

בצלם

בצלם מרכז המידע הישראלי לזכויות האדם בשטחים (א.ר.)
בתיסלם מרכז המידע הישראלי לחقوق الإنسان في الأراضي المحتلة
B'TSELEM - The Israeli Information Center for
Human Rights in the Occupied Territories

Information Sheet
July 2005



Means of Expulsion

Violence, Harassment and Lawlessness against Palestinians
in the Southern Hebron Hills

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Cover photo: Warning sign posted at edge of the closed area (Najib Abu Rokaya, B'Tselem)

ISSN 0792-8114

B'Tselem thanks architect Eran Tamir for his help in the preparation of the report, and attorney Sharon Tal, head of the legal department of the Israel Religious Action Center, for representing B'Tselem in obtaining information pursuant to the Freedom of Information Act.



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B'TSELEM - The Israeli Information Center for Human Rights in the Occupied Territories was founded in 1989 by a group of lawyers, authors, academics, journalists, and Members of Knesset. B'Tselem documents human rights abuses in the Occupied Territories and brings them to the attention of policymakers and the general public. Its data are based on independent fieldwork and research, official sources, the media, and data from Palestinian and Israeli human rights organizations.



Children at the entrance to their cave home in a-Tabban
(Musa Abu Hashhash, B'Tselem)



Homes and caves in Jinba
(Musa Abu Hashhash, B'Tselem)



Outhouse in Jinba that was destroyed by the Civil Administration
(Karim Jubran, B'Tselem)

Introduction

In the southern West Bank, in an area that Palestinians refer to as *Masafer Yatta*, (satellite villages of the town of Yatta), close to one thousand Palestinians live in caves and earn a livelihood from farming (hereafter: “the cave residents” or “the residents”). In the 1970s, Israel declared this area a “closed military area.” Relying on this declaration, Israel has been attempting to expel the cave residents.

In November 1999, Israeli military forces, accompanied by Civil Administration officials, expelled the cave residents and confiscated their few possessions – tents, produce, clothes, and other personal property. The army sealed caves, destroyed wells and outhouses, and prohibited the residents from returning to the area. The cave residents petitioned the High Court of Justice against their expulsion. The High Court issued a temporary injunction, returning the residents to the area and enjoining the state from expelling them until the court reached a final decision in the matter. The petitions are still pending.¹

In addition to the threat of expulsion that has been hanging over their heads since they returned following the High Court’s order, the cave residents have suffered from repeated attacks and abuse by settlers from nearby settlements that have caused injury to person and property. Recently, the army, too, has damaged their property. Furthermore, Israeli planning officials have ignored the cave residents’ needs, refusing to issue building permits that would provide them with needed housing and demolishing structures that have been built in the villages.

This report is a follow-up to B’Tselem’s report in 2000 that documented Israel’s attempt to

expel the cave residents in November 1999.² The present report documents Israel’s efforts to complete the expulsion through the legal proceedings that have been taking place ever since, and describes the lives of the cave residents under the threat of settlers, the military, and the Civil Administration.

The report has six chapters. The first chapter offers a brief factual background of the area, the local population, and its unique way of life. The second chapter gives a chronology of the legal proceedings during the five-year period since the court ordered the state to allow the residents to return. The third chapter analyzes the declared and hidden motives behind the desire to expel the cave residents. Chapter Four discusses the settler violence against the cave residents and examines Israel’s law enforcement policy regarding the settlers. Chapter Five examines the state’s acts and omissions that obstruct the residents’ daily lives. The last chapter analyzes the violations of the residents’ human rights in the light of international law.

As part of the research for this report, B’Tselem conducted a survey among the cave residents between September and December 2004. Forty-five residents participated in the survey, forty-two of whom were family heads, representing about one-half of the families in the area. The survey was conducted in face-to-face interviews based on a questionnaire. The report also relies on data obtained through the normal channels used by B’Tselem in preparing its reports, such as testimonies of the residents, correspondence with the authorities, and media reports.

1. HCJ 517/00, *Mahmud Hussein Hamamdeh et al. v. Minister of Defense et al.*; HCJ 1199/00, *Ahmad 'Issa Abu 'Aram et al. v. Commander of IDF Forces in Judea and Samaria*. The temporary injunction was issued on 29 March 2000.

2. B’Tselem, *Expulsion of Residents from the South Mount Hebron Area, October-November 1999*, February 2000.





Children from a-Tuba on their way home from school in a-Tuwani

(Musa Abu Hashhash, B'Tselem)



Women and children alongside the entrance to their cave home in a-Sfay

(Musa Abu Hashhash, B'Tselem)



Expulsion of residents of caves in the southern Hebron hills, 1999

(Nasrin 'Alyan, B'Tselem)

Chapter One

The Cave Area and its Residents: Factual Background

The area that the IDF declared a closed military area lies southeast of the town of Yatta. The army refers to it as “Firing Area 918” (hereafter: “the closed area”). The closed area consists of some 30,000 dunams (about 7,500 acres) and contains twelve Palestinian villages:³ a-Tuba, al-Mufaqrara, a-Sfay, Maghayir el-Abeed, al-Majaz, a-Tabban, al-Fakhit, al-Halaweh, al-Mirkez, Jinba, al-Kharuba, and a-Sarura.⁴ According to the census taken in 2004, about 1,000 persons live in these villages.⁵ B’Tselem’s research indicates that a small number of the residents live there for a few months a year to farm the land and graze their flocks. In many cases, this seasonal presence in the closed area reaches a total of six months a year.

The southern Hebron hills, in general, and the closed area, in particular, are full of natural caves in which Palestinians live and use as shelter for their sheep and goats. In addition to the natural caves, the ancestors of the current cave residents dug caves near wells and farmland. Each nuclear family has at least one cave that it uses as a residence. Jinba, a-Tuba, and al-Majaz contain stone houses that are not carved out of the landscape.

Contrary to common perception, the cave residents are not Beduin, and do not migrate.⁶

B’Tselem’s survey shows that eighty-eight percent of the cave residents were born in the caves in the closed area. In fact, cave dwellers have been living in the southern Hebron hills at least since the 1830s.⁷ Residents support themselves primarily from farming and raising sheep and goats, and from the production of milk and cheese. Most of the produce is for home consumption and for their flocks, with the surplus being sold in Yatta and other nearby villages. Prior to the outbreak of the intifada, in September 2000, some of the cave residents also worked in Israel. Now, almost none do so.

Many of the residents living in the closed area told B’Tselem that they also had a house in Yatta, which their children use during the school year, and the family uses when it visits the town. Yatta is situated twelve to seventeen kilometers from the villages in the closed area. Because of the distance, the lack of public transportation, and the restrictions on movement to and from the closed area, children of residents who do not own homes in Yatta spend the school year with relatives from their extended family in the town.

The closed area has no physical infrastructure. There are no paved roads leading from the villages, and the harsh topography of the area

3. The residents generally attach “khirbeh,” which means “small village,” to the name of each of these villages.

4. This report does not deal with the village Suseya, which lies outside the closed area. Israel is also trying to expel its residents, but it is a separate case.

5. Environment Resource Management (ERM), www.erm.com. ERM took a census in ten of the twelve villages and found that they contained 937 residents. A-Sarura and al-Kharuba are currently unpopulated.

6. See Ya’akov Habakkuk, *Life in the Hebron Mountain Caves* (Ministry of Defense, 1985), 26.

7. *Ibid.*, 57.

compel the residents to travel to and from the closed area by foot, on horse or donkey, or by tractor or off-road vehicles. The villages in the closed area are also not linked to a power grid, telephone lines, or a running-water system. A few families have a generator, which is used primarily for lighting and heating. Cell-phone reception is generally poor.

Residents have two options for obtaining water: rainwater gathered in cisterns in the villages, and water purchased outside the closed area that is brought to them by tanker and is stored in the cisterns. A cubic meter of water purchased in this way costs from 25 to 50 shekels, whereas a cubic meter of water obtained from a running-water system costs from three to five shekels.

No services are available in the closed area, and the residents rely on the services provided by their parent town, Yatta, and other nearby villages. For example, the closed area has no schools. Khirbet a-Tuwani, which is situated just north of the closed area, has one elementary school, which is used primarily by the children from nearby a-Tuba. However, most of the children in the closed area study in Yatta. The children go home on weekends, holidays, and for the summer. According to B'Tselem's survey, one-quarter of the children in the closed area do not attend school at all. Rather, they help with the farm work and the grazing.

The residents also rely on Yatta for medical services. The closed area has no medical clinic, no resident doctors, and not even a mobile medical facility. A clinic is being built in nearby Khirbet a-Tuwani that will provide basic medical services to residents of the closed area. It should be noted that it takes from thirty minutes to four hours to get to Yatta from the closed area, depending on the location of the village and the means of transportation. As a result, the residents find themselves in life-threatening situations when they require urgent medical care. One of the consequences of this situation is that women do not give birth in hospital. Most of the childbirths take place in the caves, under poor sanitary conditions, without licensed midwives, and without appropriate medical equipment.

In the early 1980s, Israel built four settlements near the closed area, in which some 1,600 persons live: Karmel and Ma'on, north of the closed area, and Susia and Meẓadot Yehuda (also known as Beit Yatir), to the west. From 1996-2001, the settlers established four outposts near the four settlements: Avigayil, Hill 833, Mitzpe Ya'ir (also called Magen David) and Nof Nesher (also called Lucifer Farm).⁸ A fifth outpost, Ma'on Farm, was established inside the closed area itself, but was recently evacuated.

8. See the map, p. 6

Chapter Two

The Attempted Expulsion and the Legal Proceedings

As early as the 1970s, the IDF issued an order declaring the area of the caves in the southern Hebron hills a closed military area. The order was most recently extended on 5 May 1999.⁹ However, until 1997 the declaration had almost no effect on the lives of the residents. In October and November 1997, and in April 1998, some families in the closed area were given eviction orders. Seventeen families, represented by attorney Linda Brayer, of the St. Yves organization, petitioned the High Court, and in August 1999, the two sides reached an agreement: the families would be permitted to enter the closed area on Israeli holidays, Fridays, Saturdays, and two other times during the year, a month each time, during the planting and harvesting seasons. Following the agreement, the petitions were withdrawn. In October and November 1999, most of the cave residents received eviction orders on grounds of “illegal stay in a closed military area.” The orders, which were served personally to only some of the residents, demanded immediate eviction.¹⁰

On 16 November 1999, military forces came and expelled the residents by force. The army sealed the caves used as residences, destroyed water cisterns, scattered the flocks of sheep and goats, and confiscated tents and other property, primarily mattresses, blankets, and food.¹¹

A total of some 700 people were evicted. Less than a day after receiving the eviction order, the residents found themselves homeless and without a means of livelihood.¹² Some of the persons who were expelled went to live temporarily with acquaintances in Khirbet a-Tuwani, and others moved to their homes or homes of members of their extended family in Yatta.

