



Balasan Initiative
for Human Rights

**Annexing the Land of Grapes and Vines:
Case Study of Al Makhroul Valley**



Balasan Initiative* for Human Rights is an independent, non-partisan Palestinian human rights initiative that aims to protect and promote human rights across the occupied Palestinian territory (“oPt”), indiscriminately and as set forth in international law. Through legal advocacy, research and policy planning, we seek to challenge the policies that allow the injustices to persist in the oPt.

While advocating comprehensively in favor of human rights in the oPt, Balasan Initiative also aims to shed light on the effects of the current situation on the Palestinian Christian components, by creating and raising awareness on the narratives, hopes and experiences of Palestinian Christians, and the primordial objective of sustaining and solidifying their presence in their homeland, Palestine.

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*Balasan is the Arabic word (found also in the Holy Bible) for a tree that has existed in Palestine for thousands of years, which leaves were used to extract a healing balm to cure wounds and illnesses. The name is inspired by the vision that the respect for human rights and justice are a cure needed to end violations and suffering, and restore the humanity and dignity of all people.

Introduction

A haven-like valley in Beit Jala composed of plentiful agricultural terraces with irrigation systems dating back to the Roman period, and a rich biodiversity over the Western Aquifer Basin, one of Palestine's most important water sources. This is an accurate description of Al Makhroul Valley, very famous for its quality agricultural produce, mainly apricots, figs, grapes and olives. Part of the registered UNESCO World Heritage Site under the name of "Palestine: Land of Olives and Vines: Cultural Landscape of Southern Jerusalem, Battir", the Valley is of outstanding universal value as the agricultural practices that were used to create this living landscape reflect one of the oldest farming methods known to humankind,¹ and remain an important source of livelihood for local communities. The Valley encompasses all the elements to flourish into a significant center of agricultural production as well as tourism.

Yet, Al Makhroul Valley's huge potential is almost entirely hindered and remains restrained by the Israeli policies imposed on it over the past decades, notably through the expansion of illegal Israeli settlements and their related infrastructure such as roads and movement restrictions for Palestinians. The Valley has been the subject of Israeli land annexation interests, now supported and sponsored by the US Administration, pushing for its annexation among other large parts of the occupied Palestinian territory ("**oPt**"). The US released its "Peace to Prosperity" plan, commonly known as the "Deal of the Century", in late January 2020, in which Al Makhroul Valley is marked as an area that will be annexed by Israel.²

This process and the set of policies undertaken by the Israeli government to enable it- besides constituting the subject of grave violations under international law as this report will demonstrate- have devastating effects on the fundamental rights of Palestinians, as well as on the integrity of Palestinian lands, which has already been fragmented by the active construction of Israeli settlements in the area. Moreover, the gradual confiscation of the Valley is surely to deprive the Palestinian right and ability to develop and make use of this important place. More particularly,



¹ UNESCO: "Palestine: Land of Olives and Vines: Cultural Landscape of South Jerusalem, Battir". Available at: <https://whc.unesco.org/en/list/1492/>. Last accessed May 22, 2020

² The plan, including a map, is available at: <https://www.whitehouse.gov/peacetoprosperty/>. Last accessed on March 16, 2020.

it will inflict another significant blow on the Palestinian Christian community in the Bethlehem Governorate, after Israel has almost completed building the Annexation Wall in the Cremisan Valley, which is adjacent to Al Makhroul Valley.

Al Makhroul Valley is effectively one of the last two remaining green and recreational spaces left for Palestinians in the Bethlehem Governorate,³ and today it is under imminent threat of being annexed, therefore becoming accessible exclusively for Israelis. This is not a new situation for Bethlehem: other green areas in the past were turned into Israeli settlements, including Jabal Abu Ghneim (Har Homa Settlement) and large parts of Artas were turned into the Efrat settlement.



This report aims at shedding light on the current Israeli policies that serve the objective of annexation in Al Makhroul, and their consequences for Palestinians, including the Palestinian Christian community, followed by an analysis of such policies under international law. The report will finally propose a number of recommendations essential in order to save Al Makhroul Valley from the threat of annexation, which is materializing at a very accelerated pace.

I- Background

Al Makhroul Valley lies in a strategic location which, since ancient times, served in linking Bethlehem and Jerusalem. It is located south of Jerusalem, between the Bethlehem Area and the western Jerusalem villages that were destroyed during the Nakba of 1948, including Al Wallajeh and Ras Abu Ammar as well as towards the old train stations that served to link Jerusalem with Jaffa before 1948. The Valley is mainly located in Beit Jala, while the villages of Al Khader, Battir, Husan and Wallajeh also share parts of the area. It is located exactly 5 kilometers west of Bethlehem City and around 12 kilometers southwest of Jerusalem's Old City.

The name "Makhroul" is derived from an old Arabic word, "Makhroula", which refers to an area where rainfall gathers. There is evidence of irrigation systems being used in Al Makhroul area for the past 4,000 years.⁴ Other archeological discoveries have shown that there is evidence of human life in the Valley from the Middle Bronze Age, or about 1500 BC. The Valley has been a major food basket of agricultural produce, mainly for the benefit of Jerusalem and Bethlehem.

³ The other green space left in Bethlehem is the Cremisan Valley, which is also under direct threat of annexation and surrounded by the Annexation Wall. For more information, see: "The Last Nail in Bethlehem's Coffin: The Annexation Wall in Cremisan", available at: <https://www.saintyves.org/uploads/48b0e3006fed833d1e1ac000954819c5.pdf>

⁴ UNESCO Submission "Palestine, Land of Olives and Vines: Cultural Landscape of Southern Jerusalem, Battir" available at: <http://www.bic.com.ps/bcc/images/BaNF%20Final.pdf> last accessed on March 16, 2020.

During the Nakba of 1948,⁵ the Valley became one of the displacement paths taken by Palestinian refugees who were expelled from the western Jerusalem villages, and the armistice lines were set at the boundaries of Battir and Al Wallajeh.⁶

After the Nakba, Al Makhroul kept its position as one of the important sources for agricultural produce in the Bethlehem Governorate, particularly given its access to water resources. However, the identity and landscape of the Valley were put under serious threats of alteration after the Israeli occupation of the West Bank in 1967, when Israel, the occupying power, after having imposed military rule on the area, began a gradual process of illegal settlement, that includes land confiscations, the active construction of settlements and exploiting the natural resources of the occupied territory for its own exclusive benefit, as this report seeks to demonstrate in consequent sections.

II- Israeli Policies Imposed on Al Makhroul Valley

As per the Interim Agreements (Oslo) signed between the Palestinian Liberation Organization (“PLO”) and Israel in 1993, the oPt was divided into three categories: areas A, which make around 18% of the oPt, where the Palestinian Authority (“PA”) retains control over civil and security matters;⁷ areas B, making up to 21% of the oPt, where responsibility is divided between the PA which handles civil matters and Israel which controls security matters; and areas C, which constitute over 60% of the oPt,⁸ where Israel retains exclusive control over both civil and security matters. This arrangement was part of an interim period of five years to be followed by Israeli withdrawals and handing control of areas C to the PAlestinian Authority, which never took place to this day.

Taking advantage of its exclusive control over areas C, Israel has imposed a set of policies that ensure serving its long-term objectives: grabbing as much lands as possible from the oPt, while simultaneously transferring Palestinians out of their homeland in order to facilitate the process of annexation. Al Makhroul Valley is no exception to the policies imposed on areas C, and has witnessed a rigid application of such arbitrary policies, which basically crippled its potential and laid the ground for its illegal annexation, as follows:

A- Land Grab Policies

Immediately after its occupation of the oPt in 1967, Israel started a process of altering Palestinian land ownership to its exclusive benefit and control, contrary to the prohibitions set on the Occupying Power under international law not to alter the status of occupied lands. In doing so, Israel used a complex and bureaucratic set of “legal” tools imposed through military orders in the West Bank. The main land grab methods include declaration of “State Lands”, seizure for “military” needs, confiscation for “public needs”, and “absentees” lands.

However, the most common method of land grab in Makhroul Valley is confiscation under “public needs” pretexts, specifically for building and expanding Road 60, which is an Israeli by-pass road that crosses all the way through the occupied West Bank, serving Israelis only in Al Makhroul

⁵ Almost 100,000 Palestinians from Jerusalem villages were forcibly displaced during the Nakba. Many of those who were closed to Bethlehem from its western area found shelter in the valley. By the year 1950 those refugees were settled in other areas, including the refugee camps of Aida and Dheisheh in Bethlehem.

⁶ Bethlehem University “Battir: A Palestinian Village” available at <https://www.bethlehem.edu/page.aspx?pid=1718> last accessed on March 16, 2020.

⁷ In practice, Israel in fact has control and access over areas A and violates Palestinian sovereignty therein on almost a daily basis. For instance, military raids and detention of Palestinian from their homes in areas A are almost a daily occurrence. Moreover, entries and exists of all Palestinian cities are controlled by Israel through checkpoints, which ensures effective control in almost all aspects of life.

⁸ Palestinian Central Bureau of Statistics (PSBS)

area. According to the applicable law imposed on the West Bank, Israel is entitled to confiscate private land for public needs (including roads).

