

***From Palestinian Olive Groves to Canadian Courtrooms:
Resisting Israel's Land Annexation Policies in the West Bank***

The Case of Bil'in Village

The Land

Located close to the Green Line that separates the occupied West Bank from Israel, the Palestinian village of Bil'in covers 4,085 dunums,¹ almost all of which has traditionally served as agricultural land. Over the past three years, Bil'in has attained international prominence through its weekly non-violent demonstrations against Israel's Annexation Wall, which cuts through the area, appropriating roughly half of the village's land in the process. The targeting of this area of the West Bank by Israel, however, had quietly begun long before the idea of the Wall was even conceived.

The Settlement Policy

As early as 1982, the Israeli authorities declared a portion (approximately 350 dunums) of the lands of Bil'in, as well as lands belonging to the nearby villages of Deir Kadis, Kharbatha and Ni'lin, as government property, or "state land." In 1990 and 1991, the Israeli authorities declared a further 900 dunums of the village land of Bil'in to be government property. Given that according to rulings by the Israeli courts, construction of Jewish-Israeli settlements in the West Bank can be undertaken on "state land," whereas not on land privately-owned by Palestinians,² the purpose underlying the declarations was clear – to facilitate settlement construction and create facts on the ground that would consolidate Israel's control and, ultimately, sovereignty over the territory. It was to this end that the settlement of Modi'in Illit was established in 1996 (in spite of the so-called "peace process" heralded by the 1993 Oslo Accords) on some of the "state land" that had previously been appropriated from the people of Bil'in. Modi'in Illit is now the most populated Israeli settlement in the West Bank outside of East Jerusalem, with a current population of almost 40,000. According to Israeli government plans, the target population for Modi'in Illit by the year 2020 is almost 150,000 residents.

In 1999, as Modi'in Illit rapidly expanded, the Israeli Civil Administration approved a planning scheme for a new neighbourhood in the settlement that would be known as Mattiyahu East, and that would contain 1,532 housing units. This neighbourhood was planned to be built on most of the 900 dunums of Bil'in village land declared government property in the early 1990s. In 2001, an amended plan was filed which aimed to double the number of residential units to be constructed in Mattiyahu East.

Before the approval of the new plan was granted by the Civil Administration, however, contractors began unauthorised construction on the basis of the modified plan, rendering the building project illegal not just under international law but also under local planning law. It was only in January 2007 that the plan was retroactively approved by the Higher Planning Council of the Israeli Civil Administration in the

¹ One dunum is equal to 1,000 square metres.

² In practice however, significant tracts of private Palestinian land have been used for the purposes of Israeli settlement construction. One study estimates that approximately 30 per cent of settlements in the West Bank are built on land privately owned by Palestinians. See Peace Now, *Breaking the Law in the West Bank – One Violation Leads to Another: Israeli Settlement Building on Private Palestinian Property* (Peace Now, Jerusalem, October 2006).

West Bank. Irrespective of this, the implantation of Israeli settlers to Mattityahu East remains indisputably illegal under international law.

Two Canadian companies, Green Park International Inc. and Green Mount International Inc., were among the contractors that had bought the rights to the project as outlined in the planning schemes. By early 2005, Green Park and Green Mount had began the construction of some 250 residential units in Mattityahu East and had entered into contracts of sale for the individual units with Jewish-Israeli purchasers. In one of a series of cases before the Israeli High Court of Justice (HCJ)³ related to the issue of Bil'in's land, Green Park and Green Mount, along with the Israeli contractors involved, claimed that the lands they were building on in Bil'in/Mattityahu East "were purchased lawfully and for full consideration" from their Palestinian owners "many years ago" (by one of the Israeli companies – the Fund for Land Redemption, Planning and Development of Settlements, Ltd.⁴). However, as noted by the Court, they "refrained from attaching the documents attesting to these facts."⁵

Instead, it appears that back in 1990 and 1991, the Fund for Land Redemption made claims of having bought land in Bil'in and the Israeli authorities colluded with the Fund for Land Redemption and facilitated its agenda by declaring the land as "state land." In this way the Fund could avoid the lengthy and expensive procedures associated with registering the land as its own property, procedures which often expose the falsified nature of the supposed purchase deals.

The Wall

The amended, enlarged plan for Mattityahu East was originally filed in 2001. In 2002, Israel began the construction of the Wall through the West Bank. The route of the Wall in the Bil'in area matched the planning scheme for Mattityahu East and ensured that the entire Modi'in Illit bloc would remain on the western or Israeli-facing side of the Wall. This meant that 1,980 dunums, or 49 per cent, of Bil'in's land would be cut off from the rest of the village by the Wall.

