

**Summary of petition for the realization of an order of demolition on the land of Jabel Artis<sup>1</sup>**

At the Supreme Court in Jerusalem  
In its capacity as the High Court of Justice

HCJ 08/

- 1. Mahbouba Muhammad Sa'id Yasin**
- 2. Harbi Ibrahim Mustafa Mustafa**

all represented by Counsel, Michael Sfard and/or Shlomy Zachary and/or Neta Patrick and/or Muhammad Shaqir, on behalf of Yesh Din -- Volunteers for Human Rights, of 49 Ahad Ha-Am Street, 65206 Tel Aviv; Tel. 03-5607345, Fax 03-5607346

**Petitioners**

– v. –

- 1. Defense Minister Ehud Barak**
- 2. Commander of IDF Forces in the West Bank Maj. Gen. Gadi Shamni**
- 3. Head of Civil Administration Brig. Gen. Yoav Mordechai**
- 4. Commander of SJ Police District Commander Shlomo Katabi**

all represented by Counsel from State Advocacy, Ministry of Justice, Salah A-Din Street, Jerusalem

- 5. Beit El Local Council**, East Binyamin mobile post office, 90613,
- 6. Beit El Yeshiva Campus**, registered association 580002541, POB 1155. Beit El 90628

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<sup>1</sup> Disclaimer: The extract presented herein is only a summary of the petition submitted to the Supreme Court. The contents of this summary must not be considered, in part or in whole, as the statement of petition or as a binding legal document on behalf of the petitioners and/or the Yesh Din organization and/or anyone on their behalf. In any case of contradiction, the full text of the petition in Hebrew is paramount and must be consulted.

**Petition for Order Nisi and Interim Injunction**

This is a Petition for an order nisi according to which the Honorable Court is asked to order the Respondent to come forth and explain, if they should so desire:

- a. To Respondents 1-4: why they should not **enforce without delay** stop work orders and why orders of demolition issued against five permanent buildings and five caravans currently located on plots numbers 34 and 39 of section number 5 of the land of the village of Dura al-Qara' in the West Bank should not be **carried out** immediately (hereinafter: "the buildings").
- b. Alternatively and for reasons of prudence only and if it transpires that no such orders have been issued for the buildings -- why stop work orders and orders of demolition for the buildings and the site preparation should not be issued and enforced without delay.
- c. To Respondents 5-6 why they should not immediately stop performing any action, themselves or through others, directly or indirectly, on the Respondents' land, including why they should [not] refrain from providing any services to the illegal buildings built on it.

This is also a Petition for an interim injunction according to which the Honorable Court is being requested to order:

- a. Respondents 5-6 to refrain from any construction on the Respondents' land as well as refraining from conducting any business involving those buildings including refraining from selling, transferring, renting, populating or transferring rights of any kind;
- b. Prevent Respondents 1-4 from populating the empty apartments in the buildings as well as preventing their continued construction;

***These are the reasons for the Petition for an order nisi:***

**a. Introduction**

1. The subject of this Petition is five permanent buildings whose construction was recently completed by settlers and another five caravans placed during 2003, all on **registered private land recorded in the land registry** belonging to Palestinian

residents of the nearby village of Dura al-Qara'. The buildings are being built on land outside of the boundaries of the settlement of Beit El, in a neighborhood projected to be part of a settlement called Jabel Artis and their construction is being undertaken against the law as follows:

- a. The buildings are being built on **private and registered** Palestinian land without the agreement of its owners;
- b. The buildings are being built without permits;
- c. The buildings are being built outside of any jurisdiction and without any outline plan;
- d. The buildings are being built in violation of stop work orders and demolition orders issued against them;

2. Like in any other case of illegal construction by Israelis in the West Bank, pursued through the theft of private land, in this case too, the arm of the law enforcement agencies is unfelt.

**3. This is the place to mention that the buildings which are the subject of this Petition are outside of the area of the Beit El mother settlement (also born in sin, as shall be explained below, on private Palestinian land), and near the Civil Administration headquarters, including the enforcement agencies. And so, right under the noses of those charged with law enforcement, with their open knowledge and conscious inaction, land theft is taking place on a huge scale, without the parties charged with enforcing the law lifting a finger, despite the many reports by the Petitioners and other parties over the years.**

4. This Petition is therefore being submitted for lack of any other option and out of the understanding that without the interference of the Honorable Court the fate of the plots owned by the Petitioners, even though they were never seized for security needs or any other reason, will be the same as the fate of the other land on which the Beit El settlement was built, all registered private land – a fate of de-facto annexation to the settlement and a hopeless wait for the end of the "temporary" situation because of which some of the land upon which the mother settlement was built was seized.