The area was closed pursuant to Section 90 of the Order Regarding Defense Regulations.¹³ This section empowers the military commander to close any area, prohibit persons from entering or leaving it, or remaining in it, and to remove any person who enters the area without permit, except for “permanent residents” of the area. The state offers two primary justifications for evicting the residents: first, the area is needed immediately for training purposes, and second, residents of the caves live in the closed area only on a seasonal basis, so they do not come within the category of “resident,” which would have exempted them from obtaining a permit to remain in a closed military area.

The proceedings in the High Court of Justice

In January 2000, four families residing in the closed area, represented by the Association for Civil Rights in Israel (ACRI), petitioned

9. See Appendix 5.

10. See, for example, Appendix 4.

11. HCJ 517/00, Response on Behalf of the Respondents, Sections 7-8.

12. See B'Tselem, *Expulsion of Residents*, testimonies at pp. 19-22.

13. Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730–1970.

the High Court (HCJ 517/00). The families requested an order permitting them to return to their homes and ordering the state to return the property that had been confiscated during the expulsion or, alternatively, to compensate them for the losses they had sustained. In February of that year, eighty-two other residents, represented by attorney Shlomo Lecker, petitioned the High Court (HCJ 1199/00). The court ordered that the two petitions be heard together. On 29 March 2000, the High Court granted the petitioners' application to maintain the status quo that existed prior to the expulsion.

Immediately following the court's order, most of the expelled residents returned to their villages. However, many residents had nowhere to return; their caves had been destroyed, their wells sealed, and some of their sheep and goats and fodder stolen by settlers. Furthermore, the residents of a-Sarura and al-Kharuba, which are situated near the Ma'on settlement, did not return to their caves because of the increase in settler attacks and harassment at the time. These residents have remained in Yatta or in other villages in the southern Hebron hills area ever since.

Some of the residents who returned encountered another problem, resulting from the Civil Administration's interpretation of the High Court decision. The Civil Administration did not think that it applied to residents whose names did not appear on either of the petitions. Consistent with its interpretation, the Civil Administration issued new eviction orders against those residents. In response to ACRI's request that the High Court decision be applied

to all the residents, the Civil Administration stated that it was willing to maintain the status quo as it promised in court, provided that all persons wanting to continue to live in the area submit an affidavit signed before an attorney that includes the details of their place of residence, the day on which they became a permanent resident or holder of rights in the place, and any other evidence that supports their affidavit.¹⁴ ACRI took affidavits from the residents and submitted them to the Civil Administration. The Civil Administration ignored the affidavits and continued to deny that the court's decision applied to all the residents. Therefore, ACRI filed an application with the High Court in July 2001, requesting to add 112 additional residents as petitioners. Ten months later, the court approved the application.

In its decision of 29 March 2000, the High Court ordered the parties to agree upon an expert to investigate the question of the petitioners' permanent residency in the area and the rights of the residents there. The court added that, based on the opinion it receives, it would decide how to proceed in its handling of the petitions. Two experts were agreed on, but the review was never conducted. The state explained that the failure resulted from "budgetary constraints (the fee to be paid to the experts), and because of the advances in the peace process, on the one hand, and the outbreak of war in the area, on the other hand."¹⁵ The state further argued that the security situation made it impossible for experts to investigate the facts on the ground.

Rather than have experts carry out the investigation as the High Court had ordered, the state made a unilateral decision to have its own

14. Letter of 6 April 2000 from Lt. Gil Limon, assistant to the legal advisor for Judea and Samaria, to ACRI.

15. Application of attorney Malchiel Blass, of the State Attorney's Office, of 13 January 2002, Section 2.

personnel do the job. The state only examined the residency of the eighty-two petitioners who were represented by attorney Lecker. Relying on this examination, in June 2002, the state filed a supplemental response to the court, in which it contended that, based on Civil Administration information, the petitioners are not permanent residents of the closed area, but reside there only on a seasonal basis, and, therefore, may be evicted. The state added that, “following investigation made on the ground, and after discussing the matter with the Minister of Defense, the respondent decided not to take action to evict thirty of the petitioners.” These are residents of Sirat ’Awad Ibrahim, a-Tuba, a-Sarura, and al-Mufaqrara, which are situated in the northwest section of the closed area.¹⁶ Regarding the other residents, the state agreed to let them stay in the closed area “in accordance with seasonal arrangements, meaning during plowing and sowing, for the harvest, and for grazing purposes on Fridays and Saturdays and Israeli holidays.”¹⁷ It should be noted that the state, in giving its reasons, relied on the research of Ya’akov Habakkuk, who found that at least some of the villages of the area are permanent communities.¹⁸

The residents rejected the findings of the examination and requested the court to enforce its decision to make a comprehensive and professional factual examination that would be acceptable to both sides.¹⁹ The court accepted their position and reiterated its earlier decision

that the sides were to appoint an agreed-upon expert to examine the facts. In response, the state proposed appointing an appeals committee on its behalf to hear the residents’ arguments on the question of permanent residency in the closed area and to make recommendations to the military commander in the area.²⁰ This proposal, too, was rejected by the court.

Having no option, in December 2002, the sides agreed to begin mediation to resolve the factual disputes. The two sides agreed on Brig. Gen. (res.) Dov Zadka to serve as the mediator.²¹ The justices stated that the mediation would be completed within forty-five days. However, it continued for over two years.

Testimonies that cave residents gave to B’Tselem indicate that, during this mediation period, the state proposed that the residents move to another area, south of Yatta. Although the residents opposed in principle any solution based on their eviction from the area, they agreed to consider the state’s proposal. In June 2004, a joint tour of the alternative area was conducted to determine whether it would suit the residents’ needs. The tour made clear that the state’s proposal did not constitute a fair resolution of the dispute: the proposed space did not contain caves suitable for habitation, part of the area was land being farmed by residents of Yatta, which the state had no power to transfer to another party, and the other part of the land was rocky and not suitable for farming

16. The basis for the Defense Minister’s decision is unclear. Sirat ’Awad Ibrahim, for example, is an abandoned village with no occupants.

17. H CJ 517, 1199/00, Supplemental Response of the State Attorney’s Office, of 11 June 2002, Section 1.

18. Habakkuk, *Life in the Hebron Mountain Caves*, 28.

19. Petitioners’ Response to the Supplemental Response of the State Attorney’s Office, 11 June 2002.

20. The appeals committee operates by virtue of the Order Regarding Appeals Committees (Judea and Samaria) (No. 172), 5728 – 1967.

21. Brig. Gen. Zadka served as head of the Civil Administration until the second half of 2002.

or grazing. In addition, it was found that the substitute land was a few hundred dunams in size, while the closed area amounted to some 30,000 dunams.

In August 2004, the state proposed that the cave residents work the land and graze their flocks in the closed area periodically, and in coordination with the Civil Administration. Testimonies of

the residents indicate that in early 2005, after more than two years of fruitless negotiations, the mediation process ended without success. In a hearing set for December 2005, the court is expected to rule on the manner in which the petition is to be handled. In the meantime, the residents continue to live in uncertainty, with the threat of expulsion hanging over their heads.

Table No. 1: Chronology of the litigation proceedings

| | |
|-------------------------------|--|
| 20 January 2000 | ACRI files a petition on behalf of four families that were expelled from the closed area. |
| 21 January 2000 | The High Court orders the state to respond to the petition. |
| 15 February 2000 | The state files its response. |
| 16 February 2000 | Attorney Shlomo Lecker files a petition on behalf of eighty-two residents of the closed area. The court combines the two petitions. |
| 29 March 2000 | The High Court hears the combined petition and issues an order permitting the residents to return to their homes, and requiring the parties to preserve the status quo at the time prior to the expulsion. The court orders the parties to agree on an expert to examine the petitioners' contentions. |
| 3 April 2000 | The Civil Administration serves new eviction orders on residents who are not petitioners in the two files. Failing to resolve the matter of these new orders, ACRI applies to the court on 5 July 2001 to add 112 petitioners to the petition. The court grants the application on 9 May 2002. |
| April 2000 - December 2001 | The parties try, but fail, to resolve the matter of the residents residing in the closed area. |
| 13 January 2002 | The state requests a postponement of the hearing to give it time to formulate a position on residents living in the closed area. The court grants the application. |
| 9 May 2002 | The state requests a further postponement of the hearing to give it time to formulate a position on residents living in the closed area. The court grants the application. |

11 June 2002 The state files a supplemental response, indicating that the Minister of Defense decided not to evict thirty of the petitioners, but the position regarding the other petitioners remains unchanged.

5 November 2002 The state requests postponement of the court hearing. The court denies the application.

6 November 2002 The state requests the court to allow it to appoint an appeals committee to examine the question of the residents' residence. The court denies the application and reiterates its decision that the parties are to agree on an expert to conduct the examination.

29 December 2002 The court orders the parties to begin mediation, with the assistance of an agreed-upon mediator, and that the process is to continue for forty-five days.

11 March 2003 The parties fail to meet the court's timetable and request additional time to complete the mediation process. The court grants the application, and the mediation process continues.

February 2005 The mediation process ends without success.

Chapter Three

The Motives behind the Expulsion

The declared motive: imperative military needs

In its response to the High Court, the state justified the declaration of the caves area as a closed area and the eviction of Palestinians living there, on “imperative military needs”:

This area was used in the past as a firing range for Air Force aircraft. Since 1993, the area has been used by infantry forces, primarily for the training of new recruits and combat soldiers being conducted at the army base near the firing zone. This training is conducted all-year-round in four-month cycles, during which the entire area is used.²²

However, the contention that the entire area is used all-year-round for military exercises, some of which are dangerous firing exercises, is inconsistent with the fact that hundreds of Palestinians live in the area and carry out their daily functions both in the villages and in the nearby farming and grazing areas. Also, from 1997-1999, the closed area also contained the Ma'on Farm outpost, in which several dozen settlers lived or stayed during the day. The outpost was re-established and then finally evacuated in April 2004. Presumably, had the state's contention that the intense and ongoing military activity in the area been correct, the training activity would have caused substantial harm to the local residents and would have

Is it really intense gunfire?

In preparing this report, B'Tselem researchers entered villages in the closed area a few times a week over a three-month period. Not once did they encounter military activity of any kind. It appears that the authorities decided to present a false impression that intensive training was being conducted in the area.

On 9 November 2004, at the northern entrance to the closed area near Khirbet a-Tuwani, B'Tselem researchers saw a sign that had been put up by the Civil Administration. The sign, which bore the inscription – “Danger – Closed Military Area, Entry Forbidden” – was lying on the ground. The sign also stated that permission was required to enter the area, and telephone numbers were listed.

