial zone Mishor Adumim has created hundreds of jobs for Palestinian residents of the region. Before 1967, industry in Judea and Samaria was a total failure, and after 1967, Israel opened the economic barricades, benefiting Palestinians throughout the region. It is important to point out that no request was made to establish an industrial zone in the Abu- Dis - Al-'Izariyyeh area.



### Conclusion

B'Tselem's report is neither objective nor professional, it's clear objective being to bypass the Supreme Court. The data are baseless and unsubstantiated, and based on questionable testimonies of persons who "profess" to be land owners. An organization with any self-respect should do it's work professionally by revealing the truth. Once again B'Tselem shows that it is unable to present an accurate picture of the true data and the actual distress of the population that organization professes to represent.

Captain Peter Lerner  
Spokesman



Appendix 1 - Map of Area within the Town Planning Scheme

### Clarification by B'Tselem

B'Tselem's figures on the population of 'Anata, al-'Izariyyeh, and Abu Dis, taken from the architects' opinion annexed to the petition to the High Court of Justice in the Ma'aleh Adumim expansion case, are based on the article of Amira Hass in *Ha'aretz* of 2 May 1997. The figures relate to 1993 and were provided by the village mukhtars and local councils. B'Tselem's figures do not take into account the natural population growth that has taken place since 1993.

On 7 July 1999, the Palestinian Central Bureau of Statistics provided figures to B'Tselem that differ from those stated in the response of the Civil Administration (see Appendix 3, below).

The area included within the planning schemes and Area B in the expanse east of Jerusalem to Ma'aleh Adumim.



*Note by B'Tselem*

Unfortunately, we were unable to obtain a better-quality map from the Civil Administration

# Appendix 3

## Population Figures of the Palestinian Central Bureau of Statistics

07-07 99 WED 12:16 FAX 972 2 9986343

P C B S

0001

Palestinian Central Bureau of  
Statistics  
Al-Bireh Office  
P.O. Box 1647 Ramallah  
Palestine



الجهاز المركزي للإحصاء الفلسطيني  
مكتب البيرة  
ص.ب. 1647 رام الله  
فلسطين

### FAX COVER SHEET

صفحة غلاف فاكس

Page # 1 of 1 صفحة # 1 من 1

Date: 07-07-1999 التاريخ Time: 12:06 الساعة Ref: 07/1999 الإشارة

To: Ms. Naema

From: Laay Shehadeh  
Director, Public Relations and Users  
Services Department

Betsalem

Jerusalem - Palestine

Palestinian Central Bureau of Statistics

Fax: 5610756 فاكس

FAX: 972 2 2986343 فاكس

INFO ONLY  : اطلاع  : REPLY REQ.  : مطلوب الرد  : FOR COMM.  : للتطبيق  : URGENT  : عاجل

MESSAGE:

الرسالة:

Subject: Information Request.

Dear Ms. Naema,

Thank you for contacting PCBS, please find below the requested information:

Locality Name	Population
Anata	7130
Abu Dis	8975
Al-Eisriya	12893

Includes population counted during the period of 10-21/3/1997. Does not include uncounted population estimates according to post-censal survey and population estimates for those parts of Jerusalem annexed by Israel in 1967.

Source: Palestinian Central Bureau of Statistics, 1999 Population, Housing, and Establishment Statistics 1997  
Best regards.

AUTHORIZED BY

Laay Shehadeh

DIRECTORATE /DEPARTMENT

PRD

SIGNATURE



أمر الإرسال  
الإدارة /الذاترة  
التوقيع

DIFFICULTIES?: PLEASE CALL

972 2 2986340

في حال عدم نجاح الإرسال، يرجى الاتصال على:

Field Work Directorate (Only) 972 2 2951101 972 2 2952796

الإدارة العامة للعمل الميداني (فقط)

E-MAIL ADDRESS: [dir@pcbs.pna.org](mailto:dir@pcbs.pna.org)

URL: <http://www.pcbs.org>



