January 16, 2013

High Court of Justice

HCJ 413/13

Appellants:
The Association for Civil Rights in Israel
(Representing 108 residents of the villages under consideration)

Vs.

Respondents:
Minister of Defense; and
IDF Commander for the West Bank

Executive Summary of Appellants' Petition for Conditional Order and Request for Interim Injunction

A petition was served containing a request for a conditional order instructing the Respondents to provide responses for the following:

1. Why the respondents refuse to take measures to avoid the forcible transfer of the Petitioners and their families from their homes in the villages located inside the area designated as Firing Zone 918?
2. Why the respondents refuse to rescind closure order 6/99 from January 5, 1999 on the area southeast of the city of Yatta, designated as Firing Zone 918?
3. Why the respondents refuse to settle the Petitioners and their families' residency issues in the area designated as Firing Zone 918 in a manner that will enable them to lead sound lives in their place of residence, in accordance with the military commander's obligations as per the laws of belligerent occupation?

Request for Interim Injunction

The honorable court is hereby requested to issue an interim injunction that prohibits the Respondents, or anyone on their behalf, to operate in any way, to implement the transfer of the Petitioners and their families from their homes, until a decision regarding this petition is reached.

The Facts Relating to the Petition

The Villages of Masafer-Yatta - Data and historical background

The Petitioners all reside in small villages or hamlets ("Khirbe" in Arabic) on the eastern range of the South Hebron Hills, an area called Masafer-Yatta, which is adjacent to the city of Yatta. There are over 20 villages in Masafer-Yatta, a dozen of which are located inside an area designated by Respondent 2 as Firing Zone 918. A total of 1,300 Palestinian residents live in these 12 villages, 1,000 of which live in the eight villages that Respondent 1 is pushing to evacuate in order to utilize it as a live-fire military training zone, according to the updated position.

The area designated as Firing Zone 918 spans 32,713 dunams (nearly 13 square miles) and the area the Respondent 1 has demarcated for a live-fire military training zone spans 26,000 dunams (10 square miles). According to official data from the Civil Administration, which was submitted to Dror Etkes between 2007 and 2012, only 5,600 dunams (2 square miles) of the entire area are registered as state lands, and they are mostly located in the northwest part of the area – the part that is in fact not included in the borders specified for the firing zone. About 12,000 dunams (4.6 square miles) of the area are registered as private lands. Since the land in this area has not been properly mapped out or planned, it is fair to assume that the quantity of private land is even greater.

The climate conditions and access to inexpensive land in the South Hebron Hills attracted settlement in the area and generated a process of departure from native small towns of Yatta and Dura, toward the open areas nearby. This process started in the beginning of the 19th century and continued through the end of the British Mandate in Palestine and the start of Jordanian rule.

Aerial photographs of the Masafer-Yatta area provide substantial visual evidence of the existence of contiguous settlement in the villages in the area prior to 1967 and in the 45 years that have passed since. Despite the poor quality of the aerial photographs, one can distinguish the stone corrals and a pen for livestock, both testaments to residence in the area. A comparative analysis of the aerial photos demonstrates a process of transition, from dwelling in caves to dwelling above ground.

Residents of Majaz claim that their forefathers lived in the village prior to Ottoman rule in the region. They were the ones who dug some of the caves that serve as dwellings and storage areas to this day, as well as the water cisterns that also still operate as reservoirs for rainwater.
Mohammad Musa Mohammad Abu Aram, Petitioner No. 1, attested in an affidavit that:

> "I was born in 1962, am married to Aisha and we have three boys and three girls. Most of them are married. We have eight grandchildren and one more on the way. I was born in the village of al-Majaz and have been living there ever since. My parents were also born there. They got married, lived their entire lives and died in al-Majaz. Also my grandfather and grandmother on my father's side lived and died in al-Majaz. All my children live in al-Majaz, as do the ones who are married with their own families. My family and I make our living from the pasture and the agriculture that we live off of. We collectively own 200 sheep…

> My family has been living in this village since before the Turks. We have lived through the Turks, the Jordanians, the British and the Israeli occupation. My grandfather's father is the one that dug up the caves that serve us to this day as dwellings and storage. We live in these caves and in tents set up beside them. The sheep live next to us in the tents. My grandfather's father dug up some of the water cisterns that we use to this day."

