

- 1. Yousif Musa ‘abdel Razek el-Nabut**
- 2. Muhammad Rasheed ‘abdel Jabar Jaber el-Nabut**
- 3. ‘Abdel Mun’im ‘abdel Jawad ‘abdel Latif Ma’atan**
- 4. ‘Ali ‘Atallah ‘ali ‘Aslia**

All residents of Burqa in the region of Judea and Samaria

- 5. Fatma Sau’ud Ahmed ‘Awawada**

Resident of Deir Dibwan in the region of Judea and Samaria

- 6. ‘Abdel Kader Muhammed ‘abdel Jalal Ma’atan**

Head of the Burqa Village Council

- 7. The “Peace Now” Movement – S.A.L. Educational Industries, no. 58-003743-0**

All represented by Michael Sfar, Attorney-at-law and/or Shlomi Zecharia, of 31 Rothschild Blvd, Tel Aviv 66883; Tel.: 03-5607345; Fax: 03-5607346

And/or by Hussein abu Hussein, Attorney-at-law, of Jaffa Street, P.O.B. 290, Um el Fachem, tel.: 04-6313640; Fax: 04-6312915

Against

- 1. The Minister of Defense, Mr. ‘Amir Peretz**
- 2. The Commander of the IDF forces in the West Bank**
- 3. The Head of the Civil Administration, Brigadier-General Kamil abu-Rokon**

4. The Commander of the SHAI Police District, Major-General Yisrael Yitzhak

All represented by an attorney from State Attorney's Office, Ministry of Justice, 29 Salah al-Din Street, Jerusalem 91010

5. Avi Teksler, Head of the Migron Settlement Committee

Tel. No: 02-5322646; 052-5666767

The Secretariat of the Migron Settlement Committee, Mobile Post East Binyamin, 90624

PETITION FOR AN *ORDER NISI*

This is a petition for an *Order Nisi* according to which the Honorable Court is requested to order the Respondents, should they be inclined to do so, to come forward and give cause as to why they should not take all actions required to evacuate the illegal outpost called "Migron", located adjacent to the Kochav Ya'akov settlement, an aerial photograph of which is attached to this Petition as "Addendum A", including the issue of an area delineation injunction and its implementation, the issue of injunctions for halting work [on the site] and demolition injunctions and their implementation.

**FOLLOWING ARE THE ARGUMENTS RE THE PETITION FOR AN
ORDER NISI:**

A. PREAMBLE

1. This Petition relates to the presumptuous invasion of Israeli citizens **onto private land** belonging to the Petitioners, all of whom are Palestinians, residents of the West Bank, an incursion which has been ongoing for over four and a half (4 ½) years without any effective response on the part of the authorities responsible for the rule of law in this region.
2. The issue is an illegal outpost established without permit from the authorities, which is a crass infraction of the law and involves a large number of containers (“trailers” or caravans) and a number of stone structures. The intruders onto the Petitioners’ land settled there and declared it to be a community called “Migron”.

An aerial photo of the “Migron” outpost is attached and marked Addendum A.

3. This petition has a dual purpose – the first demands that the lawbreakers who have taken the law unto themselves and who have settled on private lands belonging to the Petitioners be evicted; the second will demand that the authorities on the West Bank enforce the law against those parties who do absolutely nothing to prevent these public, provocative and insolent violations of the law on the part of settlers in the region, and who (the parties) do not act in response to the massive construction and population that is taking place under their noses, in spite of its definition, with the exception of defining the outpost as being illegal.
4. **Because this is the legal status of the outpost that is the subject of this Petition, and there cannot be any dispute regarding this: the outpost was established and its structures positioned and surrounded by a fence by an act of trespassing and invasion of private property, without having received permission from the owners of land and/or the authorities. Activities involving leveling the land, introducing infrastructures, laying**

roads, placing buildings and the extensive construction were all carried out with the knowledge and under the gaze of the law enforcement authorities in the West Bank.

5. **The Petitioners have followed what has been happening in the Migron outpost and have also, on a regular basis, reported to the Civil Administration regarding the violations of the law, the construction and infrastructure work that has been going on and the placement of fencing around the outpost, and even requested repeatedly that the authorities intervene in order to put a halt to the massive damage being done to the private property. And despite this, the authorities responsible for enforcing the law upon Israelis on the West Bank did not take any of the steps necessary to prevent the construction and population [of the outpost] or to evacuate the insurgents.**
6. As we shall see below in the Factual Section, the appeal to this Honorable Court is submitted as a result of lack of choice and after all attempts to persuade the authorities to carry out their duties in accordance with the law have failed.
7. Therefore, it is rare that the Court is requested to issue an injunction which orders law enforcement authorities to enforce the law. We were aware of this and therefore, did not take legal steps asking the Court to interfere in this matter in haste. However, when it became clear to the Petitioners that there was no intention of putting a stop to the continued and provocative violations, and after months of correspondence had not brought about any results, they had no choice but to turn to the Honorable Court and ask for its assistance in this matter.
8. For several years, the residents of Burqa and Deir Dibwan, located near the outpost of “Migron”, have watched the settlers take over the lands that they own, and how the Central Army Command, the Civil Administration and the SHAI Police District do not lift a finger to prevent this brutal behavior. Despite repeated and endless applications to the various offices, and despite announcements and notifications which proved to be devoid of meaning

stating that the structures are illegal and are to be demolished – nothing was done. Therefore, the only road left to the Petitioners was to turn to this Honorable Court in order that it orders the authorities to do their duty in accordance with the law.

