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The Israeli Information Center for Human  
Rights in the Occupied Territories

מתכננים למען זכויות תכנון  
Planners for Planning Rights

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## THE HIDDEN AGENDA

### The Establishment and Expansion Plans of Ma'ale Adummim and their Human Rights Ramifications

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Cover photograph: the Tsemach Ha-sadeh neighborhood in Ma'ale Adummim and a nearby residential compound of the Jahalin Bedouins, whom Israel plans to expel, December 2009. Photograph: Nir Shalev

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**BIMKOM – Planners for Planning Rights** is an Israeli NGO that was established in May 1999 by planners and architects with the vision of strengthening the connection between the planning system and human rights. Bimkom uses professional tools to promote equal rights and social justice in planning, development, and allocation of land resources. Bimkom assists communities disadvantaged by economic, social, or civic circumstances to exercise their planning rights.

**B'TSELEM – The Israeli Center for Human Rights in the Occupied Territories** was established in 1989 by a group of academics, attorneys, medical doctors, journalists, and Israeli parliament members. With a commitment to human rights principles, and under the belief that continuing occupation contradicts these principles, B'Tselem's primary goal is to expose and document human rights violations in the Occupied Territories. B'Tselem operates within the Israeli society and vis-a-vis decision-makers in an attempt to bring about policy change and an end to human rights violations.

*"The considerations of the military commander are in ensuring his security interests in the area, on the one hand, and in ensuring the interests of the civilian population in the area, on the other hand. Both are directed toward the area. The military commander may not weigh national, economic, or social interests of his own country insofar as they have no ramification on his security interest in the area, or on the interest of the local population. Even the needs of the military are its military needs and not national security needs in their broad sense. An area held under belligerent occupation is not an open field for economic or other exploitation"*

(From the judgment in HCJ 393/82, *Jam'iyat Iskan al-Mu'alimoun al-Mahdduda al-Mas'uliyah v. Commander of IDF Forces in Judea and Samaria*, December 28, 1983)

## Introduction

In February 2009, *Ha'aretz* newspaper reported that the United States opposed development work in E1, an area that lies within the municipal boundaries of Ma'ale Adummim and borders Jerusalem's city limits. In response, Minister of Defense Ehud Barak stated that "Ma'ale Adummim is an inseparable part of Jerusalem and the State of Israel, [and will remain so] in any permanent arrangement."<sup>1</sup>

Even though this position may reflect a consensus among Israel's political leadership, the fact remains that, like every other settlement, the city of Ma'ale Adummim is illegal under international law, which prohibits the establishment of settlements in occupied territory (see box on p. ???).

In 1999, B'Tselem published *On the Way to Annexation*, a report on the violation of human rights caused by the establishment and subsequent expansion of Ma'ale Adummim.<sup>2</sup> The report focused

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<sup>1</sup> Amos Harel, "200 Million Shekels Invested in New Neighborhood East of Jerusalem," *Ha'aretz*, February 1, 2009. The article quoted similar comments by the heads of the other major political parties, Tzipi Livni and Benjamin Netanyahu.

<sup>2</sup> B'Tselem, *On the Way to Annexation: Human Rights Violations Resulting from the Establishment and Expansion of the Ma'ale Adummim Settlement* (June 1999).

on the expulsion of Bedouins of the Jahalin tribe from land designated for the expansion of the settlement, and on the new outline plan for E1. A petition to Israel's High Court of Justice against the decision to approve the outline plan was denied soon after the report had been published.<sup>3</sup>

In the decade that has passed since then, the area has undergone substantial spatial changes. Following the outbreak of the second intifada and the increase in attacks against Israeli civilians, more stringent restrictions have been imposed on Palestinians' freedom of movement within the West Bank. The government also decided to build a contiguous Separation Barrier, ostensibly in order to protect the population of Israel from Palestinian terrorists, although the barrier runs mostly through the West Bank and not on the Green Line, Israel's pre-1967 borderline. The planned route of the barrier in the Ma'ale Adummim area would leave the city and the small adjacent settlements (Kfar Adummim, Almon, Qedar, Nofey Prat, and Alon) on the "Israeli" side of the barrier, creating a partition between the southern and northern sections of the West Bank. Simultaneously, and despite the opposition of the US Administration, Israel began to implement parts of the E1 outline plan, building the new Samaria and Judea Police District Headquarters there and paving an extensive system of roads to serve hundreds of housing units to be built there.<sup>4</sup>

The present report has two principal objectives. One, to describe the spatial changes that have taken place in the area since the publication of *On the Way to Annexation*, as well as their effect on Palestinians' human rights; and two, to examine these changes in light of the history of Ma'ale Adummim and the intentions behind its establishment. This retrospective outlook was made possible thanks to Israel State Archives' files that were only recently opened to public view and are revealed here for the first time.<sup>5</sup> These documents show that already in 1974, the first Rabin

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<sup>3</sup> HCJ 3125/98, *'Abed al'Aziz Muhammad 'Ayad et al. v. Commander of IDF Forces in Judea and Samaria et al.*, ruling given on November 7, 1999.

<sup>4</sup> Amos Harel (see fn. 1); Ilil Shahar, "Despite American Opposition: Israel is Building in E1," *NRG Ma'ariv*, March 14, 2006.

<sup>5</sup> Under the Archives Regulations (Perusal of Archival Material Deposited in the State Archives), 1966, perusal of government decisions and other documents that are revealed in this report is forbidden for 30 years from the time they were made.

government made a decision whose practical effect was the annexation of the Ma'ale Adummim area to Jerusalem – although no official annexation was declared.

Chapter 1 presents the history of Ma'ale Adummim and discusses the unique procedures employed to gain control over the land designated for it. Chapter 2 examines the city's outline plans, especially the plans for the E1 area. Chapter 3 discusses the route of the Separation Barrier near Ma'ale Adummim. Chapter 4 describes the infringement on the human rights of Palestinians resulting from the establishment of Ma'ale Adummim – harm that will undoubtedly increase if the development plans for E1 are fully implemented, creating a contiguous built-up area between Ma'ale Adummim and the municipal boundary of Jerusalem.

#### **The settlements under international law**

Since 1967, Israel has occupied the West Bank. The fundamental principle of international law established that occupation is temporary. This principle, which is accepted – declaratively, at least – by Israel,<sup>6</sup> prohibits the occupying power from establishing permanent facts in the occupied territory. International law views the occupying power's rule as temporary, with the occupier holding the territory as a trustee, until its final status is decided upon.<sup>7</sup> Establishing permanent civilian communities (settlements) in the occupied territory for the population of the occupying power contravenes the substantive prohibition on establishing permanent facts in occupied territory.

The Fourth Geneva Convention forbids the occupying power to transfer its civilian population to the occupied territory. This prohibition relates not only to expelling civilians or forcibly transferring them to the occupied territory; it applies also where the occupying power encourages its civilians to relocate to land that is under occupation or assists them in that

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<sup>6</sup> The state made such declarations in its responses to various High Court of Justice petitions. See, for example, its Supplemental Statement on Behalf of Respondents 1-5 in HCJ 1526/07, *Ahmad 'Issa 'Abdallah Yassin and 16 Others v. Head of the Civil Administration in Judea and Samaria et al.*, July 5, 2007.

<sup>7</sup> HCJ 393/82, *Jam'iyyat Iskan al-Mu'alimoun al-Mahdduda al-Mas'uliyah v. Commander of IDF Forces in Judea and Samaria*, ruling given on December 28, 1983.

endeavor.<sup>8</sup>

Regarding this sweeping prohibition, the question of ownership of the land is irrelevant: the prohibition on establishing settlements applies to both private Palestinian land and public land (state land). Establishing settlements on private Palestinian land also violates provisions of international law that require the occupying power to protect private property.<sup>9</sup> The occupying power also has the duty to protect public property, but Israel breaches this duty by establishing settlements on state land.<sup>10</sup>

To date, 121 official settlements and some 100 unrecognized settlements, referred to as “unauthorized outposts”, have been established in the West Bank. In addition, 12 Israeli neighborhoods have been built on West Bank territory that Israel unilaterally annexed to Jerusalem’s jurisdiction area, as defined after 1967. Under international law, these neighborhoods have the same status as Israeli settlements built in other parts of the West Bank. The very existence of the settlements leads to numerous violations of Palestinians’ human rights, among them the rights to equality, property, an adequate standard of living, freedom of movement, and self-determination.<sup>11</sup>

Under international law, all these communities are illegal. Ma’ale Adummim is no different. Being the largest settlement in its municipal area and third largest in population (after Modi’in Illit and Beitar Illit) does not reduce the intensity of the harm to Palestinians nor does it blunt the ongoing breach of international law.

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<sup>8</sup> Article 49 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War; International Court of Justice advisory opinion on construction of the Separation Barrier (2005).

<sup>9</sup> For example, article 46 of the Regulations Attached to the Hague Convention on the Laws and Customs of War on Land of 1907.

<sup>10</sup> Article 55 of the Regulations Attached to the Hague Convention on the Laws and Customs of War on Land of 1907.

<sup>11</sup> B’Tselem, *Land Grab: Israel’s Settlement Policy in the West Bank* (May 2002), pp. 41-44.

# 1. Expropriation of the Land

In March 1975, a ministerial committee, which had been authorized to do so by the Israeli government, decided to expropriate some 3,000 hectares of the village lands of al-'Eizariyah, at-Tur, 'Issawiya, Abu Dis, Khan al-Ahmar, and Nabi Musa "for the needs of Ma'ale Adummim."<sup>12</sup> Several years before the expropriation, the Israeli military commander declared most of these lands a closed military zone that all persons were forbidden to enter, remain in, or use (including for farming and grazing), except for individuals who lived there at the time of the declaration.<sup>13</sup> In 1977, another 194 hectares were expropriated for future expansion of the settlement.<sup>14</sup> Some 200 hectares were expropriated for roads and infrastructure facilities serving Ma'ale Adummim and other Israeli communities, primarily Jerusalem.<sup>15</sup> The land expropriated by Israel is in addition to 145 hectares expropriated by the Jordanian government in Mishor Adummim (now the industrial zone of the settlement) to build a military firing range.<sup>16</sup> The 3,500 hectares of

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<sup>12</sup> Decision No. 385 of the Ministerial Committee for Allocation of Land, of March 30, 1975, 'Anatot-Ma'ale Adummim File, vol. 3, State Archives, ISA/77/A/7314/10. The actual expropriation took place on April 1, 1975, when the military commander of the area signed Decision Concerning the Acquisition and Taking of Possession (Ma'ale Adummim). The term "village lands" relates to the administrative division of Palestine during the British Mandate, in which the borders of every community (village, town) were classified for administrative purposes, primarily to enable the collection of property tax and to create a foundation for future recording of the land in the Land Registry. The term does not relate to ownership of the land. Often, the lands of a certain village include privately-owned Palestinian land alongside land belonging to the local authority, as well as state land.

<sup>13</sup> Minister Israel Galili, "Development of the Ma'ale Adummim Area – Explanatory Notes," October 31, 1974, 'Anatot-Ma'ale Adummim File, vol. 3, ISA/77/A/7341/10.

<sup>14</sup> Decision Concerning Acquisition and Taking of Possession (Territories) 9/77, December 26, 1977.

<sup>15</sup> Response of Captain Aryeh Shaya of the Civil Administration to a request under the Freedom of Information Law made by Eyal Hareuveni of B'Tselem, April 20, 2009. In total, Israel expropriated 199.3 hectares for roads, water facilities, and the Abu Dis waste disposal dumping site.

<sup>16</sup> Meir Shamgar, "Industrial Zone in Jerusalem," September 12, 1974, 'Anatot-Ma'ale Adummim File, vol. 3, ISA/77/A/7314/10.

expropriated land constitute 73 percent of Ma'ale Adummim's jurisdiction area (4,800 hectares); almost all the remaining is land declared by Israel as government property.

**Ma'ale Adummim, 2009: basic facts**

Year founded: 1975

Distance from the Green Line: six kilometers (from the closest residential dwellings), 15 kilometers (from the furthest jurisdiction boundary line)

Municipal status: city, granted in 1991; the first settlement to attain this status

Official jurisdiction area: about 4,800 hectares (3,533 of which were expropriated)

Built-up area (residential neighborhoods only): some 400 hectares

Existing housing units: about 10,000

Population: 34,100 residents<sup>17</sup>

Socioeconomic rate: 6 (on a scale of 1-10)<sup>18</sup>

The expropriation procedure that was carried out in Ma'ale Adummim is unique.<sup>19</sup> Until 1979, settlements were established on Palestinian land that was requisitioned under military orders, claiming that these civilian communities were to serve an important security function. In three cases, the Israeli High Court of Justice approved requisition orders issued to enable the

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<sup>17</sup> The Israeli population figures given here and below were taken from the Central Bureau of Statistics ([www.cbs.gov.il](http://www.cbs.gov.il)), and are updated to June 30, 2009.

<sup>18</sup> This figure is from the Israeli Ministry of the Interior and applies to 2008. In comparison, the socioeconomic rating of Bnei Brak is 2; Beit Shemesh, Jerusalem, and Nazareth is 4; Beersheva and Netanya is 5; Holon and Haifa is 7; Ramat Gan, Mevasseret Zion, and Tel Aviv is 8. The figures are available at [www.pnim.gov.il](http://www.pnim.gov.il).

<sup>19</sup> The Israeli military commander issued an expropriation order in the Ofra settlement, too, but it was based on expropriation procedures that had begun under Jordanian rule and were not completed. See B'Tselem, *The Ofra Settlement: An Unauthorized Outpost* (December 2008), pp. 20-25.

establishment of settlements.<sup>20</sup> In 1979, however, the Court held that the requisition order issued for Elon Moreh was illegal because it was intended for a civilian settlement that did not serve a real security function.<sup>21</sup> Following the Elon Moreh ruling, Israel stopped using requisition orders to obtain land for settlements; instead, it gradually declared more than 90,000 hectares of West Bank land that had not theretofore been classified as government property, as state land.<sup>22</sup> The vast majority of the land declared as government property was later on included within the jurisdiction boundaries of the local councils and the regional councils of the settlements.

The major expropriations in Ma'ale Adummim took place in 1975 and 1977, a few years prior to the Elon Moreh ruling and before the practice of declaring state land had begun. The expropriation of land in Ma'ale Adummim must be examined, therefore, in light of the only procedure that was used at the time to provide land for settlements: requisition for military needs.

The essential difference between the two procedures relates to their validity over time. Requisition of land is temporary: the requisition order itself is valid for a limited time, but may be extended. The requisition does not change ownership of the land, which remains in the hands of the Palestinian owners, but they temporarily lose the right to use it. The state also offers payment for the use of the land. In other words, the landowner is forced to "lease" the land to the state.

