

Before the Supreme Court
In session as the High Court of Justice

HCI 517/00
HCI 1199/00

1. **Muhammad Hamamdeh**
2. **Muhammad Hamamdeh**
3. **'Omid Jindiyya**
4. **Nu'aman Hamamdeh**
5. **The Association for Civil Rights in Israel and 112 additional petitioners**

Represented by Atty. Limor Yehuda
The Association for Civil Rights in Israel (ACRI)
Tel: (02) 652-1218; Fax: (02) 652-1219

Petitioners in HCI 517/00

Ahmad 'Issa abu 'Aram and 81 others

Represented by Atty. Shlomo Lecker
54A HaNevi'im Street, Jerusalem
Tel: (02) 623-3695; Fax: (02) 625-7546

Petitioners in HCI 1199/00

v.

1. **Minister of Defense**
2. **IDF Commander, Judea and Samaria**

Respondents in HCI 517/00

IDF Commander, Judea and Samaria

Represented by the State Attorney
Ministry of Justice, Jerusalem
Tel: (02) 646-6513; Fax: (02) 656-7011

Respondents in HCI 1199/00

Update Notice on behalf of the Respondents

In accordance with the decision of the Honorable Justice Fogelman dated 17 April 2012, as well as requests for extensions of time, the Respondents hereby submit an Update Notice, as follows:

1. These petitions concern the request of the Petitioners to enter and remain in the area south of Hebron and southeast of the town of Yatta (Firing Zone 918), which was declared a Closed Military Zone for purposes of its use as an IDF training area.
2. In a notice dated 16 April 2012, the Respondents informed this Honorable Court just prior to the Passover recess that the issue of principle regarding Firing Zone 918 was brought to the attention of the Minister of Defense, who issued his opinion on this matter. We remind the Court that, as noted in various requests submitted by the Respondents for extensions of time, the

aforesaid petition has remained pending in order to determine the position of the Ministry of Defense in this matter.

As a result, the Respondents requested that the Court hear their position on the issues raised in this petition, and the Honorable Court consented to this request.

3. Accordingly, the Respondents will seek to update this Honorable Court regarding the Minister of Defense who, upon presentation of the issue of use of the area as a firing zone, made a decision to approve the position of the IDF in which the Petitioners shall be allowed to remain in the northwestern part of the firing zone, delimited on the south by the line drawn in blue on the map attached to this notice and labeled MS/1. Located in this area are the villages of **Sirat 'Awad Ibrahim, Tuba, Sarura, and Mufaqrara.**

According to the decision of the Minister of Defense, the remainder of the area shall be declared a Closed Military Zone for use as Firing Zone 918 for IDF training, and permanent residence shall be prohibited there. Nevertheless, the Respondent is willing to allow the Petitioners entry to the firing zone for purposes of working the land or grazing their flocks during periods in which no exercises take place in the firing zone (i.e., weekends and Jewish holidays). Furthermore, the Respondent is willing to allow entry of the Petitioners during two one-month periods a year, as previously agreed with Atty. Khoury, their legal representative, in order to work the land and graze their flocks.

Note that this decision adopts the main points of the Minister of Defense's position that was submitted to this Honorable Court on 9 June 2002 in the Supplemental Response of the State.

4. We remind the Court that the State noted in its Supplemental Response from 9 June 2002 that –according to information known to the Civil Administration – the firing zone cited in these petitions did not serve as permanent residences prior to submission of the petitions and issue of an interim order, and therefore the Petitioners at the time of submission of the petitions were not permanent residents there and could already have been evacuated by virtue of declaring the area to be a Closed Military Zone.

This Supplemental Response notes that investigations revealed that of the forty-nine original Petitioners in the two said petitions who claimed permanent residence in the firing zone area, thirty-eight Petitioners were found to have **permanent residences in or near Yatta.**

The Respondents will ask to draw the Honorable Court's attention to the general arguments in their Supplemental Response from 9 June 2002 concerning the character of the residences in Firing Zone 918, and also to the specific remarks about the thirty-eight Petitioners in these petitions.

Furthermore, in 2002, the Civil Administration conducted an investigation into the places of residence of all the Petitioners in HCJ 1199/00 and all the Petitioners in HCJ 517/00. At this time, the Civil Administration has not yet been able to locate all the relevant material that was gathered as part of this investigation, and therefore it could not be attached to that Supplemental Response.

