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SETTLEMENT MONITOR

EDITED BY GEOFFREY ARONSON

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

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SETTLEMENT OVERVIEW: 2008 AND THE GAZA WAR

AS PROSPECT OF TWO-STATE PEACE RECEDES, NEW U.S. POLICIES ARE URGENT

From Settlement Report, January-February 2009.

Israel’s assault on Gaza, after the breakdown of a six-month cease-fire with Hamas, offers the most recent evidence of the breakdown of the diplomatic process ushered in by the Oslo agreements in 1993 and the declining prospect of a peace agreement based upon its principles. It is yet another signal that, beginning with Ariel Sharon’s “disengagement” from Gaza in 2005, the focus of the Israel-Palestine conflict is now urgently centered on the Gaza Strip, and more broadly, on the contentious relationship between Israel and Hamas.

The election of Barack Obama offers the international community the opportunity for some new thinking about how to reenergize its unfulfilled commitment to end the occupation and create a sovereign, independent

Palestine at peace with Israel. The selection of former senator George Mitchell, a mediator of international standing, as Pres. Barack Obama’s special envoy is widely viewed as an inspired choice. As Mitchell begins a much-needed reassessment of the U.S.-led effort to strengthen Abu Mazin and weaken Hamas, he inherits a policy based upon the following principles:

- a) Denying Hamas’s role in Palestinian affairs, demanding its adherence to Quartet principles (recognition of Israel, forswearing the use of force, and accepting the Oslo-Annapolis agreements), refusing to accept its rule in Gaza, and opposing national political reconciliation;
- b) Acquiescing in practice to Israel’s diplomatic and security agenda on the West Bank while offering only rhetorical objection to the system of checkpoints and settlement construction;
- c) Supporting Israel’s security agenda in Gaza, and the draconian Israeli and Egyptian restriction of imports sufficient only

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to meet minimal humanitarian needs, and supporting reconstruction aid on condition that it strengthens Abu Mazin and weakens Hamas;

- d) Continuing the West Bank effort to strengthen Abu Mazin by acting as paymaster to the Palestinian Authority (PA), supporting a “counterinsurgency” strategy against Hamas, and prodding Israel to make marginal concessions to PA security services as part of a “performance based” effort aimed at moving toward Palestinian independence and an end to occupation.

Continuing U.S. support for policies that fail to acknowledge the real changes among the principal players risks making Washington increasingly irrelevant to the march of events. Israel and Hamas in particular are pursuing agendas that differ markedly from those promoted by the international community. In the absence of a revitalized and reoriented American-led effort, their confrontation will define the policy choices of the future. It may still be possible for the international community to bring an end to Israel’s occupation and to make possible the creation of a unified Palestinian state next to Israel under secular Palestinian leadership that enjoys the support of both Israeli and Palestinian majorities. To do so, however, will require a dramatic departure from prevailing assumptions and policies.

The ongoing battle in Gaza has made the environment for such an effort far more difficult. Israel increasingly focuses on Hamas as its primary Palestinian threat and principal Palestinian interlocutor, rather than Fatah and Abu Mazin. The latter, in Israel’s view, have been “domesticated” by the peace process. Their interests, therefore, do not have to be seriously addressed.

Israel waged war to force the Hamas-led government and security forces in Gaza to accommodate a security agenda defined by Israel—to cease all missile strikes against Israel without conceding Hamas’s demand to open Gaza’s borders, especially to Egypt (at Rafah). Hamas, in turn, demands an end to the economic “siege” and open borders as the price of a durable cease-fire.

The Palestinian leadership in Ramallah failed to win Israeli support for its restoration in Gaza. Israel’s decision not to destroy the Hamas regime dispelled the illusion fortifying many in Fatah that Israel would support their return to power, lost in the

January 2006 election and the June 2007 debacle in Gaza. The war demonstrated Israel’s lack of interest in promoting Fatah’s declining fortunes. This view informs Israeli policy on issues now at the center of international concern—Gaza’s border regime and reconstruction aid. Fatah, politically weakened by the war, should be prepared to entertain proposals that will win it a role in the provision of aid to Gaza and border operations commensurate with its reduced power. In the West Bank, Europe, U.S., and Arab officials continue to make the case for the need to strengthen Abu Mazin through Israeli security if not political concessions. In today’s environment, Israel is less likely than ever to follow this international agenda.

The war in Gaza placed Hamas at the center of a new page in the history of the century-old Palestinian battle against Israel. It survived the Israeli attack and successfully defended Gaza against an Israeli reoccupation. In contrast, Abu Mazin, and more significantly Fatah, were mere spectators in this latest Palestinian battle against Israel. In the aftermath of the war, Hamas’s control of the government, bureaucracy, and security arms in Gaza is undiminished. The “movement” remains intact despite its leadership losses, and its decision-making capacity has not been compromised. The integrity of Hamas’s security forces has been impaired but there is ready evidence that they continue to exercise a monopoly of force in Gaza. They remain capable of projecting power, however feeble, against Israel. Hamas is also demonstrating an ability to provide for the burgeoning humanitarian requirements of the Gaza population, despite the continuation of the “siege.” This situation establishes a threshold far above what Hamas leaders defined as victory in the midst of the war.

Hamas’s policy goals today remain almost identical to the prewar period:

- a) Recognition by Israel, Egypt, and the international community as the responsible power in Gaza, without submitting to external diktats (the Quartet principles);
- b) Maintaining a credible “resistance option”—not to defeat Israel, which it recognizes is impossible, but rather to alter the terms of the relationship with Israel in its favor;
- c) Ending the siege and restoring functionality of Gaza’s borders with Israel and Egypt

for imports and exports so that normal economic activity can resume;

- d) Opening the Rafah border with Egypt as a strategic goal in order to establish a link with the world independent of Israel;
- e) Resolving the prisoner exchange issue with Israel according to its suggested formula.

