

AMNESTY INTERNATIONAL

EXTERNAL

AI Index: MDE 15/085/2003

8 September 2003

Israel and the Occupied Territories: The issue of settlements must be addressed according to international law

Amnesty International calls on Israel to put an immediate end to the construction or expansion of Israeli settlements in the Occupied Territories and to take measures to evacuate Israeli civilians living in settlements in the West Bank and Gaza Strip. The establishment of settlements violates international humanitarian law and constitutes a serious violation of the prohibition on discrimination. The presence of settlements has led to mass violations of human rights of the local Palestinian population.

Article 49 of the Fourth Geneva Convention¹ states categorically: "...*The Occupying Power shall not deport or transfer parts of its own civilian population in the territory it occupies.*" And Article 55 of the Hague Regulations² forbids the occupying State from changing the character and nature of state property, except for security needs and for the benefit of the local population. Israel's building of settlements, roads and related infrastructure for Israeli civilians in the West Bank and Gaza does not meet these two exceptional criteria.

The Rome Statute of the International Criminal Court, in force since 1 July 2002, includes among the war crimes within the jurisdiction of the court the "*transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies...*" "when committed as part of a plan or policy or a part of a large scale commission of such crimes" (Article 8 (2) (b) (viii)). This crime is further defined in the Elements of Crimes, a supplementary instrument to the Rome Statute adopted in September 2002.

As well as violating international humanitarian law *per se*, the implementation of Israel's settlement policy in the Occupied Territories violates fundamental human rights provisions, including the prohibition of discrimination. This is a fundamental principle of human rights enshrined in treaties to which Israel is a State Party, including the International Convention on the Elimination of All Forms of Racial Discrimination, International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Israel has ratified these treaties and is obliged to uphold them.

Discrimination on grounds of nationality, ethnicity and religion is the dominant feature of Israel's settlement policy. Israeli settlements in the Occupied Territories are for Jews only and Israeli settlers are governed by Israeli law, whereas Palestinians are governed

¹ The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) of 12 August 1949. Israel has ratified the Geneva Conventions but claims that the Fourth Geneva Convention does not apply *de jure* to the West Bank and Gaza, because they dispute that these are occupied territories. The government has asserted that they will apply the humanitarian provisions of the Convention but have never specified which these are. The international community rejects this assertion by Israel (see Background).

² The Hague Convention (IV) respecting the Laws and Customs of War on Land (Hague Convention) and its annexed Regulations respecting the Laws and Customs of War on Land (Hague Regulations) of 18 October 1907. Israel accepts its provisions as customary law.

by less protective military orders and tried by military courts. Israeli settlers receive Israeli benefits and services and enjoy freedom of movement whereas Palestinians are forbidden to enter settlements unless they obtain special permit (only rarely can they obtain such permits and only as workers – not as visitors) and to use bypass roads built for settlers on seized Palestinian land.

The Israeli settlements and large areas of land surrounding the settlements are for the exclusive use of Israeli settlers. Palestinians can neither build nor farm or otherwise use this land. The Israeli settlements in the Occupied Territories also use a substantial amount of water, often depriving nearby Palestinian towns and villages.

The seizure and appropriations of land for Israeli settlements, bypass roads and related infrastructure and discriminatory allocation of other vital resources, including water, have had a devastating impact on the fundamental rights of the local Palestinian population, including their rights to an adequate standard of living, housing, health, education, and work.

Israeli settlements in the Occupied Territories have spread considerably in the past decade. During the seven years of the Oslo peace process (1993-2000) the number of Israeli settlers in the West Bank and Gaza increased by more than 50 percent. Given the spread of Israeli settlements throughout the West Bank and Gaza, in order to ensure the safety and freedom of movement of some 380,000 Israeli settlers in the Occupied Territories facing frequent attacks by Palestinians, Israel has increasingly kept the 3,500,000 Palestinians who live there confined to specific areas, subjected to closures, curfews and other restrictions on movements effectively amounting to some form of house or town/village arrest. Disproportionate restrictions on movement have crippled the Palestinian economy and contributed to widespread poverty and the emergence of malnutrition.

Previous attempts at resolving the conflict failed because they did not address these key issues. The current peace plan is likely to fail unless these fundamental human rights issues are addressed - and this means more than just dismantling the recently established settlements, referred to as “unauthorized outposts”, some of which are not even inhabited.

Israel should have never transferred its civilian population into the Occupied Territories. Now it must remedy these violations by taking concrete measures to evacuate the settlers.

Given that successive Israeli governments have consistently encouraged Israeli civilians to move to the Occupied Territories, the Israeli authorities should provide compensation to the Israeli settlers who are evacuated and assist them to resettle in Israel.

The international community, which has long recognized the illegality of the Israeli settlements in the Occupied Territories, must ensure that Israel complies with international law and takes measures to evacuate its civilians from the Occupied Territories.

The Israeli authorities must also refrain from constructing barriers/fences or other permanent structures inside the Occupied Territories which constitute or result in disproportionate restrictions on the right to free movement of Palestinians within the West Bank and Gaza or in the unlawful destruction or seizure of their property.

Israel has the right to take reasonable, necessary and proportionate measures to protect the security of its citizens and its borders. This includes measures to prevent the entry into Israel of Palestinians or others who are reasonably suspected of intending to carry out suicide bombings or other attacks. However, Israel does not have a right to unlawfully destroy or confiscate Palestinian land and property and hinder the movements of Palestinians inside the Occupied Territories in order to consolidate its control over land which is being used for illegal Israeli settlements.

BACKGROUND

Since Israel occupied the West Bank and Gaza Strip in 1967 successive Israeli governments have pursued a policy of settling Israeli civilians in the Occupied Territories, in violation of international law.