However, the findings of this investigation are described in detail in the attached affidavit of the Implementation and Enforcement Coordinator in the Monitoring Unit, **which was involved in conducting the said investigation in 2002**. Upon location of all the relevant raw material, and to the extent that the Court so requests, the Respondents will transfer this material to the Court and the parties.

5. It should be further noted that according to the investigation by the Civil Administration, all the villages in the firing zone were devoid of buildings in 2000. According to the evaluation of the Monitoring Unit, at the time only a small number of residents from the village of Yatta entered that area on a seasonable basis.

6. As evident in the affidavits by the Implementation and Enforcement Coordinator in the Monitoring Unit, in the years since submission of the petitions and the ensuing Interim Order, a widespread phenomenon of illegal construction began in the firing zone; and together with that, a widespread phenomenon of persons entering the zone and staying in it – in numbers that significantly exceed the number of Petitioners in the aforementioned petitions, and who are not included in the Interim Order issued by this Honorable Court – **all in violation of the status quo, in contravention of the Closed Military Zone order, and against the planning and building laws of the area.**

Attached are aerial photographs taken in 2000 of the villages in Firing Zone 918, compared with photographs from 2012 or 2009, labeled MS/2.

7. **The Respondents request to emphasize that the Petitioners clearly cannot build upon the development of these illegal phenomena – which violated the status quo in the area and contravened the planning and building laws and the orders of the military commander – and now claim permanent residence in the area, which prevents evacuation in keeping with the declaration of a Closed Military Zone.**

The relevant moment of time for examination of the said petition is the date of issue of the order referenced in this petition, i.e., 1999 (and we remind the Court that, as noted in the responses previously submitted by the State in the framework of the said petition, various Closed Military Zone orders were issued as early as the 1980s and the Respondents had even then sought to evacuate infiltrators and enforce the Closed Military Zone orders – with petitions submitted in this matter rescinded, and an agreement even reached with the Respondents about entry to the area and arrangements that would allow for working of the land and grazing flocks).

8. Moreover, as noted by the Respondents in response to requests for an interim order dated 29 March 2012 and 16 April 2012, all matters related to illegal construction, particularly the new illegal construction in the area that is the subject of this petition, **are extraneous to the said petition**, which deals with the validity of orders issued by a military commander in 2000 to close off the area described in this petition for purposes of IDF training. This is the case in particular where extensive construction has taken place.

In this context, it should be noted that the Honorable Justice Fogelman ruled on 17 April 2012 that the Petitioners must submit separate petitions with respect to new demolition orders about illegal construction in the area.

9. To put matters in context, it should be stated that, as noted in the affidavit of the Implementation and Enforcement Coordinator in the Monitoring Unit, which is based on data collected by the Monitoring Unit and the Central Command, as of 2009 there is an increasing trend of supporting and strengthening the population in Area C, conducted by the Palestinian Authority with the help of international organizations. This support is manifested in various ways, from providing means to remain in the area – such as water trackers, sheds, and water containers – to legal support. The scope of incursions into the firing zones has also significantly increased in terms of the number of people as well as the quality and amount of construction. This phenomenon causes significant damage to security. One should also note in this context that the firing zone is near the border of Israel and the route of the Seam Barrier in the northern part of the Arad Valley.

10. With respect to the operational need for the firing zone, the Respondents will note that in the distant past, Firing Range 918 was used as a training ground for the Air Force, and later as the northern training ground for Nahal Brigade Training Base 933. A company base was even established at this location, and used frequently for exercises. Other IDF units also used this area to train in the past, but because of the current limitations on live-fire in this location due to the presence of people, other infantry units generally do not train there.

Because of the many illegal structures and the presence of people in the area despite its being declared a Closed Military Zone, the amount of training in this firing zone was reduced, and changes were made in the training. These have led the IDF to refrain from holding live-fire training in this area at this time, for example.

The presence of people in the firing zone raises additional problems, such as the concern that residents would be able to collect intelligence on IDF training methods or gather weapons that the forces leave behind (through loss, for example) for purposes of terrorist activity.

Under these circumstances, the IDF has had to find alternative solutions for training its forces. These solutions meet some needs, but do not meet the full operational needs of the forces. Furthermore, the use of alternative firing zones comes at the expense of other training that should be carried out at those alternative firing zones.

11. It should be noted that the vital importance of this firing zone to the IDF stems from the unique topographical character of the area, which allows for training methods specific to both small and large frameworks, from a squad to a battalion (and for larger forces when combined with adjacent firing zones), to maintain the fitness required by IDF forces.