As George Mitchell has noted, the immediate challenges facing the new U.S. administration have been defined by the bitter contest between Israel and Hamas. The war has forced Israel to reconsider its previous policies on prisoner release and border operations. There is as yet no agreement on a cease-fire or the release of prisoners, notably the Israeli corporal Gilad Shalit, because there is no agreement on ending the draconian import-export regime imposed by Israel with international support. Gaza's borders remain all but closed because Israel longs to divide Israel and the West Bank from Gaza and end all economic ties with the area, no matter which Palestinians rule there, and because of Egypt's determination to resist Israel's intention to move Gaza into its economic and security orbit. Nevertheless, the prospects for fragile understandings on borders and prisoner release on terms closer to those long favored by Hamas are now better than before the war.

The diplomatic dimension of the Annapolis process has exhausted itself. The deafening silence that greeted lame-duck Prime Minister Ehud Olmert's report to Mitchell of his conditional offer of Palestinian statehood and settlement evacuation attests to Israel's disinterest in addressing final status issues under the Annapolis banner. Israel's uncertain election results make a credible resumption of this process even more problematic.

Little remains of the Annapolis effort except the security element managed by U.S. and European security officials in cooperation with Israeli and Palestinian security forces. During the war in Gaza, PA security forces in the West Bank performed well and according to script under extreme and unprecedented pressure in a successful effort to minimize public protest and unrest. Their motivation for doing so, however, was not so much a desire to protect Israeli interests or to safeguard Palestinians from IDF entry into the streets as it was to demonstrate to the international community, and particularly to the United States, that Palestinians have

upheld their part of the Oslo/Mitchell Commission/road map/Annapolis bargain and that they now expect a payoff in the form of more security space to call their own and real progress toward settlement evacuation, an end to occupation, and independence.

An American policy that results in the timely realization of these Palestinian national demands, which have been endorsed by the international community, is the only effective means for reviving the fortunes of secular Palestinian nationalists. Israel and Hamas have chosen another road. They are not waiting for Washington but are creating a dynamic alternative to a moribund "peace process."

SUMMARY OF CONSTRUCTION IN THE WEST BANK, 2008 (EXCERPTS)

This Peace Now report was released in January 2009. The full report is available online at www.peacenow.org.il.

Annual Summary for 2008

The figures are based on aerial photos and site visits by the Settlement Watch team in the last year.

- Number of settlers in the territories as of 2008: 285,800
- Number of new structures built in the territories in 2008: 1,518 (including 261 in outposts)
- 61% of the new structures (927 structures) were built west of the route of the separation fence and 39% (591 structures) east of it.
- A quarter of the new structures east of the fence were built in outposts.

Settlements

- At least 1,257 new structures were built in settlements, including 748 permanent buildings and 509 caravans, compared to 800 structures in 2007 (including 442 permanent structures and 368 caravans), a 60% rise.
- In addition, the ground was prepared for the construction of 63 new structures.

Outposts

- Not a single real outpost was evacuated.
- At least 261 new structures were built, including 227 caravans and 34 permanent structures, compared to 98 structures in 2007 (including 82 caravans and 16 permanent structures), a 2.5-fold increase.

- In addition, the ground was prepared for the construction of 9 new permanent structures.
- In three of every four outposts (74 of the 99 outposts), construction or development work took place in 2008.

Gaza

...

During the war in Gaza, settlers took advantage of the fact that public attention was on the south to expand construction in the outposts and settlements. At this point it is difficult to assess the amount of construction done during the weeks of the war, but it can be stated with certainty that a number of new roads were opened, with the goal of extending control in the areas near the settlements:

- Opening a road connecting the settlement of Eli with the settlement of Shilo
- Opening a road extending control surrounding the outpost of Haro'e
- Expanding road ascending from Eli cemetery toward Hayovel outpost
- Opening the road from outpost of Adi toward Allon Road
- Beginning of opening road from Zayit Ra'anon outpost southward

East Jerusalem

Tenders were issued to build 1,184 new housing units in East Jerusalem, compared to 793 in 2007. Only 46 of the tenders in 2007 were issued during the first 11 months of the year. All of the other 747 were issued in December 2007, right after the Annapolis conference.

Construction plans for 5,431 housing units in East Jerusalem were open for public review, of which 2,730 housing units received final approval, compared to 391 housing units approved during 2007.

Additional Figures

In 2008, tenders were issued to build 539 new housing units in the settlements, compared to only 65 housing units in 2007, an eightfold increase in the number of tenders.

Central Bureau of Statistics figures also showed a 60% rise in the number of building starts in 2008 compared to 2007: 1,647 new housing units (only until September 2008), compared to 1,389 in all of 2007.

Government Policy in 2008

... Along with the declaration of a commitment to freeze the settlements, the government continued the construction of the

settlements in three main ways:

1. Initiating and promoting construction and plans in the settlements west of the fence, with the pretext of it not having a bearing on the final [status].
2. Issuing permits and licenses for plans and construction, at the request of the settlers, as part of agreements and understandings with them.
3. Ignoring... unauthorized construction and development.

Promoting Construction and Plans West of the Fence Route

- Tenders: In 2008 tenders were issued for the construction of 539 housing units in settlements west of the fence (Elkana, Ariel, Efrat, Beitar Ilit, Alfei Menashe).
- Construction permits: The beginning of work on large projects west of the fence was approved (950 housing units in Ma'ale Adumim, 800 housing units in Giv'at Ze'ev, 100 housing units in Ariel, and more).
- Construction in East Jerusalem: A considerable momentum began in planning and construction in East Jerusalem (Har Homa, Givat Hamatos, near Sur Baher, Pisgat Ze'ev, and more).

