

## **Creeping Annexation in the oPt: the Case of Etzion Colonial Bloc**

### **Introduction**

1. Under the guise of occupation, Israel deploys colonial practices in the occupied Palestinian territory (oPt) to create facts on the ground that amount to de facto annexation, and presses its population transfer policies leading to de jure annexation of Palestinian territory. In recent years, this practice has accelerated, with emboldened statements, plans and legislative actions that point to an overall governmental policy aiming at the annexation of large parts of the West Bank.
2. Gush Etzion is one of six strategic colonial blocs, targeted by Israel for de jure annexation.<sup>1</sup> Kfar Etzion was the first Israeli colony, established 3 months after the occupation of 1967, and is an area inextricably linked to the narrative of Israeli nationhood.<sup>2</sup> Initially, the demand was for the re-colonization of three previous short-lived attempts to establish kibbutzim there. Today, the area commonly referred to as “Gush Etzion” applies to a land area thirty times the size of the former colonies, extending out to the south-east hilltops of Bethlehem. It contains 38 colonies and 87,000 illegal Jewish-Israeli colonizers,<sup>3</sup> that benefit from the support and protection of Israel, justified by the myth of Etzion. Etzion has continued as the standard for the entire colonial project in the oPt.
3. International (IHL) prohibits the use of occupation to engage in colonial practices that assert sovereignty over occupied land, including prohibition on the transfer of an occupier’s civilian population into the occupied territory,<sup>4</sup> the confiscation of private property,<sup>5</sup> and the requirement to respect the laws in force in the occupied territory.<sup>6</sup> Concurrently, forcible transfer and the creation of a coercive environment to induce forcible transfer are also strictly prohibited by

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<sup>1</sup> The other five are Ma’ale Adummim and Givat Ze’ev, that surround Jerusalem, and Modi’in Illit, Ariel and Karnei Shomron further north.

<sup>2</sup> David Ohana, “Kfar Etzion: The Community of Memory and the Myth of Return”, *Israel Studies*, 7(2) (2002), p.145-174.

<sup>3</sup> Israeli Government, Central Bureau of Statistics, 2017.

<sup>4</sup> *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War*, 12 August 1949, Art.49, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6DB876FD94A28530C12563CD0051BEF8> [hereinafter GCIV].

<sup>5</sup> *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, 18 October 1907, Art.46, available at: <http://www.refworld.org/docid/4374cae64.html> [hereinafter Hague Regulations]; GCIV, *supra* note 6, Art.53.

<sup>6</sup> Hague Regulations, *supra* note 7, Art.43; GCIV, *supra* note 6, Art.64.

international law.<sup>7</sup> These rules prohibit Israel from establishing facts on the ground that assume sovereignty over the oPt and lead to annexation of it into its own state.

4. Combined, these acts directly challenge fundamental Palestinian rights, most importantly the right to self-determination.<sup>8</sup> The denial of self-determination and the acquisition of territory by force, also referred to as annexation, amount to a serious breaches of an obligation arising under a peremptory norm of international law,<sup>9</sup> While annexation is not a legal category and there exists no set of definitive elements, “annexation presupposes the effective occupation of the territory in question and the clear intention to appropriate it permanently.”<sup>10</sup>

### **Colonial Expansion and Annexation in Etzion**

5. In the area of Etzion demarcated by the planned Wall, 21 colonies are supported by an intricate and permanent network of roads, checkpoints and infrastructure, all built on Palestinian land in violation of international law. The Jewish-Israeli colonizers are governed by Israeli civil laws through an impermissible and unjustified extension of Israeli jurisdiction into the occupied territory. These actions are underpinned by a number of legislative attempts and oratory appeals to annex the territory, indicative of Israeli intent with respect this area. This amounts to an indisputable situation of unlawful de facto annexation, in violation of a peremptory norm of international law.<sup>11</sup>
6. Concurrently, the remaining seven Palestinian villages in this same area, already stripped of most of their agricultural land, now face Israeli policies that apply in two ways. First, Israeli policies inhibit Palestinians from accessing their land or entice farmers away from the industry into the more lucrative Israeli labor market. This serves to place their remaining land at risk of unlawful seizure due to non-cultivation. Second, since 91 percent of this area was designated as Area C under the Oslo Accords, bringing it under full Israeli control, Palestinians also face the systematic denial of building permits and issuance of home demolition orders, and a severe lack of services. The coercive environment created forces the gradual transfer of those remaining villagers into Palestinian built-up areas (Area A), resulting in increasing cases of internal displacement and paving the way for de jure annexation of the land with fewer Palestinians.