12. It should be further noted that between 2000 and 2006, the IDF's use of firing zones declined for a number of reasons, including cutbacks in the size of the forces, as well as the need for

security forces in ongoing operational activities for the events that began in 2000, Operation Defensive Shield, the operational activities that followed, etc. – all at the expense of training time.

The Second Lebanon War that erupted in 2006 exposed flaws in the fitness of the ground troops – a result, to some extent, of the stepped-up, ongoing war on terror in Judea and Samaria, which hindered training activity of the forces, and underscored the need to return to regular training of the forces. In parallel, the eventual improvement in the security situation and the enhanced control in the region as a result of this ongoing activity made it possible for the units to return to training.

Hence, the scope of training steadily increased since 2006, as did use of the firing zones as an integral part of the changes in the operational needs of the IDF, in general, and the Central Command, in particular. Among other things, this was an extension of the lessons learned from the Second Lebanon War, as noted above, as well as the relative stability in the security situation in the Central Command, which reduced the operational burden on the forces and allowed them to engage in training. **As a result, the need for IDF training areas has significantly increased in recent years.**

13. We will also clarify that reducing even a part of the firing zone presents difficulties, as it could reduce the army's ability to make use of some weapons, as the reduced size of the firing zone will not allow for the required safety margin (that sets the safety boundaries for firing based on the type of weapon and the direction of the shooting) within the bounds of the firing zone.

Despite this difficulty, the Minister of Defense decided in the case at hand to allow the presence of people in part of the firing zone (without diminishing the firing zone), meaning a reduction in the parts of the firing zone where it will be possible to train in all formations, and in this area training will be done without the use of live ammunition.

14. Thus, considering all of the above, the updated decision of the Minister of Defense, as described above, will enable permanent residence in the northwestern region of the firing zone, as indicated on aerial photo MS/1, and enforcement of the Closed Military Zone order on the remainder of the area. Entry to the remainder of the firing zone area for working the land or grazing of flocks will be allowed in accordance with seasonable arrangements and when the IDF is not using it for training – on Fridays, Saturdays, and Jewish holidays.

15. **It should be clarified that the Respondents agreement to allow the presence of the Petitioners in the northwest part of the firing zone does not constitute agreement or a permit to engage in construction in that location in contravention of the planning and construction laws of the area.** The Respondents will continue to take action concerning illegal construction at that location in accordance with the law of the region, both in the northwest area and even more so in the remainder of the firing zone, which is required for IDF training, as noted above. These procedures concern the enforcement of planning and should be taken up with the relevant bodies in the Civil Administration and, as noted above, the position of the Respondents is that these issues are outside the scope of the said petition. Those in possession of illegal structures may bring their claims to the Monitoring Subcommittee of the Civil Administration, and thereafter appeal as appropriate to

the Honorable Court – both concerning new orders, in keeping with the decision on 17 April 2012 of the Honorable Justice Fogelman and also, in the spirit of this decision, concerning the previous illegal construction in that location.

16. The facts stated in this response are corroborated in the affidavits of Col. Uri Cohen, Assistant Military Secretary to the Minister of Defense, Lt. Col. Yaron Frankel, Training Officer of the Central Command, and Raziel Goldstein, Implementation and Enforcement Coordinator in the Monitoring Unit of the Civil Administration in Judea and Samaria.

Today, 29 Tammuz 5772

19 July 2012

Hilla Gorni, Atty.

Senior Deputy in the State Attorney's Office

AFFIDAVIT
Ministry of Defense

I the undersigned Uriel Cohen, having been duly cautioned that I must tell the truth and that if I do not, I will be subject to penalties under law, do hereby declare as follows:

1. I serve as Military Secretary, Ministry of Defense.
2. I am making this declaration in support of the Update Notice on behalf of the Respondents in HCJ 1199/00; 517/00.
3. The facts cited in parag. 3 to this response that relate to the decision of the Minister of Defense are known to me by virtue of my job and are true to the best of my knowledge.
4. I declare that this is my name, this is my signature, and the content of this affidavit is true.

<signature>

Certification

I the undersigned Gal Cohen, an attorney-at-law, hereby certify that on 19 July 2012, Uriel Cohen appeared before me and after I cautioned him that he must make a truthful declaration, and if he does not do so, he will be subject to penalties under the law, he signed this affidavit in my presence.