Approval of Plans East of the Fence Route

During 2008 the minister of defense approved dozens of construction plans in settlements, some east of the fence. In many cases these were plans meant to allow small changes in existing plans or the expansion of individual housing units, but in some cases the plans were for the substantial construction and expansion or the retroactive approval of building violations or even the establishment of new settlements. Among the substantial plans approved:

- Establishment of settlement of Sansana: The minister of defense approved for completion all planning stages... to build 60 housing units at Sansana in the southern [part of] Mount Hebron. The plan actually constitutes the establishment of a new settlement whose residents currently live in caravans. The construction of the permanent structures began a few years ago without permission... As soon as Barak approved moving the plan to the open stage, the settlers began construction,

even though the plan itself has not yet undergone all of the planning procedures nor did the planning institutions approve it. At the beginning of January 2009 the plan was open for public objections. Officially, the government of Israel treats the settlement as a "neighborhood" of the settlement of Eshkolot, 4 km away, without any road connecting them.

- Establishment of the settlement of Maskiyot: The defense minister approved validating plan no. 303, which was published for validation on 23 July 2008. What this actually means is the establishment of a new settlement, which had so far served as a Nahal outpost and educational institution.
- Expansion of the settlement in Hebron: For the first time in years, the defense minister approved construction of a new building for the settlement in the middle of Hebron, near Beit Romano.
- Other plans approved by Barak: Barak approved plans to continue the planning . . . in dozens of other settlements including: Ovnat, Elkana, Efrat, Ariel, Talmon, Negohot, Kiryat Arba, Keddu-mim, Na'ale, Mevo Horon, Beit El, Neve Daniel, Giv'at Ze'ev, Alon Shvut, Bet Arye, and others.

Limited and Marginal Enforcement

Whereas in 2008 at least 34 permanent structures and 227 new caravans were erected in the outposts, law enforcement was extremely limited. In a list submitted by the state to the [High Court] in order to show its intensive enforcement activities against illegal construction, only 31 incidents were presented in which tin shacks and other temporary structures were evacuated or demolished, and groups of youngsters who were demonstrating on hilltops were evicted. All of the outposts Barak declared were evacuated were not fully evacuated. . . .

The evacuation of the disputed house in Hebron is the exception that proves the rule: the decision to evacuate the house was made more than a year and a half before the evacuation, but it was only the sight of the severe violence by the settlers and their throwing stones at Palestinians and police that led the defense minister to evict them from the house.

Land Confiscation

Despite government declarations that no new land had been confiscated, Peace Now

learned of a number of decisions and orders whose practical meaning is the confiscation of new land and its transfer to state ownership, in the amount of 275 dunams (of the land of al-Khadr near the settlement of Efrat, of the land of Hussan near the settlement of Beitar Ilit, of the land of Brukin near Ariel, and the land of al-Udaysa near Hebron).

SETTLER POPULATION EAST OF THE BARRIER, 1994–2007

The figures in this chart were taken from the November–December 2008 Settlement Report. Out of 71 settlements located east of what is now the separation barrier, the five that have exhibited the most and least population growth are presented here.

Settlement	Population		Population Growth
	1994	2007	1994–2007 (%)
<i>(most growth)</i>			
Giva Benjamin	361	3,574	890.0
Kochav Ya'akov	663	5,627	748.7
Almog	102	854	737.3
Avnei Hefetz	214	1,328	520.6
Talmon	439	2,350	436.3
<i>(least growth)</i>			
Netiv haGedud	201	114	−43.3
Massua	210	136	−35.2
Pdu'el	311	217	−30.2
Ro'i	158	126	−20.3
Mekhora	135	112	−17.0
Total settler population east of the barrier (71 settlements)	30,065	66,749	122.0

RIISING SETTLER VIOLENCE

ISRAELI SETTLER VIOLENCE AGAINST PALESTINIAN CIVILIANS AND THEIR PROPERTY (EXCERPTS)

This report on settler violence by the UN Office for the Coordination of Humanitarian Affairs (OCHA) in the occupied Palestinian territories was released in December 2008. Detailed sections on law enforcement and civil society response to settler violence have been omitted for space reasons, as have been footnotes. The full report can be accessed at www.ochaopt.org.

Introduction

Israeli settler violence against Palestinian civilians is increasing; during the first ten months of 2008, OCHA recorded more Palestinian casualties caused by settlers than in each of the previous two years. Settler violence is not random criminal activity; in most cases, it is ideology-driven organized

violence, the goal of which is to assert settler dominance over an area. IDF commander of the Central Command Major General Gadi Shamni, responsible for the West Bank, recently argued that the increase is due to the “encouragement [the settlers] receive from the settler leadership, rabbis and [the] public.”

. . . Over the course of its prolonged military occupation, Israel has facilitated and encouraged the settling of nearly 470,000 Israelis into the occupied Palestinian territory (oPt), resulting in the takeover of Palestinian land, natural resources, and transportation routes. This transfer of citizens into occupied territory is strictly prohibited under international humanitarian law (IHL). In 2004, the International Court of Justice concluded that Israeli settlements in the oPt are in breach of international law, while Israel’s settlement activity has been condemned by the UN Security Council. . . .

Israeli media reports credit the recent increase in settler violence to more radicalized settler youth, impacted by Israel’s 2005 “disengagement” from the Gaza Strip and parts of the northern West Bank and strenuously opposed to further evacuations of settlements. Settlers report that they intend to exact a “price” for every attempt to dismantle a settlement “outpost”—small satellite settlements established without official Israeli authorization. The implementation of this technique has been seen recently with settlers mobilizing large groups of other settlers to attack Palestinians following attempts to dismantle settlement outposts in Hebron. As a result, after paying the price of Israel’s settlement policy for decades, Palestinian from all walks of life are now paying the price for the limited efforts undertaken to remove settlement outposts.

Settler-related Incidents Affecting Palestinians, 2006–2008

Since 2006, OCHA oPt has regularly recorded settler-related incidents taking place in the West Bank. After confirmation, OCHA integrates this data into its Protection of Civilians database. Included in this category is any event involving an aggressive action perpetrated by either Israeli settlers or Palestinians toward each other or others (such as international observers). The category also includes incidents wherein the IDF takes action in response to a specific incident involving Israeli settlers (e.g., restricting Palestinian movement as hundreds of settlers attempt to re-occupy a settlement). The

majority of the incidents recorded by OCHA involve settler aggression against Palestinian civilians.