B. THE FACTS

I. The petitioning parties

9. Petitioner no. 1, Mr. Yussef Mussa ‘abd a-Razek el-Nabut, resident of Burqa, is the owner of lot no. 2 in bloc no. 7 of the lands of Burqa, and of plot no. 10 in bloc no. 26 of the lands of Deir Dibwan. A copy of Petitioner no. 1’s statement, as well as copies of records taken from the real estate records, together with their Hebrew translations are hereby attached and marked Addendum B1.
10. Petitioner no. 2, Mohammed Rashid ‘abd el Jabar Jaber el-Nabut, resident of Burqa, is the son of Mr. Rashid ‘abd el Jabar Jaber el-Nabut, the owner of plot no. 4 in bloc no. 7 of the lands of Burqa. Petitioner no. 2 inherited this plot. A copy of Petitioner no. 2’s statement, as well as copies of records taken from the real estate records and of the order of inheritance issued by the Ramallah Shar’i Court of law, together with Hebrew translations of the same are hereby attached and marked Addendum B2.
11. Petitioner no. 3, ‘Abd el Mun’am ‘abd el Jawad ‘abd Alelatif Ma’atan, resident of Burqa, is the son of Mr. ‘abd el Jewad ‘abd Alelatif Ma’atan, who inherited plot no. 23 in bloc no. 26 of the Deir Dibwan lands. The Petitioner is empowered to act for the inheritor and to handle all of his property. A copy of Petitioner no. 3’s statement, as well as copies of records taken from the real estate records and of the father’s order of inheritance, together with a copy of the general power of attorney and the Hebrew translations of those documents are hereby attached and marked Addendum B3.

12. Petitioner no. 4, ‘Ali ‘Atalla ‘ali ‘Aslia, resident of Burqa, is the heir to plot no. 3 in bloc no. 7 of lands in Burqa, which was owned by his late father, Mr. ‘Udat Alla ‘Ali ‘Udat Allah Aliya al-Nabut. A copy of Petitioner no. 4, statement, as well as copies of the records from the real estate records, testify to his late father’s ownership of the plot, and the order of inheritance issued by the Shara’i Court in Ramallah, together with their translation into Hebrew, are hereby attached and marked Addendum B4.
13. Petitioner no. 5, Ms. Fatma Sa’ud Ahmed ‘Awawada, resident of Deir Dibwan, is the wife and acting for her husband, Mr. Salem ‘abd el Majid Salem Selame, the heir to plot no. 27 in bloc 26, part of the area of land which comprises Deir Dibwan, which was owned by the deceased’s father, Mr. ‘abd el Majid Salem Selame a-Nasre. A copy of Petitioner no. 5’s statement, the document record from the real estate records attesting to the ownership of the plot by her late father-in-law, the order of inheritance attesting to her husband’s ownership of the plot and the power of attorney issued by the Petitioner’s husband, together with their translation into Hebrew are hereby attached and marked Addendum B5.

We have marked the relevant plots and blocs and their numbers upon the aerial photograph of the illegal outpost of Migron – Addendum A.

14. Petitioner no. 6, Mr. ‘Abd el Kader Muhammed ‘abd el-Jalel Ma’atan, is the head of the Burqa Village Council. A copy of the Petitioner’s statement, together with its translation into Hebrew, are hereby attached and marked Addendum B6.
15. Petitioner no. 7, the “Peace Now” movement, is an NGO (non-governmental organization) which has been engaged in the struggle for a lasting peace between the State of Israel and its neighbors for the past three decades. A statement made by Mr. Dror Etkes, Coordinator of the Settlement Project, to Respondent no. 7, is hereby attached and marked Addendum B7.
16. Respondent no. 1 is the Minister of Defense of the State of Israel. Respondent no. 1 is responsible for the Civil Administration on the West Bank and for

implementing the conclusions drawn in the report prepared by Talia Sasson, Attorney-at-Law (“Opinion re illegal outposts”, which can be found in the Prime Minister’s website: <http://www.pmo.gov.il> ; hereafter, to be called “The Sasson Report”). He is authorized to delay the implementation of demolition injunctions which have been legally issued against illegal structures.

17. Respondent no. 2 is the Commander of IDF forces on the West Bank. All of the administrative and legislative authority over the region occupied militarily by the State of Israel is vested in him in accordance with international humanitarian legal regulations and laws governing belligerent occupation. In particular, Respondent no. 2 is responsible for maintaining public order and protecting the property of the residents in the area occupied militarily, as shall be explained below.
18. Respondent no. 3 is the Head of the Civil Administration, who, along with Respondent no. 2, is authorized to administer civilian life in the occupied territories. Respondent no. 3 is also charged with enforcing the planning and building laws which may be in force and applicable to the region.
19. Respondent no. 5 is the Commander of the Israel Police SHAI District, who, among his other duties, is charged with enforcing the law against Israeli offenders in the West Bank.

Respondents 1-4 shall be referred to in this Petition as: “The Respondents”

20. Respondent no. 5 is the Secretary of the delegation of Israelis who reside (as stated above, by virtue of invasion and trespass, and without having received permission from the authorities) in the settlement post which has been called “Migron” by them, and they have been included solely out of caution and their addition is in no way an admission that they indeed have legal right to the land which is the issue of this Petition and/or to the structures and the property which have been placed upon it.

II. Construction on the outpost and the response of the authorities

21. The illegal outpost of Migron is located northeast of the settlement of Kokhav Ya'akov, on the edge of the Mateh Binyamin Regional Authority. In the middle of 2001, or the beginning of 2002, under atmosphere of the Intifada and the difficulties placed upon the Palestinian population at that time due to movement restrictions, trailers began to be transported and permanent structures constructed on this area. In addition, the intruders fenced the area and prepared additional infrastructures for the structures which they had placed, or were to place on the site.
22. **Despite the ongoing work on the infrastructure, the transport and placement of the trailers, as well as the construction of permanent structures on the outpost, no permits had been issued by the authorities, and despite the fact that the structures were constructed and placed upon private land belonging to the Petitioners, the Respondents did not lift a finger to prevent the establishment of the outpost**, except for issuing injunctions which were not enforced, and a number of failed attempts at evacuating the outpost. To the best of the Petitioners' knowledge, at the time of the writing of these lines, the outpost consists of sixty (60) trailers and two permanent structures, and is populated by some 43 families. A number of access roads have been laid leading to the outpost, connecting it to Road no. 60, the main artery in the region traveling from north to south.
23. According to the Sasson Report, the outpost is connected to a number of infrastructures such as electricity and water, where the electrical work was carried out by the Electricity Company and Mekorot connected the water at the request of the Mateh Binyamin Regional Council. It should be pointed out that connection to electricity was carried out due to a misrepresentation that this was required in order to carry out ongoing maintenance of a cellular antenna, which had, apparently, been placed on the site. After receiving permission from the Binyamin Brigade Commander to connect the electricity, it turned out that there was no antenna on the site and that the Brigade Commander had been systematically misled by the residents in the region (see

the Sasson Report, pp. 105-106, 203). Attorney Sasson stated the following re the Migron outpost:

“We have, before us, the Migron outpost, which was established as a result of misrepresentation before certain authorities, and the cooperation of others in this barefaced and shameless violation of the law” (ibid, p. 114).