## **b. The factual background**

### **I. The parties in the Petition**

5. Petitioner no. 1, Mahbouba Muhammad Sa'id Yasin, resident of the village of Dura al-Qara' in the West Bank, is the daughter and one of the heirs of Muhammad Sa'id Ahmad Qassem, who is the registered owner of plot 39 in section 5 of the land

of the village of Dura al-Qara' in the Ramallah district.

6. Petitioner no. 2, Harbi Ibrahim Mustafa Mustafa, is one of the registered owners of plot no. 34 in section 5 of the land of the village of Dura al-Qara'.

7. Respondent no. 1 is the defense minister of Israel. Respondent no. 1 is in charge of the Civil Administration in the West Bank and the implementation of the conclusions of the report written by attorney Talia Sasson about the unauthorized outposts.

8. Respondent no. 2 is the commander of the Israel Defense Forces in the West Bank and has all the administrative and legislative powers of the area occupied by Israel by way of belligerent occupation, in accordance with the rules of international humanitarian law and the laws of belligerent occupation. In particular, Respondent no. 2 is in charge of maintaining public order and protecting the property of the residents of the area subject to belligerent occupation.

9. Respondent no. 3 is the head of the Civil Administration for Respondent no. 2, who holds the administrative powers over civilian life in the occupied territories. Among other things Respondent no. 3 is in charge of enforcing the planning and construction laws that apply to the area, including issuing stop work orders. As mentioned above, Respondent no. 3 and the center of the "enforcement agencies" who report to him are stationed in the Beit El military camp, which is near the buildings that are the subject of this Petition.

10. Respondent no. 4 is commander of the Israel Police Samaria and Judea District who is in charge, among other things, of enforcing the law upon Israeli offenders in the West Bank.

**Hereinafter respondents 1-4 will be called in this Petition "the Respondents."**

11. Respondent no. 5, the Beit El Regional Council, was declared as such in 1997, according to the order for the administration of regional councils (Judea and Samaria) (no. 892), [1981]. The Petitioners do not know with full certainty the identity of those responsible for building the buildings on their land, nor do the Petitioners know the identity of the people living in those buildings. **Since the buildings which are the subject of this Petition are outside the jurisdiction of the settlement of Beit El as declared in 1997, Respondent no. 5 is added to this Petition strictly for reasons of prudence.**

12. Respondent no. 6 is an association that operates a yeshiva in Beit El, and as far as the Petitioners know it is the entity that is selling the apartments in the buildings that are the subject of the Petition and apparently was also involved in building them. The Petitioners have no way of ascertaining this because the construction is illegal and is not registered anywhere, nor is it accompanied by building licenses, and the addition of this Respondent is strictly for reasons of prudence.

## **II. The buildings that are the subject of this Petition**

13. During the last years there has been accelerated construction of eight large permanent homes in the Jabel Artis outpost near the settlement of Beit El. Five of those eight homes are built on the Petitioners' land. Based on the answers received from representatives of the Respondents and the authorities, and according to the law that applies to the area, all of the buildings that are under construction and standing in that neighborhood were built illegally.

14. From photos taken of the building sites in the middle of May this year the accelerated pace of work by the construction violators can be seen clearly, with no hindrance on the part of the authorities and despite the existence of various orders that they have issued over the years and the very close presence of the compound of the headquarters of the Civil Administration in Beit El.

## **III. Exhaustion of proceedings**

15. On November 5, 2006 Mr. Dror Etkes, then coordinator of the Peace Now settlement watch project, wrote to Respondent no. 3, informing him of the expansion of the apparently illegal construction that had begun at Jabel Artis, when the placing of buildings and site preparation began to proceed at an accelerated pace, including in the places where the buildings which are the subject of this Petition are presently located. Respondent no. 3 was asked in a letter, among other things, whether the land where the construction was taking place was private Palestinian land, whether there was a valid seizure order for that land and whether the construction on that land was being done in accordance with the law that applies to the area.