Under such pretext, Israel applied military orders to confiscate large parts of Makhrou Valley, and inaugurated the section of the by-pass Road 60, built on Beit Jala's lands in 1996, which was the outcome of a decision made by the Israeli government to build a network of roads to connect colonial-settlements with Israel in order for settlers to avoid crossing through cities under Palestinian limited control. This involved the expropriation of large sections of privately owned Palestinian lands, including church lands. Israel justifies the construction of such roads inside occupied lands under "security" pretexts, as an "interim security measure" to avoid friction between Israeli settlers and Palestinians. However, by-pass roads are part of a permanent network that facilitates the growth of Israel's colonial-settlement enterprise. In fact, there has been a clear relation between the construction of by-pass Road 60 and the growth of Israeli settlements in the western Bethlehem area: six years after the road was built the population in the settlements around it had doubled, tripling the number within a decade (from 15,515 settlers in 1995 to 45,870 in 2006).⁹

Although confiscation for "public needs" is legally permitted under a few strict conditions, including that it should benefit Palestinians as protected population, Israel uses the confiscated Palestinian lands under such pretexts to expand settlements, which are classified as grave violations of international law that mount to war crimes on one hand, and to the exclusive benefit of Israeli settlers residing illegally in the oPt on the other. Therefore, in Makhrou Valley and in many other parts of the oPt, such methods of confiscation are used in an exclusive, discriminatory manner, and for committing systematic violations under international law embodied mainly through the settlement enterprise.

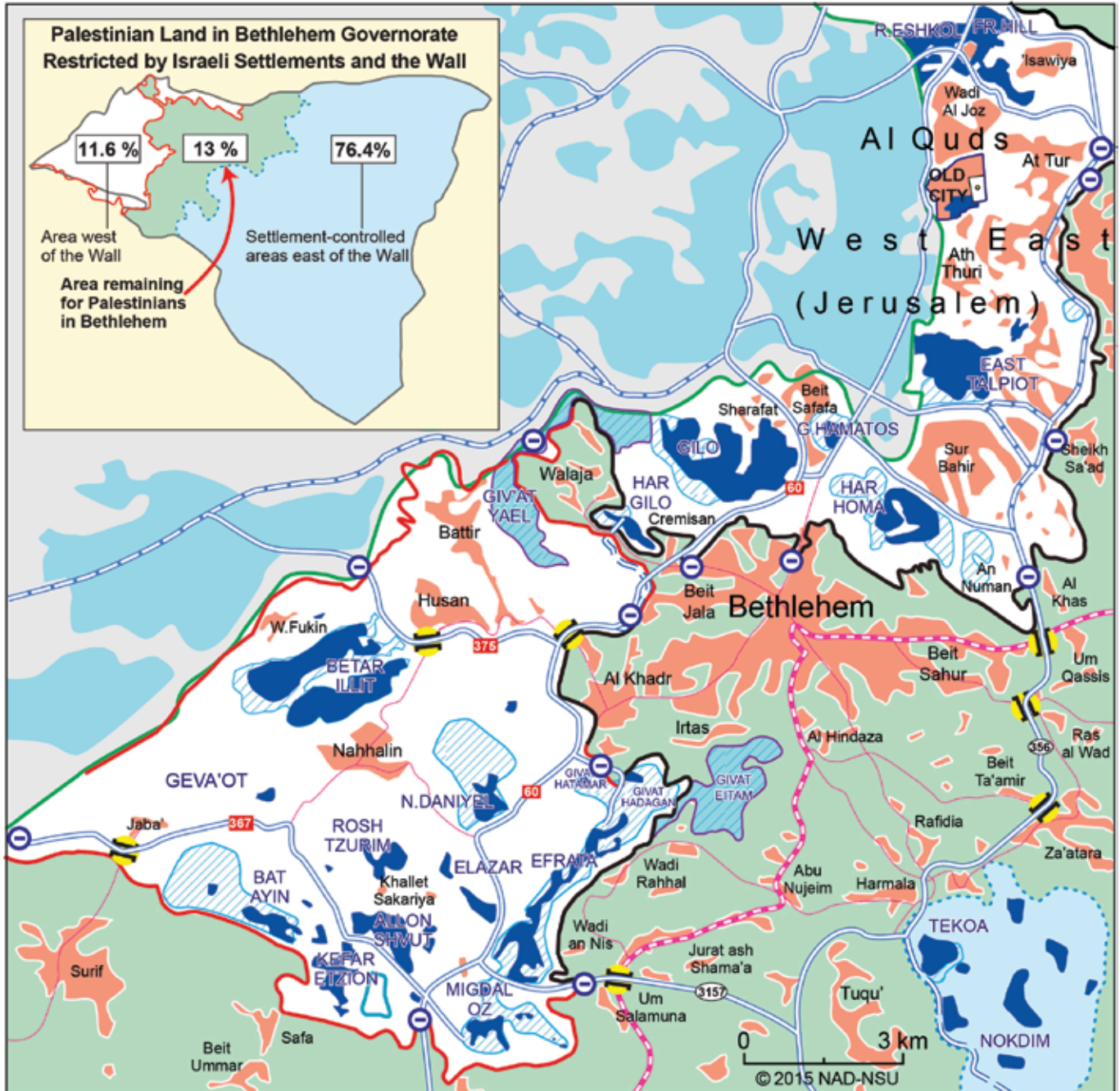
B- The Settlement Enterprise

Only a few weeks after the occupation in 1967, Israel had already begun building settlements in the areas surrounding Al Makhrou Valley. Kfar Etzion settlement was established only about 8 kilometers south of Bethlehem. In a very short time span of less than one year, the first settlement directly threatening Al Makhrou Valley was established: Har Gilo, located on the



⁹ Peace Now: "Confiscation Orders Issued for Widening of Bethlehem Bypass Road for Settlers", (September 9, 2019). Available at: <https://peacenow.org.il/en/confiscation-tunnels-road>. Last accessed: May 19, 2020.

SHRINKING BETHLEHEM



- 1967 Boundary ("Green Line")
- Palestinian city, town, village or neighborhood
- Palestinian territory west / east of the Wall
- Israeli settlement built-up area
- Planned settlement expansion area
- Proposed new settlement area
- Area of Israeli settlement control
- Israeli military base
- The Wall
 - constructed or under construction
 - approved or planned
- Israeli settler / bypass roads
 - - existing
 - planned or under construction
- Israeli controlled tunnel or underpass for Palestinians
- local Palestinian roads
- Israeli-proposed "alternative" Palestinian road link
- Israeli checkpoint

highest mountain of Beit Jala, used to be a Jordanian military base, later on occupied by the Israeli army and turned into a civilian settlement. This settlement overlooks Al Makhroun Valley, and has expanded over lands belonging to Beit Jala and Al Wallajah.

Shortly after that, more settlements were constructed around the same area, in addition to Har Gilo, including the settlements of Gilo (1970), Neve Daniel (1982) and Beitar Illit (1985). Israel's plans of annexation of occupied territory include all of those settlements built around Al Makhroun Valley.

The case of the Gilo settlement, built 2 kilometers north of Al Makhroun on lands of Beit Jala, is an example of annexation as it has been the subject of unilateral expansion to the so-called Israeli "Jerusalem Municipality" borders. Built on the hills of Al Slayeb, mainly belonging to Beit Jala and partly to Bethlehem, Beit Safafa and Sharafat, the Gilo settlement has become one of the largest Israeli settlements in the oPt. It is placed over the historic quarries of Al Slayeb, which constituted a main source of income for the people of Beit Jala before the Israeli occupation.

The "Gush Etzion Settlement Blocs"

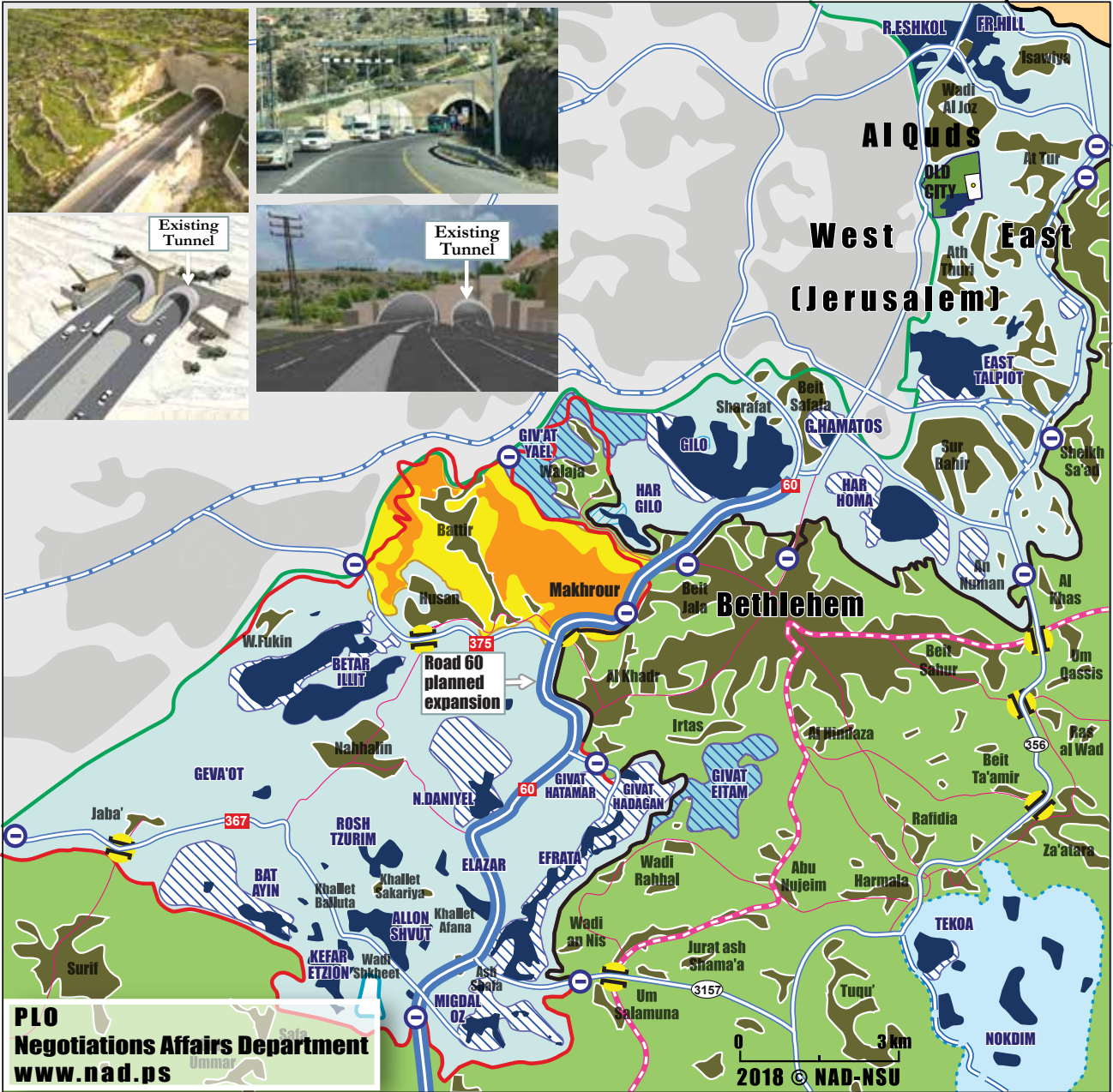
While the entirety of the Israeli settlements enterprise in the oPt is illegal under international law, Israel has consistently disputed this. As part of this strategy, it has tried to set out irreversible facts on the ground, including by inventing the term "settlement blocs". This term, which finds no basis in international law or in bilateral negotiations between Israelis and Palestinians, means that a network of Israeli settlements can be considered as one whole unit, taking over all the Palestinian land falling between them. This, precisely, is the most threatening element in the process of confiscating and annexing Al Makhroun Valley.