Expropriation, on the other hand, is permanent: ownership switches from the individual Palestinian to the state forever. It is a forced acquisition by the state, against the will of the owners. In this case, too, the state offers the owner payment for the land, but the owner may refuse to accept the payment. Indeed, for political and other reasons, in most cases, Palestinians whose land has been expropriated or requisitioned by Israel refuse compensation. It should be

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<sup>20</sup> HCJ 302/72, *Sheikh Suleiman Hussein 'Odeh Abu Hilu et al. v. Government of Israel*, ruling given on May 23, 1973; HCJ 606/78, *Suleiman Tawfiq Ayub and 11 Others v. Minister of Defense et al.*, ruling given on March 15, 1979; HCJ 258/79, *Falah Hussein Ibrahim 'Amira and Nine Others v. Minister of Defense*, ruling given on August 24, 1979.

<sup>21</sup> HCJ 390/79, *'Izzat Muhammad Mustafa Dweiqat and 16 Others v. Government of Israel et al.*, ruling given on October 22, 1979.

<sup>22</sup> For further discussion on this subject, see Bimkom, *The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C* (June 2008), pp. 25-34.

pointed out that, from the perspective of the Palestinian landowner, there is no real difference between military requisition orders and expropriation, since the “temporary” requisition orders are routinely renewed by the army, leaving the Palestinians owners no access to their land. However, in legal terms, there is a fundamental difference between the two procedures.

### **From “Jerusalem’s industrial zone” to a civilian settlement**

Why did Israel take the unusual measure of expropriating land to establish Ma’ale Adummim, at a time in which military requisition orders were routinely issued for such purposes in other settlements? The answer lies in the government’s development objectives in the area, and in its spatial conception of Ma’ale Adummim as an integral part of Jerusalem.

In 1967, shortly after the war, the government of Israel decided to unilaterally expand the borders of Jerusalem and annex West Bank lands to the city. The task of formulating the alternatives for the expanded borders was given to Major General Rechavam Ze’evy, the head of the General Staff’s Operations Branch. Ze’evy prepared three alternatives, one of which was to annex some 20,000 hectares to Jerusalem, from the Etzion Bloc in the south to the outskirts of Ramallah in the north, including the area of Ma’ale Adummim.<sup>23</sup>

This maximalist alternative was rejected. Instead, it was decided to annex to Jerusalem “only” 7,000 hectares. The Ma’ale Adummim area was not included in the annexed territory.<sup>24</sup>

The decision not to officially annex the area of Ma’ale Adummim was based on several considerations. In addition to the fear of international protest, which was expected to increase the deeper the annexation extended into the West Bank, the principle that dictated the new borders of Jerusalem was demographic: “to annex extensive territory to Jerusalem to ensure its expansion and development, but to avoid including refugee camps and densely populated Arab villages within the city’s limits. The annexation was intended to enable the construction of new Jewish

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<sup>23</sup> David Eisenstadt, *The Evolution of Jerusalem’s Municipal Boundaries, 1863-1967*, M.A. thesis, Ramat Gan: Bar-Ilan University (1999), p. 134.

<sup>24</sup> Anna Hazan, *Jerusalem Municipal Boundaries 1948-1993*, Jerusalem: Jerusalem Institute for Israel Studies (1995), pp. 19-22.

neighborhoods which will foil any attempt to re-divide the city.”<sup>25</sup> Ma’ale Adummim lies east of the built-up and densely populated area of the Palestinian towns of al-‘Eizariyah and Abu Dis. Annexation of this area would have resulted in the including of these towns within the borders of the expanded Jerusalem; alternatively, in order to include the Ma’ale Adummim area within the new borders of Jerusalem, a non-contiguous area, with an entry corridor (access road) leading to the city, would have to be annexed. Both these options contradicted the very principles according to which the new city limits of Jerusalem were formulated, i.e., avoiding the inclusion of a large Palestinian population inside the city and guaranteeing a contiguous jurisdiction area.

Although the Ma’ale Adummim area was not officially annexed to Jerusalem, Israeli governments continued to relate to it as if it were functionally part of the city. In 1974, the government appointed an inter-ministerial team, headed by then-Attorney General Meir Shamgar, to locate land for a new industrial zone for Jerusalem. The team examined several alternatives, some within the expanded borders of the city and some outside them, within the West Bank, and recommended that the industrial zone be built in Mishor Adummim, which currently lies within the city limits of Ma’ale Adummim.<sup>26</sup> In accordance with the team’s recommendations, the government decided, on November 24, 1974, as follows:

- A. To approve the recommendations of the inter-ministerial team headed by the attorney general:
  - 1. Jerusalem’s industrial zone will be established in Ma’ale Adummim [ ....]
- B. Development of Ma’ale Adummim as an industrial zone for Jerusalem:
  - 1. To develop the area of Ma’ale Adummim as an industrial zone of Jerusalem, in accordance with purposes and maps prepared by the inter-ministerial team [...]
  - 2. Planning of the area will take into account Jerusalem’s municipal-industrial development needs, and will be carried out in coordination with the Jerusalem Municipality.

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<sup>25</sup> Ibid., p. 1. See also Eisenstadt (fn. 23), pp. 133, 144, 149.

<sup>26</sup> Minister Israel Galili, “Development of the Ma’ale Adummim Area – Explanatory Notes,” October 31, 1974, ‘Anatot-Ma’ale Adummim File, vol. 3, ISA/77/A/7314/10.

3. The legal aspects of the land issues will be dealt with by the military government, in coordination with the directions of the attorney general.
4. (by a vote of 11-6) Residential construction will be designated for persons whose employment is in the Ma'ale Adummim area.<sup>27</sup>

From the outset, the government designated the Ma'ale Adummim area to meet the development needs of Jerusalem. For this reason, it appears that the government considered Ma'ale Adummim to be a special case that warranted permanent expropriation of the land, and did not suffice with temporary requisition orders, as was done at the same period in other settlements. This conclusion is supported by the fact that, unlike requisition orders issued during that period, which applied to small areas of land intended for construction of the settlements themselves,<sup>28</sup> in Ma'ale Adummim, an enormous area of thousands of hectares was expropriated although at the time there were no concrete building plans for it.

As early as 1974, the government took a decision that meant, in practical terms, annexation of Ma'ale Adummim. It was not surprising, therefore, that Jerusalem Economic Company (JEC) was charged with the task of building the industrial zone.<sup>29</sup> JEC is a government company that was established in 1948 with the objective of developing Jerusalem.<sup>30</sup> JEC also initiated the first detailed plans for the Mishor Adummim industrial zone.<sup>31</sup>

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<sup>27</sup> Government Decision No. 159, "Development of Jerusalem," November 23, 1974. Ma'ale Adummim File (1974-1975): Letters, Minutes, Decisions of the Ministerial Committee for Jerusalem concerning Establishment of a Workers Camp in Ma'ale Adummim, ISA/77/A/7032/14.

<sup>28</sup> The requisition order for Elon Moreh included some 70 hectares, and the one for the Matityahu settlement covered approximately 50 hectares.

<sup>29</sup> Uri Orbach, "Ma'ale Adummim: A City in Israel – Special Supplement Commemorating the Decade," *Nekuda*, Spring 1986.

<sup>30</sup> See the JEC's website: [www.jec.co.il/46-en/Calcalit.aspx](http://www.jec.co.il/46-en/Calcalit.aspx). The company was privatized in the 1980s and is no longer responsible for development of the Mishor Adummim industrial zone.

<sup>31</sup> Plan 420/2/1, which covers about 100 hectares, and plan 420/2/2, which encompasses some 123 hectares.

The 1974 government decision related to establishment of an industrial zone for Jerusalem in Mishor Adummim, but stated that residential houses could also be built there for “persons whose employment is in the Ma’ale Adummim area” and their families.<sup>32</sup> In practice, the “workers camp” was a guise for the establishment of a settlement, as was the case at the same time in Ofra.<sup>33</sup> Indeed, during a cabinet discussion of the matter, Minister Gallili pointed out that “some people need Ma’ale Adummim like a pain in the neck... for others, the settlement in Ma’ale Adummim is very close to their hearts. I said that the government decided that a settlement in Ma’ale Adummim is very close to their heart? I choose my words carefully, and am amazed that you don’t understand that this whole matter [the workers camp] was genius, to quell a process that might be very controversial inside Israel.”<sup>34</sup>

The inter-ministerial team located 450 hectares in Mishor Adummim for the industrial zone.<sup>35</sup> But the ministerial committee, which the government had appointed to implement its decision concerning Ma’ale Adummim, decided to expropriate a much larger area of 3,000 hectares. The expropriation order of 1975 also included a western section of land that would later be labeled “Site A”. This site, which lies closer to Jerusalem, was to become the area where the settlement’s residential neighborhoods

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<sup>32</sup> Mati Golan, “Government Decision: Families, Too, can Live in Ma’ale Adummim,” *Ha’aretz*, March 3, 1975. See also Yehuda Litani, “Gush Emunim Trying to Establish ‘Political Facts’ in the Territories,” *Ha’aretz*, December 5, 1975.

<sup>33</sup> B’Tselem, *The Ofra Settlement* (see fn. 19).

<sup>34</sup> Stenographic minutes of a discussion on Ma’ale Adummim, held in Tel Aviv on January 8, 1975. Ma’ale Adummim File (1974-1975): Letters, Minutes, Decisions of the Ministerial Committee for Jerusalem concerning Establishment of a Workers Camp in Ma’ale Adummim, ISA/77/A/7032/14. See also Mati Golan (fn. 32), who quoted then-Minister Shimon Peres as saying that “the government’s decision does not state this explicitly, but... the spirit of the decision is to establish a settlement” in Ma’ale Adummim, and not only an industrial zone.

<sup>35</sup> Meir Shamgar, “Industrial Zone in Jerusalem,” September 12, 1974, ‘Anatot-Ma’ale Adummim File, vol. 3, ISA/77/A/7314/10.

were built. In addition, the expropriation order included broad expanses of land east and south of the industrial zone whose hilly topography and desert climate render them unsuitable for residential construction in most parts (even though these lands include some moderately hilly parts, which were designated for residential neighborhoods). It appears that the main consideration in expropriating these desert lands and including them within the jurisdiction area of Ma'ale Adummim was the desire to ensure Israeli control of a strategic location, which overlooks passage between the northern and southern parts of the West Bank, as well as from Jordan and Jericho to Jerusalem.<sup>36</sup>

Under the guise of establishing a new industrial zone for Jerusalem, it was decided, therefore, to expropriate seven times more land than was needed for the industrial zone itself. The expropriation map that was presented to the ministerial committee marked optional sites for residential neighborhoods, including Site A (see image 1).<sup>37</sup> The practical meaning of the decision to build the residential neighborhoods of the settlement in Site A was that Ma'ale Adummim would be a suburb of Jerusalem.<sup>38</sup> In 1977, when the Likud party rose to power, the government decided to recognize Ma'ale Adummim and Ofra – the two former “workers camps” – as civilian communities.<sup>39</sup>

### **The expropriation from a legal perspective**

In the judgments approving requisition orders for settlements given prior to the Elon Moreh ruling, the High Court of Justice emphasized the substantive difference it saw between

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<sup>36</sup> Shemaryahu Cohen, who served as director of the Jerusalem District at the Ministry of Housing during the time when Ma'ale Adummim was founded, stated that, “the objective in establishing the settlement was political [...]. It was necessary to block the entrance way to Jerusalem against a Jordanian threat.” See Uri Orbach (fn. 29).

<sup>37</sup> The map is located in the Israel State Archives, ‘Anatot-Ma'ale Adummim File, vol. 3, ISA/77/A/7314/10.

<sup>38</sup> The Urban Institute, Z. Zaslavsky and Associates Engineers Ltd., *Examination of Location and Development Potential of a Community in the Ma'ale Adummim Area* (August 1977), pp. 153, 161.

<sup>39</sup> Government Decision No. 835 (Settlement/20), July 26, 1977.

requisition orders on the one hand and expropriation on the other hand. As early as 1973, the Court ruled that expropriation of private property in occupied territory for needs of a security settlement (let alone for a civilian one) is prohibited under international law (the Hague Convention), while temporary holding through a requisition order is permissible.<sup>40</sup>

A fundamental principle of international law is that the occupying power must respect existing local legislation as much as possible.<sup>41</sup> The Jordanian land laws applying in the West Bank enable expropriation of private land upon payment of compensation, provided that it is carried out for a "public purpose," such as roads and public buildings. This statute remains in effect to the present day.<sup>42</sup>

Establishment of Israeli settlements is not a public purpose that can justify expropriation of Palestinian land. This position has been reinforced by the attorney general and later Supreme Court justice Prof. Yitzhak Zamir.<sup>43</sup> Pli'a Albeck, head of the civilian division in the State Attorney's Office, who had a key role in advancing the settlement enterprise, held a similar position.<sup>44</sup> Following the Elon Moreh ruling, leaders of the settlement movement held a hunger strike, demanding that the government expropriate Palestinian lands in the West Bank to

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<sup>40</sup> HCJ 302/72, *Sheikh Suleiman Hussein 'Odeh Abu Hilu et al. v. Government of Israel*, ruling given on May 23, 1973 by Justice Landau. The court held a similar position in the ruling of March 15, 1979 in HCJ 606/78, *Suleiman Tawfiq Ayub and 11 Others v. Minister of Defense et al.*, where the establishment of the Beit El settlement on land taken pursuant to an army requisition order was approved.

<sup>41</sup> Article 43 of the Regulations attached to the Hague Convention on the Laws and Customs of War on Land of 1907.

<sup>42</sup> The Land (Acquisition for Public Purposes) (No. 2) Law of 1953. This Jordanian law was changed by a military order, which transferred the power granted in it from the Jordanian government to holders of various functions in the Israeli military government. See Order Concerning the Land (Acquisition for Public Purposes) Law (Judea and Samaria) (No. 321), 1969. The order did not change the substantive orders of the Jordanian law.

<sup>43</sup> Gideon Alon, "Prof. Zamir in Opinion He will Submit to the Cabinet Today: It is Not Permissible to Act under Jordanian Law to Expropriate Land in Judea and Samaria," *Ha'aretz*, May 11, 1980.