In an effort to check the procedure for coordinating entry with the army, a B'Tselem researcher called the telephone number that appeared on the sign. The person who answered suggested that entry into the area be coordinated directly with the area's operations officer, and provided the officer's telephone number. The operations officer told the researcher that, “The whole area is a closed area for military training purposes, in which intensive training takes place daily, and it is forbidden to enter the area except on Saturdays and following prior coordination.” When the researcher pointed out that he was near the area and asked if it was possible to enter, the operations officer replied: “At this very moment, there is intense gunfire at the site. Entry into the area is life-threatening.” It goes without saying that his response was pure fiction.

22. HCJ 517, 1199/00, Response on Behalf of the Respondents, Section 8.

curtailed their ability to maintain a reasonable way of life. However, over the years, the area's residents have not complained to B'Tselem about injury to them or their property resulting from military activity in the area, nor has any such injury been reported in the media.

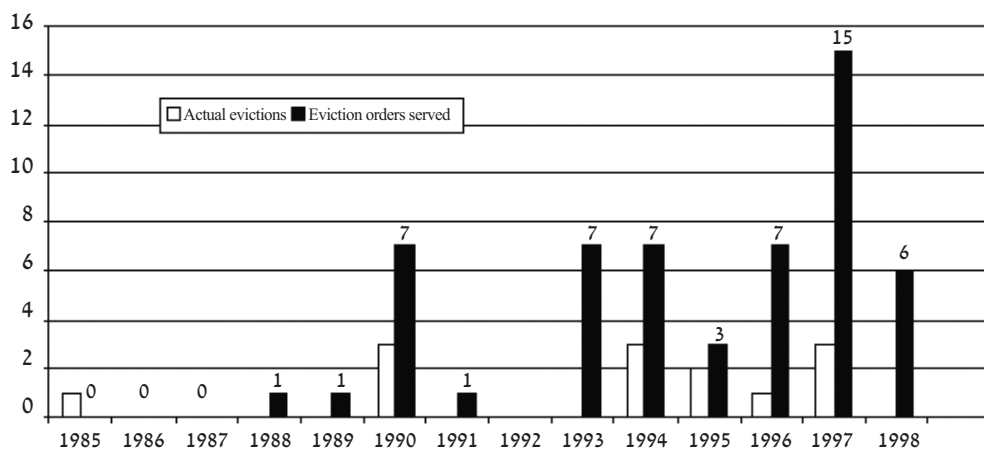
In the above quotation, the state argues simultaneously that the entire closed area is used for training new recruits and combat soldiers, and that this training is conducted at a base nearby the closed area. It seems that the state had good reason to state its position in a confusing manner, enabling it to be interpreted in opposite ways.

The state argued that the need for the closed area increased following the IDF's redeployment in the West Bank as part of the Oslo agreements.²³ This argument is flawed. Even following redeployment, some sixty percent of the West Bank remains under complete Israeli control (Area C). Area C includes most of the territory of the West Bank that had been used for military training purposes. Furthermore, adjacent to the

closed area to the south, within Area C, there is an area comprising tens of thousands of dunams that the army has declared a firing zone. This space is comparable in topography to the closed area, and the state has been unable to explain why the army has an imperative need to use the closed area in particular.

The state's contention of imperative military need is also unreasonable in light of the lack of enforcement of the order closing the area from the time it was issued in the 1970s until the first wave of expulsions, in 1997. Prior to 1997, the army issued only a few eviction orders, and most of them were not enforced. According to figures of the Civil Administration, in the second half of the 1980s, only two eviction orders (that were not enforced) were issued, while in the years 1990-1997, only thirty eviction orders were issued, of which less than one-third were enforced. It was not until 1999, some thirty years after a military need to close the area purportedly arose, that the fundamental decision to evict all the residents from the area was made.

Graph 1: Comparison of number of eviction orders served on residents with the number of eviction orders that were enforced, 1985-1998²⁴



23. Ibid., Section 10.

24. The figures are taken from the report on the monitoring and enforcement in the closed area, of the central monitoring division in the Civil Administration in Judea and Samaria, which was attached to the supplemental response of the state, filed in the High Court on 9 June 2002.

The state's argument presented to the court and in the media therefore leaves significant questions unanswered: How could Palestinians continue to live in the closed area, even seasonally, while the entire area was actively used as a firing zone? How did settlers in Ma'on Farm continue to live in the area for many years? If the military need was indeed imperative, as the state contends, why did it issue such a small number of eviction orders, with few of those being enforced, during the many years that the area was closed? With large firing areas located next to the closed area, what is the imperative military need to use the closed area in particular? How has the army managed to meet the alleged imperative military need during the period since the High Court ordered that the residents be allowed to live in the closed area until final decision is reached on their petition?

The seasonal-residence argument

Section 90 of the Order Regarding Defense Regulations, as stated, empowers the military commander to close any area or place and to order that persons not be permitted to enter, leave, or remain in the area without a personal or general permit issued by the military commander. Subsection (d) states that, "if a person violates the provisions of a declaration on the closing of area or place, which prohibits entry into the closed area or remaining in the area, or the conditions of the permit given pursuant to this section, any soldier or police officer may remove the person from the closed area." However, it then states that, "This subsection shall not apply to a permanent resident of the closed area."

Because of this exception, the order closing the area in the southern Hebron hills states that it does not apply to a "person who lives in the closed area."²⁵

To justify the expulsion in the light of the language of these provisions, the state argued that the cave residents do not live in the closed area permanently, but only on a seasonal basis.²⁶ The state explained that the term "seasonal residence" means residence from time to time for grazing purposes and during the months November-December to sow the fields in the closed area. The state pointed out that its examination revealed that the residents live in the area from February to the beginning of the summer (May-June), and that they live in Yatta the rest of the year.²⁷ Therefore, the state argued, the exemption in the order does not apply to the cave residents. This argument is flawed for a number of reasons.

First, Section 4 of the closing-of-area order states that it does not apply to a "person residing in the closed area." The order expands the exception granted by Section 90 of the Order Regarding Defense Regulations, and exempts every person who resides in the area, regardless of the nature of the residence: permanent, seasonal, or other.

Second, testimonies of residents indicate that only a few of them live in the area on a seasonal basis for farming and grazing purposes, and that the amount of time they spend in the area can reach six months a year. Even the state contends that they live there half the year every year. Therefore, it is unclear why residence for half a year in Yatta is considered permanent

25. Closing of Area Order No. 'b/99/6, of 5 May 1999, Section 4. The order is attached as Appendix 5.

26. H.C.J. 517/00, Response on Behalf of the Respondents, Sections 11, 21.

27. *Ibid.*, Section 21.

residence while residence during the other half of the year in the caves is considered seasonal. According to Civil Administration figures, the eviction orders given to some of the residents in the years 1985-1999 were served in the villages in the closed area at various times throughout the year, except for August. This fact offers further proof that the residents are present in the closed area throughout the year.

The state attempted to strengthen its arguments by pointing out that in the past, in the framework of a petition to the High Court, it reached agreement with the residents in the closed area who were represented by attorney Linda Brayer, in which the families were allowed to enter the closed area during Israeli holidays, on Fridays and Saturdays, and two other times a year, each for one month, during the planting and harvest seasons. However, the agreement only covered the petitioners, who in any case lived in the area on a seasonal basis, and proved nothing regarding the other residents.

The state raised another argument to prove that the cave residents are not permanent residents of the closed area: most of them have houses in Yatta, and Yatta is listed as their address on their identity cards. Many of the residents stated in their testimonies to B'Tselem that their families do have a house in Yatta. In most cases, the houses belong to the father of the family, who has a number of sons, or to a member of the extended family. These houses are used, as mentioned above, by the children who go to school in Yatta. However, ownership of a house in Yatta by a person or a member of his family, as well as the use of the house by the children, does not prove that the family lives in the house permanently. The residents' land and flocks

provide most of their livelihood, and these are located in the closed area, not in Yatta, where the residents are unable to earn a living.

Prof. Gidon Karsel, the advisor of Ya'akov Habakkuk, on whom the state relied to substantiate its contention, wrote to ACRI regarding the expulsion of the residents from the closed area:

The caves that were at first used seasonally by some of the families that grazed their flocks in the winter became permanently populated over the years by some of those families. That is, even if the extended families of the said cave residents had relatives living in homes in villages near the caves, that did not mean that they had the right to use the houses in these villages. It should, then, be recognized that the caves are their homes and the center of their life, and they should be allowed to return to live in them.²⁸

Furthermore, the state's reliance on house ownership to prove residence of a person conflicts with its handling of other cases involving the question of residence. For example, the Interior Ministry held that, to maintain a status of permanent resident, "the center of life" of the person must be inside the state, and that it was not sufficient to own property or even actually live in the state. Based on this holding, in the years 1996-1999, the Ministry revoked the residency status of Palestinian residents of East Jerusalem who were unable to prove that their center of life was in Jerusalem.²⁹

Also, reliance on the address listed on the identity card as proof of the place in which the holder lives is clearly refuted. The Civil

28. Letter from Prof. Karsel, head of the Department of Social Research, Ben Gurion University, to ACRI, 14 January 2000.
29. For an extensive discussion on the matter, see B'Tselem and HaMoked: Center for the Defence of the Individual, *The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians*, April 1997.

Administration does not recognize the villages in the southern Hebron hills as villages, so it is impossible to list them as the address on identity cards. In addition, the military legislation provides that the address listed in the population registry is not proof of the place of residence but constitutes, at most, *prima facie* proof of residence.³⁰

The hidden motive: expansion of settlements and annexation of territory

Since the occupation began, in 1967, every Israeli government has been active in developing and strengthening the settlement enterprise. Every governmental plan for settling the West Bank has indicated a clear intention to annex parts of the southern Hebron hills near the Green Line, including the closed area. Their proximity to the Green Line and the sparse Palestinian population living there make the southern Hebron hills a “natural” candidate for annexation, as well as an attractive site for settlement that will create a contiguous Jewish presence on both sides of the Green Line. Israel’s declared policy and statements over the years suggest that the real motive for turning the area into a closed military area and attempting to expel the cave residents is expansion of settlements and annexation of the area.

The Allon Plan, which served from 1967 to 1977 (the year that the Likud was elected to power) as the basis for governmental action in establishing settlements in the West Bank, proposed that about one-half of the West Bank

be annexed to Israel, including the closed area.³¹ In 1978, Matityahu Drobless, who was head of the Settlement Division of the World Zionist Organization, presented a settlement plan for the West Bank, which served until the mid-1980s as the basis for government policy.³² The plan made it clear that Israel intended to hold onto the West Bank forever, and to help achieve that purpose, it would build a chain of settlements running southward from Nablus to Hebron in a way that prevents the establishment of a Palestinian state. In the area of the southern Hebron hills, Drobless suggested the establishment of three settlement blocs, one of them south of Hebron, situated on both sides of the Green Line, near the closed area. In 1981, maps from a plan presented by Ariel Sharon, then Minister of Defense, to annex areas of the West Bank were published. In the southern Hebron hills area, Sharon proposed annexing broad expanses of land with sparse Palestinian population, including the closed area.