16. The response of a representative of Respondent no. 3, Capt. Mali Cohen, arrived on February 18, 2007 and included the following:

*"2. [...] In your letter you asked for various information about the construction at the 'Jabel Artis' outpost near Beit El and the land status of the area where the outpost was built.*

*3. According to the findings the land on which the outpost was built is privately owned and registered land.*

*4. Figures from the inspection unit show that inspection procedures against that construction are underway."*

17. **At this point the Petitioners wish to emphasize that even the Respondents consider the construction in the neighborhood of Jabel Artis to be the construction of an unauthorized and illegal outpost, and they do not consider it an integral part of the settlement of Beit El, contrary to the view of Respondent no. 5 and/or parties on its behalf which presented the construction as part of the**

**settlement.**

18. The Petitioners waited patiently in anticipation of the enforcement of the inspection procedures by the Respondents. Nothing was done, just like nothing was done almost anywhere in the West Bank regarding the enforcement of the planning and construction laws against illegal construction by Israelis.

19. After about a year of almost total inaction, Mr. Dror Etkes (now in his capacity as coordinator of Yesh Din's land project) wrote again to Respondent no. 3, because of the resumption of construction and the addition of new buildings, the buildings which are the subject of this Petition, which were built on the land of Petitioners 1-2. In this letter Mr. Etkes demanded the cessation of construction, undertaken without any planning status and compromising the Petitioners' rights to realize their rights to the land.

20. Only a month later, after the buildings were apparently completed and populated, did the response of a representative of Respondent no. 3 arrive, in which he "informed" the undersigned of the following:

**“As for the construction which is the subject of your letter, inspection and enforcement procedures were launched by the Civil Administration in which a final order was issued to stop the work and demolish the construction.”**

21. This answer, we already know from our experience in similar cases in the past, includes the words that mean: **"when we receive permission from the political echelon,"** or in simpler words, **"never."** So feeble are the law enforcement agencies that since the orders were issued not only has construction not stopped, but on a site that had only been "prepared for construction" when the orders were issued, today stand giant buildings, which apparently serve a large number of residents.

**22. It turns out again, like in many cases of illegal construction by settlers in the Occupied territories, that the law enforcement agencies embarrass themselves and us by issuing orders they have no intention of enforcing and construction, even though it is illegal, continues with full vigor and without hindrance.**

#### **IV. In the margins of the petition, a history of the seizure orders issued for land in Beit El and the interaction between the military-security seizure orders and the construction of settlements and outposts**

23. This part of the factual background wishes to illustrate, through a case study, the conduct of the systems in the West Bank regarding the issuance of seizure orders and their "designation," and turning them into thriving building sites for the settlement enterprise.

24. Petitioner no.1 received a letter in 2003 from parties reporting to Respondent no. 3, in which she was told that the land in her possession (the aforementioned plot no. 39 in section 5) was seized for military purposes through seizure order number t/72/03. It should be stressed that construction in the Jabel Artis area began in 2003, parallel or maybe even following the "notice" of the seizure of the area, because from the moment the notice arrived the Petitioner was barred from accessing the land, for obvious reasons.

25. On July 7, 2008 the undersigned wrote to the Judea and Samaria Area legal adviser, asking whether the seizure order that was issued (seizure order number t/72/03) really had been issued against the Petitioner's land.

26. A response from a representative of the Judea and Samaria Area legal adviser came a month and a half later, on August 14, 2008, saying that the seizure order was indeed issued on August 24, 2003 and that it was extended on January 10, 2005. It also said that the order applies to part of the plot owned by Petitioner no. 1.

27. Following that answer, Dror Etkes of Yesh Din wrote to the Judea and Samaria Area legal adviser, drawing her attention to the fact that according to information, given from the Civil Administration officials about the seizure orders issued in the West Bank, that seizure order did not apply to the land owned by Petitioner no. 1, and in any case the seizure order had expired and had not been renewed for 2007.

28. Ten days later a correction of error notice came from a representative of the Judea and Samaria Area legal adviser. The notice said that in the previous response they had provided they had made an error, and as a result of a re-examination of the issue it emerged that the seizure order did not apply to the land that was the subject of the letter (which is the land owned by the Petitioner, on which the buildings that are the subject of this Petition were built), and also that there was no seizure order that applied to the aforementioned land. It also said that a comment to that effect was given to the responsible parties.