OCHA’s settler-related data provides one means of monitoring the humanitarian impact of Israel’s settlement policy on Palestinian civilians. The recorded events are not comprehensive. As this report will make clear, some areas of the West Bank suffer far higher levels of settler violence and related activity than others. In areas where settler harassment is routine, many incidents are not reported unless they have a significant result, simply because harassment has become a regular aspect of daily life or because those affected do not believe that reporting an incident will result in any change. In other cases, OCHA has been unable to confirm details of a particular incident and, therefore, has not included it in the database. However, while the incidents recorded do not reflect the full extent of settler violence towards Palestinians, they are indicative of related trends.

The total number of OCHA-recorded settler incidents affecting Palestinians has steadily increased each year since 2006. Likewise, the total number of incidents in the first 10 months of 2008 surpassed the total number of incidents recorded by OCHA in 2006 and 2007. A total of 182 incidents were recorded in 2006. This increased to 243 in 2007 and 290 in the first ten months of 2008.

This section is based on events recorded by OCHA during the period 1 January 2006–31 October 2008, along with field observations during that period. It analyzes OCHA data in terms of location, results and timing of settler-related incidents.

a. Location of Incidents

Settler-related incidents recorded by OCHA occur primarily in areas adjacent to Israeli settlements in the West Bank. While incidents were recorded in all governorates during the first 10 months of 2008, they were more frequent in the Hebron and Nablus governorates, with 42% and 21% of incidents, respectively.

Thirty-one percent (31%) of total incidents in 2008 occurred in the H2 area of Hebron city; 11% took place near the settlements of Yitzhar and Bracha (Har Bracha) in the Nablus governorate; 9% took place in the south Hebron area, from Adh Dhariya in the west to Masafer Yatta in the east; and 10% involved settlers from Nablus settlements other than Yitzhar and Bracha.

This trend was also witnessed in the preceding two years. In 2007, 42% of recorded incidents occurred in the Hebron governorate, while 27% took place in the Nablus governorate. In 2006, Hebron governorate accounted for 54% of incidents, while Nablus governorate accounted for 23%.

b. Results of Incidents

OCHA records settler-related incidents based on the result of the event, i.e. whether it caused casualties or property damage, denied Palestinian access to an area, etc. While incidents may have multiple results, a hierarchy based on the severity of the result is employed so that each incident is counted only once. For example, one attack might result in a Palestinian casualty as well as in damage to Palestinian property. In this case, the incident is recorded as a “casualty” incident and not as a “property damage” incident.

Since 2006, the majority of settler-related incidents (77%) recorded by OCHA resulted either in Palestinian deaths and injuries (26%); caused damage to Palestinian property (28%); or denied Palestinians access to a particular place, road or area (23%). These three categories also constituted the majority of events recorded each year.

Palestinian Casualties

Of the 290 settler-related incidents affecting Palestinian civilians recorded by OCHA in the first ten months of 2008, 24% resulted in Palestinian casualties: three Palestinian males, including one child, were killed and 128 injured (including 28 women and 21 children). These surpassed the total number of settler-related Palestinian casualties in 2006 (92—1 death, 91 injuries) and 2007 (74, all injuries). Approximately half of all Palestinian injuries from settler violence each year since 2006 have been inflicted on children, women, and men 70 years and older.

The majority of incidents that resulted in Palestinian casualties occurred in the Hebron governorate, 39 incidents. Of these, 30 incidents occurred in the H2 area of Hebron City. This represents 42% of all incidents resulting in casualties. Seven of the remaining nine incidents occurred in the south Hebron area. Other incidents resulting in casualties occurred in the Ramallah governorate (4%) and the Nablus governorate, where six of the eight total incidents involved settlers from Yitzhar and Bracha.

The majority of Palestinian injuries caused by Israeli settlers each year since 2006 have been the result of unarmed physical assaults. In the first ten months of 2008, these injuries represented 65% of all injuries caused by Israeli settlers. The number of such injuries, 83, surpassed the parallel figure for 2006 and 2007, when 61 and 53 injuries were caused by physical assault, respectively.

The second-largest category of injuries in 2008 was those caused by stone-throwing by settlers. These incidents accounted for 27% of all Palestinian injuries in 2008. There were twice as many stone-throwing-related injuries—35—in the first ten months of 2008 as in 2007, when 16 . . . injuries were caused by stone-throwing. In 2006, 15% of all cases, or 14 injuries, were caused by stone-throwing. The same year, an almost equal number of injuries, 15, were caused by live ammunition fired by Israeli settlers. Such injuries were considerably fewer in 2007 and 2008, with five and two injuries, respectively.

Settler killings of Palestinians: In 2008, one Palestinian male child (17 years old) was killed by Israeli settlers in the West Bank. Two other Palestinian males (aged 19 and 22 years) were killed by Israeli settlers in contexts that were disputed: one died after being shot by a settler who alleged that the Palestinian tried to stab him; and another died while bird hunting with a group of Palestinians after he was shot by an off-duty IDF soldier, who claimed that he was responding to fire from the group of Palestinians.

In 2007, OCHA recorded no Palestinian deaths due to settler violence. In 2006, one death was recorded: a 48 year-old Palestinian man was shot dead when an Israeli settler opened fire at his vehicle.

Property Damage

In the first ten months of 2008, the single largest category of settler-related incidents was made up of incidents that caused property damage, without resulting in any casualties. There were 79 such cases, some 27% of total incidents. In 2007, 24% of recorded incidents resulted in damage to Palestinian property, down from 33% in 2006. . . .

Preventing Access

In 2008, the third-largest category of incidents (21%) recorded by OCHA were those that denied Palestinians access to a

particular place, road, or area due to Israeli settlers. These incidents are separate from incidents related to the hundreds of Israeli checkpoints and other movement obstacles that restrict Palestinian access to the primary road network in the West Bank, which is largely for the exclusive use of Israelis.