24. In Attorney Sasson’s opinion, the Migron outpost was **illegal** and it had been established upon **private Palestinian land** (see: The Sasson Report, pp. 153-158)
25. According to the Sasson Report, certain elements in the competent authorities assisted in the construction of the outpost, transferring monies from the Ministry of Housing and Construction, which paid the amazing sum of NIS 4,325,000 (**four million three hundred and twenty five thousand NIS!!!**) to establish the infrastructures. The Ministry of Housing and Construction paid NIS 3,525,000 for the infrastructure and NIS 800,000 for the erection of public structures.
26. It goes without saying that the participation of elements in competent government authorities in the illegal activity does not make it legal but rather, makes the illegality of it even more serious.
27. The opinion tells us the following about the Migron outpost:

Migron

Date established: May 2001.

The closest settlement: Kochav Ya’akov, at a distance of approx. 2.5 km as the crow flies.

Government or Minister of Defense approval for its establishment: None.

Nature of land rights: Private Palestinian land (agricultural lands of ‘Ein Yabrud and Burqa).

Body which allocated the land: None.

Planning status: None.

Jurisdiction: None. Beyond the jurisdiction of the Mate Binyamin Regional Council; beyond the boundaries of the settlement.

No. of inhabitants: 42 families; approx. 150 persons.

Type of construction: 51 caravans; a caravan used for pre-school; 8 containers; land prepared for permanent structures and additional caravans; a synagogue in a permanent structure; a prefabricated structure; communications poles; illumination; a paved access road and another access road, a security room (shelter); a water tower, a road; trees planted .

Body financing the establishment: The Ministry of Housing and Construction financed the establishment of infrastructures in the amount of 3,525,000 NIS, and 800,000 NIS for the construction of public structures.

Connection to electricity grid: Connection to the electricity grid was approved by the communications and the electricity company for connecting to a cellular antenna. Afterwards, an additional connection to the electricity grid was carried out, making it possible to connect electricity to the houses. According to the electricity company, they were misled by the Civil Administration.

Connection to water system: The site was temporarily connected to the water system to enable work on the site. According to Mekorot, the Binyamin Regional Council ordered the connection.

NOTE: There have been requests to register adjacent land that lies beyond the boundaries of the outpost. The requests have only been submitted, not dealt with.

The relevant pages from the Sasson Report and its Addendum are hereby attached and marked Addendum C. It should be pointed out that the information and details in the Report relate to the period during which it was written, in 2005, while the factual details in the Petition relate to the present situation, up to the date of the submission of the Petition.

28. Therefore, Migron is an illegal outpost which has already existed four and a half years, without the authorities having taken any effective step whatsoever to prevent the theft of land and the massive infractions of the law resulting

from its establishment, and even assisting the violators of the law to attain their criminal objective.

29. Over the years, Petitioners 1-6 and/or their agents turned to the Civil Administration, orally, requesting that the trailers placed upon the land which they owned be removed and that the permanent structures constructed on their land be demolished, and to this end, we refer to statements made by the Petitioners (Addenda B1-B6) which describe the requests made. For example, the statement of Petitioner no. 6, the Head of the Burqa Village Council:

“6. To the best of my knowledge, ever since the establishment of the outpost, the IDF has made a number of attempts to evacuate the settlers but they always returned to the outpost. Therefore, as long as the IDF made attempts to remove them, the residents of these villages, of which I am one, did not take any legal steps to evacuate the residents of the outpost. During 2004, after the attempts at evacuation by the IDF had failed, we turned to the Civil Administration and complained about the establishment of the outpost, demanding that it be evacuated and that the land be returned to its owners. To this day, the outpost has not been evacuated nor have the lands been returned. I demand that the settlers who have invaded my land be removed.”

30. To our sorrow, the end result is that the Petitioners' appeals were not resolved and the authorities failed to evacuate the insurgents and demolish the illegal structures.
31. Petitioner no. 7, the “Peace Now” movement, anxiously followed the work on the infrastructure and the subsequent placement of buildings in Migron, and published its findings in reports issued from time to time regarding illegal construction on the West Bank.
32. Work on the site continued and therefore, as of the beginning of November 2005 and thereafter, Petitioner no. 7 conducted, through its agent, the undersigned, who represents all of the Petitioners, correspondence with the law enforcement authorities charged with preventing illegal construction and

responsible for demolishing illegal structures – the SHAI Police District and the Civil Administration.

33. This correspondence, as shall be detailed below, made it clear, without the shadow of a doubt, that Migron is illegal; the developmental work being carried out there is not legal; injunctions to stop work were issued for all of the structures and injunctions were issued for the total demolition of most of them; injunctions were issued regarding the fencing work carried out in the region. **Later, Petitioner no. 7 found out that an order had been issued to evacuate the outpost and injunctions to demolish the structures had been issued in December 2003.**
34. In addition, despite the fact that demolition orders had been issued rather early during the period of construction, and despite the fact that injunctions to stop construction had been given to the contractor, no one enforced the injunctions and work on the site continued undisturbed.
35. Weeks and months passed, work on the site continued despite the appeals which the Petitioners showered upon the Civil Administration demanding, almost pleading, that the law be enforced, and an outpost began peering over the hills and it has become a symbol and model for all of the outposts on the West Bank, which, today, number over one hundred.

Photographs taken by the Petitioners, some of which are aerial photographs, and some photographs taken during visits to the site and which show the structures in the outpost, are hereby attached and marked Addendum D.

III. Exhaustion of Proceedings – Appeals to the Respondents

36. On 27/8/03, Petitioner no. 7, through the offices of Attorney Keren Bar-Yehuda, of the Reshef and Reshef Law Office, sent a letter to the Civil Administration requesting to verify whether the land upon which, among others, Migron is situated, is private or State land, whether permits been issued for construction on the land and whether there was an outline plan for this outpost.