The settlement of Har Gilo is considered to be the first settlement of the "Gush Etzion bloc", made up by a network of relatively small settlements going from southern Jerusalem all the way through to Hebron, mainly affecting the western Bethlehem Governorate. Al Makhroun Valley stands between the settlements of Har Gilo and Neve Daniel. In addition to the settlements themselves, their related infrastructure such as by-pass Road 60 have contributed to the re-designing of the area, geographically and demographically, by the Israeli occupation. By-pass Road 60, including a network of tunnels and bridges built in and over the Cremisan valley, is serving for Israel as a new "border". When Israel approved the construction of the Annexation Wall in the oPt in 2002, it took by-pass Road 60 as a reference to draw the route of the Annexation Wall in the western Bethlehem Area. While the Annexation Wall has not yet been built in Al Makhroun, the existing policies with the the plans to annex Al Makhroun Valley in order to consolidate the existence of a "settlement bloc" are threatening the connection between Beit Jala and its hinterland, including Al Makhroun Valley.



Palestine's Heritage under Occupation

In Focus: Bethlehem's Denied Potential



C- Creation of Coercive Environment

One of the main tools that Israel has used in its quest to grab and annex Palestinian lands in areas C is the deliberate creation of coercive environment for the Palestinian residents and landowners, whose physical presence in their homes is considered an impediment to annexation in the eyes of consecutive Israeli governments.

Coercive environment is indeed a main tool in ensuring a process of illegal forcible transfer, a notion that extends beyond using actual physical force in transfer. The report of the UN Secretary General on the Human Right Situation in the oPt in 2017, states the following: “Forcible transfer does not necessarily require the use of physical force by authorities, but may be triggered by specific circumstances that leave individuals or communities with no choice but to leave; this is known as a coercive environment. {...} However, genuine consent to a transfer cannot be presumed in an environment marked by the use or threat of physical force, coercion, fear of violence, or duress.”¹⁰

In Al Makhrou, the main Israeli policies serving as tools of imposing a coercive environment on Palestinians are as follows:

1. Intentional Deprivation from Right to Development

The growth of Israeli settlements in the area at an extraordinary rate including Beitar Illit and Neve Daniel led to a situation where Al Makhrou Valley became trapped between various settlements and by-pass Road 60, diminishing any possibility for development.

When speaking of Palestinian right to development, areas C are perhaps the most crucial factor to the fulfillment of this right and its importance cannot be understated. Making up to 63,9% of the West Bank,¹¹ areas C are not only the very geographic continuity essential for the integrity of a future Palestinian State, but also constitute the majority of Palestine’s fertile lands and significant natural resources, including water resources and mineral resources.

Although the Oslo Accords provided of a framework under which there should have been a gradual Israeli withdrawal from the occupied territory, with the exception of settlements, borders and Jerusalem, in a time limit of five years (which would have expired in May 1999), to be concluded with a final status agreement, Israel solidified and expanded its control over areas C instead of gradually withdrawing from them, setting them up for annexation.

The fact that Israel has obtained exclusive control, civil and military, over areas C has resulted in the designed enforcement of extremely arbitrary and discriminatory policies on these areas to deprive any Palestinian potential for development, while at the same time exploiting Palestinian lands and natural resources to the sole benefit of its economy, including settlements, without any consideration to the rights of the Palestinians – or to the status of occupied Palestinian lands.

In this context, Israel was able to prevent the Palestinian development of areas C by illegally changing and manipulating the status of the lands. Israel designating large swathes of land, composing 60% of areas C as “State Land”, survey land, firing zones, nature reserves and national parks, as well as allocating land to settlements and their regional councils; and introducing

¹⁰ Report of the Secretary General, Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, A/HRC/34/39, 16 March 2017, paras 22, 27.

¹¹ Supra at note 8

prohibitions to the area now trapped between the Annexation Wall and the Green Line,¹² therefore effectively ruling out any chances of Palestinian development.

One of the key characteristics of such policies in areas C, where most fertile agricultural lands are located, is impeding Palestinian agriculture, a vital element in the Palestinian economy. In building settlements, coupled with vast confiscation of Palestinian lands, as well as the Annexation Wall which cuts deep inside the oPt,¹³ mainly of areas C, the access of Palestinian farmers to their lands for agricultural purposes is almost entirely barred. Al Makhrour Valley possesses advanced opportunities for producing a variety of fruits that have been produced there for centuries, yet the barriers blocking access to agricultural machinery and making use of the available water resources have significantly reduced the productivity, while denying the Valley's potential. Agricultural projects, including the plantation of hundreds of trees that require of irrigation systems, largely depend on Israeli permits, which are rarely granted. Palestinian farmers are thus left with the only option of making maximum use of existing wells that collect the rainfall, which cannot sustain major agricultural investment.¹⁴

The perspectives for development of tourism in the Makhrour Valley have grown since the inscription of the place as a UNESCO World Heritage Site. This includes the possibility of opening new touristic infrastructure such as hotels and restaurants, the design of hike trails and restoration of archeological sites. Al Makhrour Valley gives an opportunity to increasing local tourism as well as for "green tourism". Religious pilgrimage could also benefit from the connection between Al Makhrour and Cremisan, where Christian communities have worshipped for centuries. Nevertheless, all this development continues to be hindered by the restrictions imposed by the Israeli occupation: from the constant threat of construction of the illegal Annexation Wall that would leave both areas on the Israeli side, to the restrictions on construction for Palestinian infrastructure, and the demolition of existing sites, including a touristic restaurant,¹⁵ as well as the prevention to Palestinian authorities from freely delivering basic services to the area (including Beit Jala Municipality and the Palestinian Security Forces) the potential of this World Heritage Site continues to be denied.



¹² B'tselem: "Planning Policy in the West Bank", available at: https://www.btselem.org/planning_and_building, last accessed: March 23, 2020.

¹³ B'Tselem: "The Separation Barrier", available at: https://www.btselem.org/separation_barrier. Last accessed: May 6, 2020.

¹⁴ Based on interviews with landowners in Beit Jala.

¹⁵ WAFA "Israeli Forces demolish Bethlehem-district house, restaurant". Available at: <http://english.wafa.ps/page.aspx?id=00Bf-P0a111345583470a00BfP0>. Last accessed: April 15, 2020.

2. Demolition Policies

As an area classified as C as per the Oslo Accords, Al Makhroul Valley is under severe Israeli restrictions when it comes to planning and building for Palestinians. Exploiting its exclusive authorities in areas C, Israel took action against Palestinian infrastructure in Al Makhroul Valley, including any kind of construction; buildings, homes, agricultural infrastructure, water wells, and electricity poles.

In order for Palestinians to build in their own lands in area C, a building permit must be obtained from Israel's "Civil Administration", which is a body of the Israeli military administrating civil affairs in areas C. Obtaining such permits in practice is practically impossible for Palestinians due to a very discriminatory planning regime that hinders Palestinian growth while facilitating settler and settlement expansion in occupied lands. Therefore, any construction or renovation activity for Palestinian is met with a demolition order by Israeli authorities, hence the very high demolition rates in areas C for Palestinians,¹⁶ while illegal settlements continue to grow unabated.

On August 27th 2019, Israel demolished a home and a traditional restaurant owned by a local Palestinian family. The restaurant had been demolished for third time. Only a few days later, Israeli settlers began the construction of a new settlement outpost nearby the demolished structures while Israeli bulldozers had started the expansion of by-pass Road 60, provoking further damage to this World Heritage Site. In March 2020, Israeli forces returned to the Makhroul Valley to raze more Palestinian land.¹⁷

Behind the demolitions and the establishment of a new settlement outpost in the area is the Jewish National Fund ("JNF"), a semi-official organization in Israel with offices worldwide in order to fundraise for its projects, including dozens of activities in illegal Israeli settlements.



¹⁶ During 2019 alone Israel demolished more than 500 Palestinian houses in the Occupied West Bank including in and around East Jerusalem. Information available by Btselem "Israeli House Demolitions spiked in 2019 compared to previous years" available at https://www.btselem.org/press_releases/20200106_2019_house_demolitions. Last accessed: March 16, 2020.