Included in “preventing access” incidents are cases where the IDF denied Palestinian access due to specific settler acts in an area. Examples include the closure of a school in the H2 area of Hebron to allow for settler celebrations during a Jewish holiday, a curfew imposed on a Palestinian town so that a settler’s wedding could take place, or Palestinian movement in an area denied due to a settler march.

In 2008, OCHA recorded 62 “preventing access” incidents. Of the total, 60% involved incidents wherein Palestinian access was denied to the Prayers Road leading to the Ibrahimi Mosque in the H2 area of Hebron City. These incidents generally involve settlers using physical force or the threat of violence to prevent Palestinians from accessing the road. Other related incidents included Palestinians denied access to grazing land or their agricultural fields by settlers or Palestinians barred free movement within a particular area so that Israeli settlers could visit or reach an area.

In 2007, 31% (76) of total recorded incidents involved the denial of access. This was double the number and percentage of such incidents in 2006, when 28 incidents—5%—resulted in denied access. The increase is due primarily to the large number of incidents, 36, in which Palestinian access to areas of the northern West Bank was restricted by the IDF due to Israeli settlers’ repeated attempts to reoccupy Homesh settlement, which was evacuated during Israel’s 2005 “disengagement.”

Other Attacks

Twelve percent (12%) of incidents recorded by OCHA in the first ten months of 2008 were “intimidation” attacks that, while not resulting in casualties or damage to property, were nevertheless violent. Examples include opening fire on Palestinians; kidnapping two boy shepherds, and firing homemade shells or improvised rockets in the direction of Palestinian villages, among other incidents. A striking example of an “intimidation” attack occurred on 19 October, during this year’s olive harvest, when approximately 100 Israeli settlers from Keddu-mim settlement attacked Palestinian farmers

from Kafr Qaddum with stones while they were picking olives. The IDF evacuated the settlers from the area.

c. Group vs. Individual Attack

Since 2006, a significant majority of settler incidents recorded by OCHA have been carried out by groups of Israeli settlers, rather than by lone individuals. The size of group ranged from two settlers upwards to over 100. The number of such incidents has steadily increased since 2006: there were 156 recorded incidents carried out by groups of Israeli settlers in 2006. This number increased to 181 in 2007 and to 252 in 2008. Also, these incidents have consistently comprised a majority of recorded incidents: In 2006, 86% of total incidents recorded were carried out by groups of settlers; in 2007, they constituted 74%; and in the first 10 months of 2008, they were 87%.

As with the overall trend, the majority of incidents that resulted in casualties in 2008 were carried out by groups of settlers: of the 71 incidents recorded by OCHA that resulted in Palestinian casualties, 80% were carried out by a group of Israeli settlers. All but three of the incidents recorded in the H2 area of Hebron city in 2008 were carried out by groups of settlers.

d. Timing of Incidents

Incidents occur throughout the year: since January 2006, OCHA has recorded settler-related incidents every month. Within each year, however, there are peaks and ebbs recorded. In 2006 and 2007, the annual peak of monthly incidents recorded took place during the period of the olive harvest (October and November). In 2008, there was a spike in recorded incidents following the start of the olive harvest in October 2008 (39 in October, up from 23 in September). This makes October one of the two highest monthly totals in 2008; there were also 39 incidents recorded in July. OCHA field observations also indicate that settler-related property and land damage sometimes increases in specific locations during other periods of intensive agricultural activity for Palestinians, e.g. preparing land or sowing crops, as farmers are active in settlement-adjacent areas. . . .

Conclusion

For decades, Israeli settler violence has had a significant humanitarian impact on Palestinian civilians in the oPt. It has led to the death and injury of Palestinian civilians,

caused displacement in targeted areas, and resulted in extensive damage to Palestinian property and livelihoods. Additionally, it has had a significant psychological impact on victims and witnesses to violence.

As this report indicates, settler violence is not random criminal activity carried out by rogue settlers acting independently across the West Bank. For the most part, it is organized violence, encouraged by extremist elements of Israeli society and carried out by groups. While some Palestinians experience greater levels of violence than others, due to their proximity to particular settlements, Palestinian communities throughout the West Bank, including East Jerusalem, are affected. Of particular concern is that roughly half of those Palestinians that OCHA has recorded as injured by settler violence have been children, women, and the elderly. . . .

Recent statements by Israeli leaders condemning settler lawlessness and calling for the perpetrators to be held accountable constitute a positive first step. The fact that settler violence is now targeting IDF soldiers to a larger degree may garner a more effective response from the Israeli authorities than seen previously.

However, it bears mentioning that similar condemnations have been issued in the past and as far back as the early 1980s, recommendations have been made to the Israeli government on measures that could, and should, be taken to address the problem. The absence of action points to a lack of will, a point underscored by Talia Sasson, who noted that it was unrealistic to expect the Israeli state and its organs to enforce law upon the settlers, when those very entities are responsible for unlawful settlement activity on a daily basis.

The Israeli authorities' history of lax law enforcement has engendered an environment of lawlessness for Israeli settlers in the West Bank. This, along with the increase in settler incidents and new settler techniques, raises a concern that settler violence may further escalate, thus increasing the humanitarian impact on Palestinians. In order to eradicate the problem of settler violence, Israel's settlement activity must cease and existing settlements must be addressed within the context of a comprehensive political agreement, in accordance with IHL [International Humanitarian Law] and UN Security Council resolutions. Until that happens, there can be no substitute for the immediate enforcement of the law against

Israeli settlers in the West Bank and for the protection of the occupied Palestinian population, as required by IHL and international human rights law.

SETTLEMENTS IN THE ISRAELI LEGAL SYSTEM

In 2005, Israeli Brigadier General Baruch Spiegel was placed in charge of a Defense Ministry project to compile a comprehensive database of information on West Bank settlements. The database was kept confidential until January 2009, when it was leaked to Ha'Aretz. Known in the Israeli press as the "Spiegel database," it has become a new flashpoint in the settlement debate in Israel. The database demonstrates that much of the Israeli settlement enterprise—which is considered categorically illegal under international law—also violates Israel's own laws regarding settlement activity, paving the way for new local legal challenges.