Ya'akov Havakuk's study, which was published by Israel's Ministry of Defense in 1985, is also evidence of the fact that the residents of the South Hebron Hills have been living a unique way of life in this area for generations, carrying on their ancestors' traditions of living in and around caves. Havakuk notes that the plural form of the word in Arabic for "cave" which the residents use is not the accepted "mua'ur," but rather with the inflection of the word in Arabic for home ("dar"), and in plural "dur." Havakuk argued that this reflects the special relationship these Palestinian cave dwellers have to the caves, which are their homes.

The residents of these villages rely to this day on cattle rearing and dryland farming to earn their livelihoods. The farming provides them with what they need for personal consumption, as well as for feeding their livestock. The agricultural work is done traditionally: plowing the land with a wooden plow, scattered plowing, reliance on rainwater, etc. Most of the crops cultivated are wheat, barley, sorghum, lentils and others. The livestock also provide an economic backbone for the villagers, as they produce wool, milk, skin and meat. The grazing and cultivation spread out across open areas, as such work naturally requires. According to a 2012 OCHA report (Office for the Coordination of Humanitarian Affairs within the United Nations), the area includes 12,000 dunams (4.6 square miles) of cultivated land and the villagers collectively own 12,500 livestock.

Masafer-Yatta's villages are not hooked up to water or electricity infrastructures. Residents collect rainwater in ancient cisterns, but according to most of them, this doesn't provide them with sufficient water for their basic needs (For more information on the severe water shortage in the West Bank, see B'Tselem's report on water from March 22, 2009.) The residents are thus forced to purchase water from Kiryat Arba and Yatta at exorbitant prices of NIS25-30 per cubic meter of water.

The high cost of water stems, inter alia, from the high cost of delivering it to these isolated villages, located on hilltop ranges or in valleys that regular vehicles cannot access, only 4X4 vehicles. (See OCHA report: "Special Focus: Displacement and Insecurity in Area C of the West Bank, August" 2011, p. 14; "Area C Humanitarian Response Plan Fact Sheet," August 2010.) The demolition of water cisterns by the Civil Administration intensifies this shortage. According to a field report by OCHA from 2012, in recent years the Civil Administration has demolished 6 water cisterns in the area, one in Taban, three in Jinba, and two in Sfai. The demolition of water cisterns, which serve as rainwater reservoirs on the one hand, and the high cost of purchasing water and transferring them to the villages on the other hand, make it very difficult for the Petitioners to maintain a basic livelihood, as they additionally rely on the water source for their herds.

Health services in the area are limited to a single makeshift clinic made of tin and operated by a not for profit organization that opens it once a week for only a few hours. According to a 2012 OCHA report, a stop-work order was recently issued on the clinic structure. Villagers in need of medical attention are forced to travel to another clinic, by foot or by donkey,

during its work hours. The rest of the time, they are forced to try and reach the hospital in Yatta, which means traversing a bumpy and dangerous road. Petitioner No. 13, Sa'ad Mohammed Ahmed al-Abid, testified that she had to travel for an hour and a half on this road when she went into labor whilst she was suffering great pain. According to Amer Ali Mohammed Dabassa, Petitioner No. 9, a month ago his sister was stung by a scorpion and had to be treated in the hospital in Yatta. When the IDF did not allow them to get her in a taxi, they were forced to take her on a donkey to At-Tuwani, and from there a car to Yatta.