¹⁷ WAFA "Israeli Forces raze lands near Bethlehem" available at <http://english.wafa.ps/page.aspx?id=7Z8qDWa115288696149a7Z8qDW>. Last accessed: March 16, 2020.

III- Annexation Plans in Al Makhroun Valley

A- Objectives:

The final objective of the policies described in section II of this report is to annex Al Makhroun valley to Israel, naturally making it accessible exclusively to Israelis. Indeed, given its strategic location that connects Bethlehem and Jerusalem, as well as its ecological and natural resources' richness, the vision to have Al Makhroun Valley annexed by Israel is not a novelty. In fact, such plans can be traced back to the outset of the Israeli occupation.

Bethlehem fell to the Israeli army on June 6th, 1967. One month later, the "Allon Plan",¹⁸ a plan that identifies areas of the newly occupied territories that would be retained by Israel under any scenario was presented to the Israeli Cabinet. The Makhroun Valley alongside all the western Bethlehem area was part of the areas Israel decided it would retain. While this plan obtains no legitimacy under international law and was never officially adopted, all the following Israeli maps, whether the Drobles Plan of 1978,¹⁹ and the Sharon Map of 2002, and most recently President Trump's Annexation Plan of 2020,²⁰ have all included Al Makhroun as part of the occupied areas to be annexed to Israel.

Annexation objectives in Al Makhroun come in a context of a preceding *de facto* and *de jure* annexation of occupied territory conducted illegally by Israel without accountability; Israel has annexed the occupied Syrian Golan and occupied East Jerusalem. The western part of Bethlehem, which notably includes all of Al Makhroun Valley, is part of the attempts aimed at consolidating further Israeli annexation over occupied Palestinian land.

Israel has advanced the process of annexation on two levels; the first is through imposing a *de facto* occupation and facts on the ground, with a draconian system of restrictions that hinder Palestinian development and presence in their own lands, while simultaneously sponsoring the illegal use of Palestinian land and natural resources for the benefit of its colonial-settlement enterprise. The second level is the active extension of Israeli law into the occupied territory, i.e. turning annexation into a "*de jure*" situation, which is currently ongoing with major steps taken at a large scale, through the Israeli parliament legislating directly into occupied land, emboldened with the active support of the US Trump Administration. A very clear example is the passing of the Amendment to the Administrative Affairs Court Law in July 2018, which, despite the technical legal appearance, is in fact judicial annexation and applies Israel law proper to the oPt, treating it as Israeli lands, and dropping its internationally-recognized status as occupied territory.²¹

But it was specifically in the context of the Oslo Peace Process in 1993 that the Israeli plans and intentions in annexing the western Bethlehem area were consolidated, with the introduction of the "settlement blocs" concept. As previously laid out in this report, the translation of this term to the reality on the ground is that Israel unilaterally selects a group of settlements and takes over all the (Palestinian) land between them. With the signature of the Oslo Agreement, large projects to expand Israeli colonial-settlements have been inaugurated since 1993, including by-pass Road 60, which serves the exclusive benefit of Israeli settlers' movement and settlement connectivity, in a network of tunnels and bridges across the oPt. Such projects have contributed

¹⁸ PASSIA "The Allon Plan, June 1967" available at: <http://www.passia.org/maps/view/21>. Last accessed: March 16, 2020.

¹⁹ Btselem "Land Grab: Israel's Settlement Policy in the West Bank" available at https://www.btselem.org/download/200205_land_grab_eng.pdf. Last accessed: March 16, 2020.

²⁰ Shaul, Yehuda "Trump's Middle East Peace Plan Isn't New. It Plagiarized a 40-Year-Old Israeli Initiative" in Foreign Policy, available at <https://foreignpolicy.com/2020/02/11/trump-middle-east-peace-plan-isnt-new-israeli-palestinian-drobles/>. Last accessed: March 16, 2020.

²¹ For more information, see Jerusalem Legal Aid Center's Legal Analysis: "Shaked's Proposal to Amend the Administrative Affairs Courts Law: Impact on Palestinians' Litigation", available at: http://jilac.ps/userfiles/Administrative_Affairs_Courts_Law_Amendment.pdf



to a significant rise in settler population and incentivized an increased movement of Israeli Jewish citizens into those illegal colonial-settlements. For instance, near the Makhrour valley, the number of Israeli settlers in the “Gush Etzion” area (western Bethlehem) was minimal compared to almost 80,000 settlers by 2017.²²

Settlements such as Beitar Illit had an increase in its population from 5,500 in 1995 to almost 50,000 by 2017.²³ A similar example is the settlement of Efrat, south of Bethlehem, going up from 3,500 settlers in 1995 to over 10,000 settlers in 2017. Such expansion in land and in settler population aims at changing the status of the West Bank, including East Jerusalem, internationally recognized occupied territory, to part of Israel “proper”, which would prevent Palestinian right to self-determination and the independence of the State of Palestine.

Article 31 of the Declaration of Principles (“DoP” – Oslo Agreement) specifies that “neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations.” Nevertheless, it was precisely after that date when most of the colonization projects were conducted leading to today’s situation whereby the Israeli government is preparing to unilaterally expand, once again, the boundaries of the Israeli Jerusalem Municipality towards the south, permanently annexing occupied territory. In this case, the settlements in the western Bethlehem area will be linked to the settlements of Gilo, Giv’at Hamatos and Har Homa, blocking any contact between Bethlehem and Jerusalem, and physically severing the two Palestinian cities in the process.

The announcement of the construction of the Annexation Wall in the occupied Palestinian territory, approved on June 2002, confirmed Israel’s annexation intentions: All the Western Bethlehem Area, in addition to the Cremisan Valley and the areas north of Bethlehem where to be de facto annexed through the construction of the annexation Wall. Based on the request of Palestine, the International Court of Justice (“ICJ”) issued an advisory opinion in July 2004 on the question of legality of the Annexation Wall built by Israel in the oPt (hereafter referred to as the

²² PLO Negotiations Affairs Department “Media Brief on Israeli Settlements in the Western Bethlehem Area” available at <https://www.nad.ps/en/media-room/media-brief/media-brief-israeli-settlements-western-bethlehem-area>. Last accessed: March 17, 2020.

²³ Id.

“Advisory Opinion”). The ICJ’s Advisory Opinion authoritatively declared that the Annexation Wall to be illegal under international law.²⁴ Regarding the prospects of annexation, the ICJ stated in its decision that “settlements established by Israel in breach of international law in the Occupied Palestinian Territory – construction of the wall and its associated regime create a *fait accompli* on the ground that could well become permanent – Risk of situation tantamount to *de facto* annexation – Construction of the wall severely impedes the exercise by the Palestinian people of its right to self-determination and is therefore a breach of Israel’s obligation to respect that right”.²⁵

What was described by the ICJ as the “risk of situation tantamount to *de facto* annexation” is fast becoming a reality on the ground enforced by occupation forces under the orders of the Israeli government. The coordination between the US Administration and the Israeli authorities ended up with the release of a US “Vision of Peace” in the form of a plan released on January 28, 2020 which aims at legitimizing the Israeli annexation of vast areas within the occupied Palestinian territory, including Al Makhroun valley.²⁶ Other areas of Bethlehem vital for its natural growth, environmental sustainability and economy, such as Cremisan, Mar Elias and Jabal Abu Ghneim also appear to be annexed by this plan.

B- Impacts

The Israeli objectives in annexing the Jordan Valley serve the official vision of creating a “Greater Jerusalem”, which entails connecting three major settlement “blocs” built inside the West Bank to the Jerusalem city center: Ma’aleh Adumim, Giv’at Ze’ev and Gush Etsion, not only in terms of territory, but also in a vast settler population, which will artificially alter the demographics of Jerusalem to predominantly Jewish-Israeli. The official annexation of the three settlements to Jerusalem is the subject of an alarming bill standing in the Israeli Parliament entitled as the “Jerusalem and its Daughters” bill.

With consensus on annexation within the new Israeli unity government which was formed in May 2020, methods of annexation are not identified yet, but from past experiences of Israeli annexation of Jerusalem and the occupied Syrian Golan, it will most likely strip Palestinians from the ownership of their lands in an all-together manner. For instance, to do this in Occupied East Jerusalem, formally annexed since 1980,²⁷ Israel has created and used “legal” tools, such as the “Absentees Property Law” of 1951 to enable taking over property of Palestinians it has identified as “absentees”, including people that have been forcibly displaced or prevented from reaching their homes, in this case involving Palestinians living outside East Jerusalem.²⁸

Since Palestinian development and access to Al Makhroun area is already restricted through a situation of *de facto* annexation, turning this into a *de jure* annexation will enable a mass process of land grab and expansion of Israeli infrastructure, eliminating the already fragile Palestinian presence. Accordingly, the western Bethlehem area, including the entirety of Al Makhroun Valley, would become a reservoir for further Israeli settlement expansion, in population and infrastructure. The planned annexation of the Valley would also cripple all Palestinian agricultural activities and tourism industry potentials.

²⁴ International Court of Justice “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”. Advisory Opinion of 9 July 2004. P 5 available at <https://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>. Last accessed: March 8, 2020.

²⁵ Id, Paragraph 122.

²⁶ The plan, including a map, is available at <https://www.whitehouse.gov/peacetoprosperity/>. Last accessed on March 16, 2020.

²⁷ Knesset “Basic Law: Jerusalem, Capital of Israel” available at https://www.knesset.gov.il/laws/special/eng/basic10_eng.htm. Last accessed: March 17, 2020.