To implement these settlement and annexation plans, over the years Israel took control, through various means, of hundreds of thousands of dunams. The main means was by declaring the land “state land” by a manipulative and biased use of the laws applying in the West Bank, in violation of fundamental principles of due process.³³ Most of the declarations of state land were made during the years 1979-1984. In the closed area, Israel declared some 18,000 dunams (54 percent of the total closed area) state land.

30. Order Regarding Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5769 – 1969, Section 11A.

31. The plan served as a guideline for establishment of settlements in the West Bank even though it was never approved. See Meron Benvenisti and Shimon Khayat, *The West Bank and Gaza Atlas* (Jerusalem: West Bank Data Project, 1988), 63-64.

32. Matityahu Drobless, *Settlement in Judea and Samaria – Strategy, Policy and Plan* (Jerusalem: World Zionist Organization, September 1980), 3.

33. B’Tselem, *Land Grab: Israel’s Settlement Policy in the West Bank*, May 2002.

The four settlements in the southern Hebron hills near the closed area – Karmel, Ma'on, Suseya, and Me zadot Yehuda – were established in 1981 and 1983 on territory that was declared state land. In addition, between 1996-2001, four outposts near the closed area were established – Avigayil, Hill 833, Mitzpe Ya'ir (Magen David Farm), and Nof Neshet (Lucifer Farm) – and one outpost inside the closed area itself, Ma'on Farm, which was dismantled in 2004.³⁴

It should be mentioned that the outposts were built in coordination and with the assistance of government and defense officials, even though they lacked the approvals necessary according to the planning and building laws. According to Ze'ev Hever (Zambish), settlement movement director of the YESHA Council (Amaneh), "Every outpost that we built was coordinated with the relevant officials in the defense establishment, from the Minister of Defense on down. Wherever governmental institutions in Israel did not want a settlement, there was none."³⁵ An interim report of the governmental committee that examined the phenomenon of "unauthorized outposts," published in April 2005, states:

Breach of the law became organized and institutional. This is not a matter of an offender or group of offenders acting in violation of law. The picture that arises is one of flagrant violation of law by state authorities, public authorities, regional councils in Judea and Samaria, and settlers, all while giving the appearance that an

organized and institutional system is operating in accordance with the law.³⁶

B'Tselem recently learned that the Mt. Hebron Regional Council intends to pave a new road parallel to Route 317.³⁷ The road will link Me zadot Yehuda, Mitzpe Ya'ir, Ma'on, and Karmel. The road will likely run the whole length of the closed area and pass through the land of the cave residents. It is not clear if the plan has been incorporated into an outline plan that was submitted to the Civil Administration for approval. The media recently reported that the council is planning to build forty new housing units in Mitzpe Ya'ir, near the closed area.³⁸ B'Tselem contacted the Civil Administration to learn if building permits had been issued for construction of these units, but has not yet received an answer to its question. It should be pointed out that the lack of a building permit, outline plan, or approval to establish a settlement has not prevented government ministries from providing financial support to lawbreakers. For example, the interim report on the unauthorized outposts indicates that the Housing Ministry transferred NIS 1.3 million to the illegal outpost Mitzpe Ya'ir-Magen David Farm, and NIS 570,000 to the unauthorized outpost Avigayil, which is situated near the western boundary of the closed area.³⁹

The attitude of Israeli governments toward the southern Hebron hills is also apparent in the final-status negotiations between Israel and the Palestinians that were held in July 2000 at

34. See the map, p. 6.

35. Nadav Shargai, "Amaneh Head: Every Outpost Built in Coordination with Defense Officials," *Ha'aretz*, 4 December 2002.

36. Talia Sasson, *Opinion on Unauthorized Outposts*, Department of Communications, Prime Minister's Office, April 2005.

37. B'Tselem obtained the information from a resident of a settlement in the area, who requested to remain anonymous. His particulars are on file at B'Tselem.

38. News Flash, *Ha'aretz* Online, 26 May 2005.

39. Talia Sasson, *Opinion on Unauthorized Outposts*, 12, 29.

Camp David. Israel's prime minister at the time, Ehud Barak, offered a proposal in which Israel would annex thirteen percent of the West Bank and would hold another ten percent of the land for many years. The closed area was included in the area that Barak aspired to continue to hold for many years.⁴⁰

In June 2002, the government of Israel decided to build the separation barrier, whose declared purpose is to prevent Palestinians from the West Bank from entering Israel to carry out attacks. The barrier's route in the southern part of the West Bank was first approved by the Israeli government in October 2003. In the section along the West Bank's southern border, the route was set 5-8 kilometers from the Green Line. The land area between the barrier and the Green Line in this section amounts to 170,000 dunams, about three percent of the West Bank.⁴¹ All the settlements and outposts mentioned above, and the closed area, are situated in this land space.

The route was changed, both as a result of sharp criticism from the international community and as a result of a decision of Israel's Supreme

Court in June 2004. The court ruled that the route of the barrier northwest of Jerusalem was not legal because it disproportionately harmed Palestinian residents living nearby, and ordered the state to propose an alternate route. As a result of this decision, the defense establishment reconsidered the entire route of the barrier, and in February 2005, the government approved the amended route. The amended route in the southern part of the West Bank runs near the Green Line, leaving only two settlements in the area between the barrier and the Green Line – Eshkolot and Mezadot Yehuda. No work on the barrier has yet begun in this area.

Despite the substantial change in the route in the southern Hebron hills, it may be that the intention to annex this area will be expressed in other ways. In an interview in April 2005, Knesset member Avraham Shochat revealed that the Israeli government intended to place concrete panels along Route 317 in the southern Hebron hills. This roadway runs near the previous route of the barrier, such that the concrete panels would detach the southern Hebron hills, with its settlements and Palestinian villages, from the rest of the West Bank.⁴²

40. Ron Pundak and Shaul Arieli, *The Territorial Aspect in the Israeli-Palestinian Final-Status Negotiations* (Peres Center for Peace, September 2004), 29.

41. OCHA, *The Humanitarian Impact of the West Bank Barrier on Palestinian Communities*, 1 September 2004.

42. B'Tselem contacted MK Shochat's office and was told that Shochat had quoted the comments of Prime Minister Sharon at a meeting of the Foreign Affairs and Defense Committee on 4 April 2005.

Chapter Four

Settler Violence and Lack of Law Enforcement

Since the founding of the settlements in the area in the 1980s, the cave residents have suffered from settler attacks. The attacks increased after the establishment of Ma'on Farm, in 1997, and particularly after the killing in 1998 of Dov Dribben, one of its residents, for which residents of the caves were blamed.⁴³ Since the residents returned to the caves, in March 2000, they have been subject to constant abuse by the settlers living in the area.

B'Tselem's survey found that, over the past three years, eighty-eight percent of the residents have been victims of settler violence, or witnessed such violence toward a first-degree relative. No village has managed to escape settler abuse. The frequency of the violence and abuse differs from village to village. Khirbet al-Fakhit, for example, suffered relatively little, apparently because it is situated far from the settlements and outposts near the closed area.

The abuse reported in the survey can be divided into four patterns: blocking of roads and preventing access to fields (51 percent of the cases), property damage, including destruction of crops and theft of sheep and goats in particular (21 percent), intimidation (17 percent), and physical violence (11 percent). Regarding property damage, a majority of the interviewees mentioned that the attacks

increased during the planting and harvesting seasons. In that most of the families living in the closed area make their entire living from farming and grazing, the damage to their crops and flocks is critical.⁴⁴

In his testimony to B'Tselem, Mahmud Hussein Hamamdeh, 39, described the abuse that his family has faced:

Since 1999, the settlers have abused us almost daily, in all kinds of ways. About a year ago, settlers beat residents of a-Tuwani. I was there and the settlers beat me too. Also, settlers from Avigayil prevented my children from getting to school, throwing stones at them. In May 2004, settlers torched the wheat and barley we had gathered. The loss amounted to NIS 25,000. My extended family has about one thousand dunams of land near Ma'on Hill. From about the time that the settler Dov Dribben was killed, we have been unable to get there because we are afraid of the settlers. The settlers also blocked the main road, which passes by the Ma'on settlement and links al-Mufaqrara and other villages in the area with Yatta.⁴⁵

The common method of intimidation is setting dogs at children while they are grazing the sheep and goats or are on their way to or from school. In many cases of violence, firearms are also used. Tawfiq Hamamdeh, 23, a resident of

43. In August 2004, the court acquitted the Ahmad Dabaseh, a Palestinian who had been charged with the murder of Dov Dribben.

44. Settler attacks against Palestinians while working their fields is a known phenomenon in the West Bank. During the olive harvest, which provides the primary source of income for many families, the level of violence usually increases. See B'Tselem, *Foreseen but Not Prevented: The Performance of Law Enforcement Authorities in Responding to Settler Attacks on Olive Harvesters*, November 2002.

45. The comments were made to Karim Jubran in al-Mufaqrara in October 2004.

al-Mufaqrara, described how settlers used these methods to prevent him and his family from reaching their farmland:

The settlers prevent us from reaching our grazing land in Wadi Sarura, near the Ma'on settlement. They chase us with dogs, and if we try to go onto the land, or even if we only want to let our flock graze there, the settlers open fire. They not only prevent us from going onto the land, they work it themselves. The settlers also block the road between the village and Yatta.⁴⁶

One of the most grievous cases of abuse took place in March 2005, when settlers spread poison in the grazing areas used by residents of Khirbet a-Tuwani, killing a number of sheep.⁴⁷ Tests conducted at Bir Zeit University indicated that the material was extremely poisonous, and was liable to seep into the ground water.⁴⁸ In his testimony to B'Tselem, Na'im Sallem 'Issa 'Adra, 38, a resident of a-Tuwani, spoke about the incident:

My family and I have a ten-dunam parcel of land at the edge of the village. We also have thirty-three sheep and goats that I graze in areas around a-Tuwani. The Ma'on settlement is situated near the village land. Since the intifada began, the number of settler attacks dramatically increased... The last one was on Wednesday, 23 March 2005. The settlers scattered a large quantity of poisonous kernels on more than two hundred dunams of our land. The animals grazing in the area ate the poison. So far, twenty-one sheep and goats died from the poison. I lost one sheep, and three are

sick... This attack took place during one of the best years the farmers have had. The animals have been giving lots of milk, which is the basic food source for us and our children. After we discovered the poison, the farmers who graze their flock in the poisoned area threw away the milk that they get from the flock, causing us to lose money. Some of us filed complaints at the Israeli police station in Qiryat Arba. We thought that the police would do something about it, and stop these attacks.⁴⁹

Two weeks after the incident, settlers returned and again spread poison on grazing land of the cave residents.

