

בצלם - מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.)
بتسيلم - مركز المعلومات الإسرائيلي لحقوق الإنسان في الأراضي المحتلة
B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

29 March 2012

The Committee to Examine the State of Construction in the West Bank

Chaired by Supreme Court Justice (Ret.) Edmund Levy

Dear Members of the Committee,

Re: The position of B'Tselem concerning the illegality of settlements
in the West Bank

Pursuant to the public appeal published by the Committee in newspapers, B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories would like to present to you its position concerning the issues the Committee is to discuss. B'Tselem wishes to clarify that, based on international humanitarian law, the settlements are unlawful and that their very existence entails a long list of violations of the human rights of the Palestinian residents of the West Bank. This position is accepted by the overwhelming majority of jurists worldwide. In fact, the interpretation according to which the settlements are legal is accepted mainly within Israel. This illegality holds equally with respect to the settlements and to the outposts. The distinction between them is an internal Israeli matter and has no significance from the standpoint of international law.

Below are the main points that in our opinion the Committee must consider during its deliberations. The material below is presented in more detail in reports published by B'Tselem, which we will send to you separately.

1) The prohibition in international law against establishing settlements in occupied territories

The establishment of settlements in the occupied territory in the West Bank violates two central covenants in international humanitarian law which determine the rules that apply during wartime and occupation:

- a) The Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Law and Customs of War on Land, of 1907. Based on this Convention, an occupying state is a type of “trustee” operating in the occupied territory only until the return of its sovereign. As such, Israel is permitted to manage the assets of occupied areas, but is prohibited from making changes within the area and is prohibited from changing the nature and character of those assets. The establishment of permanent civilian settlements within the West Bank constitutes a violation of this prohibition.
- b) The Fourth Geneva Convention, on the protection of civilians during wartime, of 1949. Article 49 of the Convention states: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” Since the settlements began, the State, through a long series of economic incentives and benefits has encouraged its citizens to move to the territories. This constitutes a violation by Israel of Article 49.

2) The land in the West Bank, including “State land,” is the property of the Palestinian population

An occupying state is not permitted to act within the occupied area as it does within its own territory and international humanitarian law imposes upon it a long series of restrictions. Inter alia, this law prohibits an occupying state from using the resources of the occupied area – including land – for its own needs. Nor is “State land” intended to serve the occupying state and its interests, but rather is intended to serve the needs of the local population, to which it belongs. The Supreme Court has determined, in a

series of basic rulings, that the range of Israel's activity in the occupied territories is limited to two considerations: its military needs and the wellbeing of the local population, and Israel cannot give preference instead to its own national, economic, or social interests. The use of land declared "State land" to establish civilian settlements for citizens of the State does not meet either of these considerations and is therefore unlawful.

3) The policy of declarations of State land is unlawful

Israel declared broad areas of the West Bank as "State land," in reliance on a manipulative and erroneous interpretation of the local law in force in the West Bank before it was occupied. This law is what obligates Israel according to international humanitarian law. Israel's policy of declarations contradicted three central aspects of the local law:

- a) Israel applied a stringent interpretation to the concept of agricultural cultivation, recognizing only cultivation of 50% of a plot, and ignoring the cultivation of scattered patches of stony ground.
- b) Israel ignored rulings of the Mandatory Supreme Court and the Israeli Supreme Court recognizing acquisition of rights to the land after ten years of agricultural cultivation even if the land is not registered in the name of its owners.
- c) Israel ignored the manner in which Ottoman land law was implemented and ignored court rulings that recognized pasture lands serving communities and villages as public lands that are not considered government property.

4) The settlements lead to violations of human rights

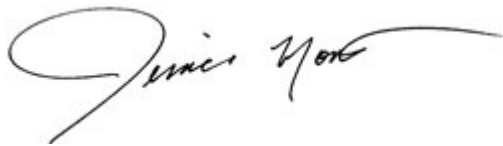
The establishment of Israeli settlements in the West Bank – those established with government authorization or unauthorized outposts established without government permission, lead to violation of a long series of human rights of the Palestinian residents of the West Bank:

- a) ***Property rights*** – According to Civil Administration data, some 21% of the built area of the settlements (as of 2009) is privately owned Palestinian land. Israeli's apparatus for taking over land in the West Bank has transferred to the control of the settlements more than 42% of land in the West Bank.
- b) ***The right to a decent standard of living*** – The geographic spread of the settlements blocks the development of the Palestinian communities, mainly the large cities, and Israeli planning policy in Area C limits the possibility of construction and development of Palestinian localities in these areas. Israel steals the water sources of the eastern aquifer from the residents of the West Bank, especially the residents of the Jordan Valley, and allocates them to settlements in the area. Israel prevents the Palestinians from using fertile agricultural lands and pasture lands that prior to the occupation of the West Bank were used by Palestinians, in Area C overall and particularly in the Jordan Valley.
- c) ***The right to freedom of movement*** – The restrictions on movement that Israel imposes today on the Palestinians – by means of checkpoints and blockades of various kinds – are intended to distance the Palestinians from the settlements and from main roads serving the settlements. Palestinians are forced to travel on roundabout routes that are longer and generally of lower quality. The route of the Separation Barrier, determined in order to perpetuate and enlarge the settlements, also restricts the freedom of movement of tens of thousands of people. The violation of this right leads to a long series of other human rights violations, including the right to work, the right to health, the right to an education, the right to family life and the right to religious worship.
- d) ***The right to equality*** – Israel created two systems of law in the West Bank – Israeli civil law, with democratic values, which applies to the residents of the settlements, and military law, which applies to the Palestinian residents of the West Bank and routinely discriminates against them and violates their rights.

- e) *The right to self-determination* – The configuration of the settlements interrupts Palestinian territorial contiguity and creates instead dozens of territorial enclaves and islands which prevent any possibility of establishing an independent and sustainable Palestinian state.

We call on the Committee to avoid giving its imprimatur to these violations of the law and to the ongoing violations of human rights enumerated above. The State of Israel has repeatedly declared that it views itself as obligated to act in accordance with the dictates of international law, and the Committee now has a rare opportunity to oblige it to do so. We have no doubt that a change in Israel's policy in this regard will only contribute to strengthening its resilience as a democratic state that respects the rule of law.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Jessica Montell", with a long, sweeping horizontal line extending to the right.

Jessica Montell
Director