Portions of the database, available in its entirety in Hebrew on haaretz.com, were published in English by the Israeli advocacy group Yesh Din and can be accessed at yesh-din.org. The articles that follow examine elements of the settlement enterprise—including the potential for legal challenges—from the point of view of Israeli law.

TO SUE OR NOT? PALESTINIANS FACE DILEMMA AFTER REPORT ON SETTLEMENTS (EXCERPTS)

This piece, written by Nathan Jeffay, was published in the Jewish Daily Forward on 18 February 2009.

On paper, it has never been easier for Palestinians whose land has been appropriated by Israeli settlements to have their day in court.

Classified government data on settlements, made public in late January, documents for the first time precisely where settlements and parts of settlements have been built in violation of Israel's own laws. The data reveals that in more than 30 settlements, buildings—including homes, roads, schools, synagogues and police stations—have gone up on privately owned Palestinian land.

Most international authorities consider all Israeli civilian construction in the territories to be illegal under the Geneva Conventions on rules of war. Israel, while accepting the Geneva rules, has always insisted that

its settlements are legal, based on its reading of the rules' language, so long as they are built on land that is public or legally purchased.

Leftist groups welcomed the new data as an admission that Israel has broken its own rules on settlement building. Yesh Din (Hebrew for "There is a law"), an anti-settlement advocacy organization, said it was the "smoking gun" long needed to sue Israel on behalf of Palestinians whose land has been unlawfully taken. The group has placed advertisements in Palestinian newspapers, offering to take on cases for free.

But despite the offer of no-cost representation and the fact that evidence is available, many Palestinians are reluctant to take the legal route. Only five requests have been submitted so far. "Many people are very cynical and skeptical of going to the high court of Israel—the high court of the occupier," said political scientist Ali Jarbawi of Birzeit University in Ramallah.

Data compilation began four years ago, when then—defense minister Shaul Mofaz asked his aide Baruch Spiegel to research the status of all settlements.

The report, completed two years later, contained written information backed up by aerial photos and electronic mapping, documenting the status of each tract and the official boundaries of each settlement. Upon completion, it was classified on security grounds. The Israeli daily *Ha'Aretz* published the contents in January.

Palestinian reactions have been mixed. On one hand, the database confirms long-held suspicions. It "catalogs the widespread theft of Palestinian land in the West Bank, and points the finger of blame squarely at the Israeli government," said [Mouin Erekat], deputy head and coordinator general of the Palestine Liberation Organization Negotiations Affairs Department.

On the other hand, most Palestinians reject the principle underlying the database, distinguishing the legal building of settlements from the illegal building. "The standard used by the Spiegel database is Israeli law rather than international law," Erekat said. "Under international law, all Israeli settlements are illegal." . . .

The Palestinian debate over using Israeli courts is most urgent on the ground, in West Bank villages where landowners are mulling what to do about the database. Mohammed Khatib, secretary of the village council in Bil'in, near Ramallah, said he is

encouraging Palestinians to take the legal route, but "some people will not do it, so as to not give legitimacy to the Israeli court system. Others just have no trust it will bring a fair result."

Khatib tried the legal tactic to fight the planned routing of the security barrier, which would have cut off villagers from much of their land. At the time, Khatib recalled, "we were confused as to whether to go down this path. We are talking about the Israeli system, which we expect to take the side of Israel rather than Palestinians, and to legitimize the crime. But we thought that we had to, as we have a right to this land." In September 2007, Israel's High Court ordered the route redrawn.

Khatib predicts that other villages and individuals will use the judicial process. So does Yesh Din fieldworker Muhammed Anati. "There is no option for Palestinians," he said, adding that his organization's legal-aid advertisements are arousing some interest—even from Hamas counselors.

Still, even those who are prepared to put aside their ideological objections seem dubious about handing their case to Yesh Din and its Israeli lawyers—their only option for free representation. "People are very suspicious," said Dror Etkes, who coordinates Yesh Din's legal activities. "They cannot understand why an Israeli organization wants to help Palestinians. It contradicts everything they know about the world."

Moreover, some Palestinians fear the ramifications of a court ruling, whichever way it goes. If litigants lose, they might be seen as having rubber-stamped the expropriation of their own land, Jarbawi said. "If a judgment comes out of the court and Palestinian claims are rejected, it might give the expropriation of land the okay," he said.

And it is widely feared that even if litigants succeed, nothing will change. Khalil Tafakji, head of the maps department of the not-for-profit Arab Studies Society, said Israeli decisions that favored Palestinians but were never implemented make people skeptical of court proceedings.

He gave the example of Migron, near Jerusalem. Two years ago, Peace Now went to court, together with five Palestinians who own land where the outpost stands. The court never even ruled, because the state admitted that the outpost was on private land. After the petitioners brought the case to court, the state promised to remove the outpost. It still has not done so.

THE OFRA SETTLEMENT: AN UNAUTHORIZED OUTPOST (EXCERPTS)

This B'Tselem report, which examines the status of the Ofra settlement with respect to Israeli law, was published December 2008. Footnotes have been omitted for space reasons. The full report is available online at www.btselem.org.

Introduction

Ofra, the first settlement established by the Gush Emunim (Bloc of the Faithful) movement, is viewed by many as the flagship of the settlement enterprise in the West Bank. The special circumstances of its founding and the political significance of building a settlement in the heart of a densely populated Palestinian area [northeast of Ramallah], some 24 kilometers east of the Green Line, among other things, gave Ofra this status. Ofra is one of the most blatantly ideological settlements, yet its members managed to integrate into Israeli society, and many political and ideological leaders of the settler population established their homes there.

...

The point of departure for the following discussion is that all the Israeli settlements in the West Bank are illegal under international humanitarian law. However, this report, unlike previous reports by B'Tselem, focuses on the legality of the Ofra settlement from the perspective of the local law in force in the West Bank. Over the years, Israeli governments used various means to bypass the prohibition imposed by international humanitarian law and continued to establish settlements in the West Bank. At the same time, they always declared their commitment to enforce the local law that applies in the West Bank.