**29. And so, the picture emerges in its full ugliness and its full disturbing findings: in 2003 Palestinian landowners were informed of a supposed "seizure order" issued upon their land, for security purposes, of course. Parallel to delivering the notice, the construction of buildings began in the Jabel Artis neighborhood. Now that the buildings have been completed it has been learned that seizure orders were never issued. And out of that vicious cycle come the Petitioners who are asking the Court to give them remedy against that entanglement of foolishness, errors, evil and intentional absence of law enforcement by the authorities, which are completely ignoring what is happening in front of their noses and in their backyard.**

30. That is the reason for this petition.

## c. The legal argument

### I - About the legal status of the settlement of Beit El

31. The infiltration into the land of the Palestinian settlements of al-Bira and Dura al-Qara', in the Ramallah district, by Israelis in order to build the settlement of Beit El, took place in 1978 with the use of a military seizure order issued for the military camp and the land around it in 1970. The original seizure order, no. 1/70, was issued on February 16, 1974 for urgent and necessary military needs, with no expiration date ever set for it.

32. Towards the end of the 1970s construction procedures for a civilian settlement on the land seized under the aforementioned seizure order began. Those procedures were validated by the Honorable Court in the famous ruling HCJ 606/78 **Suleiman Tawfiq Ayyub et al. v. Minister of Defense et al.**, 33(2) PD 113 [1979], which established that since the civilian settlement built inside of the area subject to the seizure order constituted part of the government's security doctrine of the time, construction of the settlement was approved, with the Court stating it was avoiding addressing the question of the legality of building settlements in the West Bank.

33. The contents of that ruling were widely criticized in Israel and abroad. Of the many criticisms of the ruling, one of the most memorable was by Prof. Yoram Dinstein, one of the world's greatest experts on the laws of warfare, who stated that the Honorable Court's failure to examine the matter from the perspective of the principle of distinction and its failure to address the legal significance of placing civilians on the site "for military purposes" could lead to a disastrous result:

*"But now that the High Court of Justice established officially that Jewish civilian settlements in the occupied territories constitute part of the IDF deployment, it can be argued that the settlements are de facto stripped of their civilian character not only for the purpose of achieving the goal the advocacy wish to achieve but also in other contexts. **The laws of warfare do not recognize an interim status, half military and have civilian.**"*

Yoram Dinstein, "Settlements and expulsions in the occupied territories," **Iyunei Mishpat**, vol. 7 (5739-5740) 188, p. 191 [Hebrew]. (Emphasis added, M.S., S.Z.)

34. The Petitioners wish to stress that the Petition is not about the grave and serious issue raised in the article following the ruling, but that because of the complexity of the issue, they are presenting the full picture to the Honorable Court. Whether the security doctrine and the ruling that invalidated it are correct or not, whether the security situation was reevaluated over the years to examine the necessity of the seizure order and the "urgent military" necessity of the settlement or not, none of that changes the fact that the Respondents or someone on their behalf frequently uses civilians as part of the military campaign, and that alone constitutes a violation of the



principle of distinction.

35. Over the years the settlement was expanded more and more and today is united under a single municipal umbrella, following the declaration of the municipal area of Beit El by the Respondents and the establishment of the Beit El regional Council, procedures that were undertaken in 1997.

36. The municipal area of the settlement -- most of which is located on the private land seized for military purposes following the order from 1970 -- is non-contiguous, and comprised of segments and enclaves. However, contiguity was achieved by illegal and unauthorized construction on a colossal scale in the settlement.

37. Official figures obtained by the undersigned, originating from the Civil Administration, showed that as of 2007 more than 100 (100!) Procedures of illegal construction were underway in the Beit El settlement. This illegal construction helps "fuse" the parts of the settlement, with the construction taking place on private Palestinian land. That is also the case of the buildings that are the subject of this petition, which are being built outside of the municipal territory of the settlement of Beit El in the outpost or neighborhood of Jabel Artis, with the goal of expanding the settlement in a particularly illegal and harmful way.