<sup>44</sup> Pli'a Albeck, "What is State Land? On State Land in Judea, Samaria, and the Gaza Strip," *Ha-lishkah* [Journal of the Israel Bar Association – Jerusalem District Committee], vol. 46, January 1999, pp. 9-11.

establish settlements.<sup>45</sup> The attorney general rejected the demand, stating that expropriation of privately-owned Palestinian land violated international law.<sup>46</sup>

The official policy of Israeli governments over the years was summarized by Eyal Zamir, former deputy legal advisor for Judea and Samaria:

Expropriation of land for public purposes [in the West Bank] is not prohibited. Three pre-conditions must be met: first, the acquisition is made in accordance with the local law; second, the landlord is fully compensated; and third, the acquisition is for a public purpose. Exercise of the authority by the Israeli administration meets these requirements. Expropriation is done by Israel in an extremely limited extent, for genuine public purposes, and with full compensation being offered to the landlords (though for political reasons, the landowners do not always use the option to demand and receive compensation). *It should be emphasized that Israel is not expropriating land to establish settlements in the area.*<sup>47</sup>

Despite this long-held position, Ma'ale Adummim was established, as stated, by means of expropriation orders covering thousands of hectares. The ministerial committee based its expropriation decision on the recommendations of the inter-ministerial team, headed by the then-attorney general, and later Supreme Court president, Meir Shamgar, who held:

With respect to expropriation in Judea and Samaria, it should be mentioned that international law generally denies the military government the authority to expropriate land in occupied territories; however, there is evidence supporting the position that *it is permissible to expropriate land for the needs of the local population* upon payment of compensation. On this basis, we previously expropriated land in the West Bank for

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<sup>45</sup> Elyakim Ha'etzni, "Land Trap: the Legal Situation," *Nekuda*, No. 6, March 17, 1980, pp. 4-6; Zvi Ra'anani, *Gush Emunim*, Tel Aviv: Sifriyat Poalim (1980), Appendix 6.

<sup>46</sup> Gideon Alon (see fn. 43).

<sup>47</sup> Eyal Zamir, *State Land in Judea and Samaria: Legal Survey*, Jerusalem: Jerusalem Institute for Israel Studies (1985), p. 36 (emphasis added). However, according to Zamir, following the establishment of a settlement on state land or on land purchased by Israelis, it is permissible to expropriate privately-owned Palestinian land for roads and other public needs of the settlement, since, according to this view, after the settlers have become part of the area's population, it is permissible to expropriate privately-owned land to accommodate their public needs. *Ibid.*, footnote 230 on p. 62.

roads and public buildings, and on the same grounds, it may also be permissible to expropriate land for an industrial zone that will also serve Judea and Samaria, and whose construction is approved under the local planning and building laws.<sup>48</sup>

The expropriation of 450 hectares that were intended for the industrial zone was therefore justified on grounds that the factories built there would also serve Palestinians, who would find work there. However, in 1975, a much larger area of land was expropriated (3,000 hectares), to which the recommendations of the inter-ministerial team did not relate. One way or the other, the professed aim of the expropriation was to establish an industrial zone for Jerusalem, and another purpose was to build an Israeli settlement – purposes for which expropriation is forbidden under international law, the local law, and even decisions of the High Court of Justice at the time.

#### **“We didn’t take it from anyone”**

According to the planners of the settlement, the land on which it was built was uncultivated state land, and therefore no Palestinian was harmed by the construction of Ma’ale Adummim. Architect Tommy Leitersdorf, who prepared the first outline plan for Ma’ale Adummim and several of its detailed plans, contended that, “the state inherited it from Jordan... These were state lands, state land proper. Hence there was also a consensus regarding Ma’ale Adummim, since we didn’t take it from anyone.”<sup>49</sup> The Civil Administration recently made similar comments with respect to the expropriation procedures in Ma’ale Adummim: “in those years (‘75-‘77), there was no procedure for declaring state land, so, due to doubt, an expropriation order was issued, though the lands concerned was unregistered and not cultivated.”<sup>50</sup>

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<sup>48</sup> Meir Shamgar, “Industrial Zone in Jerusalem,” September 12, 1974, ‘Anatot-Ma’ale Adummim File, vol. 3, ISA/77/A/7314/10.

<sup>49</sup> Eran Tamir Tawil, “Starting a City from Scratch: A Conversation with Architect Tommy Leitersdorf”, [www.readingmachine.co.il/home/books/book\\_1\\_85984\\_549\\_5/1193036487](http://www.readingmachine.co.il/home/books/book_1_85984_549_5/1193036487). See also Esther Zandberg, “Things I Didn’t See in Ma’ale Adummim,” *Ha’aretz*, April 8, 2006.

<sup>50</sup> See fn. 15; the linguistic error appears in the original text.

The government's decision to build Jerusalem's industrial zone in Mishor Adummim was based, as stated, on the recommendations of the inter-ministerial team, which related only to the 450 hectares intended for the industrial zone itself. The area designated by the team for the industrial zone lies east of the site on which the residential neighborhoods of Ma'ale Adummim were built, on land that was more desert-like and had a drier climate. In this desert land, the possibilities of agricultural cultivation were scarce. Because of the climatic conditions and given that the land was not being cultivated, the inter-ministerial team concluded that ostensibly, there was no basis for Palestinians to claim ownership rights in the area to be expropriated for the industrial zone itself. Despite this, the team assumed that the state would have to pay compensation for expropriation of the land.<sup>51</sup>

The assumption that individuals cannot have ownership rights in uncultivated land in the West Bank is inaccurate. The local land laws recognize that uncultivated land, such as grazing land, could be owned by individuals.<sup>52</sup> In villages where land was registered in the Land Registry during Jordanian rule, there were many cases in which rocky, uncultivated parcels were registered to individual Palestinians, and not as state-owned land.<sup>53</sup> It is undoubtably true that in some parts of Ma'ale Adummim's jurisdiction area, there is a desert climate, and no groves existed or crops were grown at the time of the expropriation. However, this fact does not rule out a-priori the possibility of private Palestinian ownership on these lands or at least on part of them.

It is therefore hardly surprising that the text of the recommendations made by the inter-ministerial team actually indicates that Palestinians had ownership rights in the land expropriated for the industrial zone. As noted above, during Jordanian rule, 145 hectares had

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<sup>51</sup> Meir Shamgar, "Industrial Zone in Jerusalem," September 12, 1974, 'Anatot-Ma'ale Adummim File, vol. 3, ISA/77/A/7314/10.

<sup>52</sup> The Ottoman Land Code of 1858, sections 3, 10, 24, and others; Transfer of Immovable Property Law of 1913.

<sup>53</sup> Aryeh Shalev, *The Autonomy – Problems and Possible Solutions*, Tel Aviv: Center for Strategic Studies, Tel Aviv University (1980), p. 105.

been expropriated in Mishor Adummim to build a firing range.<sup>54</sup> The land expropriated by the Jordanians was adjacent to the area that the inter-ministerial team designated for Jerusalem's new industrial zone. Following the expropriation, dozens of Palestinians filed compensation claims with the Jordanian government, arguing that they owned the expropriated land. A Jordanian governmental committee appointed to investigate the claims concluded that the expropriated land cannot be cultivated, but nevertheless recognized ownership rights of 57 of the claimants to some 112.5 of the 145 hectares that Jordan had expropriated. In other words, the Jordanian government concluded that 78 percent of the land it had expropriated was privately-owned, with its owners being entitled to compensation for the expropriation, and only 22 percent was state land.<sup>55</sup>

The claim that the entire area of Ma'ale Adummim was arid, abandoned, and uncultivated is also inaccurate. In fact, this argument is cynical, given that several years prior to the expropriations made by Israel, most of the expropriated land had been declared a closed military zone, and part of it was used by the IDF for firing and training. In those years that the area was closed by military order, Palestinians were not able to cultivate most of the land there.

As for climate, the area of Ma'ale Adummim is marked by a gradual transition from a Mediterranean climate, which enables regular cultivation, in the west, to a desert climate, suitable only for grazing, in the east. Site A, where the neighborhoods of the settlement were subsequently built, is the westernmost site of the alternative residential sites that were explored by the city planners.

Although extensive areas of Ma'ale Adummim were declared a closed military zone, cultivation of land in Site A continued until construction of the settlement began. An experts' report for the Ministry of Construction and Housing, commissioned and prepared in 1977, stated that Site A "is still in the Mediterranean flora area... The wadis [valleys] in Site A are being cultivated. *Other than cultivation, Site A has an occupied [Palestinian] building in Khirbet al-Murassas* [in the village

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<sup>54</sup> To the best of our knowledge, the land was expropriated by the Jordanians in 1967, a few months before the war. This information was provided by Darwish Musa Darwish, from the village of 'Issawiya, on September 1, 2009.

<sup>55</sup> Meir Shamgar, "Industrial Zone in Jerusalem," September 12, 1974, 'Anatot-Ma'ale Adummim File, vol. 3, ISA/77/A/7314/10.

lands of al-'Eizariyah]... With respect to the availability of the land... in Site A, it is necessary to evacuate an agricultural area and a small number of families."<sup>56</sup> The report further points out that "the land division of the Bedouin territory conforms to the various landscape units. The cultivated land bordering the desert, in the transition from the Mediterranean area, is privately owned... East of this area, on land that can still be cultivated in rainy years, cultivation is done in accord with the Masha' ownership method [collective ownership], whereby every several years, the land is re-divided among the members of the tribe. The more arid land is used for communal grazing, moving eastward during the winter (to the border of the cliffs of the Dead Sea Valley).<sup>57</sup>

Salameh Khamis al-Mazar'ah Jahalin, who now lives in al-'Eizariyah, told B'Tselem about his family's eviction from the occupied building in Khirbet al-Murassas in 1980, when the construction of Ma'ale Adummim began:

In the 1950s, my family settled in Khirbet al-Murassas along with many other Bedouins who had been expelled from the Negev after 1948. There was an archeological site there that the Greek Orthodox monastery claimed they owned. In 1966, we built, alongside the archeological site, a one-room stone building, which served as a mosque. The monks, who feared losing ownership of the site, erected a building nearby to serve as a guard post.

After the 1967 war, my father and his family went to live in the mosque building, and with the consent of the people from the monastery, my wife and I went to live in the guard's house.

In 1977, the Israelis began to build the settlement of Ma'ale Adummim. The tents of the Bedouin families who lived nearby us were demolished and removed. The

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<sup>56</sup> Urban Institute (see fn. 38), pp. 14, 127, 163 (emphasis added). Architect Adam Mazor headed the team that wrote the report, based on planning surveys. The other team members were economists Yigal Cohen, Dafna Pelli and Yedidya Raz; engineer Yoram Gadish; planners Meira Gluskinos, Moshe Hill, Rachel Alterman and Yitzhak Freund; geologist Uzi Zaltzman; climate advisor Aryeh Bitan; nature, landscape and history advisor Tzila Drori; and geographer Conny Willshak. See, also, T.M. Leitersdorf, Y. Goldenberg, Architects and City Planners 72 Ltd., Ministry of Construction and Housing – Jerusalem District, *New City in Ma'ale Adummim: Interim Report No. 1*, Tel Aviv (January 1978), pp. 8, 17.

<sup>57</sup> Urban Institute (see fn. 38), Appendix C-4, "Community and Agricultural Characteristics."

Israelis also tried to convince my father and me to vacate our houses, and they threatened us as well.

In an attempt to prevent this, I hired the lawyer Elias Khoury, who petitioned the Israeli court. In 1980, Khoury told me that he was unable to prevent the expulsion, but achieved a compromise: in exchange for the eviction, Israel would give my father and me 2,500 square meters of land next to the built-up area of al-'Eizariyah. We were forced to accept the compromise. A day after we left Khirbet al-Murassas, the bulldozers demolished our houses.<sup>58</sup>

For years, the land expropriated for Ma'ale Adummim was used by a diverse Palestinian population, including residents of the local villages and hundreds of Bedouins who had relocated there from the Negev in the 1950s.<sup>59</sup> Under the local land laws, these residents had property rights to at least some of the expropriated land. Ma'ale Adummim was built in complete disregard for these rights and in contravention of international and local law.

### **The jurisdiction area of Ma'ale Adummim**

The borders of Ma'ale Adummim were first defined in an order that the military commander issued in 1979 encompassing some 3,500 hectares.<sup>60</sup> In 1981, the municipal boundaries were expanded to cover approximately 3,700 hectares.<sup>61</sup> In 1991, they were again expanded, this time mainly to the west, toward Jerusalem.<sup>62</sup> In 1994, in the midst of the Oslo peace process, 120

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<sup>58</sup> Salameh Khamis al-Mazar'ah Jahalin gave his testimony to B'Tselem's researcher Kareem Jubran on September 7, 2009.

<sup>59</sup> B'Tselem, *On the Way to Annexation* (see fn. 2), pp. 23-35.

<sup>60</sup> Order Concerning Administration of Ma'ale Adummim (Judea and Samaria) (No. 788), 1979.

<sup>61</sup> Map of the Ma'ale Adummim Local Council, March 1, 1981.

<sup>62</sup> Regulations Concerning Local Councils (Change of Maps) (Ma'ale Adummim), 1991.

hectares were added to the city limits,<sup>63</sup> in order to connect with Jerusalem's municipal borders in E1.<sup>64</sup> Ma'ale Adummim's jurisdiction area now covers some 4,800 hectares.<sup>65</sup>

Ma'ale Adummim is the largest settlement in terms of land area, and its municipal boundaries are large even in comparison to cities within Israel. Thus, the city limits of Tel Aviv-Jaffa, which has 393,200 residents, 11 times the population of Ma'ale Adummim, extend over 5,180 hectares. The jurisdiction area of Beit Shemesh, which has 77,300 residents, is approximately 3,432 hectares. The city limits of Nazareth, with a population of 66,600, cover only 1,410 hectares.<sup>66</sup> Consequently, the population density in Ma'ale Adummim is 710 residents per square kilometer of jurisdiction area, compared to 2,252 in Beit Shemesh, 4,720 in Nazareth, and 7,590 in Tel Aviv.

Despite this, in March 2009, a Change of Borders Commission, appointed by the Ministry of the Interior, recommended that the jurisdiction area of Ma'ale Adummim's be further increased by some 1,150 hectares.<sup>67</sup> The Commission proposed to do this by integrating the Qedar settlement, all the state lands that lie between it and Ma'ale Adummim, and additional areas, within the extended city limits (see image 2). Some 800 residents live in Qedar, which is situated some 800 meters south of Ma'ale Adummim's built-up area. In municipal terms, Qedar is currently part of the Gush Etzion Regional Council. In its decision, the Commission rejected objections submitted

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<sup>63</sup> Regulations Concerning Local Councils (Change of Maps) (Ma'ale Adummim), 1994. The data are from HCJ 3125/98, *'Abed al'Aziz Muhammad 'Ayad et al. v. Commander of IDF Forces in Judea and Samaria et al.*, Response of the State, October 3, 1999.

<sup>64</sup> HCJ 3125/98, *'Abed al'Aziz Muhammad 'Ayad et al. v. Commander of IDF Forces in Judea and Samaria et al.*, Response of the State, October 3, 1999, section 11.