²⁸ Norwegian Refugee Council “Legal Memo: The Absentee Property Law and its Application to East Jerusalem” available at https://www.nrc.no/globalassets/pdf/legal-opinions/absentee_law_memo.pdf. Last accessed: March 17, 2020.

Moreover, annexing Al Makhrou, as one of the last two remaining green, open-air areas in Bethlehem would limit the presence of Palestinians into shrinking municipal borders. With the JNF being directly engaged in increasing presence of settlers in Al Makhrou Valley,²⁹ it is very possible that Israel may plan for Al Makhrou to become a nature reserve for the exclusive benefit of Israeli citizens generally, and settlers specifically. The JNF receives donations from around the globe, including some countries that provide tax benefits to contributors to the Fund's work, which mainly dispossesses Palestinians from their lands and displaces them for the benefit of Israeli settlers. Currently, dozens of projects are run by the JNF inside occupied territory, including in areas under threat of annexation or that have been already annexed, such Silwan in occupied East Jerusalem, the Jordan Valley and most recently in Beit Jala.³⁰

This scenario will present significant obstacles for Palestinians to reclaim their lands, even in mere procedures of registration, making Al Makhrou Valley a fertile ground for further expropriations and settlement activities while depriving the community of Beit Jala and the extended Bethlehem Governorate of one of its most traditional spots, a listed UNESCO World Heritage Site Under Danger, and a vital place for the cultural, economic and social fabric of the area.



Specific Impact on the Palestinian Christian Communities

Following the Nakba of 1948, severe demographic changes took place in Palestine, including the forcible displacement of over 700,000 Palestinians, Christians and Muslims, constituting the equivalent of two-thirds of the total Palestinian population at the time. This dramatically affected the life of ancient Christian communities in Palestine, forcing the majority of its members into exile. As for the case of Bethlehem, part of the area that remained under Arab control between 1948 and 1967, it had to adapt to a new reality, one where thousands of refugees from neighboring villages were received and settled in it. The process of taking in refugees, led by the then ruling Jordanian Authorities and the United Nations Relief and Works Agency ("UNRWA"), caused a sudden population growth suffered by Bethlehem, and the neighboring cities of Beit

²⁹ Peace Now "New Outpost on Land Where the JNF Evicted Palestinians Near Bethlehem" available at <https://peacenow.org.il/en/new-outpost-on-land-where-the-jnf-evicted-palestinians-near-bethlehem>. Last accessed: March 17, 2020.

³⁰ Peace Now "Involvement of KKL-JNF and the Settlement Division in the Settlements" available at <https://peacenow.org.il/en/involvement-of-kkj-jnf-and-the-settlement-division-in-the-settlements> last accessed: March 17, 2020.

Sahour and Beit Jala.

After the Nakba, the Bethlehem area became the main center of Christian population in what was left of historic Palestine. Despite the geographic proximity to Jerusalem, and a specific spiritual relationship between the two cities which represent the pillars of the Christian faith; Nativity and Resurrection, the Jerusalem closure policy imposed by Israel has severed, for the first time in history, the connection between the cities, geographically, politically and spiritually. Therefore, the daily connection with Jerusalem, including access to its holy places, educational centers and hospitals among other institutions was hindered. Moreover, Israel's colonial-settlement project which began with the occupation of 1967 has effectively taken over most of the lands in the northern Bethlehem area.

In addition, the arbitrary policies that Israel imposes on areas C widely affect Palestinian Christian communities, in their capacities as land and house owners. For instance, Israel issued a demolition order against the Orthodox Housing Project in Beit Sahour, a project made by the local community to sustain the presence of young Palestinian Christian families, due to its proximity to the illegal Israeli Annexation Wall and the colonial-settlement of Har Homa (Jabal Abu Ghnem).³¹

With this context, the only available place for natural growth of Palestinian Christians has been towards the west, including upper Beit Jala, Cremisan and Al Makhroul. The three areas are either classified as Area C or have been formally and unilaterally annexed to the Israeli "Jerusalem Municipality". The current Israeli policies in the area are effectively preventing the last prospects for Palestinian Christians to develop a sustainable presence in the Bethlehem Governorate.

Specifically in Al Makhroul, the vast majority of the Valley is owned by Palestinian Christian families, primarily from Beit Jala: Out of 506 registered lands in Al Makhroul, 466 lands are owned by Palestinian Christian families, which represents 91.5% of the total of registered lands.³² Many families use their lands for cultivating various agricultural produce and profit off it. The annexation of Al Makhroul would be of drastic consequences on the local Palestinian Christian community in the area, robbing them not only of their livelihoods in terms of lands and assets, but also from their history, identity, culture, and future in their homeland; for this, it is very likely that the families who will be deprived from their lands due to annexation will emigrate from Palestine. Over 72 years since the Nakba and 52 years of occupation, this has been proven to be the case for Palestinian Christian communities, where loss of land is indeed a key factor in emigration.

In the Cremisan Valley, which is the other side of the Al Makhroul Valley, two main Christian Institutions are located: the Cremisan Monastery, including the winery and the Salesian Convent, which also operates as a school. The Latin Patriarchate of Jerusalem owns lands in the area, and the Greek Orthodox Patriarchate of Jerusalem owns lands in the mountain separating Cremisan from Al Makhroul Valley (within the area of expansion of the illegal colonial-settlement of Har Gilo).

Additionally, the economic potential of the valley, including with regards to tourism and agriculture, as well as the rich environmental value of the place, make Al Makhroul Valley a critical place for the present and future of the Palestinian Christian presence in the Bethlehem area, which remains the main Christian concentration within the occupied State of Palestine. Therefore, the annexation of Al Makhroul Valley would constitute a significant blow to the presence of Palestinian Christians in their homeland.

³¹ Reuters "Christian Housing Faces Israeli Encirclement" available at: <https://www.reuters.com/article/idUSLB710547>. Last accessed on March 17, 2020.

³² Beit Jala Municipality records, accessed upon interview on May 6, 2020.

IV- Legal Analysis

In this section, the aforementioned policies adopted by Israel in Al Makhroun Valley, including the illegal settlement enterprise and its associated infrastructure, such as by-pass roads, systematic land grab, the illegal exploitation resources and annexation will be examined under international law, including International Humanitarian Law (“IHL”), International Human Rights Law (“IHRL”), and International Criminal Law (“ICL”).

To understand the laws applicable in the oPt, a contextual framework must be established, starting with the Israeli belligerent Occupation of the West Bank, including Jerusalem, and the Gaza Strip in 1967, with Israel exercising its effective control since, violating a wide set of rules of international law and intentionally hindering the inalienable right of self-determination for Palestinians.

A- Applicability

Given the 73 years of Israel’s occupation of the oPt, IHL and IHRL are the main sources of laws applicable to the situation at hand. Their applicability has been addressed and confirmed by the International Court of Justice (ICJ),³³ United Nations Security Council (UNSC),³⁴ and United Nations General Assembly (UNGA). Although Israel upholds that it is unbound by this framework, on the basis that the oPt falls out of its territorial scope, the ICJ has authoritatively settled this issue in its Advisory opinion of 2004, where it has resolved that Israel continues to have the status of Occupying Power in the oPt and is bound, as such, by customary international law and the humanitarian and human rights treaties it has ratified, including, among others, the Fourth Geneva Convention.

The two principal international instruments on belligerent occupation are the Hague Regulations and the Fourth Geneva Convention. The Hague Regulations have become generally accepted to the extent that they constitute norms of customary international law.

Article 42 of the 1907 Hague regulations defines occupation as any territory “placed under the authority of the hostile army”. According to this definition, the Israeli occupation is under the obligation to administer the oPt for the benefit of the protected Palestinian population.

The situation falls within the definition provided in Common Article 2 to the four 1949 Geneva Conventions which provides that they apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties. This was reaffirmed by numerous United Nations Resolutions.³⁵ Various Provisions regulating occupation can also be found in The Hague Regulations of 1907, the Fourth Geneva Convention and Additional Protocol I of 1977.

While in occupation, an Occupying Power is prohibited from changing the existing legal order; it must apply the laws that it finds in force there. While it may take action limited to military necessity to protect its forces, it must respect the population, their customs and their way of life. It may not exploit the people or resources for its own benefit.

As to IHRL’s applicability is confirmed in the Advisory Opinion, issued by the ICJ in 2004. As expressed

³³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136; Paras. 95, 92

³⁴ UNSC Resolution 446

³⁵ UNSC: 242/1967, 237/1967, 338/1973, 446/1979, 338/1973, 242/1967, UNGA: 2443/1968, 2252/1967, 2256/1967, 2257/1967, 2628/1970.

by the Court, the Israeli occupation is under the obligation to ensure the implementation and respect of the obligations and provisions laid down in the International Covenant on Civil and Political rights (ICCPR),³⁶ the International Covenant on Economic, Social and Cultural rights (ICESR),³⁷ the Convention on the Rights of the Child (CRC).³⁸

The ICJ in its advisory opinion further affirmed the Palestinian people's right to self-determination, a right *erga omnes*, asserted repeatedly by the UNGA,³⁹ UN Human Rights Council (UNHRC) and by various relevant human rights treaty bodies,⁴⁰ as well as Special Procedures mandate holders (Human Rights Rapporteurs).

The Rome Statute of the International Criminal Court ("ICC") is yet another instrument that provides jurisdiction over crimes stipulated in the Statute and committed in the oPt, since Palestine's accession to it June 13th, 2014. On December 20th, 2019, the ICC Prosecutor found that there is a reasonable basis to start an investigation into the 'situation Palestine', pursuant to Article 53(1) of the Rome Statute. According to the Office of the Prosecutor ("OTP"), there are reasonable grounds to believe that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip.

The policies individually and collectively are no doubt in violation of multiple international law rules explained and analyzed below in the light of applicable legal norms.