38. On top of that comes the website of the Yesha Council, which comprises all of the settlements and local councils in the West Bank, and announces regarding the settlement of Beit El, under the headline "tourism in the Council," that "*the Council [i.e. the local Council, M.S., S.Z.] is investing money in developing "Artis Hill," a tourism hill near the settlement including a historic site, a lookout and a breathtaking view. Tours are available through the Ofra field school.*"

**39. And so it is that more and more land is annexed -- by way of the improper tool of illegal construction, which thrives in the absence of effective enforcement -- into the settlement, which was originally built for an "urgent and immediate military necessity," without building permits and outside of the municipal boundaries of the local council, which along with Respondent no. 6 is yet attempting to legalize the construction and thereby expand the area of the settlement.**

40. Since this is the situation, and since construction of the neighborhood of Jabel Artis is taking place outside of the settlement's jurisdiction, without an outline plan and without decisions by the relevant echelon, **the Petitioners have no choice but to reach the obvious conclusion that the neighborhood of Jabel Artis is an illegal outpost**, adjoined to the "security" settlement of Beit El. We shall expand on this point further in the legal section about planning and construction issues and the lack of law enforcement in the outposts.

41. And this is what the appendix of the Sasson report said about this outpost:

Name of the outpost in the report: Pisgat Ya'acov -- Jabel Artis -- Alt. 901  
*Date established: A water tower was positioned in 1995. Caravans were placed in February 2001.*  
*The closest settlement: Bet El, 147 m from a built-up neighborhood – **which is also illegal** (emphasis added, S.Z., M.S.)*  
*Government or Minister of Defense approval for its establishment: None.*  
*Nature of land rights: Private Palestinian land.*  
*Body which allocated the land: None.*  
*Planning status: None.*  
*Jurisdiction: None*  
*Number of inhabitants: 25 families.*  
*Type of construction: 30 caravans; one container; 2 cellular installations; 2 water towers; development work and a water reservoir.*  
*Body financing the establishment: The Ministry of Housing and Construction financed the establishment of infrastructures in the amount of 4,535,000 NIS.*  
*Connection to electricity grid: Electrical connection has only been approved for the water tower.*  
*Connection to water system: According to a report by Mekorot – they apparently “pull” water from Beit El.*

## **II - On the Petitioners' rights and the Respondents' duty to protect their property**

42. The Petitioners are the owners of the land on which the permanent buildings that are the subject of this Petition are being built. The buildings are located on the Petitioners' private land, without their permission and without the required relevant permits.

43. The Petitioners are protected persons who reside in a territory subject to belligerent occupation, as is the land they own, land on which the buildings that are the subject of this Petition are located. In their capacity as civilians located in a territory subject to belligerent seizure, they have the status of "protected persons" according to international humanitarian law.

44. The provisions of international humanitarian law apply to the area of the West Bank and to the Petitioners, as the Honorable Court has long established. On this matter see the words of retired Chief Justice Aharon Barak in H CJ 393/82 **Jam'iat Iskan al-Mu'allimoon v. Commander of the IDF Forces**, PD 37 (4), 785, pp. 791-792. Likewise, the provisions of the Fourth Geneva Convention from 1949 relative to the Protection of Civilian Persons in Time of War apply to the area, as the Honorable Court recently reasserted, in H CJ 7957/04 **Zaharan Yunis Mara'abe et al. v Israeli Prime Minister et al.** Tak-Al 2005 (3), 3333.

45. One of the duties incumbent on the occupying power by virtue of international and humanitarian law is protecting, among other things, the property of the protected population. And so article 46 of the Hague Conventions states that:

*Art. 46. 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.*

46. In addition there is an equivalent provision in the Fourth Geneva Convention as well, which states that:

*Art. 53 – Prohibited Destruction: “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”.*

47. There is no doubt that the actions of the settlers, who have de facto occupied the Petitioners' land, possibly with the help or under the cover of sending the notices to the Petitioners about seizure orders that never existed, and began building on the land unhindered, while the Petitioners were prevented from accessing the area and the land they own (see their depositions), constitute destruction of the property and unauthorized use thereof.

48. The duty incumbent on the military force on the ground, which is Respondents 2 and 3, as regards humanitarian law, also contains the duty to protect the property of the protected individual in the occupied territories. (And see also HCJ 4764/04 – **Physicians for Human Rights et al. v. Commander of IDF Forces in Gaza**, PD 58 (5), 385, pp. 393-394; and HCJ 7862/04, **Zohariya Hassan Mourshad Bin Hussein Abu Daher v. IDF Commander in Judea and Samaria**, PD 59 (5), 368, pp. 376-377).