37. Approximately five months later, on 5/02/2004, a response was received from the spokesperson of the Civil Administration, Lt. Talia Somekh. In her reply, Lt. Somekh said that the lands in reference, those being settled by Migron, were not State Lands, that no construction permit had been issued, and in addition, that there was no outline plan for the outpost. Copies of these letters are hereby attached and marked Addendum E and F respectively.
38. On 13/9/2005, Mr. Dror Etkes, Coordinator of the Settlement Project, sent a letter to the Spokesperson of the Civil Administration, Lt. Adam Avidan, requesting to know if the fencing being carried out around the site had been approved by the relevant elements in the Civil Administration, and if not, would demolition injunctions against this work be issued.
39. On 19/10/2005, the Spokesman of the Civil Administration replied to Petitioner no. 7. In his response, Lt. Avidan clarified that:

“As is well known, the Migron outpost has been labeled illegal. [...] It should be pointed out that injunctions to stop work were issued for all of the structures in the outpost as well as demolition injunctions for most of them.

“Recently, fencing work has been discovered on the northern side of the outpost which, as stated above, is not legal, and therefore, a representative of the supervision unit of the Civil Administration was sent there and he delivered stop work orders. In addition, this matter is being handled in accordance with all stages of the “illegal construction” procedures.

The letter of 13/9/2005 sent by Petitioner no. 7's representative and Lt. Avidan's response of 19/10/2005 are hereby attached and marked Addendum G and H respectively.

40. Despite the contents of Lt. Avidan's letter, the settlers continued to transport trailers to the outpost and to populate them, to construct permanent housing and connect the structures to the various infrastructures, without being

hindered, and before the astounded eyes of Petitioners 1-6, who saw how their land was being wrested from them in order to establish the outpost, despite the fact that all of the Israeli authorities, including the Government decision of 13/3/2005 which had adopted the contents of the Sasson Report, had defined such actions as illegal.

41. In view of the above, the undersigned, representing all of the Petitioners, wrote to Respondents 1 and 2 on 21/9/2006. This letter was also addressed to Respondents 3 and 4 and to all of their legal advisors. In this letter, the undersigned made it clear to the addressees that the outpost had been established on land belonging to the Petitioners, that is, on private land; that the outpost was not legal, that there was no outline plan or construction permits as required, and that despite the demolition injunctions and orders to evacuate the outpost, it was still standing and populated. The undersigned demanded of the Respondents as follows:

*“To take **immediate** steps as required in order to remove, without delay, the residents from the outpost and the structures that had been established on the site, including the issue of demolition orders **and their implementation**, the issue of land delineation orders [the legal resource for evacuating illegal outposts] **and their implementation**, as well as institute criminal and/or administrative proceedings against the insurgents.”*

A copy of this letter is hereby attached and marked Addendum I.

42. When no response was received from the Respondents and the addressees, the undersigned sent an additional reminder on the subjects to the same addressees on 10/10/2006. A copy of the reminder is hereby attached and marked Addendum J.
43. On 19.10.2006, a response was received from Major Timor Passo, the Head of the Internal Section in the offices of the Legal Advisor of Judea and Samaria, where he confirmed that **stop work orders and final demolition injunctions**

had been issued for the structures on the outpost. In addition, Major Passo stated that:

“Regarding the implementation of the demolition injunctions, this would take place subject to the security evaluation of the situation and in accordance with the approval of the political levels for that purpose.”

A copy of Major Timor Passo’s letter is hereby attached and marked Addendum K.

44. No reply was received from the Respondents.

C. THE LEGAL ARGUMENT

I – Petitioner’s ownership and obligations on the part of Respondents 1-4

45. Petitioners 1-5 own the land upon which a great part of the trailers and permanent structures of the illegal and unauthorized outpost of Migron are situated. An aerial photograph that maps out the lands of the Petitioners in relation to the outpost and the fenced area clearly proves that the structures are located upon private land belonging to the Respondents, as stated above, without their permission and without having the necessary permits. This photograph is hereby attached to the petition and marked Addendum A.
46. The residents are civilians who are in a region which is occupied militarily, as are the lands they own, land upon which are located the structures which are the subject of this petition. By virtue of the fact that they are civilians situated in a region which is occupied militarily, they benefit from the standing of being “protected civilians” as per international humanitarian law.
47. The regulations of the humanitarian law apply to the area of the West Bank and to the Petitioners, as already established by the Honorable Court in the past. Following are the words of the former Chief Justice, Aharon Barak:

“From a legal aspect, the source of the military commander’s jurisdiction and power in a region which is subject to belligerent occupation is to be found in the regulations of public international law regarding Occupatio Bellica and which constitute part of the rules of warfare (see: HCJ 493, 69/81). From the point of view of the commitments of the occupying country towards the international community, these regulations are to be found in the institutionalized international law as well as in the international law conventions of which the country is part and which apply to the issue. From the aspect of the rights of a resident of a region which is under military rule as extended by the military commander – a right which is accountable to legal critique in the court of the occupying country – the regulations of Occupatio Bellica are anchored in institutionalized international law as well as in international legal conventions, to the extent that it is introduced before the internal law of the occupying country by valid internal legislative act.

From the aspect of Israel’s Occupatio Bellica, and lacking additional legislation, the principal norms of rules of war which concern Occupatio Bellica are those which are contained in the ordinances regarding rules and customs of war on land that date back to 1907, appended to the Fourth Hague Agreement of 1907 (hereinafter – the Hague Ordinances). Despite the fact that the Hague Ordinances are conventional, the accepted opinion is – and this opinion is acceptable to this Court (HCJ 610, 606/78; HFJ 390/79) – that the Hague Ordinances are by character declarative, and that they reflect the conventional international law valid in Israel, without the need for Israeli legislation.