<sup>65</sup> There are conflicting contentions with respect to the city limits. In the state's aforesaid response in HCJ 3125/98, the 4,800 hectares figure was given, but adding up the figures presented in the response itself (sections 8-11, 42) provides a larger total – 5,170 hectares. The website of the Ma'ale Adummim Municipality offers two figures, one 4,800 hectares and the other 5,500 hectares. See [www.maale-adummim.muni.il/Page.asp?id=1](http://www.maale-adummim.muni.il/Page.asp?id=1) (visited on July 14, 2009). For the purposes of this report, the lowest figure, 4,800 hectares, which the state specified, is adopted.

<sup>66</sup> The population figures are updated to June 30, 2009. The jurisdiction areas are based on Central Bureau of Statistics figures (number of residents divided by population density per square kilometer).

<sup>67</sup> Eran Razin, Edna Predo, and Yigal Barzilay, "Report of the Commission of Inquiry Concerning the Borders of Ma'ale Adummim and the Gush Etzion Regional Council" (March 2009).

by Bimkom, Peace Now, and the Abu Dis, Jahalin, and as-Sawahrah ash-Sharqiya village councils.

As the objectors argued, the proposal to integrate Qedar within the jurisdiction area of Ma'ale Adummim was made only after the as-Sawahrah ash-Sharqiya Village Council petitioned the High Court of Justice against the planned route of the Separation Barrier, which left many of its village lands adjacent to Qedar on the "Israeli" side of the barrier.<sup>68</sup> It appears that the expansion of Ma'ale Adummim's city limits was intended to justify to the court the route of the barrier, which leaves on its "Israeli" side many more lands than the settlement's built-up area.<sup>69</sup>

During the hearings before the Change of Borders Commission, Ma'ale Adummim officials did not deny the advantages, from their point of view and with respect to the legal battle over the barrier's route, in integrating Qedar within the jurisdiction area of the city. The municipality's general director, Eli Har-Nir, pointed out to the Commission that "if Qedar becomes a neighborhood of Ma'ale Adummim, with all that entails, it must be within the [separation] fence's route, together with Ma'ale Adummim. This position must, it has to be adopted. I know that there is such an intention, but the matter has to be decided, and presented to the High Court of Justice".<sup>70</sup>

In rejecting the objections, the Commission ignored the close link between the proposal to enlarge Ma'ale Adummim's city limits and the legal controversy over the Separation Barrier in the area. The Commission also ignored the fact that planning-wise, there is no justification or need for further expanding Ma'ale Adummim's jurisdiction area, which is extensive and includes much land that has not yet been developed, despite being designated for residential neighborhoods in approved planning schemes. At the time this report is published, the Minister of the Interior has

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<sup>68</sup> HCJ 9919/05, *as-Sawahrah ash-Sharqiya Council et al. v. Minister of Defense et al.* The petition was filed on October 26, 2005. On October 30, 2005 the court issued a temporary injunction to stop all construction work of the barrier in the area of Qedar. On June 21, 2006 the court issued an *order nisi*. On August 11, 2009, the court dismissed the petition after the state announced that, due to budgetary constraints, the barrier would not be built in the area in the foreseeable future.

<sup>69</sup> Bimkom, *Objection to Changing Ma'ale Adummim's Jurisdiction Area*, July 31, 2008.

<sup>70</sup> Commission of Inquiry into Change of Borders of Ma'ale Adummim City Limits Regional Council Gush Etzion-Qedar, *Minutes of Meeting No. 1*, July 3, 2008. Grammatical error in the original text.

not yet decided whether to adopt the Commission's recommendations to annex Qedar to Ma'ale Adummim or not, and the Minister of Defense has not yet instructed the area's commander to issue a military order that would change the city's borders accordingly. In the meantime, the state informed the High Court of Justice that, due to budgetary constraints, it did not intend to complete the Separation Barrier in the Qedar-Ma'ale Adummim area in the foreseeable future. Consequently, the court dismissed the petitions (see below). However, to the best of our knowledge, the state's remains intent on expanding the jurisdiction area of Ma'ale Adummim.

## 2. The Outline Plans

Two outline plans, which encompass almost all of Ma'ale Adummim's jurisdiction area, have been approved. In addition, hundreds of detailed plans have been prepared in the settlement, most relating to individual parcels, and some covering large areas. All these outline and detailed plans were approved by the Civil Administration's planning committees, which under the Israeli military legislation are empowered to deposit planning schemes and to approve them.

### **The first outline plan (plan 420)**

Outline plan 420 was approved in November 1984. It encompasses some 3,500 hectares and includes almost all the lands expropriated for Ma'ale Adummim (see image 3), among them Site A, where the settlement's residential neighborhoods were established, and the Mishor Adummim industrial zone. The plan, prepared by the Leitersdorf-Goldenberg firm, was submitted by the Ma'ale Adummim Local Council.

The plan was designed "to guide development and construction in the plan's area for 20 years. Its objectives are to ensure development of an urban area of a high quality of life and environment."<sup>71</sup> The outline plan does not include detailed provisions, therefore building permits

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<sup>71</sup> Section 1.1.3 in the orders of plan 420.

cannot be issued on the basis of plan 420. It defines the nature of development in Ma'ale Adummim (relatively low construction density) and specifies that up to 10,000 housing units will be built within its boundaries.<sup>72</sup> In addition to the residential zone, the plan designates lands for roads, industry, tourism and recreation, an urban center, a transportation center, and so forth.

To implement outline plan 420, many detailed plans were approved over the years, pursuant to which building permits were issued. These plans enable the construction of more than 10,000 housing units, most of which have been built - all in Site A, which was marked as a possible location for the establishment of a civilian settlement on the expropriation map presented to the ministerial committee back in 1975.

Various detailed plans were approved for the Mishor Adummim industrial zone as well. The main detailed plans are plan 420/2/1 (some 100 hectares), which was submitted by the Jerusalem Economic Company and was approved in 1982; plan 420/2/2 (about 123 hectares), also submitted by JEC, which was approved in 1986; and plan 420/2/4 (57 hectares), submitted by the Ministry of Trade and Industry and approved in 1996.

### **Plans for E1**

The second Ma'ale Adummim outline plan is plan 420/4 for E1, the area adjacent to Jerusalem's municipal borders, as defined after 1967 (see image 3). The plan encompasses some 1,200 hectares - mostly land declared by Israel as government property, some expropriated land, and a small area of state land registered in the Land Registry as government property during the period of Jordanian rule. E1 includes, for the most part, land lying north of Road 1 (the Jerusalem-Jericho road), but also land lying south of the road, adjacent to the junction of Road 1 with Road 417, and west of Road 417. Outline plan 420/4 zones lands for residential use, tourism, regional commerce and services, a regional cemetery, roads, and so forth. It was prepared by the architect Shlomo Aharonson, submitted by the Ma'ale Adummim Municipality, and approved in 1999.

#### **Cemetery for Jerusalem**

In 1989, the Higher Planning Council (HPC) in the Civil Administration approved a detailed

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<sup>72</sup> Section 2.2.1 in the orders of plan 420.

plan, plan 200/1, for a “regional cemetery”. The plan area, which covers some 61 hectares, is situated in the southern part of E1, on village lands of al-‘Eizariyah and Abu Dis. The plan was initiated by the Jerusalem Jewish Cemeteries Council, which is charged with providing burial services for residents of the city. The plan orders do not state what “regional cemetery” means, and it fails to explain the specific “region” that the cemetery is meant to serve.

Following approval of the plan, the Cemeteries Council published a brochure explaining its intent regarding the regional cemetery. According to the brochure, plan 200/1 was intended to fill the “shortage of cemeteries in Jerusalem, which were left without land for burial,” and the site will provide some 130,000 graves. Just like the Mishor Adummim industrial zone 15 years earlier, Israel related to the area of Ma’ale Adummim, which is in the West Bank, as an area intended to meet Jerusalem’s needs, as if it were an integral part of the State of Israel, and not an occupied territory.

In early 1991, Peace Now filed a petition in the High Court of Justice against the intention to establish a cemetery for Jerusalem in the West Bank. In the petition, Peace Now argued that “burial of Israeli residents in the area is intended solely to serve and benefit the occupying powers, and exploits the territory contrary to the interests of the local residents” and in contravention of international law.<sup>73</sup>

After the High Court of Justice issued an *order nisi* and instructed the state to respond to the petition, the State Attorney’s Office informed the court that it agreed “that a cemetery for residents of Jerusalem should not be built in Judea and Samaria.”<sup>74</sup> Accordingly, the petition was dismissed.<sup>75</sup>

Despite this, plan 200/1 was not annulled, and remained in effect until it was changed by outline plan 420/4 for E1. The area designated in plan 200/1 for a cemetery is zoned in outline plan 420/4

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<sup>73</sup> HCJ 997/91, *Peace Now et al. v. Jerusalem Jewish Cemeteries Council et al.* The petition was filed on March 12, 1991.

<sup>74</sup> Adv. Menachem Mazuz, First Senior Deputy to the State Attorney, Statement on Behalf of Respondents 2, 4, and 5, and Joint Application to Dismiss the Petition, HCJ 997/91, *Peace Now et al. v. Jerusalem Jewish Cemeteries Council et al.*, July 11, 1991.

<sup>75</sup> HCJ 997/91, *Peace Now et al. v. Jerusalem Jewish Cemeteries Council et al.* Ruling of August 19, 1991.

as a commercial area. However, the planners of outline plan 420/4 did not give up on building a regional cemetery within Ma'ale Adummim's city limits: outline plan 420/4 designates some 26 hectares for a regional cemetery in the northern section of E1.

The primary procedure for gaining control of lands in E1 was declarations on state land, and not expropriation. Consequently, E1 is not contiguous, as is the area of outline plan 420. It is broken up by enclaves of privately-owned Palestinian land (77.5 hectares in total) that were not included in the declarations because the land was continually cultivated. Outline plan 420/4 does not apply to these enclaves. However, if the residential neighborhoods planned in E1 are built, it is very doubtful whether the Palestinian landowners will be able to continue to reach these enclaves and cultivate them, given the spatial reality created by the outline plan and given that the jurisdiction areas of all the settlements were declared by the army Commander as a closed military zone for Palestinians.<sup>76</sup>

Officially, this declaration applies to the entire jurisdiction areas of settlements. However, in most cases the prohibition on entrance of Palestinians is enforced only with respect to the built-up areas of settlements, and not to the jurisdiction areas, which are often much larger. For example, hundreds of Palestinian vehicles travel daily on a section of Road 417 that leads to the towns of al-'Eizariyah and Abu Dis, although this road section lies within the municipal borders of Ma'ale Adummim – but outside its built-up area. Hence, the land owners of the E1 enclaves can still reach them today, but it is highly doubtful whether they would continue to enjoy this accessibility once the construction plans for residential purposes are implemented in E1 and the enclaves are encircled by inhabited neighborhoods.

Outline plan 420/4 does not include detailed provisions, and therefore building permits cannot be issued on the basis of this plan. Hence, its implementation requires that detailed plans be prepared to its various zones. To the best of knowledge, at least three detailed plans for residential neighborhoods in E1, comprising a total of 3,910 housing units, are being prepared.<sup>77</sup>

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<sup>76</sup> Declaration Concerning Closing of Land (Israeli Settlements), 2002.

<sup>77</sup> The detailed plans are plan 420/4/3 for hotels and 260 housing units; plan 420/4/7 for 1,250 housing units; and plan 420/4/10 for 2,400 housing units. These data were taken from the report of Brigadier General Baruch Spiegel, published in the website of *Ha'aretz* on January 30, 2009.

These plans have not yet been deposited for public inspection, so we do not have additional details concerning them.

Implementation of the building plans in E1 will have far-reaching ramifications. Construction of residential neighborhoods north of Road 1 and development west of the connecting road, Road 417, will turn them into local roads that will pass within the contiguous built-up area of Ma'ale Adummim, nullifying the regional function they currently fill for Palestinians. This will result in the roads being partially or fully closed to Palestinians. Furthermore, the northeastern part of outline plan 420/4 also includes a section of Road 437, which is the only access road open to Palestinians from the northern West Bank (the Ramallah region) to its southern part. Despite the declaration of the settlements' jurisdiction areas as a closed military zone, Palestinians are presently able to travel on these roads because they do not pass through the built-up area of Ma'ale Adummim. If outline plan 420/4 is fully implemented, these roads will be encircled by the contiguous built-up area of the settlement, resulting in the almost certain closing of the roads to Palestinians. This will lead to the obstruction of spatial connections between the southern part of the West Bank and its northern region.

Construction in E1 will exacerbate the forced separation between the West Bank and East Jerusalem. The planned residential neighborhoods in E1 will border the built-up area of East Jerusalem in the east, connect with Jewish neighborhoods north of the Old City, and create a physical and functional partition between East Jerusalem and the Palestinian population of the rest of the West Bank, for whom the city is a major metropolitan and religious center.<sup>78</sup>

In addition to residential neighborhoods, outline plan 420/4 also zones several public areas. Detailed plans for two public zones, pursuant to which building permits may be issued, have already been approved. The first detailed plan that was approved, plan 420/4/2, covers some 135 hectares and is designated for a joint metropolitan employment and businesses center for Ma'ale Adummim and Jerusalem. The plan was submitted by the Ministry of Industry and Trade and was prepared by the Reches-Eshkol firm. Approved in 2002, it has not yet been implemented.

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<sup>78</sup> Amos Harel, "Despite US Protest, Plan for Expanding Ma'ale Adummim and Bisecting the West Bank Proceeds," *Ha'aretz*, May 14, 2009.

The second plan, plan 420/4/9, encompasses some 18 hectares and is designated for the Samaria and Judea (SHAI) Police District Headquarters. It was submitted by the Ministry of Construction and Housing, prepared by architect Amatzia Aharonson, and approved in 2005, shortly after work (road construction) had already begun there without permits. Although its professed aim is construction of the police headquarters, the plan includes an extensive system of roads, some of which are more than 30 meters wide. The main road, which runs from Road 1 to the police headquarters, has between two and up to three lanes in each direction. It cuts through an enclave of privately-owned Palestinian land, in accordance with plan 420/4, which enables the paving of roads through the E1 enclaves.<sup>79</sup>

From a planning perspective there is no justification for such a wide road, if its sole purpose is to enable access to the police headquarters. According to the documents of plan 420/4/9, the maximum volume of traffic anticipated for the road leading to the police headquarters is 80 vehicles an hour, and the maximum volume of traffic forecast in both directions is 110 vehicles an hour. In comparison, in the section of Israel's Coastal Road (Road 2) between the Zichron Ya'akov interchange and the Atlit interchange, which is also a two-lane road in each direction, the maximum traffic volume heading north on the road in 2009 was 1,675 vehicles an hour.<sup>80</sup> This volume is more than 20 times greater than the anticipated maximum volume on the road leading to the police headquarters in E1. Despite this, the access road has two lanes, in some places three lanes, in each direction, like Road 2 in the section between the Zichron Ya'akov and Atlit interchanges.

