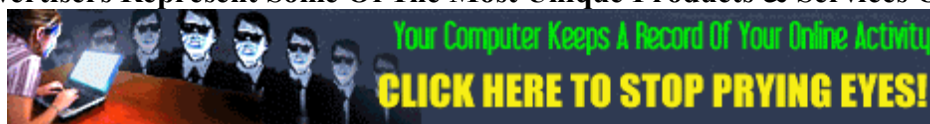


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## **Israel's Ofra Settlement On Unauthorized Palestinian Land**

By Stephen Lendman

9-29-9

Israel's 130 West Bank settlements are illegal under international law, including Article 49 of the Fourth Geneva Convention that states:

"Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive."

In addition, various UN resolutions (including 446, 452 and 465) condemned Israel's settlement building by declaring they have "no legal validity" to exist. Yet they do and continue expanding in reckless disregard of the law.

Even so, after its forces occupied the West Bank in 1967, Israel in principle agreed to respect binding local Jordanian law and its own subsequent military order. It didn't then and doesn't now.

B'Tselem's report titled "The Ofra Settlement - An Unauthorized Outpost" shows that Israel reneged on its agreement because Ofra is illegal under local and international law.

Called a flagship settlement, it was established in 1975 by the fundamentalist Gush Emunim (Bloc of the Faithful) movement that began seizing West Bank land for itself - modestly at first in abandoned Jordanian Ein Yabrud army camp houses. Then later, more aggressively after the Rabin government recognized it as a community even though 58% of its area lies on land registered to Palestinians in Israel's Land Registry. Settlement construction there is forbidden. Yet in 1977 under Menachem Begin, recognition became official.

Ofra set a precedent. As the first northern West Bank settlement, it broke

"the barrier that blocked settlement attempts in the heart of the Palestinian population" and established events on the ground for dozens more to follow - illegal settlements and outposts "in opposition to the stated official position of the government," on paper only to be defiled and ignored.

### Some Background on Gush Emunim

Under the slogan, "The Land of Israel, for the people of Israel, according to the Torah of Israel," Gush Emunim (GE) emerged in the aftermath of the 1973 Yom Kippur war, but Israel's 1967 Six-Day war victory inspired its adherents to believe that all biblical Israel for Jews alone was now in reach.

Today, GE is an influential, extremist pressure group - fundamentalist, radical, messianic, militant, terrorist, and undemocratic, yet supported by all Israeli governments. Ofra gave it a footprint, a toehold, an entry for Israel to establish 130 West Bank settlements and other outposts, now home to half a million Jews on confiscated Palestinian land.

### From Ofra to Colonizing the Entire West Bank for a Greater Israel

In their book, "Lords of the Land: The War over Israel's Settlements in the Occupied Territories," Israeli authors Idith Zertal and Akiva Eldar described the beginning as follows:

"Ofra...., which was established in trickery and on false pretexts, flourished into the heart of the Israeli consensus because of its respectable appearance, the settler's flagship institutions that were established there, and the mellifluous discourse of some of its better-known inhabitants."

Respectability, however, hid its dark side. Besides lying on registered Palestinian land, the area's borders weren't defined. A community plan was never approved, and required building permits were never issued for construction. As a result, Ofra is now the largest unauthorized West Bank outpost, yet it continues to exist. It has 2700 residents in well-established northern and southern neighborhoods with extensive community services, including three schools, a day-care center, several kindergartens, a Society for the Protection of Nature field school, women's religious schools, various public institutions, businesses, and light industry.

It's registered as a cooperative society, a legal entity offering many advantages. Their private, not public bodies. Their documents and files aren't open to the public, and they can restrict membership solely to others as ideologically committed as themselves.

### Ofra's Illegality Under Israeli Law

Besides international law, Ofra violates local law under which a settlement must meet four criteria to be legal:

-- Israeli government authorization for its establishment;

-- the settlement's jurisdictional area approved under the military commander's order;

-- a lawfully approved Civil Administration planning authorities' plan; and

-- settlements must lie on state land and/or land purchased by Israelis and registered under their name in the Land Registry.