< signature and stamp >

AFFIDAVIT

I the undersigned Lt. Col. Yaron Frankel, having been duly cautioned that I must tell the truth and that if I do not, I will be subject to penalties under law, do hereby declare as follows:

1. I serve as Training Officer, Central Command.
2. I am making this declaration in support of the Update Notice on behalf of the Respondents in HCJ 1199/00; 517/00.
3. I read the Update Notice on behalf of the Respondents in HCJ 1199/00; 517/00. The facts cited in this response that relate to the operational need for the use of firing zones in general, and Firing Zone 918 in particular; the use made over the years of firing zones in general and Firing Zone 918 in particular; and the meaning of the presence of people in firing zones are known to me by virtue of my job and are true to the best of my knowledge.
4. I declare that this is my name, this is my signature, and the content of this affidavit is true.

<signature>

Certification

I the undersigned Andrei Warshatchgen, an attorney-at-law, hereby certify that on 19 July 2012, Yaron Frankel appeared before me and after I cautioned him that he must make a truthful declaration, and if he does not do so, he will be subject to penalties under the law, he signed this affidavit in my presence.

< signature and stamp >

Affidavit

I the undersigned Raziel Goldstein, having been duly cautioned that I must tell the truth and that if I do not, I will be subject to penalties under law, do hereby declare as follows:

1. I serve as Implementation and Enforcement Coordinator in the Monitoring Unit of the Civil Administration.

In 2002 I served as Monitoring Coordinator East Hebron in the Monitoring Unit of the Civil Administration.

2. I am making this declaration in support of the Update Notice in HCJ 1199/00; 517/00.

3. In 2002, the Civil Administration carried out an examination of all the Petitioners in HCJ 1199/00 and all the Petitioners in HCJ 517/00. As part of this examination, permanent residences were found in Yatta and its environs of the vast majority of the Petitioners. These Petitioners were even recorded in the Population Registry as residents of Yatta.

This examination was carried out with the assistance of three local residents (this was possible only with respect to the Petitioners for whom their full name was given in the petition, i.e., the four names), and they pointed to the houses on the detailed aerial photo of the village Yatta and its environs. These homes were marked and located in the area by IDF forces and representatives of the Civil Administration in the framework of a patrol carried out in Yatta and its environs. Regarding the houses identified, further verification was done by the residents of the area, and only afterwards were these houses photographed by the forces. For houses in the heart of the village, the forces could not reach to photograph them, and therefore aerial photos were taken using a plane.

4. At this time, the Civil Administration has not been able to locate all the relevant material collected as part of this investigation, which was held a decade ago, but these data are known to me because of my work in carrying out the said investigation in 2002 as part of my work in the Monitoring Unit of the Civil Administration.

5. It should also be noted that according to the examination of the Civil Administration, in 2000 all the villages in Firing Zone 918 were devoid of construction. It is the view of those in the Monitoring Unit that at the time a small number of residents of Yatta remained in the area on a seasonable basis.

Attached are aerial photographs taken in 2000 of the villages in Firing Zone 918 compared with photographs from 2012 and 2009, labeled MS/2.

6. In the years since submission of the petitions and the ensuing Interim Orders, illegal construction has spread in the firing zone, in parallel with widespread incursions into and remaining in the area by significantly more people than the number of Petitioners in the aforementioned petitions, who are not included in the Interim Order issued by this Honorable Court – all in violation of the status quo, in contravention of the Closed Military Zone order as well as planning and building laws in the area.

7. According to data in the Monitoring Unit and the Central Command, as of 2009 there has been an increasing trend to support and strengthen the population in Area C conducted by the Palestinian Authority with the help of international organizations. This support is reflected in various ways, from providing means to remain in the area – such as water trackers, sheds, and water containers – to legal support. The scope of incursions into the firing zones has also significantly increased in terms of the number of people as well as the quality and amount of construction. This leads to significant security violations. One should also note in this context that the firing range is near the border of Israel and the route of the seam barrier in the northern part of the Arad Valley.

One should also note in this context that the firing range is near the border of Israel and the route of the seam barrier in the northern part of the Arad Valley.

8. I declare that this is my name, this is my signature, and the content of this affidavit is true.

<signature>

Certification

I the undersigned Andrei Warshatchgen, an attorney-at-law, hereby certify that on 19 July 2012, Raziel Goldstein appeared before me and after I cautioned him that he must make a truthful declaration, and if he does not do so, he will be subject to penalties under the law, he signed this affidavit in my presence.

< signature and stamp >
