



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

B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

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4 November 2005

Mr. Ophir Pines-Paz  
Minister of the Interior  
Ministry of the Interior  
The Kirya  
Jerusalem

**Via Fax: 02-5666376**

Dear Sir:

Re: **B'Tselem's position on turning Modi'in Illit into a municipality**

1. Following the Interior Ministry's announcement of the appointment of a committee to examine changing the municipal status of Modi'in Illit from a local council to a municipality, in which context the public was invited to provide comments on the matter. I am, therefore, forwarding a brief statement of B'Tselem's position on this issue.
2. B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories concentrates its efforts on changing the policy of the government of Israel in the Occupied Territories, to point out the state's obligation to protect the human rights of the residents of the Occupied Territories, and to comply strictly with international law. Among its activities, B'Tselem expends much effort in researching, documenting, and *hasbara* regarding Israel's settlement policy in the West Bank ("Judea and Samaria" in Israeli jargon), and its effects on human rights. Given that Modi'in Illit is a settlement that was established in the West Bank, the government's policy relating to the community is of interest and concern to B'Tselem.

Significance of changing Modi'in Illit's status to municipality

3. According to the military legislation that arranges the status of Jewish local authorities in the West Bank, other than the name, there is no difference in the rights or powers of municipalities in comparison with local councils (see the Order Regarding Administration of Local Councils (Judea and Samaria) (No. 892), 5741 – 1981, Section

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140(c). Also, according to the law applying in Israel, the difference between local councils and municipalities is relatively small, and is felt primarily in personnel matters.

4. Yet, changing the community's status from local council to municipality is of great practical significance. As pointed out in a report issued by the Local Government Administration, of the Interior Ministry, "municipality status may give greater validity to the demands for high-density construction, and possibly also free agricultural land for construction... It may be that the minister's interest in rapid urban development of a certain place (for example, to draw additional residents to strengthen the location or to populate development areas) will promote the granting of this status." Furthermore, as the report mentions, "a difference, the importance of which should not be underestimated, is the prestige of a municipality (and its elected officials) in comparison with that of a local council" (Local Government Administration, *Criteria for Granting Municipality Status*, March 1988, p. 9) This prestige can be expressed, for example, in the influence that the local authority holds with the central government, and its ability to obtain larger budgetary allocations.
5. In light of the potential consequences of giving Modi'in Illit municipality status, doing so will trample on fundamental principles of international law and encourage further violation of the human rights of Palestinians living in the nearby villages.

An act intended to increase the population of Modi'in Illit is illegal under international humanitarian law

6. The settlements that Israel established in the West Bank are illegal because they breach the Fourth Geneva Convention. Article 49 (6) of the Convention prohibits the occupying state to transfer its own civilian population into the occupied territory. The purpose of this prohibition, as stated in the International Committee of the Red Cross's official commentary, is to prevent the misuse of the results of the war for purposes of colonizing the occupied territory, with all the harm to the local population that results from such exploitation.
7. The vast majority of jurists in Israel and abroad hold the opinion that the Fourth Geneva Convention is binding on Israel in the territories it occupies, and that Article 49 indeed prohibits the establishment of settlements. The International Court of Justice, in The Hague, which is the highest judicial body in international law, reached this conclusion in its advisory opinion of July 2004 regarding the legality of the separation barrier (in Section 120 of the opinion).

8. It is important to note that the breach of the Fourth Geneva Convention in building the settlements is an ongoing breach. Therefore, acts that are intended to enable the settlements to continue, or to encourage Israelis to move there to live, also breach the Convention. As stated, one of the primary potential effects of the change in status of Modi'in Illit to a municipality is that its population will increase; for this reason, changing the status is illegal.

#### Changing Modi'in Illit's status would be another step toward its annexation

9. Unilateral annexation of territory occupied during war is prohibited by the UN Charter and by many other international law instruments. Because of the repercussions on international relations entailed in formally annexing the West Bank, or in formally applying Israeli law to the West Bank, all Israeli governments since 1967 have refrained from taking these measures, except as regards East Jerusalem.
10. Rather, the Israeli authorities have implemented a policy of creeping, *de facto*, annexation of the settlements into the State of Israel. By a complex web of statutes, regulations, and military orders, Israel has applied Israeli administrative law personally on the settlers and territorially on the settlements. As a result, the settlers live, for almost all intents and purposes, as if they reside in Israel, as if the territory in which they live is not occupied and under military rule. Recently, this crawling-annexation policy received a new component: separation of the territory of many settlements, among them Modi'in Illit, from the rest of the West Bank, by means of the separation barrier.
11. Although the creeping-annexation policy has not yet included the formal-declarative component entailed in *de jure* annexation, as occurred in the case with East Jerusalem, the results in the field have been almost identical. The policy, to a similar degree, undermines the prohibition on unilaterally annexing territory, and is illegal.
12. The rationale behind the intention to turn Modi'in Illit into a municipality is to give it equal status to that of communities in Israel of comparable population size. This rationale provides a further indication of Israel's creeping-annexation policy. The manner in which the request to change the community's status is being handled is also clear evidence of this policy. The process is being conducted by appointing an Interior Ministry committee to examine the matter, as is done in regard to local authorities in Israel, even though the power to change the status of a community in the West Bank lies formally with the OC Central Command.