B- Analysis of Israeli Policies Under International Law

1. Land Grab Policies

The situation in the oPt "is a vivid illustration on the use of land rights as a means of oppression".⁴¹ The planning system on the West Bank, implemented by the Israeli Civil Administration, a body of the Israeli military, is one of the most powerful mechanisms of the Israeli occupation and is inseparable all other policies leading up to the objective of annexation.

Israel, in its capacity as Occupying Power, has created and upheld complex legal-bureaucratic mechanisms to grab more Palestinians lands for building and expanding its settlements; including the declaration and registration of land as «State Land»,⁴² after altering their ownership from privately owned Palestinian lands to lands owned by the "government of Israel". A most recent study demonstrates that 99.76% (about 674,459 dunams) of state land allocated for any use in the Occupied West Bank was allocated for the needs of Israeli settlements and Palestinians were allocated, at most, only 0.24% (about 1,625 dunams).⁴³ A different set of other "legal tools" are also used by Israel to grab lands in the oPt, such as requisition for military needs, declaration of land as abandoned property and the expropriation of land for public needs. In addition, Israel has also helped its Jewish citizens to purchase land on the free market.⁴⁴ All mechanisms combined have led to vast take-over of privately owned Palestinian lands in the oPt,⁴⁵ and they serve

36 Wall Advisory opinion, Para 111.

37 Id. Para 112.

38 Id. Para 113.

39 General Assembly Resolution 71/98 (A/RES/71/98)

40 Human Rights Committee (CCPR), General Comment 31 (2005), para.10; see concluding observations on Israel's periodic reports: E/C.12/1/Add.90, para.31; CCPR/C/ISR/CO/4, para.5; CRC/C/ISR/CO/2-4, para.3; CAT/C/ISR/CO/4, para.11; CERD/C/ISR/CO/14-16, para.10.

41 HUSSEIN, Hussein Abu; MCKAY, Fiona. 2003. Access denied: Palestinian land rights in Israel. London; New York: Zed Books.

42 Lein, Yehezkel; Weizman, Eyal (May 2002). Land Grab: Israel's Settlement Policy in the West Bank (PDF). B'Tselem. ISSN 0793-520X.

43 Peace Now, "State Land Allocation the West Bank - For Israelis Only", available at: <http://peacenow.org.il/en/state-land-allocation-west-bank-israelis>

44 Id

45 One million dunams (250,000 acres) in the West Bank, composing 16% of the total land of the West Bank were declared "State Lands".

two main purposes: the first is to ensure Israeli-exclusive control of the lands, and the second is to use and exploit the lands and for the sole benefit of Israel, namely for settlements. Both purposes are illegal under international law, and accordingly, the mechanisms used to achieve them are also deemed illegal, as the protection of private property against confiscation is a long-standing rule of customary international law.

The prohibition of confiscation of private property is codified in Article 46 of the Hague Regulations stipulated clearly that “Private property cannot be confiscated”, while article 23 also provides that it is “especially forbidden” to destroy or to seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war.

Further, in situation of occupation, the occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties and administer them in accordance with the rules of usufruct.⁴⁶

Article 17(2) of the Universal Declaration for Human Rights states that “No one shall be arbitrarily deprived of his property”.

The right to property is enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) and the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”).

Under ICL, grave breaches that constitute war crimes in this context include the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” which is stated in Article 53 of the Rome Statute.



⁴⁶ (Regulations respecting the Laws and Customs of War on Land, art. 55 (annex to Convention (IV) respecting the Laws and Customs of War on Land); International Committee of the Red Cross (ICRC), Study on Customary International Humanitarian Law, rule 51 (b)113

2. Settlement Enterprise & Its Associated Infrastructure

Successive Israeli governments have initiated, approved, planned and funded settlements in the West Bank, shaping the life of Palestinians in the oPt accordingly, as they have a destructive and multidimensional impact on their livelihoods and violate their fundamental human rights such as, inter alia, roads designed mainly for settlement connectivity; roadblocks, checkpoints, and other measures that limit Palestinian movement, and in the case of Al Makhrou, as demonstrated in this report, denying access to farmlands,⁴⁷ while providing settlers with infrastructure, services, and subsidies, creating and sustaining a separate and unequal system of law, rules, and services on the same occupied land. The associated regime includes jurisdiction areas, roadblocks, gates, checkpoints, segregated roads, and by-pass roads, causing severe movement restrictions that harm all aspects of the daily Palestinian life.

The UN Security Council, in its Resolution 446 in 1979, determined that “the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity”. This was reaffirmed in its Resolution 2334, which clearly indicated that the establishment of Israeli settlements in the Occupied Palestinian Territory has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace.

UNSC Resolution 465 of 1980 considered that all “measures taken by Israel to change the physical character, demographic composition, institutional structure of the Palestinians and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity”, condemning the Israeli policies and practices undertaken of settling its own population within the oPt, considering such policies a violation of the Fourth Geneva Convention. This stance has been reaffirmed in various UNSC Resolutions such as Resolution 674 of 1990, Resolution 677 of 1990, and Resolution 752 of 1992. The UNGA has also repeatedly reaffirmed this prohibition calling Israel to comply with article 49 of the Fourth Geneva Convention.

The ICJ referred in the Wall advisory opinion to the fourth Geneva Convention with regards to Israeli settlements and concluded that “the Israeli settlements in the oPt (including East Jerusalem) have been established in breach of international law”.⁴⁸



⁴⁷ (Regulations respecting the Laws and Customs of War on Land, art. 55 (annex to Convention (IV) respecting the Laws and Customs of War on Land); International Committee of the Red Cross (ICRC), Study on Customary International Humanitarian Law, rule 51 (b)113

⁴⁸ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, para 120.

A belligerent Occupant is prohibited from transferring population into the occupied territory, this prohibition branches from article 43 of the Hague Regulations, which requires an Occupant to maintain the civic life of the population. Bringing new populations into the territory violates that obligation. The prohibition is also stated in specific terms in article 49 (6) of the Fourth Geneva Convention, which states that “the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”. It is further a grave breach according to the article 85 of Additional Protocol I, as it changes to the demographic composition in the oPt.

In the Wall advisory opinion, ICJ has found Israel to be in violation of this provision with regard to its settlements in the West Bank.⁴⁹ IHL, including the International Covenant on Civil and political rights (“ICCPR”), International Covenant on Economic, Social and Cultural Rights (“ICESCR”) and the convention on the Rights of Child (“CRC”).

“Israeli practices the only discernable purposes of which appear to be promoting life in the settlements while in many instances stifling growth in Palestinian communities and even forcibly displacing Palestinian residents. Such different treatment, on the basis of race, ethnicity, and national origin and not narrowly tailored to meet security or other justifiable goals, violates the fundamental prohibition against discrimination under human rights law”⁵⁰

The human rights violations stipulated in the Wall advisory opinion in relation to settlements are destruction and requisition of properties, restrictions on freedom of movement of inhabitants of the oPt, impediments to the exercise by those concerned of the right to work, to health, to education and to an adequate standard of living and altering demographics in the oPt.

Moreover, under ICL, “transfer”, constitutes a war crime for any individual who engages in this violation. Article 8 of the Rome Statute refers to the transfer of the occupying power civilians’ whether directly or indirectly, into the occupied territory as a war crime. The transfer of Israeli civilians into the oPt, is considered an “exceptionally serious war crime”.⁵¹

3. Deprivation of the Right to Development

Article 1 of the 1986 Declaration on the Right to Development defines this right as:

“an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.”

⁴⁹ ICJ, 2004, Legal consequences of the construction of a wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, para. 120.

⁵⁰ Human Rights Watch: “Separate and Unequal: Israel’s Discriminatory Treatment of Palestinian in the oPt”. Available at: <https://www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied>

⁵¹ UN Doc A/46/10 (1991) 2 YBILC 2, 105, para 7; Draft Code of Crimes against the Peace and Security of Mankind with commentaries 2 Year Book of the International Law Commission 2 (1996).

The right to development is actively being denied in the oPt, where access to natural wealth and resources are restricted by the countless policies and practices of the Israeli occupation, systematically and routinely⁵². Israel, the Occupying Power, has “developed and implemented in order to control and limit human rights, freedoms, and the social and economic development of the protected Palestinian population”.⁵³

Israel is under the obligation to protect populations under belligerent occupation and to administer the territory for the benefit of the occupied population, without acquiring sovereignty. The means of implementing the right to development include removing obstacles to development, including human rights violations, racism, colonialism, occupation and aggression.⁵⁴

United Nations General Assembly Resolutions 69/20, 70/12 and 71/20 requested to assess and report on the economic costs of the Israeli occupation for the Palestinian people by the United Nations Conference on Trade and Development (UNCTAD). UNCTAD concluded that Palestinian economy requires addressing the constraints and measures imposed by Israel, the occupying power, *inter alia*,⁵⁵ restrictions on the movement of people, labour and goods; systematic erosion of the productive base; the confiscation of land, water and other natural resources; separation from international markets; more than a decade of blockade and economic siege in the Gaza Strip; and the costly fragmentation of the Palestinian economy into three disjointed, disintegrated regions, in the Gaza Strip and the West Bank, including East Jerusalem.

Occupying powers that have caused harm have been recognized to bear an obligation for restitution.⁵⁶ This has been ordered by international courts and the Security Council of the United Nations and has been provided for in peace treaties. Israel bears legal responsibility for the costs it has entailed during its occupation of Palestinian territory.⁵⁷ This obligation falls on Israel by virtue of its status as a prolonged belligerent Occupant. If Israel fails to ensure this right over a long period, the negative economic consequences are serious.