(HCJ 393/82 Jma’it Ikhsan el-Ma’almun vs. Commander of the IDF Forces, p. 791-792)

48. In addition, the directives of the Fourth Geneva Convention of 1949 apply to this region, interested in protecting civilians during armed conflict, as the Honorable Court once again determined recently in HCJ 7957/04 **Zaharan**

Yunes Mohamed Mara'aba et al vs. the Prime Minister of Israel et al, p. 3340):

“The area of Judea and Samaria is held by the State of Israel through belligerent occupation. The military commander acts as an extension of the State in the region. He is not the ruler in a region subject to belligerent occupation (see the Beit Sorik Affair, p. 832). His power stems from public international law re belligerent occupation. The legal implications of this occupation are twofold: Firstly, the law, the rule and administration of the State of Israel do not apply in those regions. They were not “annexed” to Israel; Secondly, the legal regime that applies in those regions is controlled by public international law that relates to belligerent occupation (see HCJ 1661/05 the Gaza Coast Regional Council et al vs. the Israel Knesset et al – yet to be published, para. 3 of the majority decision: as follows – The Gaza Coast Regional Council Affair). In the center of this public international law are the ordinances relating to the regulations and customs of a land war, ordinances which are derived from the Fourth Hague Conference of 1907 (hereinafter – Hague Ordinances). These ordinances reflect accepted international law. In addition, the rules for belligerent occupation are established in the Geneva Convention regarding the protection of civilians during wartime – 1949 (Below – the Fourth Geneva Convention). The state of Israel acts in accordance with the humanitarian sections of this convention. The Government has informed the Court of this in a number of petitions. In view of this announcement on the part of the Israeli Government, we do not see the need to re-examine the Israeli Government’s position. [...]

As stated above, since the Israeli Government agrees that the humanitarian aspects of the Fourth Geneva Convention apply to the region, we do not feel that we should take a position regarding this matter in the petition before us. In addition to these two sources regarding international law, there is a third source of regulations

which apply to the belligerent occupation on the part of Israel. These are the basic principles of the Israeli Administrative Law, which deals with the competent authority of a public servant. These include, among others, rules regarding fundamental and deliberate impartiality, the obligation to act reasonably, and the rules of degrees. Therefore, "every Israeli soldier carries with him, in his knapsack, the practical public international law regulations regarding rules of war and the fundamental regulations of Israeli Administrative laws".

49. One of the obligations levied upon an occupying force by international humanitarian law is, among others, safekeeping the property of the protected population. Ordinance 46 of the Hague Ordinances 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.

(The emphasis was added, M.S.)

This general humanitarian-normative framework is formulated by Gasser, who claimed as follows:

"Civilians who do not take part in hostilities shall be respected and protected. They are entitled to respect for their persons, their honour, their family rights, their religious convictions, and their manners and customs. Their property is also protected"

(Gasser, "Protection of the Civilian Population", In: D. Fleck, **The Handbook of Humanitarian Law in Armed Conflicts** 211 (1995)).

50. In addition, there is a parallel directive in the Fourth Geneva Conventions, which determines 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”.

51. There is no doubt that the acts of the settlers, who have, in fact, taken control of the land belonging to the Petitioners thereby preventing them from cultivating their land, have placed structures and trailers upon the land, fenced the area as they wished, constitute destruction of the property, or, at the very least, expropriation of their ability to enjoy it and enjoy the direct fruit of their labor. The statement made in para. 53 above only reinforces and does not take away from what is written in Ordinance 46 of the Hague Ordinances, as was defined by the scholar J.S. Pictet:

“The Extension of protection to public property and to goods owned collectively, reinforces the rule already laid down in the Hague Regulations, Articles 46 and 56 according to which private property and the property of municipalities and of institutions dedicated to religion, charity and education, the arts and science must be respected”

(J.S. Pictet: **Commentary: IV Geneva Convention**, 1958, p. 301).

52. The obligation placed upon the military elements in the region, and in this case – the Civil Administration and the Central Army Command – to the extent that it concerns humanitarian law, also carries within it the obligation to protect the property of the individual being protected in the conquered area, as stated in the past by this Honorable Court:

“The military commander’s obligations are basically twofold. Firstly, he must avoid action which might harm the local residents. This is his “negative” obligation. Secondly, he must take all steps required by law that ensure that no harm comes to the local residents. This is his “positive” obligation.”

(In HCJ 4764/04 - **Doctors for human rights et al vs. Commander of IDF forces in Gaza**, p. 393-394).

As well as –

Within the framework of learning and absorbing the humanitarian regulations, it should be emphasized that the military commander's obligation does not only extend to preventing the army from harming the lives and honor of the local residents (the "negative" obligations). He also has a "positive" obligation, which is to protect the lives and honor of the local residents".

(**ibid**, p. 408)

In this matter, see also –

"[The right of possession] is also accepted as a basic protected legal right. It is accepted as such by virtue of the constitutional law in Israel in accordance with para. 3 of the basic law: human dignity and liberty. And harming an individual's rights to land is forbidden in accordance with the rules of war of international law, unless this is vital for the purpose of battle."

(HCJ 7862/04 – **Zarhariya Hassan Murshad ben Hussein abu Dahad vs. Commander of the IDF forces in Judea and Samaria**, pp. 3776-3777).

53. And so, it is possible to see – as in the past – that in accordance with international law, the Petitioners have the right to the protection of their property by the military commander of the region. **All the more so** when those harming and destroying the property originate from among the population of the conquering side. Along with this right of the Petitioners comes the duty of Respondents 1-4 to actively ensure that the right is maintained, when the "positive" dimension of this right obligates the authorities to take all steps and means at their disposal to ensure that this protection is provided. The problem is that the authorities might issue

demolition injunctions against structures placed on the Petitioners' lands, however, one does not see them being enforced or implemented, thereby adding insult to injury.

54. Similar directives obligating the Respondents to take all steps in order to return to the Petitioners their ownership rights to the land are contained in Israeli legislation which applies by virtue of the principles of administrative rule regarding activities on the West Bank. For example, a basic law: human dignity and liberty, establishes, in para. 3, that “one cannot hurt a person’s property”. The language of the directive means that legal standing regarding property is not limited only to the civilian or the resident, but also applies to every **person**, whoever he/she may be. A person is a person, and in accordance with what is stated in para. 11 of this basic law, “each of the competent authorities must respect the rights of this basic law”. In particular, the constitutional authority found it necessary to clarify that the authorities – in this case the Respondents – **must protect a person’s property** and ensure that no harm comes to this property. The Chief Justice, Justice D. Beinisch, stated this very well in a verdict handed down recently:

“Our legal system protects the right to property as a basic constitutional right (para. 3 of the basic law: human dignity and liberty). This right is, of course, a recognized right. Therefore, even in public international law [...] the right to property of the residents in a region held by virtue of belligerent occupation is protected.”