### **A new colony: Givat Eitam**

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<sup>7</sup> GCIV, *supra* note 6, Art.49, and Rule 129 of Customary International Law

<sup>8</sup> See, UNGA Resolution A/RES/3070 (XXVIII), 30 November 1973, operative para. 2.

<sup>9</sup> International Court of Justice, Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2014, <http://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>; Charter of the United Nations, 24 October 1945, Art.2(4), <http://www.refworld.org/docid/3ae6b3930.html>.

<sup>10</sup> Rainer Hofmann, “Annexation,” *Max Planck Encyclopedia of Public International Law*, February 2013, para. 1.

<sup>11</sup> UN Charter, *supra* note 11.

7. The expansion of Etzion shows no sign of abating. On 26 December 2018, Israel announced the allocation of declared “State Land” on the southern outskirts of Bethlehem to the Ministry of Housing. The planning license came into effect on 28 January 2019. This was the final hurdle to formal establishment of Givat Eitam, after years of attempts. It also represents the end of the first stage of Israel’s process of de facto annexation beyond the planned Wall, allowing Efrat colony to expand and gradually connect Etzion with its outlining colonies of Tekoa, Nokdim, Ma’ale Amos and Asfar.
8. In this corridor, there are more than 25 Palestinian villages and significant areas of agricultural land on which Bethlehem depends. The newly appropriated land, specifically, belongs to the Palestinian villages of Khirbet An Nahla, Irtas and KHALLET al Louza, and was largely privately owned Palestinian agricultural land. For 14 years, Palestinians had undertaken litigation seeking to retain their land and prevent construction of the colony.<sup>12</sup> Now, these villages are subject to increasing pressure as Israel acerbates the policies of forcible transfer, including suppression, the denial of services, threats of colonizer violence, and restrictions on freedom of movement, to create the coercive environment that induces forcible transfer, and frees up more land for confiscation, colonization and annexation.
9. Importantly, the Givat Eitam colony itself will complete the encirclement of Bethlehem, from the north-east, around to the west, and down to the south-east. This will suffocate and isolate Bethlehem, prohibiting its natural urban growth, and slowly severing its connection to the major centers of Jerusalem and Hebron, and its surrounding villages that are the breadbasket of Bethlehem. This too creates a coercive environment that will inevitably induce further forcible transfer.
10. More broadly, in 2017, plans were advanced for construction of 6,712 new units in the oPt, which represented a 250% increase on 2016. While actual colony construction in 2018, increased 20% from 2017.<sup>13</sup> This includes approximately 560 units in the Etzion colonial bloc approved in December 2018 alone. The international community is obligated to take all necessary measures to bring an end to breaches of peremptory norms of international law, and to refrain from recognition of violations of international law.<sup>14</sup> However, without any practical measures towards accountability and insignificant international pressure, the colonial enterprise has been permitted to expand dramatically in the last two years.

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<sup>12</sup> HCJ, 2676/09, Sidqi Muhammad Abu Kamel, et al, v The Custodian of Abandoned Government Property in Judea and Samaria, (2014)(Isr.).

<sup>13</sup> “Israeli settlement activity surged in Trump era: Monitor group”, *Al Jazeera*, 2 January 2019, available at: <https://www.aljazeera.com/news/2019/01/israeli-settlement-activity-surged-trump-era-monitor-group-190102063008681.html>.

<sup>14</sup> *ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, November 2001, Art.41, available at: [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf)

11. As demonstrated by the case of the establishment and ongoing expansion of Etzion, Israel's utilizes the guise of occupation to annex, colonize and extend Israeli sovereignty to the oPt. In parallel with the assertion of its oppressive policies of forcible transfer, Israel slowly reduces the population of Palestinians in the areas it seeks to annex, paving the way for de jure annexation of the area.

### **Recommendations**

12. BADIL urges the UN and member states to recognize and utilize the applicable legal terminology with regards to the situation in the oPt as a process of annexation and colonization.
13. BADIL calls upon the UN and member states to fulfill their obligations to take concrete measures (such as diplomatic and economic sanctions, non-cooperation and military embargo) to pressure Israel to cease its annexation and colonization policies in the oPt, particularly as they pertain to the imminent construction of Givat Eitam colony.