The education system in the area is comprised of two elementary schools: One in Fakheit, which was established in 2009 and has four classrooms. The second, smaller school is located in Jinba and has been operating since October 2010. A total of 65 students in grades 1-8 study in both schools. Mr. Hader Saliman Gaba Al'amor, the school principal in both Fakheit and Jinba, testified in his affidavit that the students arrive from all the villages of Masafer-Yatta and study according to the curriculum of the Palestinian Authority: English, Arabic, History, Mathematics, Sciences and Technology, Physical Education, Arts, etc. In addition, because of the unique conditions the children live in, they are taught survival skills: How to protect themselves from dangerous animals, how to identify and avoid unexploded munitions and other hazards, and how to maintain personal hygiene.

The children have to go to great lengths to get to school. They walk from their houses in the villages, which takes anywhere from half an hour to two hours, depending on how far the village is. In winter, the children have to stay home since walking on the rutted roads in the wind and the rain is extremely dangerous, explained Ms. Wadha Mohammed Shahda Abu Aram, Petitioner No. 2, in her affidavit.

Generally, the parents strongly encourage their children to go to school, as it provides them with a framework, important skills and the promise of development. The number of children – and specifically girls – studying in school has increased dramatically since these educational frameworks began operating in the villages.

It should be noted that the Civil Administration has issued demolition orders for the two buildings housing the schools in Jinba and Fakheit.

According to a 2012 OCHA report, as of 2012, 76 demolition orders have been issued on structures in the villages in this area of south Hebron, including water cisterns and lavatories, public structures, corrals for the livestock, residential tents and more. Hasan Mohammed Ali Al-Harizat, Petitioner No. 4, tells in his affidavit that in recent years, 7 demolitions orders have been issued for his water cisterns and corrals.

The lack of infrastructure and the restrictions on development have dictated a way of life that involves constant movement between the home and the "urban" center; between the agricultural villages and the town of Yatta, where the medical services, schools and commercial centers are located. Residents of the villages are dependent on Yatta for services and to market their products, whilst Yatta relies on the villages' agricultural products.

The ability to travel freely between Yatta and the villages is of cardinal importance for the resident of this area. Even though most of the villages are not much more than 15-20 kilometers from Yatta, the paths are long and full of potholes. The difficulties of traversing these mountainous and winding paths are compounded by the restrictions on freedom of

movement imposed by the IDF, specifically on getting in and out of the firing zone. Restrictions on freedom of movement hinder accessibility to health services and education, commercial services and employment, making everyday life very difficult. These restrictions include stopping cars, confiscating cars, barring entry and exit from the firing zone, etc. For example, a few months ago in May 2012, a car belonging to teachers making their way from Yatta to the school in Jinba was confiscated. As a result, the teachers were forced to reach school via donkeys. As a resident of Tabban, Nasser Mahmoud Khalil Abid, conveys in his affidavit:

> "They enter our villages, stop us while traveling and remove our produce from the vehicle. They don't let me leave and enter the area freely, even when I am carrying produce, the IDF stops me and tells me to go by foot to Yatta."

The Petitioners are residents of historical villages, which have been leading a unique lifestyle for generations, living in caves, raising livestock and engaging in dryland farming. Their already difficult lifestyle is made even more trying by the restrictions on construction and movement imposed by the Civil Administration and the IDF. Despite these hardships, the residents of Masafer-Yatta continue to see this area as their only home.

Circumstances that Led to the Petition

<u>The designation of the Firing Zone and Preceding Procedures in the 1990s</u>

On June 8, 1980 the Civil Administration issued an order compelling the closure of the northwestern part of the area now designated as Firing Zone 918 for the purposes of military training. An additional order was issued on November 12, 1982, instructing the closure of the southeastern part of the firing zone. In the beginning of the 1990s, Israel redefined the perimeters of the firing zone and issued closure order 2/91 that covered all of Firing Zone 918.

The Respondents' response to the original petition indicates that throughout the 1990s, military training exercises were carried out from time to time in this area. In their statements from February 15, 2000, they do not deny that people were living in this area during these years. They even note that residents use this area for grazing and farming.