Israel maintains that the Wall is necessary for its security, but in Bil'in, as elsewhere, the opposite was actually found to be the case by the Israeli HCJ:

This route cannot be explained but for the wish to include the [future] eastern part of Mattityahu East, to the west of the Fence [sic], as it is otherwise doubtful that there exists a security military reason to lay the Fence's route where it is now.⁶

Thus, in September 2007 the HCJ adjudged that the route of the Wall in Bil'in was designed not for genuine security purposes, but rather to accommodate plans for the future expansion of Modi'in Illit, and was causing unjustified harm to the residents of Bil'in. This judgment, however, failed to give due regard to the 2004 Advisory Opinion of the International Court of Justice, which held that the Wall inside the West Bank is illegal *in its entirety* and should be dismantled, not simply re-routed.

The HCJ ordered the Israeli authorities to propose, within a reasonable time, an alternative route for the Wall in the area that did not take into account settlement

³ In cases relating to constitutional matters and the legality of the actions or decisions of State authorities, including the military authorities in the Occupied Palestinian Territory, the Israeli Supreme Court sits as the "High Court of Justice."

⁴ Based in the Israeli settlement of Kedumim in the northern West Bank, this is a private company engaged in the acquisition of land in the West Bank from Palestinians and its transfer to settlers.

⁵ *Yassin v. The Government of Israel et al.*, HCJ 8414/05, 4 September 2007, para. 23.

⁶ *Ibid.*, para. 38.

planning schemes on which construction had yet to begin.⁷ According to the criteria set down by the HCJ, the re-routing of the Wall should allow Bil'in to recoup approximately 1,000 dunums of the land cut off by the original route. The proposal eventually presented by the Israeli military authorities (almost a full year after the Court ruling) provided for the restitution of only 260 dunums, and was described by the HCJ as "a direct and extreme violation of the Court ruling."⁸ The Court thus ordered the State and military authorities to present a new route within 45 days, which they have done and which again fails to uphold the principles of the Court ruling. This latest proposal would return about 600 dunums to the village, a figure which includes the 300 dunums of land that has been ruined by the existing Wall. The village was given 21 days to respond, and has rejected the new proposal. In its response to the Court the village describes a route that, although still unacceptable and illegal under international law, would at least comply with the September 2007 ruling.

The Case in Canada

In parallel to the decision relating to the Wall in Bil'in in September 2007, the HCJ issued another decision on the legality of the retroactively approved building plan for Mattityahu East. Here, the Court upheld the plan, ordering the preservation of most of the buildings already built on the village lands, and confirming that the procedure for the issuance of construction and residence permits for the remaining planned units in the western part of Mattityahu East could continue as normal.⁹

It was in this light and in light of the fact that the larger issue of the legality of Israeli settlements in occupied territories is not justiciable before the Israeli courts¹⁰ (which define settlements as a "political" issue not subject to intervention by the State's judicial branch) that Bil'in brought its struggle for justice to Canada. On 9 July 2008 the village commenced legal proceedings before the Superior Court of Quebec against the aforementioned Canadian corporations, Green Park International Inc. and Green Mount International Inc., registered in the Province of Quebec.

These companies have been involved in constructing, marketing and selling residential units in the Mattityahu East section of Modi'in Illit. The claim, filed by Mark Arnold, Bil'in Village Council's Canadian counsel, demonstrates that in so doing, the defendants are aiding, abetting, assisting and conspiring with Israel, the Occupying Power in the West Bank, in carrying out an illegal act.

In line with international humanitarian law and the Rome Statute of the International Criminal Court, the transfer of civilians from the Occupying Power into the territory it occupies is a war crime under Canada's Crimes Against Humanity and War Crimes Act of 2000. The claim thus argues that through their actions, the defendant companies have wilfully or negligently participated in the violation of both international and domestic Canadian law. As such, Bil'in Village Council is entitled to obtain the cessation of the illegal activities of the defendants, and to reparation for injury caused, under both the Quebec Charter of Human Rights and Freedoms and the Civil Code of Quebec. The plaintiffs are seeking the following remedies:

⁷ This meant that the western part of Mattityahu East, where construction was already on the way, would remain on the Israeli side of the Wall, while the eastern part, where no construction was started and where any further construction requires approval from the Israeli Minister of Defence, should remain on the Palestinian side of the Wall.

⁸ *Yassin v. The Government of Israel et al.*, HCJ 8414/05, 3 August 2008.

⁹ *Peace Now et al. v. The Minister of Defence et al.*, HCJ 143/06; *Yassin et al. v The Head of the Civil Administration in Judea and Samaria et al.*, HCJ 1526/07. Judgments of 5 September 2007.

¹⁰ See *Bargil v. The Government of Israel*, HCJ 4481/91.

- a declaration from the Superior Court of Quebec that the conduct of the defendants in constructing residential units in an illegal settlement is unlawful;
- a permanent injunction and order requiring the defendants and their directors, officers and agents to forthwith cease all construction and related activity with regard to the land of Bil'in village; and
- punitive damages of \$2 million and \$25,000 CAD, to be paid by the corporate defendants and their registered director, respectively, to the plaintiffs, as a result of injury wilfully or negligently caused.

The case is currently in its preliminary stages.