The applicability of the right to development in the oPt has been acknowledged by the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. “The right to development has been recognized as a human right itself, which raises its status to one with universal applicability and inviolability.”⁵⁸

4. Exploitation of Natural Resources

Israel’s constant and continuous exploitation of natural resources in the oPt permanently affects the population and land, creating a coercive environment. The responsibility of an occupier is to administer the territory, including the natural resources, according to the laws of war in order to safeguard the capital of the properties in the occupied territory and support its development. Israel, however, uses natural resources in the oPt in direct discrimination to benefit its national economy, and illegal settlements and for proposes far from military or security needs.

⁵² Al Haq Submission: “The Importance of a Legally Binding Instrument on the Right to Development”, available at: <https://www.ohchr.org/Documents/HRBodies/HRCouncil/AdvisoryCom/RighttoDevelopment/Al-haq.pdf>. Last accessed: 6 June, 2020

⁵³ Id.

⁵⁴ Declaration on the Right to Development, article 3, 5, and 6. <https://www.un.org/en/events/righttodevelopment/declaration.shtml>

⁵⁵ UNCTAD: “The Economic Costs of the Israeli Occupation for the Palestinian People and their Human Right to Development: Legal Dimensions”, available at: https://unctad.org/en/PublicationsLibrary/gdsapp2017d2_en.pdf. Last accessed: June 3, 2020.

⁵⁶ UN: The Question of Palestine, available at: <https://www.un.org/unispal/document/the-economic-costs-of-the-israeli-occupation-for-the-palestinian-people-and-their-human-right-to-development-legal-dimensions-unctad-study/>. Last accessed: June 3, 2020.

⁵⁷ Id.

⁵⁸ United Nations, General Assembly, 2016, Situation of human rights in the Palestinian territories occupied since 1967, A/71/554, New York, 19 October, para. 38.

Natural resources are essential to one's wellbeing and the enjoyment of basic human rights enshrined especially in the ICCPR and ICESCR, these rights include the right to life, right to health, adequate standards of living, food, water, housing and property, as well as collective rights, including people's right to self-determination, permanent sovereignty over natural resources and the right to development aforementioned.

In IHL, Article 28 and 47 of The Hague regulations and article 33(2) of the GCIV prohibit the pillage of private and public property. Further, the unjustified destruction, provided for in article 53 of the fourth Geneva Convention.

Additionally, the coercive environment resulting from the exploitation of resources and associated planning system, may result in forcible transfer, a war crime under the Rome Statute.⁵⁹

Finally, International Environmental Law ("IEL") – the Stockholm Declaration, United Nations Convention on the Law of the Sea ("UNCLOS"), and the Rio Declaration, all affirmed the synergy between human rights situation and the environment. The obligation codified in IEL include the sovereignty over natural resources aforementioned, and the prevention, reduction and control of environmental damage.⁶⁰ Accordingly, states must further take precautionary measures.

C- Annexation Under International Law

In order to establish a future claim of sovereignty over the oPt, Israel, the Occupying Power, has imposed intentionally irreversible changes such as the policies described in Al Makhrouf, in order to impose *de facto* exclusive control. Effective control, exercise of sovereignty, expression of intent, refusal of international law norms and directions fall directly under factors associated to annexation, and moving it to a *de jure* situation.⁶¹

The Absolute prohibition on annexation/territorial acquisition with the application of domestic law into occupied territory, as a manifestation of the use of force and violation of the right to self-determination, is an *erga omnes* obligation.⁶² The UN charter stipulates in article 2 (4) that "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.» Firstly, as a member State in the United Nations, Israel is obliged to respect the territorial integrity of the oPt, which has direct implications on the inalienable right to self-determination of the Palestinian people. Irrespective of Israeli measures, the rights to self-determination of Palestinians continues to exist and be protected under international law, as an essential principle of international law, and a *jus cogens* norm leading to obligations erga omnes.⁶³

Specifically under its IHL obligations as an Occupying Power, Israel is obliged to abide by the absolute prohibition of annexation of the oPt as set forth in Articles 4 and 47 of the Fourth Geneva Convention prohibit the occupant from annexing occupied territory, imposing its sovereignty over it, or applying any measures of a sovereign nature.

⁵⁹ Al Haq: "An environmental Approach: the protection of the natural resources in the oPt", p.27.

⁶⁰ Id. p.16

⁶¹ UN Human Rights Council, Human rights situation in the Occupied Palestinian Territory, including East Jerusalem, 22 October 2018, A/HRC/73/447, available at: <https://www.refworld.org/docid/59d4dd704.html> [accessed 31 January 2020]

⁶² Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16; East Timor (Portugal v. Australia); advisory opinion on the legal consequences of the construction of a wall in the occupied Palestinian territory, paras 155, 88, 87, 86

⁶³ Id, ICJ Advisory Opinion on the Wall (2004)

The UN bodies repeatedly condemned annexation and reaffirmed its illegality,⁶⁴ starting in 1970, the UNSC has affirmed in Resolution 232, the inadmissibility of territorial acquisition by use of force, and affirmed that states must respect and acknowledge the principles of sovereignty, territorial integrity, and political independence. The UNSC has in fact condemned the Israeli illegal occupation continuous attempts to alter the demographic composition, physical structure, institutional structure and the status of Jerusalem. These attempts encompass the expansion of the settlement regime, confiscation of land, forcible transfer of Palestinians, and the transfer of Israeli civilians inside occupied territory. In UNSC Resolution 662 (1990), the UNSC called upon States, international organizations and specialized agencies not to recognize annexation and refrain from any direct or indirect action that might be interpreted as annexation.

The UNGA has mirrored that in the 1970 Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, stating that 'no territorial acquisition resulting from the threat or use of force shall be recognized as legal'. The UNGA has continuously asserted the inalienable right of the Palestinian people to self-determination, their independent state, territorial integrity and sovereignty over their natural resources.⁶⁵

The principal judicial organ of the United Nations, the ICJ affirmed that territorial acquisition by use of force is prohibited under international law.⁶⁶ The court addressed this issue and explained that annexation of the oPt not only interferes with the territorial sovereignty, but further with the right of the Palestinians to self-determination.⁶⁷ The court considered the settlements and their associated regime to create a situation that is undistinguishable to annexation, a violation of the *erga omnes* right to self-determination. This position has been endorsed in the UN HRC.⁶⁸

Contrary to annexation, occupation in principle is inherently a *de facto* temporary situation, and as a rule of thumb the occupier, must administer the occupied territory for the benefit of the protected population, in a temporary manner, however, using this occupation as a tool to grab occupied territory and turn the control into a lasting *de jure* annexation, is, as has been demonstrated, strictly prohibited under international law, without any permissions of derogation.

D- Al Makhroun as a UNESCO World Heritage Site Under Danger

World Heritage is the "designation for places on Earth that are of outstanding universal value to humanity and as such, have been inscribed on the World Heritage List to be protected for future generations to appreciate and enjoy."⁶⁹ In June 2014, the Battir area (including the Makhroun Valley in Beit Jala) was inscribed as a World Heritage Site in the State of Palestine at UNESCO. The criteria of selection was mainly based on the complex irrigation system of this water supply has led to the creation of dry walls terraces which may have been exploited since antiquity.⁷⁰

64 UNSC res 2334 (2016)
UNSC res 476 (1980)
UNSC res 478

65 UNGA A/RES/72/160, 2017;

66 Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 16; East Timor (Portugal v. Australia).

67 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136; paras 155, 88, 87, 86

68 HRC, A/RES/40/22/2019, 37/34/2018, 34/29/2017, 31/33/2016, 28/25/2015, 25/27/2014, 22/27/2013, 19/15/2012, 16/30/2011, 13/06/2010, 10/20/2009, 7/17/2008

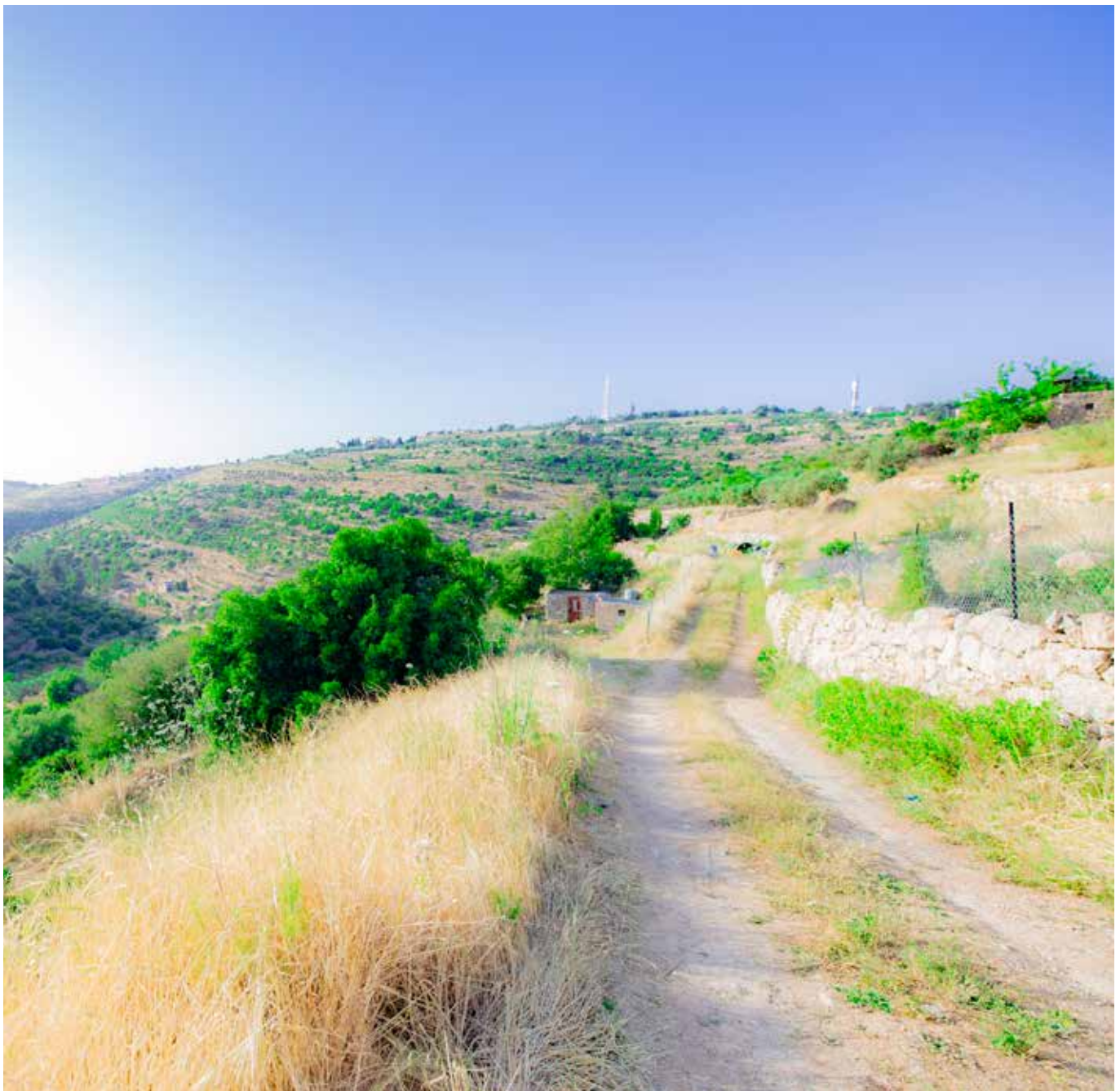
69 UNESCO: "What is World Heritage?", available at: <https://whc.unesco.org/en/faq/19>. Last accessed: June 6, 2020