49. Therefore, it can be seen -- as could have been expected -- that the Petitioners have the right, according to international law, for their property to be protected by the military commander on the ground. **All the more so** when the assailants and destroyers of the property come from the population of the occupying power, whose transfer into the occupied territory, presence in it and surely their residence in it are forbidden according to the customary rule of international law. Against that right of the Petitioners stands the duty of Respondents 1-4 to effectively guarantee the existence of that right, with the "positive" dimension of that duty requiring the authorities to take all procedures and measures at their disposal to guarantee that protection. The problem is that the authorities are not even acting to realize the stop work and/or demolition orders they issued against the buildings being built on the Petitioners' land.

50. Similar provisions that require the Respondents to take all measures in order to restore to the Petitioners their ownership of the land also exist in the Israeli articles of legislation that apply by virtue of the principles of administrative law on their activity in the West Bank. So, for example, Basic Law: Human Dignity and Freedom provides in section 3 that "There shall be no violation of the property of a person."

51. However, as we see, by declining to enforce the law against the construction at Jabel Artis in general and against those responsible for the construction that is the subject of this petition, the Respondents are breaching the legal-constitutional-moral duty incumbent on them.

**52. In conclusion, then, we can see that both according to international humanitarian law and the provisions of Basic Law: Human Dignity and Freedom, the Petitioners' right to the protection of their property is recognized and enshrined. Meanwhile, Respondents numbers 1-4 are required to guarantee the realization of the Petitioners' property right, or it least to guarantee that it is not abused. In fact, the authorities entrusted with enforcement systematically avoid enforcing the law, and we will expand on that below.**

### **III - On the Civil Administration's inspection and enforcement division's non-enforcement project**

53. Tens of thousands or even hundreds of thousands of words have already been written about the absence of effective law enforcement upon Israeli law violators in the West Bank. The problem of law enforcement upon Israelis has attended the Israeli occupation since the beginning of the settlement enterprise.

54. Following publication of the Shamgar Committee report into the events of the Cave of the Patriarchs massacre in 1994 and adoption of its conclusions, the Israel Police established its sixth district, the Samaria and Judea District, of which Respondent no. 4 is the commander. In addition, the attorney general issued a new procedure which should have regulated the delegation of responsibility for law enforcement upon Israelis in the West Bank and the Gaza Strip. The procedure was changed and updated by Atty. Gen. Elyakim Rubenstein.

55. In section 6 the procedure said explicitly that the Israel Police would be responsible for law enforcement upon Israelis in the West Bank. The IDF retains overall responsibility and the procedure also asserts that if there is an event of disturbance to which IDF soldiers arrive first, until the arrival of the police the IDF is responsible for law enforcement.

56. But all of the procedures and all of the reports did nothing to improve the situation and law breaking by Israelis in the West Bank has remained without an adequate response to this day.

See, among other things:

"A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank," **Yesh Din** (June 2006);

"Standing Idly By: Non-enforcement of the Law on Settlers: Hebron," **B'Tselem** (August 2002);

"Tacit Consent: Law Enforcement towards Israeli Settlers in the Occupied territories," **B'Tselem** (March 2001);

"Free Rein: Vigilante Settlers and Israel's Non-Enforcement of the Law," **B'Tselem** (October 2001);

57. Article 43 of the Hague conventions sets forth the power **and the duty** of the military commander on the ground to maintain order and security in the area under his command. Article 27 of the Hague conventions adds that "*Protected persons are entitled [...] and they shall be especially protected against any act of violence, or threats of violence [...]*" (Emphasis added by us: M.S., S.Z.).

58. The duty incumbent upon the Respondents is, therefore, a duty **that requires positive action for law enforcement**. And as the Honorable Court established in the Murad case: "*There is no doubt that one of the main duties incumbent upon the military commander in this framework is the duty to maintain law-abiding in the area*" (see HCJ 9593/04 **Rashed Murad v. Commander of IDF forces in Judea and Samaria**, p. 4377).