Changing Modi'in Illit's status will intensify the discrimination between Israelis and Palestinians

13. One of the grave consequences of *de facto* application of Israeli law on the settlers and the settlements is that it codifies discrimination. In areas of the West Bank under complete Israeli control (Area C), two systems of laws are applied, which are based on the national origin of the individual, Palestinian or Jewish. Whereas Palestinians are subject to a rigid military regime, Israelis benefit from all the advantages given to a citizen of a democratic country.
14. The discriminatory nature of the regime that Israel has established in the West Bank is also apparent in the planning policy instituted by the Civil Administration, which is supposed to apply the same criteria for Palestinians and Jews. In practice, the planning system forbids almost completely Palestinian building in Area C, and demolishes structures that have been built without a building permit. At the same time, the Civil Administration works energetically to advance building plans in the Israeli settlements.
15. Strengthening the status of Modi'in Illit by raising its status will increase the discrimination between its residents and the Palestinians living nearby. In particular, as the Interior Ministry's report referred to above states, such a measure may "give greater validity to the demands for high-density construction, and possibly also free agricultural land for construction," while construction by Palestinians on their agricultural land in Area C is completely forbidden.

The change in status will encourage continuation of the land grab

16. Modi'in Illit was built on land of the neighboring villages: Kiryat Sefer is located on land of the villages Bil'in and Kharbata, Kiryat Brechfeld on the land of Dir Qadis and Ni'lin, and Ganei Modi'in on the land of Ni'lin and Midiya. The jurisdictional area of Modi'in Illit currently covers some 5,800 dunams [about 1,450 acres]. Israel attained control of most of this land by declaring it state land, part of it in 1982, and part in 1991.
17. The declaration of the territory as state land was grounded on a manipulative use of the Ottoman Land Law of 1858, which was absorbed in the British mandatory legislation, and later in Jordanian law. According to the 1858 law, the state may take possession of land that is not worked for three consecutive years. In accordance with the military legislation, through which the Ottoman Law was applied, the burden of proof was on the person contending that his parcel of land *is not* state land. Testimonies given to

B'Tselem by residents of the above-mentioned Palestinian villages indicate that at least some of the land declared state land was, contrary to Israel's contention, in cultivation. However, because of the nature of the appeals procedure, the Palestinian landowners failed to prove their contention to the satisfaction of the Israeli military-bureaucratic authorities, and their land was taken from them.

18. The sketch attached to the Modi'in Illit Master Plan, which was prepared in 1998 at the initiative of the Ministry of Construction and Housing, clearly indicates that, to enable expansion of the settlement, private Palestinian land will continue to be taken. For example, some 600 dunams of cultivated land owned by residents of Bil'in, which lie in the wadi between two neighborhoods currently under construction in Modi'in Illit, Matityahu East and Na'ot Hapisgah, "are attached" to the sketch for the Matityahu East neighborhood, in which 1,200 housing units are planned, even though this land is not included in the neighborhood's approved outline plan (Plan 210/8/1), and lies outside Modi'in Illit's jurisdictional area.
19. The intention to continue to seize possession of private Palestinian land is particularly obvious in the case of Modi'in Illit, as we see from the illegal construction that has become common practice in recent years in the settlement. The State Comptroller documented this practice in Annual Report 51A, for the year 2000, in which he found that, during the period under review, "the Council permitted building and development within its domain also when it knew that the permits given were illegal, because they did not accord with the approved outline plans" (p. 218). The Matityahu East development, which is now in an advanced stage of construction, provides another example of this phenomenon. Construction there began in 2004, one and a half years before its outline plan had been approved, without legal building permits.
20. Seizing possession of the land of residents of the nearby Palestinian villages, claiming that they are not in cultivation, is a flagrant breach of their property rights and of their right to work. Furthermore, most of these Palestinians rely on farming for most of their income, and the loss of additional land is liable to drastically reduce their income and gravely affect their right to an adequate standard of living. It should be mentioned in this context that property rights, the right to work, and the right to an adequate standard of living are enshrined in both international human rights law and in Israel's Basic Laws. Turning Modi'in Illit into a municipality will encourage further expansion of the settlement at the expense of land belonging to residents of the nearby Palestinian villages, and of their rights.

Conclusion

21. For the reasons mentioned above, and out of concern for the image of the State of Israel, we hereby express our vehement opposition to giving Modi'in Illit municipality status.

Very truly yours,

*[signed]*

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Executive Director

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