A 2005 B'Tselem report reveals that until 1997, a small number of evacuation orders were issued, but not enforced. According to data from the Civil Administration, in the second half of the 1980s, only two evacuation orders were issued, neither of which was enforced, while between the years 1990-1997, three evacuations orders were issued, of which less than a third were enforced.

In the second half of the 1990s, the Respondents began evacuating residents who were living in this area without permits– they proceeded to evacuate herds, demolish tent camps, seal off caves and hand out personal evacuation orders to the residents.

Three petitions were issued on behalf of the residents in response to their expulsion – two in 1997 (HCJ 6754/97 and HCJ 6798/97) and one in 1998 (HCJ 2356/98), which demanded the revocation of the evacuation orders against the residents and the closure order, which

designates the area as a firing zone and prevents the residents from maintaining their livelihoods.

After the petitions were heard in court, the Petitioners' representatives decided to withdraw the petitions, as subject to the state's commitment to enable coordinated entry of the petitioners into the closed area on various days throughout the year. This obligation was apparently based on an agreement signed between Advocate Elias Khoury and the Civil Administration, according to which the landowners would be permitted to access to their lands for purposes of cultivation during specific periods in the year. It should be noted that the Respondents referred to this agreement in their documentation of the original petition, however did not present the agreement or explain its relevance to the Petitioners. The Petitioners wish to emphasize, as they did during the original petition, that to the best of their knowledge, Adv. Khoury represented several landowners, residents of Yatta, who had an interest in the said agreement. Adv. Khoury did not represent the Petitioners or their relatives, which were never a party in the said agreement.

Renewal of the Closure Order in 1999 and the Forcible Transfer of Residents

In 1999, after notification that the petitions were removed, it was decided that the designation of the firing zone should be renewed, and closure order 6/99 was issued.

As a result of the renewed declaration between August and November 1999, military and Civil Administration officials distributed "evacuation orders" to the residents of the 12 villages due to their "illegal residence in the firing zone." Those who refused to evacuate were forcibly removed and their tent homes and belongings – including clothes, food, chairs, kitchen equipment, mattresses, blankets and more – were all seized.

In their affidavits, the Petitioners speak of the expulsion that took place at the end of the 1990s. Mohammed Issa Mohammed Abu Aram, Petitioner No. 5 from the Majaz village, tells that when Civil Administration officials arrived, they forcibly removed them from the caves and destroyed their tents. After that they put them on trucks, with the few belongings they were able to collect, and transferred them to the Carmel village. Abu Aram says that after the expulsion, they were forced to move for a period to Ka'abaneh, until interim injunctions were issued that allowed them to return to their homes.

Petitioner No. 8, Bedouin Mohammed Jaber Dabassa from the village Kh'lat a-Daba, testifies in his affidavit that one night at the end of the 1990s, at around 2 in the morning, the IDF came and forcible evacuated everyone in the village. They put them on trucks and dropped them in At-Tuwani. Bedouin himself escaped the village on foot and wandered in the mountains for three days. When he returned to the village, he found it in ruins. Tents were ripped apart, trees uprooted, the pens were destroyed and the livestock had run away. The insides of the caves were completely destroyed – all the belongings and furniture were shattered. The village was destroyed. His relatives were taken away on trucks and had no idea what happened to him. For Bedouin, this is a tragedy that has traumatized him and his entire family. They suffered emotional trauma and significant economic damage.

There were also those who left of their own volition, out of fear of confrontations with the IDF and Civil Administration. This is what Ashada Salame Ashada Al-Hamamra, Petitioner No. 10 from Megheir Al-Abeid, who left the village for At-Tuwani in 1999 with this family

chose to do. Ashada says that their cattle ran away to the mountains and valleys after the pens were destroyed. They would collect them at night and hide next to them in the caves, and then at dawn, would send them out to graze again.