(In HCJ 9593/04 **Rashid Murad, Head of the Yanun Village Council et al vs. the commander of IDF forces in Judea and Samaria et al** 2006(2), 4362, p. 4370; verdict handed down on 26/6/2006, hereinafter to be called: “the Murad Affair”).

55. However, we see that the Respondents drag their feet – not to mention delay – when required to carry out their legal-constitutional obligation which has been laid on them.

56. **Therefore, in summary, it is possible to see that according to international humanitarian law, as well as according to the directives of the Basic Law: human dignity and liberty, the rights of Petitioners 1-6 to protect their property is recognized and defended. At the same time, Respondents 1-4 have the obligation to ensure the implementation of the Petitioners' rights to their property with regard to the land they own. To the Petitioners' sorrow and to the State's shame, the authorities charged with enforcement methodically avoid enforcing the law, and we shall elaborate this point below.**

II – Overview: Non-enforcement project of the Supervision and Enforcement Dept.

57. Tens of thousands, possibly hundreds of thousands of words have been written about the lack of effective law enforcement against Israeli offenders in the West Bank. The problem of lack of law enforcement against Israeli has been part of the Israeli occupation since the settlement project began.
58. In the beginning of the 1980's, following H CJ 175/81 Al Natashe et al vs. the Minister of Defense et al. verdict 35 (3) (61) which dealt with the grievances of Palestinian residents of Hebron regarding harassment and abuse on the part of settlers of Beit Hadassah, a coordination team was appointed, headed by Yehudit Karp, Adv., of the State Attorney's office, charged with examining and preparing procedures and directives for enforcing the law vis-à-vis Israeli offenders in the West Bank and the Gaza Strip. The team's report (hereinafter: "the Karp Report") which was published on 23.5.1982 was the first in a long series of public reports which were to deal, from that time until the present, with the problem of a lack in the enforcement of the law in the occupied territories.
59. In 1994, a national commission of enquiry headed by the former Chief Justice of the Supreme Court, Judge Meir Shamgar, published a report dealing with the massacre in the Cave of Machpelah (hereinafter "the Shamgar Report"), and there too, the failure to enforce the law in the West Bank was sharply criticized:

“None of Israeli governments, or the operational bodies charged with the subject have done their best to enforce the law following the Intifada, not in the Arab sector and not in the Jewish sector ... It is sufficient to point out, as an example, that until recently, if an Arab did not file a complaint with the police in person, the incident was not dealt with, despite the fact that there was other evidence pointing to an offense, including witnesses among army personnel.

(Report of the investigative committee regarding the slaughter in the Machpelah Cave in Hebron (headed by Chief Justice Shamgar) (5754) page 192.)

Please consider the following, which seem to have been written about our issue:

*“Inadequacies were discovered in law enforcement ... the starting point which we accept is that in the absence of efficient law enforcement, there is no efficient government. **An atmosphere where a person who is favorably looked upon shall act, without taking upon himself any real risk that he will be held responsible if he strays from the straight and narrow, spoils the normalcy of the actions of the authorities charged with efficient control in the field.** Several years ago, the Supreme Court stated that **the rule of law was not created out of nothing, and is not a vague entity. It must have concrete and daily expression.** In fact, the existence of normative accommodations are binding and are so, in practice, when acted upon with general agreement (HCJ 428/86 Barzilai vs. the Government of Israel, file no. M(3) 505, 554”.*

(Ibid, page. 243, the emphasis is mine – M.S.)

60. Following the publication of the Shamgar Report and the adoption of its conclusions, the sixth Police District, the SHAI Police District, was established, commanded today by Respondent no. 4. In addition, the Attorney General at that time, Mr. Michael ben-Yair, published a new directive which

was intended to regulate the division of responsibility regarding law enforcement *vis-à-vis* Israelis on the West Bank and the Gaza Strip. The directive was later amended and updated by Elyakim Rubinstein, the State's Attorney General. For the updated version, see:

Directive for the enforcement of law and order regarding Israeli offenders in Judea and Samaria and the Gaza Strip [(letter no. 15620/98)

61. Paragraph 6 of the directive determined as follows:

“1. The Israel Police shall be responsible for enforcing law and order inside the Israeli settlements. The IDF shall be responsible for the area surrounding settlements (this is applicable regardless of whether or not there is prior information regarding an incident).

2. Regarding all other incidents where there is prior information that makes it possible to make advance preparations – the Israel Police shall be responsible for enforcing law and order during the incident itself, and the IDF shall assist and be responsible for the area surrounding the incident ...”

62. Thus, the directives of the Attorney General clearly state that the Israel Police shall be responsible for enforcing the law *vis-à-vis* Israelis in the West Bank. In addition, the IDF maintains general responsibility, and the directive also states that during an incident involving Israelis who violate the law, should army personnel reach the incident before the police, the IDF shall be responsible for enforcing the law until the arrival of the police.

63. However, all of the directives and all of the reports did not improve the situation and today, Israelis still violate the law on the West Bank without any suitable response or reaction.

See:

“Tacit Consent: Law Enforcement towards Israeli Settlers in the Occupied Territories”, **Btselem** (March 2001);

“Free Rein: Non-Enforcement of the Law against Settlers who Attacked Palestinians in Response to Injury to Israeli Citizens”, **Btselem** (October 2001);

“Standing Idly By: Non-enforcement of the Law on Settlers in Hebron”, **Btselem** (August 2002);

“Foreseen But Not Prevented: The Israeli Law Enforcement Authorities Handling of Settler Attacks on Olive Harvesters”, **Btselem** (November 2002).

64. Ordinance no. 43 of the Hague Ordinances determines the authority **and obligations** of the military commander in the region, to maintain order and security in the region under his control. The contents of Ordinance 27 of the Hague Ordinances should be added to this, as follows:

“Protected persons have the right [...] and they are particularly protected against violence, or threats of violence [...] (the emphasis is mine, M.S.)