70 "Palestine: Land of Olives & Vines: Cultural Landscape of Southern Jerusalem, Battir", available at: <https://whc.unesco.org/en/list/1492/>. Last accessed 22 May 2020.

In the circumstances where Palestinians are being systematically and routinely denied by the Israeli occupation, from accessing and taking advantage of their natural wealth and resources, in Al Makhrou and elsewhere, along with the active settlement construction, UNESCO has placed Al Makhrou in its list of World Heritage Sites in Danger.

This designation provides a structure for international cooperation in preserving and protecting the site.⁷¹ Inscribing this site on the list first alerts the international community to the situation and consequently allows the World Heritage Committee to allocate funds for the site which allows the international community to respond to needs in an efficient manner.⁷²

The World Heritage Committee is expected to develop and adopt, in consultation with the state concerned (the State of Palestine and Israel), a program for corrective measures and to monitor the situation of the site in order to remove the site from the List of World Heritage in Danger.



⁷¹ Britannica Encyclopedia: "World Heritage Site", available at: <https://www.britannica.com/topic/World-Heritage-site>. Last accessed: June 3, 2020.

⁷² UNESCO: "World Heritage in Danger", available at: <https://whc.unesco.org/en/158/> . Last accessed: June 3, 2020.

V- Conclusion & Recommendations

As has been demonstrated in this report, Al Makhrour Valley possesses particular importance for the Bethlehem governorate. It is an embodiment of the Palestinian history, culture and identity on the one hand, and its future on another. Yet, the incessant, even more persistent Israeli attempts to annex Al Makhrour Valley rob Palestinians from its values and potentials, and are more imminent than they have ever been at this point.

The threat of annexing Al Makhrour Valley is not a plan that the Israeli government has recently adopted in light of President Trump's so-called "Deal of Century", rather, it is a step that follows decades of systematic dispossession of Palestinian lands, a direct outcome of a process of colonial policies implemented over the oPt over the past 5 decades by Israel to serve its exclusive strategic interests. Israel's apparatus of policies, laws and regulations enforced in the oPt, which are very well documented, have always been in grave violation of a wide set of rules of international law, and they continue to be so today. For over 53 years of occupation, Israel has been intentionally violating international law and calls to respect its obligations as occupying power, and, with the logic of power, created and implemented facts on the ground that effectively led to a situation where not only serious violations of fundamental rights are committed against millions of Palestinians on daily basis, but also Palestinian lands have been grabbed *en masse*, and vast tracts to be annexed, diminishing any hope for a territorially-integrate Palestinian State and the inalienable right to self-determination.

The international community has witnessed the process of occupation turning into annexation, and the increase of the severity of the ongoing violations, while expressing its concern, at best. International community refrained from adopting measures that hold Israel accountable for decades of illegal land grab, and systematic flagrant violations of international law. It is in this specific context that the threat of annexation of Al Makhrour Valley, and other parts of area C is becoming a reality, and international reluctance to take action is one active element of it.

Third Party States

With such reluctance to act in face of Israeli violation, and specifically to the imminent threat of annexation, State members of the international community are not only derogating from their moral obligations, but also from precisely legal ones: State parties to IHL instruments are under the obligation to respect and ensure respect for the said law in all circumstances, and accordingly to disseminate knowledge and repress breaches and grave breaches of it.⁷³ States are under the obligation of non-recognition, noncooperation and non-assistance.⁷⁴ Therefore, Third States must not recognize Israel's sovereignty over any part of the oPt, and declaring such acts null and void. Third States must also recognize the State of Palestine and its territorial integrity. With the dangerous shift to de jure annexation, it is imperative that States immediately take a proactive approach, ranging from diplomatic pressure, downgrading trade and cooperation relationship agreements, and adopting lawful counter-measures and sanctions to hold Israel accountable for its grave violations.

EU

The EU must play both preventive and responsive measures in response to Israel's imminent threats of annexing large parts of the oPt. With the US administration's complicity and encouragement of Israeli annexation, the EU must exert significant pressure to prevent Israel's planned annexation of occupied territory, in line with the EU guidelines on promoting compliance

⁷³ ICRC: "Respect and Ensure Respect", available at: <https://casebook.icrc.org/glossary/respect-and-ensure-respect>. Last accessed: June 3, 2020.

⁷⁴ ICRC: "Respect and Ensure Respect", available at: <https://casebook.icrc.org/glossary/respect-and-ensure-respect>. Last accessed: June 3, 2020.

with IHL.

The EU has taken a firm position on the Russian annexation of Crimea and, for purposes of consistency in respecting international law on moral and legal levels, must take the same position on the Israeli annexation of the oPt if it happens, including, but not limited to, sanctions and prohibitions on imports and exports of products and services, investment, tourism, economic sanctions, re-assessment of diplomatic relations, among other.

Moreover, Israeli policies in the oPt are in violation of Article 2 of the Israel-EU Association Agreement. The EU and its member States should suspend the agreement while reviewing all existing documents between the Parties in order to ensure that the Israeli occupation is not benefitting from them.

The EU can also play an active role in supporting Palestinian initiatives in the area, including agriculture and tourism, through funding and advocacy.

UN

The UN Security Council and General Assembly must address with urgency the Israeli plans of annexation of occupied territory in Palestine, and call upon third States to consider appropriate measures in response to Israel's grave and persistent violations of international law.

The UN HRC must also address Israel's plans of annexation with alarm and urgency, adopt resolutions against Israel's planned annexation and create an expert mechanism to report, make recommendations and follow-up on the violations stemming from annexation plans and measures. Member States of the Council must abide by their

responsibility to cooperate to bring Israel's serious breaches of international law to an end and to uphold the inalienable rights of the Palestinian people. In response to Israeli annexation plans, Member States of the Council must actively engage under Item 7 of its regular sessions agenda "Situation of Human Rights in the oPt and the Occupied Syrian Golan", instead of diminishing its importance as a political message.

The UN treaty bodies should also consider to include scrutiny on those violations of Israel's treaty obligations that result from annexation.



State of Palestine

While taking into consideration the obstacles imposed by the Israeli occupation on the regular work of the Palestinian government in areas C, there is room for a much larger engagement from the relevant Palestinian governmental authorities in the development and protection of Al Makhroun and Cremisan. The touristic and agricultural importance of the Valley must be better highlighted, especially with the registration of Al Makhroun as part of the UNESCO World Heritage Site. This includes the availability of information, promotion of touristic activities, subsidies to the Palestinian farmers and developers, regularization of land deeds, and other incentives for land development and usage. Special funds for areas like Al Makhroun should be provided to the relevant stakeholders, including municipalities, community based organizations and civil society operating in the area, in line with the Palestinian government program of disengagement from the Israeli occupation.

ICC

In December 2019, the Office of the Prosecutor of ICC, finally decided to progress the Situation of Palestine, and submit the question of territorial jurisdiction to the Pre-Trial Chamber of the ICC. With the threat of annexation of parts of the oPt materializing at a very fast pace, it is now more important than it has ever been that the ICC conduct its investigation in Israeli war crimes and crimes against humanity in the oPt. Importantly, State Parties to the Rome Statute must also support and engage with the Prosecutor to ensure the respect of international law and order.

Churches

The importance of the area for the future of Palestinian Christians should make of it relevant for the heads of churches in Jerusalem as well as to church groups, institutions and organizations worldwide. Advocacy in support of Palestinian rights in the area and against the illegal Israeli annexation of the territory should go in line with an increased solidarity, reflected in visits to the area and a more visible presence of Church groups, institutions and leaders. The unique landscape, as preserved for thousands of years, provides of a unique place for pilgrims to appreciate the green areas left of Bethlehem, while contributing to the Palestinian economy, and therefore, supporting Palestinian presence in its homeland.





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