Shortly after the cave residents returned to their homes following the High Court's decision in March 2000, the residents of al-Kharuba and a-Sarura decided to leave their villages because of the repeated abuse at the hands of settlers from Ma'on and Ma'on Farm. Ibrahim Rab'i, 30, described the background of the decision:

I was born in Khirbet al-Kharuba. My grandfather, father, and uncles have lived there for years. When I was at school, I went to live in Yatta, and returned to the village in the summer. We lived in the village until 1999. Before we left, we were intimidated by the settler Dov Dribben and other settlers. Usually, they brought their flock onto our grazing areas. But the troubles they caused were not serious, and we managed to continue to live in the village. We worked the land and grazed the sheep and goats on land near the village, on land belonging to us, which amounts to hundreds of dunams.

46. The comments were made to Karim Jubran in al-Mufaqrara in October 2004.

47. 'Ali Waqed, "Police Investigate Poisoning of Sheep in Palestinian Territory," *Ynet*, 23 March 2004.

48. Letter of 30 March 2005 from Dr. Ramzi Mansur, head of the Environmental Quality Sciences Center, of Bir Zeit University, Ramallah, to the governor of Hebron District.

49. The testimony was given to Musa Abu Hashhash in a-Tuwani on 6 April 2005.

In 1998, Dov Dribben was killed. Since then, the problems with the settlers have gotten serious. They took control of our land near the village, and did not let us go onto it. The attacks continued, and became intolerable. So, after a few months, we decided to leave the village. I was unable to get to the fields. My father and uncles were unable to return to live in the village, where they were born and lived their whole life. Now they live in Khirbet Raq'a and in Yatta. My father sold his entire flock. I sold more than half of my flock. I have four children, the eldest of whom is fourteen. The flock and land provide the main source of income for my family... We, the residents of al-Kharuba and Sarura, lost our homes, our wells, and our fields to the settlers, and now they are using them.⁵⁰

The settlers act as if they own the closed area, and prevent persons they don't know from entering the area near the Ma'on settlement and the nearby villages. Persons who enter the area without their knowledge, among them human rights workers who come to the area to aid the Palestinians, are a constant target for attack.

For years, Palestinian children who live in the closed area and study at the elementary school in Khirbet a-Tuwani have been victims of attacks by settlers living in Ma'on. The settlers did not allow them to use the direct route to a-Tuwani, intimidated and threatened them, and beat them. The children and their parents refrained from confronting the settlers, and the children used a long alternate route to get to school.

In the beginning of the current school year, volunteers from Christian Peacemakers Team

(CPT) and Operation Dove began to accompany children every morning on their way to school, via the direct route, which passed by the Ma'on settlement. Three times, settlers brutally beat up the volunteers. Kim Lamberty, one of the victims, described to a *Ha'aretz* reporter what happened on 29 September 2004:

We accompanied five children to school, when suddenly five persons dressed in black and wearing masks attacked us. They had clubs and chains in their hands. The children began to run. One of the assailants came over to me, knocked me down, and beat me on the back with a chain. I did not move. I wanted to make them think I was dead, so they would leave me be. Chris (another of the volunteers) shouted, "Just don't hit the children." The settlers pushed him down and began to kick him and beat him with the clubs.⁵¹

Following the third attack, the army undertook to escort the children, provided that the peace activists promised not to do it themselves. The first day that the army escort began, settlers attacked the children.⁵² In the days that followed, settlers continued to follow the children and their escorts, but did not attack them.

Law enforcement by the police

Israel is required to protect the lives, safety, and property of every person under its control, including Palestinians in the Occupied Territories. This responsibility includes, inter alia, preventing Israeli citizens from carrying out acts of violence against Palestinians, and prosecuting persons responsible for such acts.

50. The testimony was given to Musa Abu Hashhash at the witness's home in a-Tuwani on 16 October 2004.

51. Nir Hasson, "Settlers Attack Volunteers from Abroad in the Southern Hebron Hills: Nobody Arrested," *Ha'aretz*, 15 October 2004.

52. Niv Haklili, "Beaten on the Way to School," *Kol Ha'Ir*, 29 October 2004.

The police have the primarily responsibility for enforcing the law against settlers, while the IDF is responsible for handling certain incidents that take place outside the settlements and in instances in which they arrive before the police.⁵³

The police have the responsibility to investigate attacks on Palestinian, whether or not a complaint is filed, and regardless of the way the police learned of the attack. Based on the findings, the police then close the file or order further handling by either the State Attorney's Office or the police prosecutor. The State Attorney's Office handles files in which the suspect is thought to have committed an offense for which the punishment is three years' imprisonment or more. If the State Attorney's Office is convinced that the file warrants prosecution, it is responsible for preparing the indictment. The police prosecutor handles the other files, and prepares an indictment if one is warranted.

As mentioned above, settler violence against Palestinians is common all over the West Bank. However, throughout the history of the occupation, efforts to enforce the law against settlers have been limited and ineffective.⁵⁴ In 1981, a committee headed by Deputy Attorney General Yehudit Karp was appointed to examine the police's handling of offenses by settlers. The committee was sharply critical of the efforts of the law enforcement authorities

and stated that the police must find an urgent solution to the problem.⁵⁵ In 1994, following the massacre committed by Baruch Goldstein in the Tomb of the Patriarchs, a state commission of inquiry, headed by former Supreme Court president Meir Shamgar, was appointed to investigate the massacre. The commission held that enforcement of the law against settlers had failed, and that for years no effort had been made to improve the situation.⁵⁶

Following the commission's recommendations, the police created the SHAI [Samaria and Judea] District, which was given responsibility for enforcing the law on settlers in the West Bank.⁵⁷ In a report published in 2001, B'Tselem examined police law enforcement efforts against settlers since the beginning of the second intifada, in September 2000, and found many problems.⁵⁸ In October 2002, in a meeting of the Knesset's Foreign Affairs and Defense Committee, then-IDF chief-of-staff, Lt. Gen. Moshe Ya'alon, said that he "was not happy with the level of law enforcement over the years. Why is enforcement lacking? That is a complicated question."⁵⁹

Recently, the media reported that Attorney General Menachem Mazuz, and Police Inspector-General Moshe Karadi agreed among themselves that, "from now on, enforcement would be more efficient and swift, and that the arrest and rapid release of rioters would not suffice. It was also decided that there would

53. Procedure for Enforcing Law and Order Regarding Israelis, October 2001, issued by Attorney General Elyakim Rubinstein.

54. See the following B'Tselem reports: *Law Enforcement vis-à-vis Israeli Civilians in the Occupied Territories*, March 1994; *Free Rein: Vigilante Settlers and Israel's Non-Enforcement of the Law*, October 2001; *Foreseen but not Prevented*.

55. *Investigation of Suspicions against Israelis in Judea and Samaria*, Staff Monitoring Report (1982).

56. Report of the State Commission of Inquiry in the Matter of the Massacre in the Tomb of the Patriarchs (1994), 192-193.

57. See *State Comptroller Report 52A*, 23 September 2001, 182.

58. See B'Tselem, *Tacit Consent: Law Enforcement towards Israeli Settlers in the Occupied Territories*, March 2001.

59. Smadar Shmueli, "Chief-of-Staff: I am not Happy with Law Enforcement in Judea and Samaria," *Ynet*, 22 October 2002.

be careful documentation of events, and if there is sufficient evidence, shortly after the events occur, the state would not hesitate to file indictments against the rioters.”⁶⁰ These comments strengthen the contention that enforcement of the law against settlers is limited and ineffective, and that the top law enforcement officials are well aware of the fact.

B’Tselem asked the police how many complaints residents of the closed area had filed against settlers for violence in recent years, and how the police handled the complaints. The police supplied figures on all complaints of Palestinians in the entire Hebron District for the years 1999-2004 (until October).⁶¹ B’Tselem repeated its request for specific information on residents from the closed area, but received no reply. The figures on Hebron District are accurate, although not precise, also as regards law enforcement in the closed area.

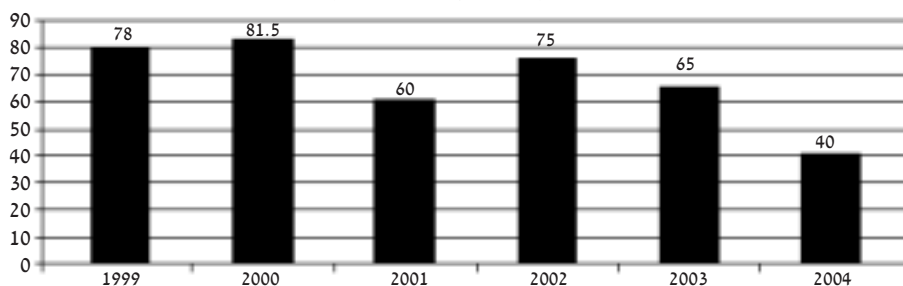
The number of Palestinian complaints to the police does not reflect the magnitude of settler violence. Many Palestinians do not have confidence in the Israeli authorities, and the police in particular, and do not think that the police will properly handle their complaints and prosecute the settlers to the full extent of the law. In many cases, therefore, they do not

file complaints. Testimonies given to B’Tselem indicate that few Palestinians filed complaints, and of those who did, some said that they did not believe it would help.

According to police statistics, in 2000, only seventy-six complaints were filed in the entire Hebron District. In 2001, the first full year of the intifada, the number rose to 102. In 2003 and 2004, the number fell sharply. Most of the complaints filed in the past five years whose handling has been completed were closed. Some were closed in the preliminary investigation stage and were not transferred to the Police Prosecutor’s Office or to the State Attorney’s Office, and the others were closed after the Police Prosecutor’s Office and the State Attorney’s Office reviewed the file.

Files are closed for four reasons: lack of evidence, lack of public interest, lack of wrongdoing, and offender unknown. According to police figures, the absolute majority of files were closed for lack of evidence. A substantial percentage of the cases referred to the State Attorney’s Office or the Police Prosecutor’s Office over the past five years (in particular the years 2003 and 2004) remain open. Based on past experience, most of them will ultimately be closed.

Graph No. 2: Complaint files relating to settler violence that were closed, by percentage and year



60. Diana Bahur-Nir, “Ramon: Try Settlers in Military Courts,” *Ynet*, 11 January 2005. This summary was achieved in the framework of a discussion at the suggestion of MK Haim Ramon that settlers be tried in the military courts.

61. Letter of 8 December 2004 from Superintendent Yifat Wegman-Shafran, head of Freedom of Information Law matters in the Israel Police Force.

As we see in Table No. 2 below, some files have not yet been resolved even after five years, particularly in the Police Prosecutor's Office. This long delay has practical consequences – witnesses are harder to find,

memory of relevant details diminishes as time passes – reducing the chances of convicting the perpetrators. It is no wonder that most files are closed on grounds of lack of evidence.