The international community has long recognized the illegality of the Israeli settlements in the Occupied Territories. For example, UN Security Council resolution 465 of 1 March 1980: "...*Determines* that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel's policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention.... Strongly deplores the continuation and persistence of Israel in pursuing those policies and calls upon the Government and people of Israel to rescind those measures, to dismantle the existing settlements and in particular to cease, on an urgent basis, the establishment, construction and planning of settlements in the Arab territories occupied since 1967, including Jerusalem..."

Similarly, the International Committee of the Red Cross (ICRC) and the December 2001 Conference of High Contracting Parties to the Fourth Geneva Convention have reaffirmed that Israeli settlements in the Occupied Territories violate international humanitarian law.

Most settlements have been established through agreed overall government policy while others have been established without prior government approval, but in most cases the latter were subsequently granted recognition and often were connected to public services such as water and electricity and were provided with army protection even before obtaining government approval. In several cases settlements were established in former Israeli army bases, which were subsequently turned over to Israeli civilians for development as residential quarters.

During the first decade of Israel's occupation of the West Bank and Gaza Strip the Israeli authorities justified the seizure of land in the Occupied Territories for establishing settlements in terms of military needs. This policy was successfully challenged before the Israeli Supreme Court, including by Israeli settlers who reiterated that the reason for establishing settlements was ideological and not military necessity, in 1979.³ Subsequently Israel declared approximately 40 percent of the West Bank as "state land", which can only be used by Israelis and Jews – a clear violation of the principle of non discrimination. With the exception of one Jewish convert Amnesty International is not aware of a single Palestinian family living in Israeli settlements in the Occupied Territories.

At present some 380,000 Israelis live in settlements in the Occupied Territories. About half of these are in East Jerusalem; some 6,000 in the Gaza Strip and the rest are spread throughout the West Bank. Successive Israeli governments have allocated significant financial resources to build settlements in the Occupied Territories and have provided substantial financial incentives, in the form of grants and tax incentives, for Israelis and new immigrants to live in settlements in the Occupied Territories.

In the years of the Oslo peace process, between 1993 and 2000, the number of Israeli settlers in the Occupied Territories increased from about 240,000 to about 380,000 – an increase of more than 50 percent. In the same periods Israel built an extensive network of roads (commonly referred to as bypass roads) in the Occupied Territories to connect the settlements to each others and to Israel, seizing and destroying large tracts of Palestinian agricultural and pasture land for this purpose.

³ Supreme Court case: HCJ 390/79, *Dweikat et al. v. Government of Israel et al.*, *Piskei Din* 34(1) 1 (*Elon Moreh*).

As a result, most Palestinian cities and many villages in the West Bank and Gaza are now surrounded by Israeli settlements and by settlers' roads and increasing restrictions have been imposed on Palestinians' movements inside the Occupied Territories to keep them away from Israeli settlements and from roads used by settlers.

Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR) stipulates that: *“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”*.

Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) stipulates that: *“The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”*.

Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) stipulates that *“In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”*.

The UN Committee on the Elimination of All Forms of Racial Discrimination in 1998 reiterated its view that *“Israeli settlements in the Occupied Palestinian Territories are not only illegal under contemporary international law but are an obstacle to peace and to the enjoyment of human rights by the whole population in the region, without distinction as to national or ethnic origin...”*.

In 2003 the UN Committee on Economic Social and Cultural Rights expressed grave concern *“about the continuing practice of expropriation of Palestinian properties and resources for the expansion of Israeli settlements in the occupied territories”*. The Committee also expressed concern about discriminatory practices regarding closures imposed on the Palestinian population and not on Israeli settlers in the Occupied Territories, and access to water resources for Palestinians. The Committee urged Israel *“to cease the practice of facilitating the building of Israeli settlements, expropriating land, water and resources, demolishing houses and arbitrary evictions”*.

Amnesty International’s work on Israel and the Occupied Territories and throughout the world was formerly restricted by its mandate to certain grave violations of civil and political rights. But AI recently has begun working on violations of economic, social and cultural rights. At the organization’s 2001 International Council Meeting AI adopted a new mission that encompasses grave abuses of economic, social and cultural rights, which allows for greater flexibility in addressing human rights problems holistically and focuses on discrimination as one of the pillars of AI’s work. At the same time, developments in the Occupied Territories in recent years have offered a dramatic demonstration of why settlements are banned under international humanitarian law. The tremendous growth and spread of settlements over the last decade, the escalating violence and abuses by all sides since September 2000, and the steep decline in enjoyment of fundamental rights by Palestinians in the Occupied Territories have made clear that respect for human rights and continuation of the settlement policy are incompatible.

Amnesty International’s opposition to the transfer of its civilian population by an occupying power into occupied territory, which is grounded in international humanitarian law, applies to all similar situations.

While Amnesty International calls for Israel to take concrete and prompt measures to evacuate Israeli citizens living in settlements in the Occupied Territories, the organization reiterates that, even though the Israeli settlers live in the Occupied Territories in violation of international law, this does not change their civilian status. Therefore the organization condemns the deliberate targeting of Israeli settlers in the Occupied Territories by Palestinian armed groups, as it condemns suicide bombings and other attacks against all Israeli civilians. Such deliberate attacks against civilians constitute crimes against humanity. Palestinian armed groups must put an immediate end to their policy of deliberately targeting Israeli civilians in Israel and in the Occupied Territories, and the Palestinian Authority must take concrete and effective measures to prevent such attacks and to ensure that anyone responsible for these crimes is brought to justice in trials which meet international standards of fairness.