As a result of all the evacuations carried out by the security forces, around 700 residents from the area were uprooted from their homes. Most of the residential structures were ruined, the tents and pens, as well as some of the caves and water cisterns. The residents were forced to find alternative housing - some went to relatives in Yatta, in Carmel and at-Twuani, and others hid in caves at night and wandered in the mountains during the day.

Legal proceedings resulting from the evacuation

In January 2000, the Association for Civil Rights in Israel (ACRI) filed a petition against the evacuation orders before the High Court of Justice on behalf of four families (HCJ 517/00) and requested an interim injunction that would allow them to remain in their homes and retrieve their seized property from the IDF or be reimbursed for property destroyed. In February 2000, an additional 82 residents, represented by Adv. Shlomo Lecker, petitioned the HCJ (HCJ 1199/00), and in July 2001, 112 residents joined ACRI's petition, raising the number of households challenging the evacuation orders to over 200. The Court joined these two petitions together and granted the requested interim injunction, allowing the villagers to temporarily return to their homes. Many residents had nothing to return to after the destruction, and security forces interpreted the interim injunction as narrowly as possible, allowing reentry only to the named petitioners and denying access to their relatives.

In December 2002, the parties entered into mediation in order to determine the status of residents in the firing zone and arrive at an agreement. Within the framework of negotiations, the State offered a similar arrangement to the one it presented recently in July 2012, namely to refrain from live-fire training in the northwest part of the Firing Zone and allow residence there. The State also offered to transfer the Petitioners to a small alternate area (200-300 dunams) in the outskirts of Yatta. The Petitioners refused. In early 2005, after more than two years of negotiations, the mediation process ended unsuccessfully.

Training with live fire of course did not take place throughout these years. From time to time, the IDF conducted "dry" training exercises, which at times damaged the residents' farmlands. On several occasions over the years, the Petitioners called on the Respondents to cease their military exercises as they were damaging their land. On one occasion, a contempt of court request was submitted.

Despite the restrictions on the ability of the military to train there – stemming from the continued legal proceedings – the Respondents issued 27 requests to extend and postpone the court date over the years; 27 times the State decided to drag out the process, thereby thwarting the possibility for the court to make a decision in the case. It is hard not to question how essential this area is for the IDF's training, given that they agreed to concede it for seven long years.

In addition, during those years, the Respondents adopted a two-faced policy: During court proceedings, their inactivity could be perceived as passive recognition and acceptance of

the Petitioners' residence in the area; but at the same time, they imposed harsh restrictions on the Respondents, limiting their freedom of movement, raiding their villages, seizing their property, legally preventing them from building and developing their villages, issuing demolitions orders and destroying vital structures, such as water cisterns and lavatories (As specified in Article 46 of the Petition).

Renewed Proceedings in 2012 and Removal of Original Petitions

On 17 April 2012, the Court held a preliminary hearing on both the general-principal petitions (HCJ 517/00 and HCJ 1199/00 mentioned above) and on the specific humanitarian petition filed by Rabbis for Human Rights (HCJ 805/05). The State informed the Court and the petitioners that the Ministry of Defense had formulated a position regarding Firing Zone 918 and that the State's final response, based on that position, will be submitted to the Court within 30 days of the hearing (by May 17, 2012). The Defense Ministry's position will also determine the State's response to the Rabbis for Human Rights petition (HCJ 805/05), which will then be subsequently submitted by 3 June 2012.

On 22 July 2012, after several delays, the State Attorney submitted a response to the Court, based on a position formulated by the Minister of Defense, according to which "permanent residence will not be permitted" in most of the area declared as a firing zone. The implication of this position is the evacuation of eight out of the 12 villages – which means the expulsion of some 1,000 people from their homes. The Defense Ministry is offering to allow the residents of these eight villages to cultivate their land and to graze their sheep on Fridays, Saturdays, and Jewish holidays, and also during two other month-long periods throughout the year. The villages that are not supposed to be evacuated according to the Defense Ministry's position are small villages in the northwestern part of the firing zone.