59. The neglect of enforcement has spread to all areas of life under the occupation, but it seems that in the area of violation of the planning and construction laws the phenomenon of non-enforcement rears its head in the worst way, as in that area the settlers have been and continue to be aided by the authorities themselves, literally. Such aid has been expressed, among other ways, also by the lack of enforcement, the failure to issue the required orders under the circumstances and/or the failure to carry out those orders.

60. The ineffectiveness of the inspection units for the planning and construction laws in the Civil Administration was widely reported in the Sasson report, which was adopted by the government of Israel on March 13, 2005. In its decision the government said, among other things, that: "*The government believes it is very important to process the findings and recommendations of the opinion regarding the unauthorized outposts. The government adopts the principle at the basis of the opinion, that it must diligently ensure that the procedures of allocation, planning, construction and population of settlements, existing or new, in the Judea and Samaria area, with everything that entails, follow the law and government decisions.*"

61. Regarding the settlement of Beit El and its immediate environment, according to the information provided by representative of Respondent no. 3 and its extensions, we know of more than 100 (100!) Illegal construction cases that are not being enforced in

that settlement alone, which is nothing short of sending a particularly big hint to the lawbreakers about the policy of non-enforcement adopted by the authorities in general and towards Beit El in particular.

62. And if that were not enough, even when lawbreaking is reported to the authorities in real time, like in the case at hand, they do not lift a finger to stop it and allow the illegal construction to expand, the lawbreaking to continue and the rule of law to be trampled in the West Bank.

#### 4. The requested remedy

63. The situation described in this Petition is outrageous. It describes a grave and continuous policy of turning a blind eye and giving "tacit license" to building offenses on a colossal scale on private Palestinian land, all in order to expand a settlement whose legal status is problematic, on land that even according to the Respondents is outside of the jurisdiction of the Beit El settlement and without any outline plan, being carried out with the open knowledge of the authorities and a total lack of action on their part (not to say expressed indifference), as emerges from the letter of the Civil Administration spokesperson.

64. Added to that is the strange and very problematic behavior, as was discovered regarding the Respondents' issuing the seizure orders, a behavior that attests to the Respondents' "security doctrines" in the area and their seizures for security reasons, as well as the Respondents' expressed indifference towards the illegal construction on the land for which the seizure orders were supposedly issued.

65. In the absence of any response or enforcement measure by the authorities, the Petitioners have no choice but to ask the Honorable Court to force the authorities to provide a remedy, to uphold their legal duty and perform what is incumbent upon them by virtue of international law, military legislation and Israeli constitutional and administrative law. Therefore, regarding these Respondents, the Court is being asked to issue an order forcing them to immediately take all measures to prevent the continued illegal construction and to take all measures at their disposal to realize the demolition orders, measures which exist but which they are refraining from enforcing for political reasons. Our position is that by failing to enforce the stop work and demolition orders, the Respondents are violating their legal obligations. It is also our position that the military commander not only has the power to issue the said orders and enforce them, but in cases like this one it is his **duty** to issue such an order and to take all the necessary measures to enforce it.

66. As for Respondents no. 5-6, the Court is being asked to issue an order instructing them not to take any actions, by themselves or through others, directly or indirectly, on the Petitioners' land, including not providing any services to the buildings built on it or to take any action and/or use involving the buildings that are the subject of this

Petition.

67. In our interest, the vigorous action by the builders of the buildings that are the subject of this Petition is a clear and flagrant defiance of the rule of law in the area. The settlers of the area have learned that there is no real chance to obtain the permit required by the applicable law in the area (or worse -- there is no real need) and have begun to operate outside of the laws, and discovered it can be done continuously and that their illegal activities can even be expanded without hindrance.

68. Therefore, in the case before us, the unfortunate outcome on the ground ***proves, clearly and beyond all doubt, that the competent authorities have evaded, and are still entirely evading, their duty of enforcing the law, and that they are unreasonably refraining from carrying out their duties.***

Therefore, the Honorable Court is moved to issue an order nisi as requested at the outset of this Petition and after receiving the Respondents' Answer and a hearing, to render the same absolute.

The Honorable Court is further moved to charge the Respondents with the Petitioner's expenses and legal fees, plus V.A.T. as required by law.

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Michael Sfar, attorney

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Shlomy Zachary, attorney

Representatives of the petitioners