At its inception in 1975, no government authorization was given. Yet, on July 26, 1977, Israel's Ministerial Committee for Settlement recognized Ofra as a civilian community. The Civil Administration told B'Tselem that "no area of jurisdiction has been defined for Ofra, which is one of the communities of the Meteh Binyamin Regional Council in accordance with the schedule to the Order Concerning Administration of Regional Councils (Judea and Samaria) (Number 783), 1979."

The still-in-force Jordanian planning law states that building permits are required for construction, including structure additions. Lawfully approved, detailed plan outlines are also required. In 1971, the IDF military commander signed Order No. 418. It left most Jordanian law provisions intact, but "made significant changes to the structure and composition of the planning institutions."

International law is precise. It lets occupying powers change existing laws only for reasons of military necessity or to provide humanitarian aid for the local population. Israel did it anyway. It cancelled local Palestinian planning and building committees, transferring their authority to the Higher Planning Council subcommittees operating within the Civil Administration on the Beit El army base.

Special local settlement planning committees were also appointed with powers given them by the military commander. It let them issue building permits, "pursuant to valid detailed outline plans." It also gave the Higher Planning Council power "to exempt any person from the obligation to obtain a (required) license (building permit)."

B'Tselem requested information on Ofra's planning process. In response, the Civil Administration replied:

"The build-up area of Ofra is not located in the planning area of a local or special committee. There are no approved or deposited planning schemes concerning the built-up area of Ofra. No building permits or exemptions from building permits were given to structures in Ofra."

Proceeding anyway, Ofra leaders broke the law by bypassing planning procedures and preparing their own "building rules." As a result, they're legally invalid, and no building permits should have been issued under them. Further, Ofra isn't situated within the boundaries of a planning area where local or special local committees have authority. Construction was authorized anyway.

In May 2008, aerial photos showed 570 structures built, at least 400 of which are single-family homes. None were authorized. All are illegal.

### The Mandatory Outline Plan

Lawful building permits may only be issued under Mandatory Regional Outline Plan RJ/5. Approved in 1942 and still in force, it covers the land on which Ofra lies. It's designated for agricultural use with construction allowed under strict conditions:

- landowner approval must be gotten;
- only one residential structure per original plot may be built provided the area is at least 1000 square meters; even if much larger, the "one" rule applies; and
- distances between structures and plot boundaries must be at least five meters.

Ofra construction failed to comply on all counts. "Residential dwellings and public buildings have been built in total disregard of the provisions of the Mandatory plan."

In October 1979, Israel's High Court ruled that privately-owned Palestinian land seizures by military requisition order were only lawful if they served "a clear security interest." Yet a month later, the government decided to establish settlements only on "state-owned land" without ever defining it properly.

Contrary to valid Jordanian law, Israeli policy states that "land that is not registered in the Land Registry, and has never been cultivated or is not suitable for cultivation, or was only cultivated in the distant past, is state land."

However, land registered to Palestinians is their land and may not be declared government property. Yet Israel twisted the law to declare 16% of the West Bank state land besides another 14% pre-1967 under Jordanian rule giving Israel 30% ownership and growing.

B'Tselem petitioned the Civil Administration for clarification, clearly marked on a map to show:

- all defined state land;
- land confiscated for public purposes;
- land seized "pursuant to military requisition orders;"
- land classified as "absentee property," belonging to Palestinians who fled in 1967 and didn't return; and

-- closed military zone areas.

The information gotten showed that "the portion of the built-up area of Ofra, or the area adjacent to it, that lies on requisitioned or confiscated land is very small, except for the land that the Civil Administration contends was confiscated by the Jordanians for the army camp."

By May 2008, Ofra's built-up area covered over 670 dunams (about 170 acres). About 27% of it was seized under Expropriation Order No 77/E (November 1977). Civil Administration information claimed it was "expropriated by the Jordanian government for a public purpose" and not initiated by Israel. Official documents, however, show that "the expropriation process was not completed." Also, Order 77/E wasn't recorded in the Land Registry, but the Civil Administration insisted that it's state land nonetheless even though registration was incomplete and thus invalid.