The only reason for the extensive and wide road system that has already been paved in the area covered by plan 420/4/9 is that it forms part of the future development of the residential neighborhood planned to be built next to the police headquarters, and is therefore intended to enable a much larger volume of traffic than that heading to the police compound itself. The traffic appendix to the detailed plan shows additional roads, which do not appear in the main plan, branching off the main road, which leads to the police headquarters. The traffic appendix also shows dozens of residential buildings planned to be erected around the police headquarters,

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<sup>79</sup> Section 1.5 in Part 7 of the orders in plan 420/4.

<sup>80</sup> CBS, *Transport Statistics Quarterly no. 2*, Table 38, 2009, [http://www.cbs.gov.il/www/archive/quart20092/transport\\_q/t38.pdf](http://www.cbs.gov.il/www/archive/quart20092/transport_q/t38.pdf).

along the secondary roads and in accordance with outline plan 420/4, which zones this area for residential construction.

Plan 420/4/9 has already been implemented, and the SHAI Police District headquarters is operational there. Along with the building of the police headquarters, various construction works have been undertaken, including the paving of roads, the erection of support walls, the building of traffic circles to regulate traffic, and the implementation of lighting posts, at an estimated total cost of 200 million shekels (more than 50,000 million US dollars).<sup>81</sup> This provides further proof that, under the guise of constructing police headquarters, infrastructure was built for future residential neighborhoods containing hundreds of housing units, in accord with outline plan 420/4.

Next to the police headquarters are wooden and tin buildings of as-Sawahrah Bedouins. Outline plan 420/24 zones this area too for residential construction for settlers. Hilwa Ahmad 'Ali Zer'i, who lives there, told B'Tselem about her fears for the future:

My family has lived here since 1900. My father grew up here early last century, and I was born here in a tent in 1937. My five brothers – Musa, Hassan, Hamidan, Muhammad, and Ahmad – still live here, in the place where they were born.

We now are about 150 persons. We used to make a living from farming, mostly raising sheep and goats. Since Ma'ale Adummim was built, we've had much less grazing land. Therefore, we are forced to buy fodder, and due the heavy costs involved, we have had no option but to reduce considerably the number of sheep and goats we raise. Most of my family switched to house cleaning in Ma'ale Adummim, and farming was neglected.

Now, our main fear is that the settlers intend to build a new neighborhood in our residential area. We have no other place. I am especially concerned about the future of

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<sup>81</sup> Amos Harel (see fn. 1). For a presentation on the infrastructure work in the police compound, see [http://www.shaularieli.com/image/users/77951/ftp/my\\_files/Power-Point%20Show/mevaseret\\_adumimNEW.pps](http://www.shaularieli.com/image/users/77951/ftp/my_files/Power-Point%20Show/mevaseret_adumimNEW.pps).

my children and grandchildren: if the settlers build a new neighborhood here, my family will be expelled from the place it has lived for more than 100 years.<sup>82</sup>

### **The Abu Dis waste disposal site: the backyard of Jerusalem**

Outline plan 420/4 also includes the Abu Dis waste disposal site, which had been established many years before the outline plan was approved. The dumping site became operational in the early 1980s, shortly after the land was expropriated from its Palestinian owners.<sup>83</sup> It was not until 1991 that a detailed plan, number 58/1603, was approved for the site. This plan covers some 44 hectares.

Like the Mishor Adummim industrial zone, the waste disposal site was intended to primarily serve Jerusalem, as the only solution for disposing of all of the city's household refuse.<sup>84</sup> Israel's top planners, who were commissioned by the Ministry of Housing and Construction to prepare the professional surveys and the preliminary planning for Ma'ale Adummim, viewed the Abu Dis waste disposal site as having another advantage, in addition to providing for Jerusalem's needs. They believed that the dumping site would greatly limit Palestinian building in the area.<sup>85</sup>

According to the State Comptroller, all of Jerusalem's household refuse is taken to the Abu Dis waste disposal site. Four million tons of garbage had been buried in the site by 2001, when the State Comptroller made his report, which found many defects in operation of the site, including environmental nuisances.<sup>86</sup>

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<sup>82</sup> Hilwa Ahmad 'Ali Zer'i gave her testimony to B'Tselem's researcher Kareem Jubran on September 17, 2009.

<sup>83</sup> According to the response of the Civil Administration, Expropriation Order 41/80 that was issued for the waste disposal site encompasses some 53 hectares (see fn. 15).

<sup>84</sup> State Comptroller, *Reports on Auditing of Local Government, Associations, and Institutions of Higher Education* (2003), p. 306.

<sup>85</sup> Urban Institute (see fn. 38), p. 127.

<sup>86</sup> State Comptroller (see fn. 84).

According to 1998-1999 figures released by the Ministry of Environmental Protection, 95 percent of all the refuse (1,150 tons a day) buried in the Abu Dis site comes from Jerusalem, the remainder originating in Ma'ale Adummim and other communities.<sup>87</sup> Updated statistics presented by the state in its response to a High Court of Justice petition, in recent years, 90 percent of all the waste buried in the waste disposal site comes from Jerusalem, four percent from settlements, and the remainder from Palestinian communities. In the period from July 2007 through June 2008, some 450,000 tons of refuse were buried in the waste disposal site, approximately 400,000 of which came from Jerusalem.<sup>88</sup>

In 2003, the Civil Administration deposited a plan for the expansion of the Abu Dis waste disposal site. According to the new planning scheme, plan 58/1603/1, the site is to be closed within a few years. Until then, its borders will be expanded and up to 1,800 tons of waste will be dumped there daily. The plan's documents do not give a target date for the closing. According to the State Comptroller, it was to have closed in 2006.<sup>89</sup> Plan 58/1063/1 was submitted jointly by the Ma'ale Adummim Municipality and the Jerusalem Municipality and was approved by the Civil Administration. However, a notice declaring the official approval of the plan has not yet been published in the press, due to a dispute between the municipalities regarding which of the two will pay for rehabilitation of the site.<sup>90</sup> Hence, plan 58/1063/1 is not a valid plan. Meanwhile, the existing site has operated unlawfully for several years, and waste is being dumped there beyond the limits of the area zoned for this purpose in the valid plan.

Along with the procedures for expanding the Abu Dis waste disposal site, the Jerusalem Municipality prepared a master plan for garbage disposal, which states that "it is necessary to speed up the construction of new waste disposal site *in the Mishor Adummim area*," with a greater

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<sup>87</sup> Ministry of Environmental Protection, Office of the Chief Scientist, and Municipal Environmental Association of Judea, *Survey of Waste Disposal Sites in Judea, 1998-1999*, p. 19.

<sup>88</sup> HCJ 10611/08, *Ma'ale Adummim Municipality v. Commander of IDF Forces in Judea and Samaria et al.*, Response of the State, February 22, 2009, section 32.

<sup>89</sup> State Comptroller (see fn. 84).

<sup>90</sup> HCJ 10611/08, *Ma'ale Adummim Municipality v. Commander of IDF Forces in Judea and Samaria et al.*, Response of the State, February 22, 2009, section 16.

capacity than that of the Abu Dis site.”<sup>91</sup> On 28 September 2005, the Civil Administration approved detailed plan 58/420/7 for the “Mishor Adummim waste disposal site.” The plan, prepared by Geo-Prospect Ltd. and submitted by the Ma’ale Adummim Municipality, encompasses some 87 hectares (twice the area of the valid plan for the Abu Dis waste disposal site) of the village lands of ‘Anata, Khan al-Ahmar, and Nabi Musa. As of now, the Mishor Adummim waste disposal site has not been built, and Jerusalem’s household refuse continues to be buried in the Abu Dis site.

Under international law, the occupying power is forbidden to exploit for its own needs the natural resources of the occupied territory.<sup>92</sup> This principle also served as the basis for several High Court of Justice rulings.<sup>93</sup> The Israeli State Attorney accepts this position. In a recent response to a High Court of Justice petition where the Ma’ale Adummim municipality asked to be exempted from payment of levies for the disposal of Palestinian refuse brought to the Abu Dis dumping site, the State Attorney stated that cessation of burial of Palestinian refuse there would negate “the very legal justification for the existence of the site”. The State Attorney’s response further argued that “the Abu Dis waste disposal site’s legitimization stems from... the fact it provides a solution for the lawful disposal of Palestinian refuse. That is, it is unreasonable to build and operate a waste disposal site in the heart of a certain population, without that population gaining benefit from the site, while it only bears the environmental costs.”<sup>94</sup> Despite these firm words, the state’s position before the High Court of Justice is that it is sufficient that a few percent of the refuse buried in the site comes from Palestinian communities to legally justify

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<sup>91</sup> State Comptroller, (see fn. 84), pp. 316-317 (emphasis added); see also the reference of the Ministry of Environmental Protection to Jerusalem’s new garbage dumping site in Mishor Adummim: [www.sviva.gov.il/bin/en.jsp?enPage=BlankPage&enDisplay=view&enDispWhat=Zone&enDispWho=jerusalem\\_trash&enZone=jerusalem\\_trash](http://www.sviva.gov.il/bin/en.jsp?enPage=BlankPage&enDisplay=view&enDispWhat=Zone&enDispWho=jerusalem_trash&enZone=jerusalem_trash) (visited on July 25, 2009).

<sup>92</sup> The relevant provision of international law is article 55 of the Regulations attached to the Hague Convention on the Laws and Customs of War on Land of 1907.

<sup>93</sup> See, for example, H CJ 393/82, *Jam’iyyat Iskan al-Mu’alimoun al-Mahdduda al-Mas’uliyah v. Commander of IDF Forces in Judea and Samaria*, Ruling of December 28, 1983.

<sup>94</sup> H CJ 10611/08, *Ma’ale Adummim Municipality v. Commander of IDF Forces in Judea and Samaria et al.*, sections 55 and 56 of the state’s response, February 22, 2009.

its existence and its use as a waste disposal site of Jerusalem. This position contradicts High Court of Justice rulings whereby, if an administrative action has more than one purpose, its legality is determined by its dominant objective.<sup>95</sup>

### **The master plan**

Alongside statutory planning of the city, by means of outline and detailed plans, a master plan was recently prepared for Ma'ale Adummim. The borders of the master plan are almost identical to that of the expanded city limits, as recommended by the Interior Ministry's Change of Borders Commission, described above.

The master plan does not conform with, and is not recognized under, the Jordanian planning law applying to the West Bank. Contrary to outline and the detailed plans, which are binding statutory documents, master plans are a guideline, a general planning framework. Statutory plans are deposited so that the public can raise objections to them; master plans are not published and the public is not allowed to object to such plans. From the point of view of planning institutions, master plans combine the goods of two worlds: on the one hand, they define, in a general-outline manner, the zoning of the area to which they apply and dictate its development. On the other hand, the public cannot object to them, so that the burden of hearing public objections and considering them is avoided. Hence, master plans often serve as a means to bypass the legal requirement of depositing plans and allowing public objections to be heard, and to prevent any involvement of the public – Palestinians in particular – in planning decisions relating directly to its living environment and to its future. Master plans were also prepared for several other settlements, e.g., Modi'in Illit and Kiryat Arba, and in some communities within Israel.

The Ma'ale Adummim master plan was prepared in 2005, at the initiative of the Ma'ale Adummim Municipality and the Ministry of Construction and Housing, by architect Yonatan Shiloni. It covers some 6,546 hectares, *about 1,750 hectares (one-third) more* than the current jurisdiction area of Ma'ale Adummim.<sup>96</sup>

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<sup>95</sup> HCJ 390/79, *'Izzat Muhammad Mustafa Dweiqat and 16 Others v. Government of Israel et al.*, Ruling of October 22, 1979.

<sup>96</sup> Ma'ale Adummim Master Plan, August 2005.

Although it is not a statutory outline plan, in 2006, the Higher Planning Council (HPC) in the Civil Administration, the highest planning institution in the West Bank, held a hearing concerning the master plan. Minutes of the hearing indicate that the master plan's main objective is to enable substantial population growth in the city, from a maximum of 70,000 residents in the existing outline plans (including E1, where housing units for some 16,000 residents are planned) to approximately 103,000 residents in the master plan. Other objectives of the master plan are to create a road system that will improve Ma'ale Adummim's connection to Israel's national road network; inclusion of the Qedar settlement within the jurisdiction area of Ma'ale Adummim, and construction of 6,000 housing units on the lands of Qedar to be annexed to the city;<sup>97</sup> And the establishment of metropolitan and national infrastructure, such as an airstrip to replace the Atarot Airport in East Jerusalem, a Ma'ale Adummim-Tel Aviv railway line, a trade fairs center, a waste disposal site to primarily serve Jerusalem, and so on.<sup>98</sup>

A conspicuous feature of the master plan is the fact it completely ignores the existence of privately-owned Palestinian land within its boundaries, enclaves that are not presently part of the jurisdiction area of Ma'ale Adummim, although they are surrounded on all sides by land that is municipally part of the settlement. Hence, the statutory outline plans of the city don't apply to these enclaves. With respect to the advantages of the master plan, the head of the planning bureau in the Civil Administration stated that "the master plan is essentially intended to give a picture of the planning concept under the existing limitations of islands [Palestinian enclaves] within this area, islands that we are not allowed to plan nor to control and develop [...] This would remain the case if the internal [Palestinian] enclaves were eliminated, were acquired, or declared state land, and so forth. *Lacking the ability to make a contiguous [statutory outline] plan for these lands, we classified it as a master plan*".<sup>99</sup> Hence, the master plan is intended, *inter alia*, to overcome the legal prohibition to incorporate privately-owned Palestinian land within the statutory plans.

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<sup>97</sup> Presentation of the master plan made by Gadi Brandes, Ma'ale Adummim municipal engineer, before the Change of Borders Commission (see fn. 70).

<sup>98</sup> Higher Planning Council, Minutes No. 498/2/06, of May 17, 2006, "Ma'ale Adummim Master Plan".

<sup>99</sup> Commission of Inquiry into Change of Borders of Ma'ale Adummim City Limits Regional Council Gush Etzion-Qedar, Minutes of Meeting No. 2, held on August 31, 2008 (emphasis added).