According to the response of the State Attorney's Office, using this area as a firing zone is essential to maintain the "required fitness of IDF forces." The Respondents claim that the need for training increased significantly as a direct result of the 2006 Second Lebanon War, which exposed the IDF's critical points of weakness when it comes to its army capabilities. The Respondents' statement clearly indicates that Firing Zone 918 is supposed to serve as a training ground for the kind of combat required during the Lebanon War, distinct from the type of combat in the occupied territories:

> "The Second Lebanon war, which erupted in 2006, exposed points of weakness in the IDF's army capacity, among other things as a result of increased and ongoing anti-terror operations in the West Bank, which has impaired the IDF's ability to train, a situation which has clarified the need for these forces to return to regular training." (Para. 12 of the Respondents' submission of 19 July 2012)

In August 2012, following the State's announcement, the High Court of Justice found that the normative circumstances have changed and therefore dismissed the petitions without ruling on the matter. The Justices stressed that the arguments of both sides remain standing and that the Petitioners could submit new petitions against the Defense Minister's decision. The interim injunctions allowing the residents to continue living in their homes and

cultivating their lands, initially in effect until November 1, 2012, were extended – as per the petitioners' request – until 16 January 2013.

The Legal Claim

The Normative Framework

The geographical area the petition addresses, like all parts of the West Bank, is subject to the laws of Israel's belligerent occupation– first and foremost, those laws are anchored primarily in regulations regarding the laws and customs of war on land, as noted in the annex of the IV Hague Convention of 1907 (hereinafter: Hague Conventions) and the directives of the 1949 Geneva Convention regarding the protection of civilians in time of war (hereinafter: The Fourth Geneva Convention or Geneva Convention), which all reflect customary international law. In addition, there are specific provisions set out in the first additional protocol to the Geneva Convention from 1977 (hereinafter: The Protocol), which are also accepted as reflective of customary law and are thus binding.

The military commander is the de facto sovereign in the area, which is subject to the laws of belligerent occupation and derives authority from international law. Article 43 of The Hague Conventions certifies and obligates the military commander to "guarantee public order and security, as much as possible, while respecting the laws and customs of the area, unless he is absolutely prevented from doing so."

The interpretation provided by the Court to this obligation is broad, as it appears in the original version, and applies to most aspects of life, not just what is necessitated by narrow security needs.

A basic principle included in the laws of belligerent occupation, which is also given expression in Article 43 of the Hague Conventions, is that the legitimate security needs of the occupier must be balanced with the rights of the residents, which the military commander is obligated to protect. The obligation in Article 43 is to "ensure public security and order," as specified above according to the directives of the Hague Conventions and Geneva Convention, specifically Article 46 of the Hague Conventions and Article 27 of the Geneva Convention. These articles entrench the basic rights of the protected civilians and place an onus on the military commander to respect and protect these rights.

Prohibition of Forcible Transfer of Protected Persons

As specified in the background information, residents of the 12 villages in the Masafer-Yatta area were forcibly evacuated from their homes at the end of 1999 and permitted to return in 2000, under an interim injunction order issued by the High Court of Justice. Currently, the Defense Minister's position, as it was presented to the court by the Respondents' on July 19, 2012, the majority of the residents of the area are facing expulsion – and more accurately, forcible transfer, from their homes and lands.

This transfer of a population directly contradictions Article 49(1) of the Geneva Convention, which determines:

> "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."

This is a rule of customary law that obligates all states in the world. The prohibition is sweeping and without restriction – whatever the motivation may be. This decisive prohibition formulated in the wake of World War II was designed to prevent arbitrary expulsion of people, which was widespread during that period.

To Whom Does Article 49(1) Apply?