The objective of this report is to examine whether this declarations has been fulfilled, and whether the settlement of Ofra can be considered legal according to both levels of the local law: the Jordanian legislation, which is still in effect in the West Bank (hereafter: "the statute"), and the orders issued by the Israeli military commander (hereafter: "the military legislation").

...

Ofra from the Perspective of the Local Law

In March 2005, the government of Israel adopted the opinion it had commissioned from attorney Talia Sasson, former head of

the Special Tasks Department in the State Attorney's Office, regarding unauthorized outposts. In doing so, it set, for the first time, detailed criteria for examining the legality of Israeli communities in the West Bank according to local law [see *JPS* 135 for more information].

The mandate given to attorney Sasson did not include reference to the relevant provisions of international humanitarian law, so neither her opinion nor the government's decision related to this body of law. However, sticking to the narrow limitations of the local law ignores both the illegality of the settlements under international humanitarian law and the fact that their existence causes serious violations to the human rights of Palestinians in the West Bank.

Despite these reservations, the present report adopts the view of the Israeli government and examines the legality of Ofra primarily from the perspective of the local law, according to which a settlement is legal only if it meets each of the four criteria that Sasson specified in her opinion:

1. The Israeli government issued a decision to establish the settlement;
2. The military commander issued an order defining the settlement's area of jurisdiction;
3. The settlement has a valid, detailed outline plan lawfully approved by the planning authorities in the Civil Administration;
4. The settlement lies on state land and/or on land that was purchased by Israelis and registered under their name in the Land Registry.

1. Government Decision

In 1975, when the first settlers grabbed the land in Ofra, no government decision had been made to establish the settlement. Even after the settlers had established facts on the ground, the government only authorized a work camp on the site, not a permanent community. However, on 26 July 1977, the Ministerial Committee for Settlement, which was so authorized by the government, recognized Ofra as a civilian community. Therefore, Ofra meets the first criterion adopted by the government of Israel.

2. Area of Jurisdiction

In response to B'Tselem's request made under the Freedom of Information Law, the spokesperson of the Civil Administration wrote that "no area of jurisdiction has been

defined for Ofra, which is one of the communities of the Mateh Binyamin Regional Council in accordance with the schedule to the Order Concerning Administration of Regional Councils (Judea and Samaria) (Number 783), 1979." Consequently, Ofra has no official area of jurisdiction, and thus fails to meet the second criterion adopted by the government of Israel.

3. *Planning and Building*

The Jordanian planning law, which is still in force in the West Bank, states that construction of any structure (including an addition to an existing structure) requires a building permit, and that the permit may be issued only in accord with a lawfully approved, detailed outline plan, in declared planning areas, and by a local planning and building committee that was given powers in that planning area.

In 1971, the Israeli military commander signed Order No. 418, which left most of the provisions of the Jordanian planning law intact but made significant changes to the structure and composition of the planning institutions. Under international humanitarian law, the occupying power is permitted to change the existing laws in the occupied area only if a decisive military necessity or the humanitarian needs of the local population necessitate such an action. Israeli officials argue that the changes in the Jordanian planning law in the West Bank were required because the planning institutions—as were specified in the statute—included representatives of the Jordanian government, who, naturally, could not be appointed under an Israeli military government. However, the changes Israel made went further, and it appears that they do not comport with international humanitarian law.

The order canceled the local planning and building committees in Palestinian villages and transferred all their powers, including the authority to issue building permits, to subcommittees of the Higher Planning Council that currently operate in the offices of the Civil Administration in the Beit El army base. Simultaneously, the order made it possible to appoint special local planning committees for the settlements. These committees have powers in planning areas declared by the military commander. The order states that in these planning areas, and only there, the special local committees are permitted to issue building permits, pursuant to valid detailed outline plans. Furthermore, Order No. 418 granted the Higher Planning Council

the far-reaching power "to exempt any person from the obligation to obtain a license [building permit] required by the statute." To the best of our knowledge, the Higher Planning Council rarely, if ever, uses this power.

To examine the planning process in Ofra, B'Tselem submitted, under the Freedom of Information Law, a request to the Civil Administration concerning the planning status of the settlement. The Civil Administration spokesperson replied as follows:

The built-up area of Ofra is not located in the planning area of a local or special committee. There are no approved or deposited planning schemes concerning the built-up area of Ofra. No building permits or exemptions from building permits were given to structures in Ofra.

In order to still [make possible] "approval" of construction in the settlement, the leaders of Ofra created procedures to bypass planning, in contravention of the statute, by preparing "building rules" that include detailed building provisions. According to the rules, requests for building permits are submitted to "the Ofra building committee"; following the committee's approval, the request is sent "for the approval of the local building and planning committee of the Mateh Binyamin Regional Council, which issues a building permit."

However, these rules do not constitute an outline plan and cannot serve as a lawful substitute for such a plan. Under the statute, approval of a detailed outline plan entails depositing it for 60 days, during which any interested party—including Palestinians whose lands are located in, or near, the area intended for the plan—may file an objection. Ofra's building rules, which, as noted, are not a statutory plan, were approved only by the leaders of Ofra, without having first been deposited and without giving Palestinian residents the opportunity to object. This being the case, the rules have no legal validity and it is not possible to issue building permits pursuant to them.

Furthermore, according to the response of the Civil Administration, Ofra is not situated within the boundaries of a planning area where a local or a special local committee has powers. Hence, the Mateh Binyamin special local committee does not have any planning powers regarding the settlement of Ofra. Despite this, Ofra's building rules state that this special local committee will issue approvals to erect structures in Ofra. This is comparable to a situation in which

the local planning and building committee in Jerusalem were to approve building construction within the planning area of Tel Aviv-Jaffa.

An aerial photo taken in May 2008 shows that Ofra has some 570 structures, at least 400 of which are single-family detached houses. . . . Some of the structures include more than one housing unit. From the Civil Administration's response and from the above comments, it is clear that all these structures were built without a permit. In other words, Ofra is a case of an entire extensive community built illegally.