At the end of the hearing, the HPC approved the master plan, subject to certain amendments, as a “guiding document” for the preparation of statutory plans for Ma’ale Adummim. In its decision, the HPC stated that “preference will be given to approval of an outline plan for the entire jurisdiction area of Ma’ale Adummim. *If for political or other reasons, it is not possible to promote such an outline plan, planning schemes will be separately prepared for parts of the master plan, with the stages of development being based on the said master plan and taking into account military/political/environmental and other limitations*”.<sup>100</sup>

Thus, the master plan, which lacks any legal status, is already serving as a basis for the detailed statutory planning of Ma’ale Adummim, directing its development in the future. There is recent proof of this. In July 2009, the Civil Administration announced the deposit of detailed plan 420/2/3/1, covering some 10 hectares in the Mishor Adummim industrial zone. The objective of the plan is to re-zone its land from an industrial area to a cemetery. The site is the same location designated in the master area for a cemetery.<sup>101</sup> Detailed plan 420/2/3/1 is thus directly based on the master plan and is a small step on the way to its implementation, which, in the words of the head of the planning bureau in the Civil Administration, will not be done in one swoop, so as not to raise attention and create a political controversy, but gradually, by means of a large number of detailed plans, each for another part of the master plan's area. It is doubtful whether this course of action is lawful, given the express provision in the Jordanian planning law, whereby detailed plans must be based on a lawfully-approved statutory outline plan, and not on a master plan.<sup>102</sup>

### 3. The Separation Barrier

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<sup>100</sup> See ft. 98 (emphasis added).

<sup>101</sup> The master plan also changes the statutory outline plan 420/4 for E1. It re-zones the land, which is designated in outline plan 420/4 for a regional cemetery, into residential and open areas.

<sup>102</sup> Article 23(1) of the Towns, Villages and Buildings Planning Law (Temporary Law) (No. 79) of 1966.

In April 2006, the government of Israel approved an amended route for the Separation Barrier in the West Bank.<sup>103</sup> Attached to the decision was a map showing the barrier's route.<sup>104</sup> In the Ma'ale Adummim area, the route penetrates some 14 kilometers east of the Green Line and 11 kilometers east of Jerusalem's post-1967 municipal border. It leaves on its "Israeli" side most of the jurisdiction area of Ma'ale Adummim, except for some desert lands – mainly in the east and south; almost all the land covered by outline plan 420/4 for E1; the small settlements of Kfar Adummim, Almon, Nofey Prat, Alon, and Qedar (less than 5,000 residents in total); and the Mishor Adummim industrial zone (see image 4).

The planned route will create a 6,400-hectare enclave, which, in addition to the settlements, includes the Palestinian village of az-Za'ayem (3,500 residents) and 3,000 Bedouins from the al-Ka'abaneh, as-Sawahrah, and Jahalin tribes. The state intends to move the Jahalin Bedouins to a relocation site in the lands of Abu Dis, on the "Palestinian" side of the barrier.<sup>105</sup> Even if intention comes true, construction of the barrier along the planned route will result in thousands of Palestinians finding themselves within the "seam zone", the term used by Israeli officials to describe the area trapped between the Green Line and the Separation Barrier. The state informed the High Court of Justice that, as elsewhere in the "seam zone", Palestinians in the Ma'ale Adummim enclave will be subject to a stringent permit regime:<sup>106</sup> they will be required to receive permits to continue to live in their homes and villages, and relatives living in towns and villages outside the "seam zone" will have to obtain a one-time permit from the Civil Administration in

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<sup>103</sup> Government Decision No. 4783, "Amended Route of the Security Fence," April 30, 2006.

<sup>104</sup> See the website of the Seam Zone Administration, <http://www.securityfence.mod.gov.il/Pages/ENG/route.htm>.

<sup>105</sup> In this context, "permanent site" refers to a fixed community, unlike the temporary residence of Bedouins in tents and other buildings, which are moved according to environmental conditions and season of the year.

<sup>106</sup> See the High Court's ruling in HCJ 7957/04, *Zaharan Younis Muhammad Mara'abe et al. v. Prime Minister of Israel et al.*, of September 15, 2005, stating that the permit regime would apply to all Palestinian residents in the "seam zone" (including Ma'ale Adummim), except for the Gush Etzion enclave.

order to visit them. The lives of these thousands of Palestinians will become a bureaucratic nightmare.<sup>107</sup>

Following petitions to the High Court of Justice, filed by the village councils of as-Sawahrah ash-Sharqiya and Abu Dis, the state announced a “significant change” in the southern section of the barrier’s route near Qedar - the only section for which requisition orders had been issued.<sup>108</sup> This “significant change”, however, will reduce the “seam zone” in Ma’ale Adummim only by some 240 hectares, from 6,400 hectares to approximately 6,160 hectares. According to details that the security establishment released to the press, after the change, Ma’ale Adummim and the small settlements nearby will remain on the “Israeli” side of the barrier, as will the Palestinian village of az-Za’ayem and the Bedouin residential compounds.<sup>109</sup> Hence, the amendment will have no effect on the fabric of life of Palestinians living in the enclave, and their number will remain the same as before the change in route.

Nor will the change improve the condition of tens of thousands of Palestinians who live in al-‘Eizariyah, Abu Dis, ‘Anata, and as-Sawahrah ash-Sharqiya. The built-up areas of these communities are trapped between the western barrier (“the Jerusalem envelope”), most of which was built along Jerusalem’s post-1967 municipal borders, and the eastern barrier in Ma’ale Adummim. The western barrier has already severed long-lasting ties with Jerusalem that go back generations, and has prevented development of these Palestinian communities westward. The eastern barrier will now prevent them from building, development, and even the possibility of

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<sup>107</sup> For further discussion on the permit regime in the seam zone, see Bimkom, *Between Fences: The Enclaves Created by the Separation Barrier*, Jerusalem (October 2006), pp. 15-16.

<sup>108</sup> HCJ 9919/05, *as-Sawahrah ash-Sharqiya Council et al. v. Minister of Defense et al*; HCJ 2001/06, *Abu Dis Council by Council Head Ibrahim Jafal v. Minister of Defense*. The two petitions, which were heard together, were dismissed on August 11, 2009 after the state had informed the court, as noted, that, due to budgetary constraints, it did not intend to execute the requisition orders that had been issued for this section of the barrier.

<sup>109</sup> Tomer Zarchin and Yuval Azulay, “Route of the Separation Fence Approaches Ma’ale Adummim,” *Ha’aretz*, August 24, 2008. The article states that the amended route will reduce the “seam zone” in Ma’ale Adummim by some 400 hectares, but an examination of the requisition orders issued for it indicates that the difference is only 240 hectares.

farming in the eastward direction. Moreover, the disruption of the existing road system in the area will render access to Ramallah, in the north, and Bethlehem, in the south, difficult. After the forced separation from Jerusalem, Ramallah and Bethlehem are the only cities capable of supplying vital services (such as health and administration) to residents of the above-mentioned Palestinian towns and villages.<sup>110</sup>

Even before the juridical proceedings in the High Court of Justice were exhausted, the state took several measures to enable construction of the barrier along the planned route. In September 2007, Israel expropriated some 141 hectares of the village lands of Abu Dis, as-Sawahrah ash-Sharqiya, Nabi Musa, and Khan al-Ahmar, to pave what the Israeli security system calls a “fabric of life road”. This road is designed to enable Palestinians to travel between the northern and southern sections of the West Bank, by providing an alternative to roads 1, 417, and 437, which would be blocked by the barrier.<sup>111</sup> The planned “fabric-of-life road” will connect with Road 1 (the Jerusalem-Jericho road) east of the Mishor Adummim industrial zone, and on the west with the built-up area of Abu Dis. From there, the road will continue northward, via the village lands of al-‘Eizariyah and at-Tur, along a route included in another requisition order, which encompasses some 39 hectares. To the best of our knowledge, the “fabric-of-life road” will run north to Hizma and enable passage to Ramallah from there. So far, only part of the northern sections (in the area of al-‘Eizariyah) has been built, with work on the southern and eastern sections (from Abu Dis to Road 1) not yet having begun.

“Fabric-of-life roads” channel Palestinian traffic to one roadway, which can be easily regulated and blocked. The paving of these roads also separates roads intended for Palestinians from the main roads, which serve only Israelis - even though all these main roads are located in the West Bank and were mostly paved on land expropriated for “public purposes.”<sup>112</sup>

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<sup>110</sup> Bimkom, “Expert Opinion: The Adummim Area Enclave” (February 2006). The opinion was submitted to the court in the framework of HCJ 9919/05, *as-Sawahrah ash-Sharqiya Council et al. v. Minister of Defense et al.*

<sup>111</sup> Akiva Eldar, “Israel Expropriates Land of Four West Bank Villages, which may Facilitate Construction in E1,” *Ha’aretz*, October 9, 2007; Aluf Ben, “US Demands Clarifications on Israel’s Intention to Expropriate Palestinian Land in E1,” *Ha’aretz*, October 14, 2007.

<sup>112</sup> Bimkom, *Between Fences* (see fn. 107), pp. 34-35.

The state recently informed the High Court of Justice that, due to budgetary constraints, “construction of the fence along the said route is not at high priority.” As a result, only a small section of the barrier – near al-'Eizariyah - has been built in the Ma'ale Adummim area, contrary to the declarations of the defense establishment that a contiguous barrier is necessary to thwart the crossing into Israeli territory of terrorists.<sup>113</sup> Indeed, of the overall 42-kilometer route, as decided by the government, in the Ma'ale Adummim enclave, so far only some 6.4 kilometers of barrier – consisting of an electronic fence, smudge road, wire fences, and access road – have been built, from Road 1 in the north to the vicinity of the entrance to Ma'ale Adummim in the south. In light of the state's announcement, the High Court of Justice dismissed the petitions filed by the Abu Dis and as-Sawahrah ash-Sharqiya village councils. However, contrary to the court's recommendation, the state did not annul the requisition orders that had been issued for the sections of the barrier against which the petitions were filed. Instead, the state made a commitment to give the petitioners 45 days' advance notice of its decision to realize the requisition orders (in other words, to build the barrier), to enable them to re-petition the High Court of Justice.<sup>114</sup>

Despite the fact that the construction of the barrier around Ma'ale Adummim has been halted, it appears that the state hasn't given up its intention to build it. Indeed, the Israeli authorities continue to initiate steps that would allow the barrier to be completed, once the necessary budget is available. Thus, the Civil Administration continues to promote plans to expel the Jahalin Bedouins, who live near Ma'ale Adummim's residential neighborhoods, to an area outside the “seam zone” that will be created once the barrier is completed. The Jahalin Bedouins, who originally lived in the Negev, relocated in the 1950s to the vicinity of Wadi Qelt. Based on lease agreements with landlords from Abu Dis, as-Sawahrah ash-Sharqiya, and al-'Eizariyah, the Jahalin settled on land that would later become Ma'ale Adummim. Expulsion of the Jahalin Bedouins to enable development of Ma'ale Adummim began many years ago. During the initial construction work on the settlement, in the 1980s, Israel demolished tents and at least two permanent buildings of the Jahalin Bedouins (see. p. ???). In 1994, the Civil Administration issued an eviction order to dozens more of Jahalin families from land intended as a new residential

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<sup>113</sup> Seam Zone Administration website (see fn. 104).

<sup>114</sup> H CJ 9919/05, *as-Sawahrah ash-Sharqiya Council et al. v. Minister of Defense et al*, Ruling of August 11, 2009.

neighborhood in Ma'ale Adummim, known as the Tsemach Ha-sadeh neighborhood.<sup>115</sup> A petition against the eviction, filed in the High Court of Justice, was denied on the grounds that the petitioners did not have rights in the land from which they were evicted.<sup>116</sup> The land covered by the plan, which was completely implemented after the Bedouins had been evicted, lies in the southwest part of the city.

As an alternative to their original residential compounds, the Civil Administration prepared detailed plans where the Jahalin Bedouins are to be relocated. To date, four plans for the relocation site (the "Jahalin Village") have been approved, covering a total area of some 33 hectares of the village lands of Abu Dis declared by Israel as government property.<sup>117</sup> The Civil Administration also made a commitment to the High Court of Justice to allocate to the Jahalin Bedouins land on which they could build without paying lease fees, and not to charge them for building permits that will be issued there.<sup>118</sup> However, the detailed plans approved for the Jahalin Village do not relate to the Bedouins' livelihood, which is based on grazing, and does not designate land for farming or other employment. Therefore, the plans do not conform to the Bedouins' way of life and culture.<sup>119</sup> So far, some 120 residential buildings - home to hundreds of Bedouins who had been expelled from land used to expand Ma'ale Adummim - have been built there.

Another detailed plan, plan 1627/4/05, has been promoted recently. It, too, involves Abu Dis land and is situated on the same site as the other detailed plans for the Jahalin Village. The plan is intended to enable the eviction of those Jahalin Bedouins remaining on the "Israeli" side of the planned route of the Separation Barrier to its "Palestinian" side. The eviction is meant to serve a

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<sup>115</sup> Detailed plan 420/1/6, which came into force in 1993.

<sup>116</sup> HCJ 2966/95, *Muhammad Ahmad Sallem Haresh and 19 Others v. Minister of Defense et al.*, Ruling of May 28, 1996.

<sup>117</sup> Plan 1627/2/03 (24 hectares), plan 1627/5/05 (some 1.2 hectares), plan 1627/6/05 (5.5 hectares), and plan 1627/8/06 (2.3 hectares).

<sup>118</sup> B'Tselem, *On the Way to Annexation* (see fn. 2), p. 28.

<sup>119</sup> For further discussion on this issue, see B'Tselem, *On the Way to Annexation* (fn.2); Bimkom, "Expert Opinion: The Adummim Area Enclave" (fn. 110), p. 9.

dual purpose: it will enable further development of Ma'ale Adummim, in part on the land where the Bedouins now live, and ensure that the Ma'ale Adummim enclave created by the barrier contains as few Palestinians as possible.

All the approved plans for the Jahalin Village lie near the Abu Dis waste disposal site, discussed above. The houses on the edges of plan 1627/2/03 – the largest of these plans - are only 300 meters away from the waste disposal site. Plan 1627/4/05 lies even closer to the waste disposal site, with houses planned there only 150 meters away from the garbage site. From planning, health, and safety perspectives, a residential neighborhood should not be built so close to a large waste disposal site.

In a recent response to the High Court of Justice, the state itself said that “there is a risk that the Abu Dis site will collapse” and that internal burning of the refuse buried there often takes place. The state further noted that “the fires (internal and external) endanger the workers there [...] this may result in the collapse of the mountain of waste [...] *It should be emphasized that a collapse is liable to cause a severe environmental risk and even endanger human life*”.<sup>120</sup>

Similar comments were made in a hearing held by the HPC regarding plan 1627/4/05. One member of the HPC said that the Abu Dis waste disposal site is “explosive and liable to cause very great damage, and I don’t want to find myself before a commission of inquiry.” The speaker also stated that “it is irresponsible to put people there.” Despite these comments, the HPC decided to promote the approval of the plan, contending that some of the risks facing the Bedouins who will be moved there are “negligible,” and while the other dangers are substantial, “there are reasonable solutions for coping with them.”<sup>121</sup>

According to information provided to us by the Civil Administration’s planning bureau, plan 1627/4/05 was approved on November 16, 2006. However, and despite the HPC’s decision, the

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<sup>120</sup> HCJ 10611/08, *Ma'ale Adummim Municipality v. Commander of IDF Forces in Judea and Samaria et al.*, section 17 of the state’s response, February 22, 2009 (emphasis in the original).