The Respondents' claim that according to Article 318(D) of the order regarding security directives, which deals with closure orders, any person staying without permit in an area the military commander has closed off can be evacuated – except for permanent residents. The Respondents' factual claim is that the residents of the village are not permanent residents in the area and can thus be expelled.
The Petitioners will first claim that Article 49(1) does not require "permanent residency" for the purpose of protection from expulsion and that as far as the requirement of a connection to the place applies in the prohibition in Article 49(1), the connection is one of "residence" or of "home"; secondly, that the manner in which the Respondents have interpreted the term "permanent resident" and the way they have applied it is contradictory to the purpose of Article 49(1), whose goal is maximum protection of protected civilians against forcible transfer; thirdly, the Petitioners will claim that they and their families are residents of the area according to any reasonable criteria, and certainly as far as Article 49(1) applies.

The Petitioners reside in villages throughout Yatta, these villages are their homes. The residents have been residing in their homes continuously – their families are there, their livelihood is there, the center of their life is there. Thus, even according to the Respondents' terminology, and even if we adopt their rigid criteria, the Petitioners and their families – as well as the rest of the villagers living in the area designated as Firing Zone 918 – have the right to continue living there. The Respondents are absolutely barred from moving them, regardless of their motive. The forcible transfer of villagers from this area will be in direct and blatant contradiction of the prohibition in Article 49(1).

Deviation from Authority in Utilizing Land Resources of Occupied Territory for Purposes of Military Training

The closure order on Firing Zone 918 applies to an area spanning nearly 33,000 dunams. No one disputes the fact that a significant portion of the lands in the area is privately owned (See Article 32 in background information). International Humanitarian Law determines what an occupying power is permitted to do with property, including land, addressed specifically in Articles 46 and 52 of the Hague Conventions, as well as Article 53 of the

Geneva Convention. These articles address a series of prohibitions and limitations regarding the use, confiscation and destruction of private or public property in the occupied territory, while seeking a balance between the recognition of rights and needs of the local, protected population and recognition of security needs from the perspective of the military commander. We will now examine the legal application of these limitations.

Article 52 of the Hague Conventions – Restriction on Use of Enemy Property

Article 52 of the Hague Conventions restricts the use of enemy property and services:

> "Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such a nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.
>
> Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.
>
> Contributions in kind shall as far is possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible. "

The article contains a restriction that applies in circumstances in which there is a military need. In order to determine whether the land seizure is legal, one must first examine whether such a restriction exists, and then examine whether the cumulative demands specified in the rest of the article are present.

The interpretation provided for the term "needs of the army of occupation" as regards Article 52 is quite narrow. It defines it as circumstances in which the occupying military has a military need in the occupied territory, and not the occupying State or its military in general.

Firing Zone 918 is not a land seizure order, but rather a large-scale closure order for the purposes of military training exercises with no defined time limit. The narrow interpretation that should be applied to Article 52, as specified above, cannot be subject to the large-scale closure of areas for the benefit of military exercises for an unlimited and extended period of time, especially when such exercises are not designed to serve the extraordinary needs of the occupying military in the occupied territory itself.

The approval that appears in Article 52 regarding the use of enemy property and services is a specific authorization that applies during times of war to serve the occupying military's immediate needs, as distinct from the occupying power. General military exercises for the occupying power cannot be considered a military necessity (See Page 6 of Bothe's expert opinion).

Article 46 of the Hague Conventions – Obligation to Honor Private Property and Prohibition of Confiscation of Property

In addition to the limitations in Article 52 of the Hague Conventions regarding requisition of property, whether public or private, in occupied territory, the Conventions specify a distinct and more severe directive regarding protection of private property, which includes a sweeping prohibition on confiscation of property. Article 46 of the Hague Conventions determines as follows:

> "Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated." (emphasis added)

As determined in the Krupp ruling in the Nuremberg Trials, the obligation to respect private property is not limited to protection from loss of ownership. Prevention of the possibility to effectively utilize property and realize property rights anchored in law also constitute a violation of this obligation to respect property. Therefore, in effect, preventing the use of property can be considered illegal confiscation of property as per Article 46 of the Hague Conventions.