Thus, Ofra fails to meet the third criterion that attorney Sasson set and the government adopted.

4. Land Ownership

. . . B'Tselem made a request to the Civil Administration for detailed information, including maps, regarding the lands of the villages of 'Ayn Yabrud, Silwad, and Taybeh, on which Ofra and the adjacent unauthorized outposts were built. The Civil Administration was requested to relate to the following kinds of land and to mark them on a map: all land defined as state land, all land confiscated for public purposes, all land seized pursuant to military requisition orders, all land classified as absentee property (property of Palestinians who fled from the area in 1967 and did not return), and all land classified as a closed military zone.

. . . [A]ccording to the Civil Administration's response, the portion of the built-up area of Ofra, or the area adjacent to it, that lies on requisitioned or confiscated land is very small, except for the land that the Civil Administration contends was confiscated by the Jordanians for the army camp.

As of May 2008, the built-up area of Ofra was spread out over some 670 dunams. Of these, 180 dunams (27 percent of the built-up area) come within the boundaries of Expropriation Order No. 77/E, which the Israeli military commander issued on 9 November 1977. According to the Civil Administration, the land was "expropriated by the Jordanian government for a public purpose" and therefore, the order is not an initiated action by Israel but only the realization of the Jordanian expropriation of 1966 to build the 'Ayn Yabrud army camp.

However, the documents that the Civil Administration provided B'Tselem do not support this claim.

. . . Expropriation Order No. 77/E is a new expropriation and that the authorities,

in their attempt to render it fit, relied on unfounded arguments. The Jordanians did not complete the expropriation process. In any event, the Israeli expropriation order relates to a larger area and was issued for a purpose that is not recognized as legitimate under international law, under Jordanian law, or under the military legislation. In fact, had the land indeed been expropriated by the Jordanian authorities, Israel would not have needed to issue the 1977 order, given that land expropriated in accordance with the Jordanian expropriation law becomes state property. The fact that the Israeli military commander issued a new expropriation order reinforces the contention that the land covered by the order had not been expropriated.

. . . Of Ofra's built-up area (680 dunams), the vast majority (about 500 dunams) is not included in Expropriation Order No. 77/E, but on land that was not expropriated, neither by Jordan nor by Israel.

. . . The land included in Expropriation Order 77/E and the area of the lots for which B'Tselem obtained land abstracts amounts to some 390 dunams. Thus, the total amount of land registered in the Land Register on the name of Palestinians that lies in Ofra's built-up area is at least fifty-eight percent of the built-up area of the settlement.

Conclusions

This report shows that Ofra does not meet three of the four requisite criteria set by attorney Talia Sasson and adopted by the government of Israel for the lawful establishment of a settlement under local law. As we have seen, no jurisdictional area was set for Ofra, the settlement does not have a valid detailed outline plan, and at least 58 percent of the land on which it was built is registered under the name of Palestinians in the Land Registry.

Although all four criteria must be met, and failure to meet one of them suffices to render the settlement illegal under local law, the criteria are not equal in importance. As attorney Sasson stated:

The tag of illegality applies to all kinds of communities enumerated in the opinion, in that it is sufficient for one of the components that are vital to render a community fit not to be met, to say that the community is illegal. . . . Yet there is a difference in the intensity of the illegality . . . that affects the prima facie legal possibility of correcting the illegality. . . . From a legal perspective, failure to comply with the provisions of law regarding planning and building, failure to reach the required government decisions in

time, and government approval of the establishment of a new community—may prima facie be corrected retroactively. . . . However, if the illegality applying to outposts or to extensions of settlements results, inter alia, from the nature of the rights over the land, that is, if they are built on land that is not state land, and certainly if it is privately-owned Palestinian land—this difficulty cannot be corrected at all. This illegality is colossal, and cannot be corrected other than by evacuating the outpost, and the sooner the better.

This distinction produces a relationship of cause and effect between the various criteria. The inability to define an area of jurisdiction for Ofra results primarily from problems relating to ownership of the land, in that the inclusion of land registered under the name of Palestinians within the settlement's area of jurisdiction contradicts government decisions and Israeli High Court rulings, whereby Israeli communities may not be built in the West Bank on such land. Also, the military order, under which the Mateh Binyamin Regional Council (to which the Ofra settlement belongs) operates, states that the jurisdictional area of an Israeli regional council shall not include Palestinian "privately-owned lands."

According to the state's position, too, the planning institutions in the Civil Administration are prevented, as a rule, from approving outline plans intended for Israeli communities whose land includes land registered under the name of Palestinians. In the case of Ofra, it appears that the Civil Administration refused to establish an area of jurisdiction for the settlement and to approve an outline plan, not because of opposition in principle to the establishment of the settlement, but because of the legal impediment to do so

given that much of the land on which it is built is registered in the Land Registry under the name of Palestinians.

Having no option, the state indeed did not approve the settlement of Ofra in terms of the local law, yet it also did nothing to prevent the settlers of Ofra from taking control of land registered under the name of Palestinians in the Land Registry and establishing hundreds of housing units on it. Since the settlement was established, the state has continued to support its existence and expansion, despite the lack of a statutory planning basis, and despite the illegality entailed in taking control of land registered under the name of Palestinians.

In recent years, the government has repeatedly declared that it is committed to the dismantlement of unauthorized outposts that have been established in the West Bank. . . . Officially, Ofra is a recognized settlement and not an unauthorized outpost. However, the fact that the government decided in the past to recognize Ofra as an Israeli community does not suffice to render the settlement lawful under the local law. Essentially, Ofra is a clear-cut case of an unauthorized outpost, having the most serious flaw possible according to the Sasson report: building the community on privately-owned Palestinian land registered in the Land Registry.

Accordingly, beyond Israel's obligations under international humanitarian law, the Israeli government must act to dismantle Ofra, along with all the other unauthorized outposts. The Palestinian landowners must be given back the land taken from them illegally, and must be remunerated for the use of their lands.