<sup>121</sup> Higher Planning Council, Minutes No. 500/4/06 of August 16, 2006. The HPS thus nullified a previous decision by the Environmental Protection Subcommittee, which stipulated that the construction of the new neighborhood for the Jahalin Bedouins will begin only after the waste disposal site is closed down and rehabilitated.

Civil Administration has not yet published an official notice concerning the approval of the plan, apparently because of the safety hazards entailed in its proximity to the waste disposal site. Since without an official notice of approval the plan remains not in force, no building permits may be issued on the basis of plan 1627/4/05.<sup>122</sup>

## 4. Harm to Palestinians

The establishment of Ma'ale Adummim entails three levels of violation of Palestinians' rights: infringement of rights of individual Palestinians, whose lands were expropriated or who were expelled from their place of residence; infringement of rights of entire Palestinian communities, whose development needs were severely compromised; and infringement of the collective rights of the Palestinian people to a viable state, with reasonable territorial contiguity.

### Harm to private property

The initial harm was to the property rights of Palestinians whose land was expropriated to establish Ma'ale Adummim. As described above, building the settlement entailed the expropriation of some 3,200 hectares, and another 200 hectares were expropriated for roads and other infrastructure that serve Ma'ale Adummim. An additional 145 hectares were expropriated during Jordanian rule and later included in the Mishor Adummim industrial zone.

The Civil Administration now contends that the 3,200 hectares expropriated for Ma'ale Adummim were not really privately-owned Palestinian land, but uncultivated rocky land that is considered government property under the local law. The optimal way to ascertain rights over land is through land settlement – a procedure whereby the lands of an entire village, town or city undergo registration in the Land Registry. Within the framework of land settlement – which is undertaken and funded by the state – the borders of plots are defined and registered in the Land Registry to private persons, local authorities, or the state – all in accordance with the local land laws. Most of the area now within the city limits of Ma'ale Adummim did not undergo land

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<sup>122</sup> Conversation with Yevgeni Mirkin, of the Civil Administration's planning bureau, October 21, 2009.

settlement, so the exact extent of land that was privately-owned by Palestinians prior to the expropriation cannot be determined.

Nevertheless, the documents revealed here contradict this claim of the Civil Administration. They indicate that, even under the Civil Administration's stringent interpretation of the local law – whereby only land cultivated for an extended period of time, both in the past and in the present, is private property – a significant part of the land expropriated for Ma'ale Adummim was under private Palestinian ownership. This is especially true with respect to Site A, where the residential neighborhoods of the settlement were built. As noted above, this western section of land is characterized by a Mediterranean climate that enables farming without irrigation. Indeed, the professional team that was commissioned by the Ministry of Housing to prepare the planning surveys prior to the construction of Ma'ale Adummim spoke openly about the need to evacuate land cultivated by Palestinians in Site A, in order to enable the establishment of the settlement. Although the land had been expropriated a few years earlier, it continued to be cultivated until the bulldozers appeared on the land.

### **Expulsion of the Jahalin Bedouins**

The establishment of every settlement entailed gaining control of Palestinian land – whether private or public. The case of Ma'ale Adummim is unique as in order to build it, Israel not only dispossessed Palestinian farmers, but also expelled persons living on land intended for the settlement. As described above, in Site A, there were at least two occupied permanent dwellings. These two houses were demolished in the early 1980s, during the initial development work on the settlement. Hundreds of Jahalin Bedouins, who lived on land running along the Jerusalem-Jericho road, were expelled from tents and tin buildings in which they lived to enable the establishment and expansion of Ma'ale Adummim.

The state contends that the Jahalin Bedouins are new residents in the area – “squatters” who arrived there around 1988 and settled on state land without permission.<sup>123</sup> But historical research contradicts this contention. The Jahalin Bedouins, originally from the Negev, were forced to move

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<sup>123</sup> HCJ 2966/95, *Muhammad Ahmad Sallem Haresh and 19 Others v. Minister of Defense et al.*, Ruling of May 28, 1996.

to the West Bank after they lost their grazing land following the setting of the Israel-Jordan border in 1949, and possibly also as a result of deliberate expulsion by Israel at the end of the war. They settled along the Jerusalem-Jericho road,<sup>124</sup> on the basis of lease agreements with the landowners from al-'Eizariyah, Abu Dis, and other Palestinian communities.<sup>125</sup>

A map based on research dating from 1945-1967 indicates that during that period, the land on which Ma'ale Adummim was later built had been strewn with Bedouin tents (see image 5). Like other semi-nomads, the Jahalin Bedouins did not live in the same place permanently, but moved their tents from time to time, depending on climate and precipitation. However, the map clearly shows that over the years, and certainly from the 1960s onward, the tribe's area of sustenance was defined and located primarily south of the Jerusalem-Jericho road. This settling of the Bedouins was a transition stage between nomadic life and permanent residence, a stage that was severed with the establishment of Ma'ale Adummim.<sup>126</sup>

Over the years, and as the construction of the settlement progressed, more Jahalin Bedouins were expelled from lands designated for development of new residential neighborhoods in Ma'ale Adummim. Thus, in 1998, hundreds of Bedouins living on the area intended for the Tsemach Hasadeh neighborhood in west-southern Ma'ale Adummim were expelled after the High Court of Justice had denied their petition against the eviction order.<sup>127</sup>

Muhammad Khalil Meqbel al-Jahalin described to B'Tselem's researcher the expulsion of his family from land on which the Nofey Sela neighborhood in eastern Ma'ale Adummim would later be built:

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<sup>124</sup> Moshe Sharon, "The Bedouins in the Judean Desert" (February 1975), available at [www.snunit.kl2.il/Bedouin/arti/0633.html](http://www.snunit.kl2.il/Bedouin/arti/0633.html); Moshe Sharon, "The Bedouins of the Hebron Hills," in Avshalom Shmueli, David Grossman, Rechavam Zeevy (eds.), *Judea and Samaria: Studies in Settlement Geography*, Jerusalem: Cana'an (1977), pp. 548-557, especially pp. 549, 554, 557; Avshalom Shmueli, *Nomadism About to Cease*, Tel Aviv: Dvir-Reshafim (1980), pp. 32, 50-51.

<sup>125</sup> B'Tselem, *On the Way to Annexation* (fn. 2), pp. 23-24.

<sup>126</sup> Avshalom Shmueli, *Nomadism About to Cease* (fn. 124), pp. 154-155.

<sup>127</sup> HCJ 2966/95, *Muhammad Ahmad Sallem Haresh and 19 Others v. Minister of Defense et al.*, Ruling of May 28, 1996.

On February 17, 1997, I was in the tent with my wife and seven children. Without warning, large forces of police and army arrived, along with bulldozers and big trucks. The soldiers came into our tent and ordered us to go outside. We sat several meters away from the tent. They opened the nearby pen, forced the flock out, and then the bulldozers demolished it. The workers who came with the army removed our belongings from the tent and threw them into a truck. Later the bulldozers demolished the tent. An officer from the Civil Administration told us that our belongings had been taken to the Jahalin Village and that we also must go there.

We refused to leave, as did the other Bedouin families whose tents had been demolished in the same way. We remained outdoors for 11 days, and the soldiers did not let us even put up a tent or any covering against the boiling sun during the day and the freezing cold at night.

Finally, despite a petition to the High Court of Justice that Attorney Shlomo Lecker filed on our behalf, we were forced to agree to move to the Jahalin Village, on the land of Abu Dis. I received 1,000 square meters of land, on which I built a tent and a pen for my flock. Since there is almost no grazing land there, I had to buy fodder for the first time in my life. Subsequently, the high cost of fodder forced me to stop raising sheep and goats. This, for me, was not only a matter of giving up an important source of income, but also a blow to my traditional way of life and culture.<sup>128</sup>

### **Choking al-'Eizariyah**

A substantial portion of the village lands of Abu Dis, al-'Eizariyah, at-Tur, 'Anata, and 'Issawiya are included within the jurisdiction area of Ma'ale Adummim and the boundaries of outline plans 420 and 420/4 for the development of the settlement. Consequently, land reserves of these Palestinian communities have been much reduced.

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<sup>128</sup> The witness gave his testimony to Kareem Jubran on August 3, 2009. For other testimonies on the expulsion of Jahalin Bedouins, see B'Tselem, *On the Way to Annexation* (fn. 2).

The story of the town of al-'Eizariyah illustrates this. The village land of al-'Eizariyah, as defined for administrative purposes during the Mandate period, encompassed some 1,135 hectares.<sup>129</sup> When Jerusalem's municipal borders were expanded in 1967, Israel annexed to the city some 43 hectares of al-'Eizariyah land. An appreciable part of al-'Eizariyah land was expropriated in 1975 to establish Ma'ale Adummim. In 1982, tens of hectares more of al-'Eizariyah land, which lie in E1, were declared state government property.<sup>130</sup> The jurisdiction area of Ma'ale Adummim now includes some 647 hectares of the village land of al-'Eizariyah.<sup>131</sup>

Given the fact that some 43 hectares of al-'Eizariyah land were annexed to Jerusalem, the Palestinian town was left with just 445 hectares – some 39 percent of its land area during the Mandate period (see image 6). The Interim Agreement of 1995 between Israel and the PLO administratively divided the West Bank into Areas A, B, and C. In Areas A and B, planning powers were transferred to the Palestinian Authority, while in Area C, the situation remained as it had been, and only the Civil Administration is empowered to approve planning schemes and issue building permits for Palestinians. Of the 445 hectares of al-'Eizariyah land which remain outside the jurisdiction areas of Jerusalem and Ma'ale Adummim, some 148 hectares are classified as Area C, in which Palestinians' chances of obtaining building permits are very small.<sup>132</sup>

As a result of the establishment of Ma'ale Adummim and its expansion, the land reserves available to al-'Eizariyah diminished greatly. Consequently, a pattern of dense construction emerged in the town (see image 7): almost every plot available for construction is utilized for tall buildings, and inside the town there is little open space left.

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<sup>129</sup> This figure and other land data pertaining to al-'Eizariyah were calculated on the basis of a computerized graphic measurement of the village land map (the fiscal map), scale 1:10,000, prepared during the Mandate period.

<sup>130</sup> Custodian of Government Property, "Seizing Possession of Government Property," August 11, 1982.

<sup>131</sup> This figure does not include the enclaves of private land belonging to residents of al-'Eizariyah, which were not part of the area which was declared government property.

<sup>132</sup> Bimkom, *The Prohibited Zone* (fn. 22), the entire report and especially pp. 157-158.

Despite this, the Civil Administration recently rejected the request of al-'Eizariyah Council to expand its outline plan and include E1 land within it. The High Court of Justice denied a petition filed by al-'Eizariyah Council against the decision of the Civil Administration. The court concluded that the petitioners had waited too long to file the petition, which attempted to annul actions (expanding the city limits of Ma'ale Adummim, approval of outline plan 420/4 for E1) that had been taken a long time ago.<sup>133</sup> According to the state, the outline plan prepared by the Civil Administration for al-'Eizariyah meets the town's present and future needs, and therefore there is no justification to expand its borders.<sup>134</sup>

In 1995, the Civil Administration approved "special outline plan" 1634/92 for al-'Eizariyah (see image 6). This plan is one of hundreds of similar planning schemes that the Civil Administration approved for Palestinian villages at the time. Generally speaking, the special outline plans suffer numerous flaws. They are un-detailed in nature: they do not mark building plots and allocate almost no land for public needs. The borders of these planning schemes were set with the objective of restricting spatial expansion of Palestinian construction, so as to leave land reserves for Israeli interests and uses. To justify these borders, the Civil Administration set a high construction density (number of housing units per hectare) in the special outline plans, which in many instances cannot be realized. On the basis of the high construction density, the Civil Administration contended that the special outline plans meet all the needs of the Palestinians.<sup>135</sup>

Plan 1634/92 for al-'Eizariyah covers approximately 213 hectares. It designates four residential zones, which differ in terms of construction density, and a public buildings zone that covers 4.8 hectares (2.2 percent of the plan area). The plan does not mark building plots and does not allocate land for commerce and industry, for public gardens, for cemeteries, and so forth. The 2.2 percent of the land designated for public buildings is miniscule. By comparison, in ten of the detailed plans that encompass most of the built-up compound of Ma'ale Adummim, 10.8 percent

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<sup>133</sup> HCJ 10921/08, *Al-'Eizariyah Council et al. v. GOC Central Command et al.* The petition was dismissed on July 1, 2009.

<sup>134</sup> *Ibid.* Response of the State, June 23, 2009. In section 35 of its response, the state contended that the number of housing units (capacity) that may be built under the outline plan approved in 1995 is 16 percent greater than the number required for the community's projected population in 2015.

<sup>135</sup> Bimkom, *The Prohibited Zone* (fn. 22), pp. 101-155.

of the area is allocated for public buildings.<sup>136</sup> Even the road system of plan 1634/92 is partial, and does not enable access to all areas designated for construction.

The planning scheme sets a high residential density, running from 66 to 150 housing units per net hectare.<sup>137</sup> The Civil Administration itself admits that it is hardly likely that this construction density is to be exhausted: in the state's response to the High Court of Justice, the Civil Administration estimated that only 43 percent of the housing units allowed under the plan will actually be built.<sup>138</sup>

Although it is not mentioned in the orders of the special outline plans, the Civil Administration assumes – and even submitted a statement to this effect before the High Court of Justice – that 30 percent of the plans' area would serve non-residential purposes (such as roads and public buildings), while the remaining 70 percent be used for residential construction.<sup>139</sup> Allocation of 30 percent of the plan's area for non-residential purposes is insufficient, certainly in an urban community like al-'Eizariyah. For comparison, the ten detailed plans of Ma'ale Adummim, referred to above allocate 66.7 percent of their area for non-residential purposes, and only 33.3 percent for residential construction.<sup>140</sup>

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<sup>136</sup> Detailed plans 420/1/1, 420/1/3, 420/1/3A, 420/1/4, /420/1/6, 420/1/7, 420/1/7/1, 420/1/7/2, 420/1/8, and 420/1/16/4. The combined area of these plans is about 405 hectares, of which some 43.7 hectares are designated for public buildings (this figure includes approximately 4.6 hectares in plan 420/1/6, defined as a "special area" and designated for a yeshiva and other public institutions). Due to the multitude of focal plans in Ma'ale Adummim and the overlap between some of the detailed plans, these figures are not 100 percent accurate, but offer a general picture of the designated land uses in the settlement.

<sup>137</sup> The term "net hectare" relates to the area zoned solely for residential construction, while "gross hectare" refers to the plan's entire area, including land zoned for roads, public buildings, and so forth.