According to Respondent 1's position in the statement provided on July 19, 2012, landowners will be granted access to their lands on weekends, Jewish holidays and two other month-long periods throughout the year (Clause 3 of the Respondent's statement). This position seeks to prevent the Petitioners from enjoying free and continuous use of their homes and land. This means the residents cannot continue residing in their homes and utilizing their properties (pens, facilities, etc.); secondly, the residents are barred from regularly grazing their livestock on their lands; and thirdly, the ability to cultivate the land as required within the framework of dryland farming is reduced. (See expert opinion provided by Hartman).

The Petitioners claims that the barring of residents from using their lands and properties, with all the various implications that involves, is a violation of the occupying power's obligation in Article 46 of the Hague Conventions that requires it honor private property and property rights, and constitutes illegal confiscation of their property (See Article 36 of the expert opinion by Benvenisti, Kretzmer and Shany.)

<u>Article 53 of the Geneva Convention – Prohibition of Destruction of Private or Public Property</u>

Article 53 of the Geneva Convention adds an additional limitation on destruction of enemy property. The article bars the destruction of property, whether private or public, except in cases in of an immediate operational military necessity.

> "Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations."

Live-fire training that uses heavy weaponry can damage the Petitioners' property, whether in the caves, other structures they own or their agricultural and pasture lands, which could also suffer damage from live fire and be transformed into fields containing unexploded munitions and mines. Thus, the training exercises the Respondents' are requesting to carry out in Firing Zone 918 are liable to constitute destruction of property and thus should be examined in light of Article 53 of the Geneva Convention.

As a rule, routine military training is generally not considered a military necessity, according to Article 53, since it lacks the immediacy and temporary nature of operations during times of war (See Articles 23-25 and 37 of the expert opinion by Benvenisti, Kretzmer and Shany.) Such training certainly cannot be considered a required military necessity when there is no requirement that they take place in the occupied territory itself, but are rather for the benefit of maintaining the required fitness of IDF forces, outside the area of the Firing Zone.

To summarize, it is highly doubtful that routine military training qualifies as necessary military needs that would justify the use of property or the destruction of property in occupied territory by the occupying power – as per Article 52 of the Hague Conventions and Article 53 of the Geneva Convention. This is certainly the case when the military exercises in no way serve the needs of the occupying military in the occupied territory, but rather military needs entirely outside the occupied territory, of the kind addressed by the Respondents in their statement to the court on July 19, 2012. This is even more so when it comes to private property, which receives special protection under Article 46 of the Hague Conventions. For all these reasons, the designation of Firing Zone 918, specifically as regards the needs specified by the Respondents in their statement, constitutes a deviation from the military commander's authority and thus should be annulled as required by law.

Violation of Rights

The Minister of Defense's intention to make broad use of most of the area designated as Firing Zone 918 for the purposes of live-fire military training effectively means the forcible uprooting and transfer of 1,000 residents, among them the Petitioners and their families, who live in eight of the villages in the area. This forcible transfer gravely violates the residents' basic rights, according to both international and Israeli law.

The forcible transfer of residents will leave them homeless, and the highly restrictive entry arrangements that the Defense Minister referred to will prevent them from exercising free use of their property, including their pasturelands and agricultural lands. This will also lead to the severe violation of the residents' ability to make a living and maintain their way of life. Each issues separately and all taken together constitutes a grave violation of the Petitioners' dignity, culture and lifestyle.

Lack of Reasonability and Proportionality

The designation of Firing Zone 918, and specifically the Defense Minister's position as presented by the Respondent's on July 19, 2012, is not reasonable or proportionate. In exercising the right to discretion he possesses, the military commander is obligated to find a balance between the legitimate military interests of his forces and his obligation to protect the protected civilian population and act on its behalf. Uprooting the Petitioners from their homes and lands constitutes one of the most severe violations of the petitioner's legal

rights. This violation is not proportionate to the benefit that will be generated from closing off the area to military exercises, which are in no way related to the occupied territory.

Therefore, the honorable court is requested to issue a conditional order as requested in the beginning of the petition, and to make it final after receiving the Respondents' response.