The settlers’ takeover of the Petitioners’ lands and doing with them as they will, virtually without being hampered by the Respondents, constitutes a violation on the part of the Respondents with regard to their obligations according to international humanitarian law, in addition to a violation of the obligations with which the Respondents are charged by virtue of Israeli law. The obligations with which the Respondents are charged are, as stated above, the commitment **which obligates the use of active action in order to enforce the law**. And as determined by the Honorable Court in the matter of the Murad Affair:

“There is no doubt that one of the principal obligations placed upon the military commander in this context is the obligation to respect the law in the region.”

(See HCJ 9593/04 **Murad**, p. 4377)

65. This disregard for law enforcement has spread throughout all the domains, however, it seems that the worst phenomenon occurred in the domain of offences against the planning and building laws, where the law-breakers were actually helped by the authorities themselves.
66. In the Sasson Report, Attorney Sasson presented the following serious items:

“It seems that since 1998, the Supervision Unit has stopped supervising and trying to enforce the construction laws imposed on Israelis within the area of the settlements in Judea and Samaria. The Supervision Unit does not check or report on illegal construction in those areas.

(T. Sasson, “Opinion **(interim)** concerning **unauthorized outposts**” (p. 217).

As well as:

“Over the years, whole neighborhoods were constructed adjacent to existing settlements, without detailed plans, and even on land which is not state-owned land; outposts were constructed within the area of jurisdiction of existing settlements – and the supervisory unit did not go there, did not report, did not collect data and did not do any of the duties of a supervising body.

(Ibid., pp. 219-220)

Attorney Sasson had the following to say regarding the importance of protecting the private property of the Palestinian residents:

The right to property is every man’s constitutional right. It is the obligation of the region’s commander to protect the right to property of anyone under his rule. Apparently, it is inconceivable that the country’s authorities be involved in harming these basic rights of man,

but this is the reality. The Ministry of Housing and Construction financed much of the work on private Palestinian land.

(Ibid., p. 155)

Furthermore, Attorney Sasson has the following sharp words to say regarding non-implementation of the demolition injunctions:

*“As far as I know, for several years, thousands of demolition injunctions against unauthorized construction by Israelis in the territories have still been pending ... **The demolition injunctions are not being carried out. Carrying out a demolition injunction requires a decision from the Minister of Defense, and this, as a matter of course, was not given by the various Ministers of Defense through the years.***

It turns out that the branch within the Civil Administration responsible for acting against unauthorized construction is, in fact, “treading water”.

It should be pointed out that the fact that demolition injunctions have been issued are not applied contributes, in itself, to the atmosphere of a lack of law enforcement.

(Ibid., page 221; The emphasis is in the original)

67. The Sasson Report was adopted by the Israeli Government, passed by Cabinet decision no. 3376 of 13/3/2005. Among other words, the following appeared in the decision:

2. *The Government finds great importance in dealing with the findings and recommendations in the opinion with regard to the unauthorized outposts. **The government supports the principle which is the basis of the opinion, according to which it is important to ensure that the allocating, planning, establishing and populating procedures for settlements, be***

they already in existence or new, in the region of Judea and Samaria, and everything involved – be effected in accordance with the law and according to the government decision.

And –

7. Israel is committed to the “Road Map” as approved by Cabinet decision no. 292 of 25.5.2003. In the first stage of the “Road Map”, it is determined **that Israel must dismantle all unauthorized outposts established after March 2001, and the Israeli Government shall stand behind this commitment.**

(The emphases were added; a copy of the Cabinet decision is hereby attached and marked Addendum L).

68. Therefore, it is possible to see that the Israeli Cabinet as well found that the violations of the law had to stop and that law enforcement had to be ensured regarding the evacuation of the illegal outposts, including Migron, the subject of this Petition. The problem is that some 20 months have passed since the report was published and since it was approved by the Cabinet, and the outpost is still standing, thumbing its nose at the law, and its residents do what they wish, as if the rule of law and government decisions were figures of derision.

III. A focused look: deliberate non-enforcement against illegal construction of structures in Migron

69. Above, we quoted Attorney Sasson’s rulings regarding all illegal outposts established over the past decade in the West Bank. However, Attorney Sasson also made specifically clear comments regarding Migron, the subject of this petition:

- On pp. 103, 153-158 of the Report, Attorney Sasson states that the Migron outpost was established on private Palestinian land.
- On p. 152 of the Report, Attorney Sasson states that Migron was established with the financial help of the Ministry of Housing and

Construction, despite the fact that it had no permit for the establishment of the outpost.

70. The authorities' resounding failure to prevent the colossal violation of the law as described in the Sasson Report is the foundation for this Petition: Criminal negligence of law enforcement in the West Bank. The lack of this enforcement, despite the issuance of the demolition injunctions as stated in the letter written by the spokesperson of the Civil Administration, or the total absence of delineation injunctions and demolition injunctions due to the fact that it is an **illegal outpost and situated on private Palestinian land**, is an abiding failure, which joins a list of several years of non-enforcement on the part of the authorities, which can only be described as **intentional and conscious non-enforcement**. This situation is intolerable, cannot be reconciled, and therefore, the Petitioners turns to the Honorable Court in order that it order the Respondents to amend this perverted situation immediately.

IV. Illegality of subjecting law enforcement to the approval of the political levels

71. In his reply to the undersigned, Major Timor Passo of the Judea and Samaria Legal Advisor's office said that:

"The demolition injunctions ... will be carried out ... in accordance with the approval of the political level."

72. This reply is the usual response received from legal elements in the Civil Administration and the IDF regarding everything related to enforcing the law where it concerns planning and construction on the West Bank on the part of Israelis, and the Petitioner's position is that making law enforcement subject to the approval of the political level is illegal and possibly even endangers our legal system.
73. We do not know the source of the legal authority for the Minister of Defense's agreement to approve (or to refuse to approve) the implementation of the demolition injunctions. Para. 38 of the Urban, Villages and Buildings

Planning Law of 1966, which regulates the issue of enforcing the laws of planning and construction on the West Bank, contains no mention of such approval on the part of the political level. This might be mentioned in government procedures or decisions, but at any rate, this contradicts the principle of legality and the idealistic and value basis of the rule of law.