Table No. 2: Pending files in the State Attorney's Office or the Police Prosecutor's Office relating to complaints of settler violence*

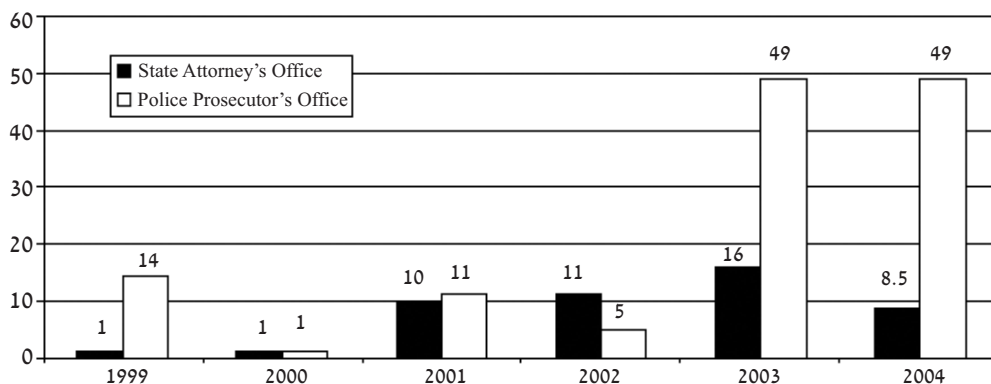
| Year | Files in the Police Prosecutor's Office | Files in the State Attorney's Office |
|--------------|---|--------------------------------------|
| 1999 | 7 | 1 |
| 2000 | 1 | 1 |
| 2001 | 11 | 10 |
| 2002 | 10 | 0 |
| 2003 | 13 | 4 |
| 2004* | 4 | 24 |
| Total | 46 | 40 |

*As of 25 October 2004

In the past five years, only a small number of Palestinian complaints were transferred to the State Attorney's Office for handling. In 2003 and 2004 (until late October), the percentage of files transferred to the Police

Prosecutor's Office increased. This change, even if welcomed, does not indicate significant improvement in law enforcement. As we know from past experience, most files are closed without indictments being filed.

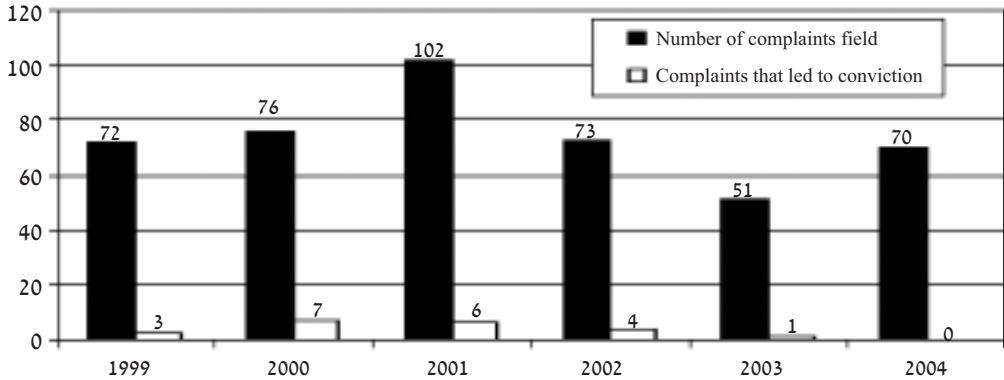
Graph No. 3: Complaints transferred to the Police Prosecutor's Office or to the State Attorney's Office, by percentage and year



The increase in the number of complaints between 1999-2001 did not lead to an increase in convictions, which failed to reach double

digits in any year. This fact surely increases Palestinians' lack of confidence in the law enforcement system.

Graph No. 4: Number of Palestinian complaints compared with the number of Palestinian complaints that led to the conviction of an Israeli citizen, by year



On 9 March 2004, *Ha'aretz* published an article by Akiva Eldar in which he described the level of law enforcement against settlers in the southern Hebron hills:

Last Wednesday, we arrived at the scene [of the incident] when police investigators were gathering the shell casings of bullets that settlers had fired at residents of a-Tuwani a few minutes earlier. Three suspects waited next to the police jeep. None of them appeared worried. The next day, ten settlers were taken to the Jerusalem Magistrate's Court. Major Amitai Amosi told the judge, Raphael Yakobi, that the

suspects chased Palestinian shepherds, fired stones at them by slingshot, and fired shots in the air. On the way, they came across a Palestinian car, stoned it, and forced the passengers to flee. Amosi did not request that the suspects be detained... He found it sufficient to request that the group be ordered to stay away from the area for three months. The judge rejected the request. The SHAI Police District and the Central Command were not surprised. Senior officers say that the settlers learned long ago that in the Occupied Territories there is neither law nor justice.⁶²

62. Akiva Eldar, "You Assaulted Arabs? Not so Terrible," *Ha'aretz*, 9 March 2004.

Regarding settler attacks on the foreign volunteers who escorted children living in the closed area on their way to school, the SHAI District spokesperson said that “these incidents are extremely serious. An underground organization carried out assaults in aggravated circumstances and thefts. So far, the police have conducted fourteen searches in Ma’on and Ma’on Farm, and dozens of police officers were summoned to the scene during the course of the incident.”⁶³ Why, one might ask, did the police wait until after the attack on the volunteers to search settlers belonging to an “underground organization,” given that such attacks were routine. Also, one wonders why, despite the importance that the police give to handling offenses by settlers, not one indictment was filed, to the best of B’Tselem’s knowledge.

Palestinian complaints on settler violence indicate that the police have been woefully inadequate in handling the problem. In general, the police are negligent and slow to act, making it difficult to obtain evidence and thus reducing the chances of a successful prosecution. Testimonies given to B’Tselem indicate that the police force is not properly set up to protect residents of the closed area, and does not make a meaningful effort to prevent the attacks. These failures lay the foundation for further attacks against the cave residents and allow the perpetrators to escape prosecution and punishment.

In response to B’Tselem’s inquiry, the police wrote:

The Hebron division recently upgraded its enforcement activity in the southern Hebron hills, took action to map the focal points of the friction and the areas of confrontation

between Jews and Palestinians. In the subject areas, patrols have increased to maintain a conspicuous presence. Where there is a grave incident of an attack on Palestinians, the police, together with the IDF, allocate forces to protect Palestinians from the chance of attack. In addition, we give priority to every attack on Palestinians, police forces respond swiftly to terminate the commission of the offense and locate/delay/arrest the suspect/s.⁶⁴

Even if the police’s contention is correct and the police force has recently increased its law enforcement effort against settlers in the closed area, based on the results achieved, the efforts have been a total failure: the number of attacks did not decline, the residents’ sense of security did not increase, and no indictments against offenders were filed.

Law enforcement by the IDF

The number of military troops in the West Bank is far greater than the number of police officers, and generally they are the first to reach the scene of an attack. This is especially true in the closed area, as the closest police station is in Qiryat Arba, and the terrain does not generally enable ready access to the police. Yet, in most cases, not only do soldiers turn a blind eye to settler attacks on Palestinians, they aid the attackers.

In an article published in March 2003 in Ha’aretz, Jum’a Riba’i, a resident of Khirbet a-Tuwani, described the difference between the way the army and the police acted in matters of settler violence: “Whenever the settlers come, I call the police. When they see the police, they flee. The army doesn’t bother them, because they know the army protects them... I am not

63. Nir Hasson, “Settlers Attack Volunteers.”

64. Letter of 22 November 2004 from Superintendent Yifat Wegman-Shafran.

afraid of the settlers. The problem is that the state, the government, the army help them.”⁶⁵ This conclusion is consistent with the hundreds of testimonies given to B’Tselem over the years, which show that, in many cases, soldiers do nothing to protect Palestinians and at times even join in the settlers’ acts of violence.⁶⁶ In her report regarding outposts in the West Bank, cited above, attorney Talia Sasson reached a similar conclusion:

IDF soldiers have the enforcement powers like those given to a police officer, by virtue of the procedure for enforcing the law in the territories, which is included in the IDF Commands. In practice, however, IDF soldiers do not enforce the law, are not aware of the law enforcement procedure, and are not at all interested in functioning like police officers. “The spirit conveyed by the commander,” as described to me, is that IDF soldiers are not to examine in a legal framework the acts of the settlers, who are doing a Zionist act in building the outposts, even though it is illegal.

Protecting the settlers is one of the army’s principal missions. It carries out the mission in close cooperation with the settlers themselves. Settlers take an active part in guarding the settlements, and some of them serve as security coordinators, and are given powers and firearms by the IDF. Settlers have abused these powers and have misused the weapons given them to carry out attacks against Palestinians. A senior army official told *Ha’aretz* that, “in extremist settlements, security heads, their deputies and assistance, act outside the community’s borders. They conduct patrols when they see Palestinian shepherds or farmers whom they view as

‘persons gathering intelligence information for an operation’ to be used in carrying out terrorist attacks. More than once, they beat Palestinians or fired at them.”⁶⁷

Testimonies given to B’Tselem by cave residents indicate that, as a matter of routine, soldiers do nothing to protect them from settler attacks, and even assist them in certain ways. Nibal al-’Amur, 22, a resident of Jinba, described how soldiers arrested and beat him while he was grazing his flock, after a settler convinced them that the grazing land belonged to him:

I live in Jinba and raise sheep and goats for a living. Last March, I can’t recall the exact day, I was grazing the flock near the village Bir al-’Idd, which is situated about two kilometers north of Jinba, and about one kilometer from the outpost of Ya’akov Talia [Nof Neshet outpost] ...

Around 2:00 P.M., three soldiers came up to me on foot... The settler Ya’akov Talia was with them. He told me to leave the site, and that I was forbidden to graze there, because it belonged to him. I told him that he was mistaken and that a few days earlier, a police official and an officer named Tzion from the Civil Administration, came and told me that I can graze my flock in the area. We spoke in Hebrew. Ya’akov spoke with the soldiers, and I heard him try to convince them to arrest me. The soldiers told me to go with them to the police patrol van nearby... When we got to the van, one of the soldiers called the police station in Qiryat Arba, and I heard the policewoman who answered say that we were allowed to graze in the area of Bir al-’Idd.

65. Gidon Levy, “Winds of War in Khirbet Rakiz,” *Ha’aretz*, 19 March 2003.

66. For further discussion on this point, see B’Tselem, *Free Rein*.

67. Amos Harel, “IDF Limits Powers of Security Coordinators in Settlements,” *Ha’aretz*, 4 November 2004.

Ya'akov broke in and said that that was not true, and demanded that the soldiers arrest me. He succeeded. One of the soldiers tied my hands and covered my eyes. They put me in the van and told me not to move. We started to move, and after about thirty minutes, the vehicle stopped. I felt as if they had put me in a room. There were people around me, and they swore at me. I think they were soldiers. One of them grabbed my head and slammed it into the wall three times...