<sup>138</sup> This conclusion is based on the state response (of October 3, 1999) in HCJ 3125/98, *'Abed al'Aziz Muhammad 'Ayad et al. v. Commander of IDF Forces in Judea and Samaria et al.* We shall elaborate on the capacity of the special outline plan for al-'Eizariyah alter on.

<sup>139</sup> Ibid.

<sup>140</sup> See fn. 136. The ten detailed plans allocate a total of some 135 hectares for residential construction, which, as noted, amounts to 33.3 percent of the total area of the plans (about 405 hectares), with the remainder for non-residential use, such as public building, open public spaces, commerce, roads, and so forth.

After deducting the 30 percent for non-residential uses, taking into account estimated realization of the plan and assuming that the average household size will be six persons, the Civil Administration concluded that plan 1634/92 has a capacity of 32,000 residents (some 5,330 housing units).<sup>141</sup> The population projections of the Palestinian Central Bureau of Statistics (PCBS) indicate that in 2009, al-'Eizariyah had only 18,103 residents.<sup>142</sup> Accordingly, the Civil Administration argued that the special outline plan meets the community's future needs and expansion of its borders is unjustified.<sup>143</sup>

However, due to the special demographic and statistical characteristics of al-'Eizariyah, the Civil Administration's calculation is wrong. In a census conducted by the PCBS in 2007, the town had 17,606 residents. Average family size was 5.1 persons and there were 3,429 households and 5,207 housing units in al-'Eizariyah.<sup>144</sup>

Ostensibly, al-'Eizariyah has a surplus of 1,778 housing units (number of housing units less number of households). Actually, most of these surplus housing units belong to 7,000 of al-'Eizariyah's residents who hold blue (Israeli) identity cards and live now in Jerusalem. Despite being residents in Jerusalem, they continue to keep their houses in al-'Eizariyah.<sup>145</sup>

Under Israeli law, East Jerusalem Palestinians lose their permanent residency status in the city in case they leave Jerusalem seven years or more. Until recently, the Ministry of the Interior

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<sup>141</sup> The estimate arises from Appendix 10 attached to the state response of October 3, 1999 in HCJ 3125/98, *'Abed al'Aziz Muhammad 'Ayad et al. v. Commander of IDF Forces in Judea and Samaria et al.* The appendix included a calculation of the capacity of outline plan 1634/92 together with the capacity of the special partial outline plan of Abu Dis and plan 1627/2/03 for the Jahalin Village.

<sup>142</sup> See [www.pcbs.gov.ps](http://www.pcbs.gov.ps).

<sup>143</sup> Architect Shlomo Moskovits, head of the Civil Administration's planning bureau, "Special outline plan 1634/05," letter to al-'Eizariyah Municipality, December 14, 2005.

<sup>144</sup> See [www.pcbs.gov.ps](http://www.pcbs.gov.ps). Dividing the number of residents counted in the census (17,606) by the size of an average household (5.1) shows that the figures provided by the PCBS are inaccurate, and that the actual number of households is 3,452. In any event, this inaccuracy does not change the overall picture.

<sup>145</sup> This information was provided in a conversation with Muhammad 'Issa Abu D'amus, a surveyor in al-'Eizariyah Municipality, held on July 26, 2009.

interpreted this provision in the law so that it was sufficient for Palestinian residents of East Jerusalem to move to other parts of the West Bank in order to revoke their permanent residency.<sup>146</sup> Fearing the loss of their residency status, tens of thousands of Palestinians, among them many residents of al-'Eizariyah who have blue identity cards, moved inside Jerusalem's municipal borders.

This phenomenon also occurs in other Palestinian communities in the area, e.g., ar-Ram and Bir Nabala, and has increased following the construction of the Separation Barrier.<sup>147</sup> The security checks at the barrier's gates and the long lines there make it very difficult for Palestinians from these towns and villages, who carry blue identity cards, to enter Jerusalem for work, study, and so forth. As in al-'Eizariyah, these communities also show the same demographic distortion, and the number of housing units there far exceeds the number of households.<sup>148</sup>

Accordingly, and as will be explained below, the special outline plan of al-'Eizariyah doesn't meet the town's needs. With respect to the demographic aspect alone, already today there are more than 5,200 housing units in al-'Eizariyah, while the Civil Administration claims that the special outline plan allows the construction of some 5,330 housing units. Hence, even according to the Civil Administration itself, the land reserves for construction in the town have almost been exhausted. Furthermore: according to figures of the PCBS, the average household in al-'Eizariyah has 5.1 persons, and not six as assumed by the Civil Administration. This difference alone would require an increase of 18 percent in the number of housing units for the target population (32,000) and require comparable increase in the plan's land area.

To complicate things further, as noted above, al-'Eizariyah has some 1,800 housing units most of which belong to residents who have moved to Jerusalem, fearing loss of their residency status there. The remaining residents of al-'Eizariyah cannot use these housing units. Therefore, the

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<sup>146</sup> B'Tselem, *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians* (April 1997); B'Tselem and HaMoked: Center for the Defence of the Individual, *The Quiet Deportation Continues: Revocation of Residency and Denial of Social Rights of East Jerusalem Palestinians* (September 1998).

<sup>147</sup> Danny Rubinstein, "This is How Israel Encourages the Right of Return," *Ha'aretz*, April 21, 2005.

<sup>148</sup> In the 2007 census conducted by the PCBS, Bir Nabala had 2,055 housing units and only 944 households, while in a-Ram and Dahiyat al-Barid combined there were 7,530 housing units yet only 4,149 households.

number of housing units needed for the target population is approximately 8,000: 5,330 under the approved plan, together with 18 percent to cover the smaller than assumed average family size (960 housing units), plus 1,800 housing units that belong for the most part to residents of the community who live in Jerusalem. In order to accommodate the construction of the thousands of housing units required in order to reach the target of 8,000 housing units, the area of al-'Eizariyah's outline plan must be enlarged by about 50 percent.

The planning flaws that characterize the special outline plan may require even greater increase in the development area of al-'Eizariyah. Plan 1634/92 hardly allocates land for non-residential purposes. The greater the construction density proposed in a planning scheme, the greater the need to allocate land for public buildings, open public spaces, and other non-residential uses. The failure of plan 1634/92 to meet these needs means that the prospects for realization of its full potential for residential construction are also undermined. This is so since some of the parcels, which the Civil Administration assumes are to be used for residential construction, actually serve public needs. It bears repeating that the detailed plans in Ma'ale Adummim zone almost 70 percent of their area for non-residential purposes, compared to the 30 percent that the Civil Administration assumes will be used for these needs in al-'Eizariyah.

Furthermore, the special outline plan includes lands that are not suitable for construction. Generally, building on an incline of greater than 30 percent is very hard, and on inclines of 40 percent and more, is almost impossible. Of the 213 hectares in plan 1634/92, approximately 52 hectares remain unbuilt. Of this non-built-up area, about 23 hectares are on inclines of 35-65 percent, and yet the plan designates them for residential construction.<sup>149</sup> By way of comparison, the detailed plans of Ma'ale Adummim zone for residential construction land with inclines of 19-28 percent.<sup>150</sup>

Plan 1634/92 was approved prior to the administrative division of the West Bank. The Civil Administration claims that a large portion of the al-'Eizariyah land is situated in Area B, which is under Palestinian planning authority, where the residents can also build on land outside the

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<sup>149</sup> There are other areas in plan 1634/92 that remain built-up. Some have old olive trees, and most of the rest are small plots, with limited potential for construction.

<sup>150</sup> These are the inclines in plans 420/1/1, 420/1/3, 420/1/6B, 420/1/7, and 420/1/16/4.

boundaries of plan 1634/92.<sup>151</sup> This claim, too, is mistaken. Most of Area B in al-'Eizariyah land lies within the special outline plan. Outside its boundaries there are some 78 hectares of Area B in al-'Eizariyah land. On about 20 of these 78 hectares there are buildings, but most of the remaining Area B land (some 55 hectares) have inclines of 40 percent and above, and are not suitable for construction.

Most of the land north and south of the town's built-up area has steep inclines. The town is blocked on the west by the Separation Barrier, which runs between it and Jerusalem's municipal border, and in the southwestern section, the built-up area of al-'Eizariyah runs up to the built-up area of Abu Dis. Hence, al-'Eizariyah could develop only eastward, where there are contiguous sections of land having moderate inclines. But this land, which lies east of Road 417, was expropriated and is now part of Ma'ale Adummim's built-up area. The unbuilt land suitable for construction west of Road 417 is part of outline plan 420/4 for E1. At present, al-'Eizariyah is choked, and its residents have no planning prospects for the community's development and natural growth.

### **Infringement of the collective right to a viable state**

Because of its location, Ma'ale Adummim is responsible for infringement of the Palestinian people's right to self-determination within the framework of a viable state that has reasonable territorial contiguity.

The area of Ma'ale Adummim is the narrowest part of the West Bank. The distance between Israel's border with Jordan in the east and the Green Line in this region is only 28 kilometers. The eastern border of the Ma'ale Adummim city limits is only some 13 kilometers from the border with Jordan, while the settlement's built-up and inhabited compound lies at a minimal distance of 20 kilometers from the border, and the Mishor Adummim industrial zone is situated 17 kilometers from it. Ma'ale Adummim, therefore cuts off about one-half of the total width of the West Bank in this area.

As described above, the topography of the area surrounding Ma'ale Adummim's is hilly, featuring sharp inclines, primarily in the valleys north and south of the built-up part of the

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<sup>151</sup> Letter from Shlomo Moskovits (fn. 143).

settlement. Together with the steep topography, Ma'ale Adummim creates a physical and functional partition between the southern and northern sections of the West Bank. Indeed, Ma'ale Adummim was established in a strategic point, thus splitting the West Bank into two cantons. The "fabric-of-life road" that the defense establishment plans to build near Ma'ale Adummim does not negate this fact: though it will enable, at best, Palestinian movement without checkpoints from Ramallah to the Bethlehem area – that is, from the northern part of the West Bank to its southern part – the spatial fragmentation will remain intact. Ma'ale Adummim creates a wedge – a huge enclave – and prevents reasonable Palestinian territorial contiguity, without which a viable state cannot be established.

Continued development of E1 will aggravate this situation by creating built-up urban contiguity between Jerusalem and Ma'ale Adummim. In addition to thwarting the prospects for the establishment of a viable Palestinian state, construction of residential neighborhoods in E1 will augment the physical and functional disconnection between East Jerusalem and Palestinian communities of the rest of the West Bank. Residential construction in E1 will result in East Jerusalem being surrounded from the north, south, east, and west by Jewish neighborhoods. Thus the separation of East Jerusalem from the rest of the West Bank - a process that has been going on for decades, and which has greatly accelerated with the construction of the Separation Barrier around the city – will be finalized.

## Summary and Conclusions

Virtually all Israeli governments have related to the Ma'ale Adummim area as territory intended to serve Jerusalem, even though its area has been under Israeli occupation since 1967 and despite the fact that international law and High Court of Justice judgments state that the occupying power is not allowed to exploit occupied territory for its own purposes.

Already in 1967, the government considered annexing the area of Ma'ale Adummim to Jerusalem. This idea was rejected primarily because the government feared a harsh international reaction. Although annexation was nixed, all actions taken by Israel in the area since the 1967 War were intended to complement the expansion of Jerusalem's municipal boundaries, and to extend *de facto* its eastern border even beyond the official city border line.

Thus, when the need for a new industrial zone for Jerusalem arose in the 1970s, the government decided to build it in Mishor Adummim, on occupied territory that had not been annexed to the city. The government justified its decision by claiming that the industrial zone would also serve Palestinians in the West Bank, though it was evident that its main purpose was to benefit the city of Jerusalem. Also in the 1970s, the Abu Dis waste disposal site was established. It, too, was intended to primarily serve Jerusalem's needs.

This conception, whereby the area of Ma'ale Adummim is part of Jerusalem, was also reflected in a plan, which was not carried out due to the filing of a petition with the High Court of Justice, to build a cemetery for Jerusalem in E1; in an approved plan to build a new waste disposal site in Mishor Adummim that would primarily serve Jerusalem; in a plan to establish in E1 a joint Ma'ale Adummim-Jerusalem metropolitan employment center; in the master plan for Ma'ale Adummim that would provide many regional functions (an airport, for example) to serve Jerusalem; and, of course, in the establishment of the Ma'ale Adummim itself, which was planned from the outset to be a suburb of Jerusalem.

It is not surprising, therefore, that the procedure employed to secure land for Ma'ale Adummim is unique: since, from the very start, Israel viewed the area of Ma'ale Adummim as an integral part of Jerusalem, the government chose to exercise the most extreme procedure possible here: permanent expropriation. This contrasts the procedure used in the same period to provide land for other settlements – i.e., military requisition orders, which at least officially are temporary in nature. Expropriation of the land in Ma'ale Adummim also contradicted Israel's official position, whereby it does not expropriate Palestinian land to enable the establishment of settlements, in violation of High Court of Justice rulings and in contravention of local and international law.

Establishment of all the settlements entailed gaining control of Palestinian land, private or public. The establishment of Ma'ale Adummim also involved expulsion of a Bedouin population that had lived on the land before the settlement was built. It also involved demolition of at least two permanent inhabited buildings on the site on which the settlement's first residential neighborhoods were built. Subsequently hundreds of Bedouins were expelled in order to vacate land designated for new neighborhoods in Ma'ale Adummim.

In recent years, Israeli governments have taken a number of measures to ensure that Ma'ale Adummim will be, for all practical purposes, a functionally and spatially a part of Jerusalem. These actions included expansion of the settlement's jurisdiction area so that it would converge

with the municipal boundary of Jerusalem; the building plans in E1, which are intended to create urban contiguity between Ma'ale Adummim and Jerusalem; and the planned route (and partially built) of the Separation Barrier, which will create contiguity between Ma'ale Adummim and Jerusalem, while disconnecting adjacent Palestinian towns and villages (al-'Eizariyah, 'Anata, Abu Dis, and others) from East Jerusalem.

In addition to the negative ramifications of these actions on Palestinian individuals and communities, the construction and expansion of Ma'ale Adummim create a spatial reality that thwarts the prospects of establishing a viable Palestinian state and severs other parts of the West Bank from East Jerusalem. From this perspective, the establishment of Ma'ale Adummim and its expansion plans have a much wider strategic significance than the local impact of most settlements. The only other settlement that creates a similar spatial reality is Ariel, which also cuts off Palestinian territorial contiguity, creating two cantons. In the case of Ma'ale Adummim, the cumulative effect is even greater than that of Ariel since, as noted, Ma'ale Adummim cuts off spatial contiguity in the narrowest region of the West Bank, largely disconnecting its Palestinian communities from their main metropolitan and religious center: East Jerusalem.