74. Indeed, the rule of law should act without any political considerations. Its enforcement is a matter for professional persons charged with its implementation and not for politicians or statesmen. It seems as if matters are so clear that it is not necessary to expand on them. Would it even occur to wait for the approval of the Minister of Justice before submitting an indictment against any person? Would it occur to anyone that before the Tel Aviv municipality carries out a demolition injunction against a veranda which was enclosed without permit, the personnel of the municipal enforcement dept. would have to ask the mayor's approval?!
75. Apparently, depositing the authority for approval of such matters in the hands of a political element simply invites political pressure and creates selective enforcement. This is exactly what is happening in our case.

D. *THE ASSISTANCE REQUESTED*

76. This Petition requests that Respondents 1-4 be ordered to take the necessary steps to evacuate the illegal and unauthorized outpost called "Migron".
77. The order should point out that the evacuation will be carried out in a variety of ways, "including" the issuing of demolition injunctions and their implementation, and issuing area delineation injunctions and their implementation.
78. In order to ensure clarity, we should like to remind that area delineation injunctions are issued by virtue of injunction no. 1539 which was attacked in the Supreme Court and declared to be legal (see: 7938/04 **Amona vs. Commander of IDF forces in Judea and Samaria et al**, 2004 (3)). Area

delineation injunctions make it illegal to enter land that has been delineated and requires that anyone situated there must leave. The injunctions make it possible for the army to forcefully remove anyone who does not leave as well as to demolish and remove structures and belongings from the site.

79. Unfortunately, to date, as has been described in detail above, final demolition injunctions were apparently issued for some of the structure of the outpost but these were not carried out, and to the best of our knowledge, no delineation injunctions were issued against the outpost.
80. **Our position is that by not implementing the demolition injunctions, Respondents 1-4 are violating their legal obligations. In addition, our position is that not only does the military commander have the authority to issue delineation injunctions, but in cases such as that which lies before us – he is also obligated to issue a delineation injunction.**
81. We realize this and therefore did not submit the petition hastily: this Honorable Court has oft times said that it is not in the habit of issuing declarative injunctions that state that the law has to be enforced. Nevertheless, the Petitioners' request is for a specific injunction which obliges the Respondents to take concrete law enforcement actions against substantial offenders. This injunction is requested because of the consistent and continued refusal, over a period of several months, on the part of the competent government authority to enforce the law. This injunction is required because the scope of illegal construction on the one hand, and the lack of any attempt at law enforcement on the other (which cannot be interpreted in any way other than intentional) have created the very threshold determined by the verdict regarding the Honorable Court's intervention in the policy of law enforcement – absolute disregard on the part of the authority of its obligation to enforce the law (See: HCJ 6579/99 Amichai Felber vs. The Government of Israel, supreme precedent –99(3) 425:

“Indeed, in order for the Court to intervene at the level of enforcing this or any other law, the competent authorities must have completely disregarded their obligation to enforce the law, which is not the case in

this situation, or they do not fulfill their obligation satisfactorily, which has not been proven in this case.”

82. Therefore, in the case before us, the extensive correspondence, the countless reports, particularly that by Talia Sasson, and in particular, the facts that have been presented in detail in the factual section of this petition, ***prove that the competent authorities have completely disregarded their obligation to enforce the law*** and have also ***refrained from fulfilling their obligation in a satisfactory manner***. Law enforcement is, in fact, the rock of our existence as a democratic society. The Respondents, by repudiating their duties, cause serious damage to the rule of law, no less than those who inhabit the buildings in Migron. Therefore, it turns out that the destroyers of the rule of law are exactly those who are charged with keeping it. The continued disregard on the part of the Respondents to carry out this, their obligation, dishonors them and the whole of the State of Israel greatly. Just as the Honorable Court stated in the past:

*“Indeed, law enforcement, the enforcement of any law is the basic foundation of the rule of law. [...] Law enforcement is one of the main duties of every regime. The competent authorities do not have the right to repudiate this duty. As the acting Chief Justice Zilberg said in HCJ 295/65 **Oppenheimer vs. the Minister of the Interior and Health**, PD K(1) 328, 309 “Disregarding implementation and carrying out an existing and binding injunction, is not policy and cannot be policy under any circumstances whatsoever; it only leads to demoralization in the relations between the regime and the civilian, and leads to insubordination regarding all of the country’s laws.”*

(HCJ 551/99 – **Shekem Inc. vs. Director of Customs and VAT and four others**, 2000(1). 419, p. 425).

83. This is one of the rare cases where without the intervention of the Honorable Court, there will not be any hope for the civilian struggle to enforce the rule of law, and the damage caused to civilians – particularly to the Petitioners – due to a lack of enforcement, will only grow and increase.

84. In this context, it would not be superfluous to quote His Honor, Chief Justice Shamgar, in his reference to the importance of enforcing the planning and building laws. The following words were said in relation to violations of the planning regulations in a context that is almost laughable in contrast to what is taking place on the West Bank – the illegal closing off of balconies, erecting fences without permits, etc. – from R.A. 1/84 Dueck et al vs. the Mayor of Jerusalem et al, 494(1), page 500 (The emphasis is mine – M.S.).

*“Unauthorized building is not only a phenomenon that undermines the proper planning of construction, but its repercussions are also even more far-reaching: this falls between the prominent phenomena that strike at the very foundation of the law. **Whosoever takes the law into his own hands clearly and openly strikes out at the legal establishment.**”*

85. Regarding our issue, the brisk activities of the people who have established and populated Migron is in clear and blatant defiance of the rule of law in the region. The settlers have learned that in view of the local laws, they do not really have a chance of receiving a permit to establish a settlement, and so they have begun acting outside of the law, and have discovered that there is no one to hinder them.

In view of the above, the Honorable Court is hereby requested to issue an *Order Nisi*, as requested at the beginning of this petition, and after having received the reaction of the Respondents and having heard oral argument, convert it into a permanent order.

In addition, the Honorable Court is hereby requested to order the Respondents to pay the expenses of the Petitioners as well as lawyers' fees, in addition to VAT and interest as permitted by law.

Shlomo Zecharia, Adv.

Michael Sfard, Adv.

Representatives for the Appellants