A few hours later, they put me back into the vehicle and we left the area. The soldiers took me out of the vehicle and one of them took off the cuffs and the blindfold. I saw that I was at the Hura intersection. I saw on a watch that it was midnight. The soldiers left me there and went away. I got to Yatta around 1:00 A.M. and spent the night there.⁶⁸

68. The testimony was given to Musa Abu Hashhash in Jinba on 9 September 2004.

Chapter Five

Human Rights Violations Resulting from the Authorities' Acts and Omissions

Destruction of farmland by the army

Forty-eight percent of the participants in B'Tselem's survey who said they or their immediate family were victims to abuse by soldiers suffered direct damage to their property, primarily to their fields. Sixty-one percent of them mentioned that the abuse increased during the planting and harvesting seasons. All the incidents took place in the villages al-Majaz, al-Mirkez, Jinba, a-Tabban, and al-Fakhit, most of which are situated in the southern part of the closed area. According to the testimonies of the cave residents, since the High Court's decision in March 2000, tanks and bulldozers from the army base near Jinba routinely drive over the plowed and planted fields. The residents also stated that aircraft sprayed chemicals over their fields.

In his testimony to B'Tselem, Muhammad Ahmad Mislah Hamamdeh, 70, described how security forces destroyed his family's property and crops in a-Tabban:

On 29 April 2004, a large contingent of police, army, Border Police, and Civil Administration officials came to the village. They destroyed our tents, the pens for our sheep and goats, and wells. When my children tried to remove mattresses and kitchen utensils from the tents, the soldiers beat them. They also tried to hit me. Tareq [commander of the forces] told them not to touch me because I am elderly, and he ordered the soldiers to take me from the area and tie my hands... In the past three

years, Israeli aircraft have been spraying our fields and crops with chemicals, completely destroying the crops. Tanks and jeeps also go onto our fields and destroy them. The army also destroyed six structures that we built from contributions by an organization from abroad, and which my family used.⁶⁹

Yasser Abu Sabheh, 30, a resident of al-Fakhit, said that, "Over the past two years, soldiers have intentionally driven their tanks onto our fields. The fields were planted with barley, and the tanks destroyed about eighty percent of the crop. They do it before the harvest, which is usually in May and June."⁷⁰

Trampling fields and destroying crops constitutes flagrant violation of the cave residents' property rights and their right to work and gain a livelihood. In addition, the security forces' actions breach the High Court's order of March 2000, which expressly directed that the status quo prior to the expulsion be maintained. ACRI wrote to the Civil Administration's legal advisor and asked him to instruct the army to cease its acts of destruction. The legal advisor replied that the army had indeed been so instructed. However, the army continued to go onto the residents' farmland in the southern part of the closed area. ACRI applied to the High Court for an order finding the army in contempt-of-court. Affidavits made by residents in support of the application indicate that soldiers drove their armored vehicles back and forth and trampled the fields that had been

69. The comments were made to Karim Jubran in a-Tabban in October 2004.

70. The comments were made to Karim Jubran in al-Fakhit in October 2004.

sowed only a few days earlier.⁷¹ In March 2004, the state responded that the army promised not to damage cultivated lands. The state admitted that the army may be civilly liable to compensate the residents for their losses.⁷²

Restrictions on freedom of movement

Since the beginning of the intifada, in September 2000, the IDF has restricted the freedom of movement of Palestinians in the West Bank, using staffed checkpoints, dirt piles, concrete blocks and other obstacles on roads leading to towns and villages. The restrictions also affect the residents of the closed area. Forty-seven percent of the residents interviewed by B'Tselem stated that they had encountered physical obstacles set up by the army, or that soldiers had prevented them from reaching their land. As is the case elsewhere in the West Bank, the restrictions are placed only on Palestinians; the settlers residing in the area are allowed to move about freely. Furthermore, at times, settlers set up the obstacles and the army refrains from removing them.

The access road to the closed area – Route 317 – runs near the Karmel settlement, where it turns into Route 356. These two roads provide the cave residents access to Yatta. The residents generally enter Yatta via the a-Zif junction, which lies north of Route 356. To get to Route 356, the traveler must cross a staffed checkpoint. During the intifada, the army has blocked other access to the road.⁷³ Also, soldiers occasionally block the dirt roads linking the closed area and Route 317.

The two main obstructions are on the road leading from Khirbet a-Tuwani to Route 317, and the road leading to the village al-Karmel. As a result, the residents have to travel on long, winding roads, which increases the cost of the journey and the time needed to reach their destination.

In her testimony to B'Tselem, Fahima Hoymel 'Ali 'Awad, 56, described the restrictions and problems that the army and settlers have placed on the movement from a-Sfay to Yatta:

I was born in Khirbet al-Maqbarat, which is near Tel 'Arad. I grew up in al-Mirkez. From the time I got married, I have been living with my husband, Shahadeh 'Awad, who is 77, in a-Sfay a-Tahta. Since I was a child, I have worked at farming and grazing. My husband and I have about twenty dunams of land in the village and another 114 dunams that are located west of Maghayir el-Abeed. We cannot get to that land because of the abuse inflicted by settlers from Ma'on... In 1999, following the killing of the settler Dov Dribben, the settlers closed the direct road that runs from the village to Yatta. This road passes through a-Tuba and a-Tuwani. The settlers blocked it with dirt piles and they attack anyone who tries to use it. Sometimes, soldiers prevent us from using the road. One time, soldiers stopped shepherds who were walking along the short road and did not let them pass. The shepherds returned to the village. By taking the short route, it takes thirty minutes to get to Yatta by donkey, and even less by tractor. Now we have to go via a bypass road that is longer, and it takes us about two hours to get to Yatta by tractor, and more than three hours on foot or by donkey.⁷⁴

71. HCJ 517/00, Application for Contempt-of-Court, 25 February 2004, Sections 4, 5.

72. HCJ 517/00, Response of the State to Application for Contempt-of-Court, 8 March 2004, Section 6.

73. For further discussion on this point, see B'Tselem, *Forbidden Roads: The Discriminatory West Bank Road Regime*, August 2004, Chapter 2.

74. The testimony was given to Musa Abu Hashhash in the witness's cave residence on 24 October 2004.

Refusal to permit building and development

The entire closed area is classified Area C. According to the Oslo agreements signed between Israel and the PLO, Israel continues to have sole authority over planning and building in Area C of the West Bank. These powers are exercised by the Civil Administration. Planning in Area C continues to be based on two regional outline plans prepared by the British Mandate in the 1940s: one for the southern section of the West Bank and the other for the northern section. The southern section outline plan classifies the entire closed area as farmland, on which construction is forbidden. Because the Civil Administration has refrained from amending the Mandatory outline plans, as a rule, it is impossible to obtain building permits in Area C. The rule does not apply to lands held by the settlements. To enforce the outline plans, the Civil Administration operates a Building Inspection Unit and issues demolition orders when a new structure is detected.⁷⁵

It is not surprising, therefore, that the closed area looks as if time has stood still. Israel uses the planning system to deny the residents their right to live in the area as a community. This system blocks all construction intended to meet the residents' basic needs, including residential dwellings, structures to supply services to the residents (education and basic medical care, for example), pens for their sheep and goats, and water reservoirs.

Water and sanitation are one of the central areas of life that are affected by this situation. As noted in Chapter One, the villages in the closed area are not linked to a running-water system, and rely on collecting rainwater and

buying tanks of water that are brought in from outside the village. The residents have always expended a substantial part of their farming income on water. During the expulsion, in 1999, the army and the Civil Administration destroyed and sealed many cisterns in the closed area, contending that they were built without permit. The action reduced the quantity of rainwater collected by the residents, forcing them to spend a greater portion of their income to purchase additional water in tankers.

In her testimony to B'Tselem, So'ad Ahmad 'Ali Makhamreh, 40, described the water shortage in a-Sfay:

My husband, our children, and I live in a-Sfay al-Fuqa... We have sixty sheep and goats, and about ten dunams of land. We make a living from raising our flock... To do that, we need fodder and water. The water shortage is one of our major problems. We have one cistern, which contains about sixty cubic meters. There is also a common cistern for all the residents of the village. It only lasts for two months, at best. We share the expenses of filling it. We bring water from Yatta or from the Beduin village Umm al-Khir, and sometimes from Hebron. Each container of forty cubic meters costs us 100-160 shekels, depending where we get it from. The common cistern creates problems among the families in the village because some families use more than others. As a result of the disputes, we started to tow in water tanks. We use them until they empty, and then we refill them. Last summer, we filled it twenty times. Some families are larger, with more sheep, and they bought thirty tanks. We built a private cistern with the financial aid given us by an organization from abroad. But our

75. For further discussion on this point, see B'Tselem, *Land Grab*, 86-88.

water problem was not solved... The tractors bringing the water travel via a long and winding path, because the short route, which passes by the Ma'on settlement, has been blocked since the beginning of the intifada. Nobody dares use it because the settlers from Ma'on attack anybody who uses the road. The long way from the village to Yatta takes about an hour and a half or two hours by tractor, compared to thirty minutes by the short road.⁷⁶

In recent years, the cave residents of al-Majaz, a-Sfay, and Jinba built reservoirs and outhouses near their caves with funds that they received from the British government. The Civil Administration contends that the construction was done without first obtaining building permits, and that the order issued by the High Court in March 2000 required that the situation remain as it was prior to the eviction, so that any construction in the area violates the court's order. On these grounds, since 2001, the Civil Administration has demolished dozens of the reservoirs and buildings constructed by the residents. Dozens of additional demolition orders await execution. In January 2005, the residents, represented by Rabbis for Human Rights, petitioned the High Court of Justice to stop the demolitions, arguing that it is inconceivable that construction to meet basic needs, such as

water and sanitation, is forbidden. The petition is pending.⁷⁷

The harm to the residents resulting from the planning system is particularly problematic because of the flagrant discrimination between Palestinians and Jews. While planning officials block any possibility for Palestinian development, they treat Israelis just the opposite. Almost all the settlements in the West Bank were built on land classified in the Mandatory outline plan as agricultural areas. Despite this, the Civil Administration's planning institutions have over the years approved hundreds of new outline plans that changed the designated purpose of the land and enabled the building of settlements. The system provided the settlers modern physical infrastructure. (See the aerial photo, p. 58.)

The jurisdictional borders of the settlements, as set forth in the military orders arranging their establishment, allocated extensive tracts for future development. In some instances, these tracts are many times larger than the built-up area of the settlement at the time of its founding. For example, the total built-up area of the seven settlements established on the southern Hebron hills (except for the Shani settlement) amounts to 2,500 dunams, only eight percent of the villages' jurisdictional area of 32,600 dunams.

76. The testimony was given to Musa Abu Hashhash at the witness's cave residence on 13 December 2004.

77. HCJ 805/05, *'Ali Ahmad 'Ali 'Awad et al. v. Commander of IDF Forces in the West Bank et al.*, filed on 25 January 2005, Section 11.