B'Tselem calls the land "not state land. (Therefore), Order 77/E, issued by the Israeli military commander in 1977, is a new expropriation order, issued more than two years after the settlers of Ofra took over the abandoned houses of the Jordanian army camp and some three months after the government of Israel decided to recognize Ofra as a permanent community."

The entire scheme was illegal. Israel's official position puts privately-owned Palestinian land off-limits for settlement construction because it's not for a "public purpose" under (still in force) Jordanian law. According to Plia Albeck, former State Attorney Office's Civil Division head:

Israel "may expropriate land for public purposes in the region, but regarding establishment of a new community, whose residents are Israeli citizens and at the time of establishment of the community do not live in the region, it is very doubtful that it is an expropriation for a public purpose in the region."

Former attorney general Yitzhak Zamir agreed in saying that "it is impossible to act under Jordanian law to expropriate private land for public purpose" to build settlements. Order 77/E was thus illegal and so is Ofra.

Israel also expropriated dozens of additional acres for an expanded area "not recognized as legitimate under international" or local (Jordanian) law. Further, most of Ofra's built-up land is not included under Order 77/E. In responding to recently filed petitions in Israel's High Court, "the state admitted that (Ofra's built-up area) contains additional lots that are recorded on the name of Palestinians...." It amounts to at least 58% of Ofra's built-up area.

The Ofra Cooperative Association, however, claims that it's held the land for many years without registered owners disputing it through legal action, so the land was lawfully theirs. The State Attorney's Office disagreed in stating "no proof had been made that the land was purchased by your client (and

saying it is constitutes a) mere claim." The Civil Administration also provided no proof of purchase.

By law, all claimed West Bank land must be recorded in the Land Register under the name of the purchasers. Failure to do so is a crime. Ofra settlers said they failed to comply to "protect the lives of the Palestinian sellers" even though there were none. Also, according to Israeli attorney Plia Albeck, 90% of supposed West Bank purchased land involved forged "fictitious" documents.

As a result, Palestinian rights were grossly breached because Ofra construction "prevent(ed) them from possessing and exercising their ownership rights in the land and from gaining a living from it and from its agricultural produce."

Under Israel's Basic Law: Human Dignity and Liberty, 5752 - 1992, section three states: "there shall be no violation of the property of a person." Illegal settlement construction on Palestinian-owned land constitutes a grave breach. International law affirms it. Besides Fourth Geneva and numerous UN resolutions, Article 46 of the 1907 Hague Regulations states:

"Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice must be respected. Private property cannot be confiscated."

Ofra construction violates this law, "extending beyond the prohibition on establishment of the settlements." It denies Palestinians:

- the right to live on their own land, develop it, raise crops on it, and gain other benefits;
- thousands of additional dunams that Ofra seized for future development;
- more still for infrastructure, including for-Jews only roads; and it
- "has ramifications for other Palestinian communities" by preventing free movement between them and letting all settlements expropriate more West Bank and East Jerusalem land.

## Conclusions

Under international and local laws, Ofra's settlement is illegal. No jurisdictional area was set for it. It doesn't have a valid outline plan, and at least 58% of its land is lawfully registered under Palestinian names in the Land Registry.

Israel's High Court held that settlements may not be built on such land. Yet it was and still is. Also, the military order pertaining to Ofra states that "the jurisdictional area of an Israeli regional council shall not include (privately-owned) Palestinian lands."

Israel's Civil Administration is prohibited from approving plans for Israeli communities on land registered to Palestinians. The state didn't authorize Ofra, but did nothing to stop settlement construction and continues letting them expand.

"Officially, Ofra is a recognized settlement and not an unauthorized outpost." But that doesn't make it lawful. International and local law obligate Israel to disband it, return the land to its rightful owners, and provide compensatory damages. And that's besides the greater issue of other unauthorized outposts, all 130 illegal settlements, a sovereign Palestinian state, the lawful right of return, and decades of unaddressed abuses depriving Palestinians from having the freedom, equity and justice they deserve.

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