Table No. 3: Built-up area as percentage of jurisdictional area of settlements in the southern Hebron hills*

| Settlement | Built-up Area (in dunams) | Jurisdictional Area (in dunams) | Area for Future Development (in dunams and as percentage of jurisdictional area) |
|---------------------------|--------------------------------------|--|---|
| Karmel | 262 | 1,758 | 1,496 (85%) |
| Ma'on | 306 | 393 | 87 (12%) |
| Suseya | 457 | 1,546 | 1,089 (70.5%) |
| Mezadot Yehuda | 523 | 2,817 | 2,294 (81.5%) |
| Shim'a | 308 | 10,597 | 10,289 (39%) |
| Tana | 322 | 8,269 | 7,947 (16%) |
| Eshkolot | 144 | 6,997 | 6,853 (79.5%) |
| Total | 2,517 | 32,572 | 30,055 (92.3%) |

* The figures are based on the map of the jurisdictional area of the settlements as of mid-2002

Chapter Six

Israel's Policy in the Perspective of International Law

Prohibition on the forced transfer of protected persons

The purpose of the Fourth Geneva Convention is to protect civilians who find themselves in a situation of war or under occupation.⁷⁸ Article 49 of the Convention states the rules regarding the forced transfer and evacuation of protected persons (that is, persons who are “in the hands of a Party to the conflict or Occupying Power of which they are not nationals”) from one place to another within the occupied territory or to an area outside it:

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

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand... Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are

effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated....

The article's first paragraph forbids the forced transfer of protected persons. This prohibition also applies to forced transfer within the occupied territory, in addition to the prohibition from the occupied territory to an area outside it.⁷⁹ However, the second paragraph states a narrow exception that enables the total or partial evacuation of a given area in two situations: the evacuation is needed for the security of the population being evacuated, or imperative military reasons involving hostilities in the area in question. Such evacuation, contrary to forced transfer or deportation, is temporary, so the occupying power must return the evacuated residents when the reasons for the evacuation passed.⁸⁰ The nature of the residence of the protected person in the given area in occupied territory does not constitute, therefore, legitimate grounds to deviate from the general prohibition on forced transfer.

In its response to the High Court, Israel argued that the declaration of the area in which the cave residents live as a closed military area, and its intention to evict the residents, are based on imperative military necessity. As we discussed at length in Chapter Three, this contention is baseless. Furthermore, even if Israel had imperative military reasons, Israel

78. For a discussion on the Convention's applicability to the Occupied Territories, see B'Tselem, *Israeli Settlement in the Occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects*, March 1997, 11-15.

79. D. Fleck, *The Handbook of Humanitarian Law in Armed Conflict* (Oxford University Press, 1999), 253.

80. Jean S. Pictet (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), 280; Security Council Resolution No. 469 (1980), 35 Resolutions and Decisions of the Security Council (1980), 9.

does not contend that these reasons result from hostilities in the area, so the exception in the second paragraph of Article 49 does not apply. It should be noted that, even if the alleged military reasons existed (and they do not), the expulsion that took place in 1999 breached Israel's obligation pursuant to this article to ensure the proper accommodation of the evacuees and that they be removed in satisfactory conditions of hygiene, health, safety and nutrition.

In Chapter Three, we pointed out two other considerations which, in light of Israel's consistent policy regarding the relevant area, are the real motives for the expulsion: annexation of the area and expansion of the settlements. These considerations do not come within the exception stated in the second paragraph of Article 49, and are improper and illegal.

International customary law unequivocally prohibits the acquisition of land captured by force, i.e. annexation. This prohibition is enshrined in dozens of UN Security Council resolutions.⁸¹ Therefore, acts intended to establish facts on the ground that will lead to annexation of territory is forbidden. Based on this principle, the International Court of Justice, in The Hague, recently concluded that the route set by Israel for the separation barrier is illegal.⁸²

Regarding the settlements, the sixth paragraph of Article 49 states that, "The Occupying Power shall not deport or transfer parts of

its own civilian population into the territory it occupies." Contrary to Israel's contention, the settlement enterprise is not a result of the voluntary decision of individuals, but the fruit of massive governmental intervention in every possible aspect, from taking control of the land to providing generous financial support. For these reasons, the settlements constitute a flagrant breach of this prohibition.⁸³

Violation of the residents' safety and property

As the occupier, Israel is obligated to protect the lives, dignity, and property of all persons under its control. For example, Article 27 of the Fourth Geneva Convention states:

Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Article 46 of the Hague Regulations states that, "Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected." Article 53 of the Fourth Geneva Convention states:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons,

81. International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004 (hereafter: ICJ Opinion), Sections 74, 116; HCJ 2056/04, *Beit Sourik Village Council et al. v. Government of Israel et al.*

82. ICJ Opinion.

83. For further discussion on this point, see ICJ Opinion; B'Tselem, *Israeli Settlements in the Occupied Territories as a Violation of Human Rights*, 17-37; B'Tselem, *On the Way to Annexation: Human Right Violations Resulting from the Establishment and Expansion of the Ma'aleh Adumim Settlement*, July 1999; B'Tselem, *Land Grab*, Chapter 2.

or to the State... is prohibited, except where such destruction is rendered absolutely necessary by military operations.

In Chapter Four, we described at length the settlers' attacks and harassment of the cave residents, and presented figures and testimonies indicating that the police and the army refrain from protecting the cave residents from the settlers and from enforcing the law on the offenders. Furthermore, often soldiers not only do nothing to stop the settlers, but aid them in their offenses. The failure of the authorities to prevent the settler attacks and to enforce the law constitutes a breach of Israel's obligations to the Palestinian residents as set forth in the Hague Regulations and the Fourth Geneva Convention.

In the first section of Chapter Five, we discussed the harm done by IDF soldiers to the farmland and crops of the residents in the southern part of the closed area when soldiers drive tanks and other armored vehicles onto the fields. Article 53 of the Fourth Geneva Convention, quoted above, indeed provides an exception that permits the occupier to destroy private property of civilians where the "destruction is rendered absolutely necessary by military operations." The International Committee of the Red Cross, the body authorized to interpret the Convention, defined the term "military operations" as operations taken by armed forces for the purpose of combat.⁸⁴ However, even Israel does not contend that the

destruction of fields was done in the framework of combat actions. Therefore, its actions are in clear violation of Article 53.

Infringement of the right to adequate housing

In its actions in the Occupied Territories, Israel is not only required to act in accordance with international humanitarian law (the Fourth Geneva Convention and the Hague Regulations) but also according to human rights law.⁸⁵ Article 11.1 of the International Covenant on Economic, Social and Cultural Rights, adopted by the UN in 1966 and ratified by Israel in 1991, states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and *housing*, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right... (emphasis added)

The UN Committee on Economic, Social and Cultural Rights, which is responsible for interpreting the Covenant, has stated that the right to adequate housing requires the state to ensure every person a certain standard of security regarding the person's place of residence, protecting the individual from forced eviction, harassment, and other threats.⁸⁶ The Committee also held that the right to housing also includes access to "safe drinking water, energy for cooking, heating and lighting,

84. For further discussion on this point, see B'Tselem, *Through No Fault of Their Own: Destruction of Homes as Punishment during the al-Aqsa Intifada*, November 2004, 42-43.

85. For a discussion on the applicability of human rights law in the Occupied Territories, see Orna Ben-Naftali and Yuval Shani, "Living in Denial: The Application of Human Rights in the Occupied Territories," *Israel Law Review* 37 (2004):1; ICJ Opinion.

86. Committee on Economic, Social and Cultural Rights, General Comment 4, "The Right to Adequate Housing," Sixth Session (1991), Par. 8(a).

sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services.”⁸⁷

Israel’s policy toward the cave residents in the closed area flagrantly breaches the right to adequate housing in two principal ways. First, its desire to expel the residents from the closed area without paying them compensation and without ensuring alternative accommodation denies the residents their right to housing. Second, as we showed in Chapter Five, Israel uses the planning system to deny the residents any possibility of building and developing infrastructure that will enable them to enjoy the various components of the right to adequate housing, as mentioned above. An especially egregious action in this context is the Civil Administration’s attempt to prevent the development of improved water supply for household needs. Furthermore, as previously stated, the Civil Administration recently ordered the destruction of water reservoirs that were built for the residents with aid from international organizations. In taking these actions, Israel breached Article 59 of the Fourth Geneva Convention, which states, in part:

If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal.

Infringement of the right to freedom of movement

Article 12.1 of the International Covenant on Civil and Political Rights states: “Everyone

lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” As we showed in Chapter Five, Israel curtails the freedom of movement of the cave residents by blocking roads and paths connecting the villages, and by blocking the roads leading to the main road that connects the villages with Yatta.

Israel has the right to restrict freedom of movement where necessary to protect its security. However, these restrictions may not be instituted in a manner that discriminates on grounds of race, sex, religion, and national origin, for example. Israel’s restrictions in the closed area apply only to the cave residents. The settlers are free to move about as they wish.

The right to freedom of movement is essential for the exercise of other fundamental rights enshrined in the International Covenant on Economic, Social and Cultural Rights, such as the right to work (Article 6) and the right to health (Article 12).

Infringement of the right to freedom of culture and to maintain their way of life

Article 27 of the International Covenant on Civil and Political Rights states:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

87. *Ibid.*, Par. 8(b).

In its interpretation of this article, the UN Human Rights Committee held that culture can be practiced in varied ways, including a unique way of life connected to the use of land resources, traditional operation of equipment or fishing, and the right to live on reservations protected by law.⁸⁸

Clearly, the cave residents' way of life in the southern Hebron hills is unique. They are one of the rare populations in the world that live in caves, preserving their traditions of many years duration. Moving them to another environment in which they will be unable to maintain their way of life breaches their right to live according to their manners and customs.

88. UN Human Rights Committee, General Comment No. 23 (50), UN Doc. A/L49/40, Annex 5, at Section 109 (1994).

Conclusions

Since the beginning of its occupation of the Occupied Territories, in 1967, Israel has continually breached its obligations under international law to safeguard the lives and safety of the Palestinians and to ensure their well-being. Israel's treatment of the cave residents in the southern Hebron hills offers a good example of these breaches. In the 1970s, the IDF declared the area in which the cave residents live a closed military area, and since 1999, the state has been trying to expel them. The cave residents remain in their homes pursuant to an injunction forbidding their expulsion until final decision is reached on their petition. What the near future will bring is unclear. In the meantime, the residents live with the threat of expulsion hovering over their heads. For them, the court's decision will seal their fate. It will not only decide if they are allowed to continue to live in their homes and villages, but whether they will be able to live a life of dignity and to provide a livelihood for their families.

Israel seeks to justify its action on the grounds of "imperative military needs," and that the cave residents are "seasonal residents" in the closed area. However, as we have shown in this report, the state's arguments are baseless and unconvincing. It is clear that the goal of the expulsion, apparent from Israel's consistent policy regarding the closed area, is based purely on political considerations: annexation of the area and expansion of the settlements.

In this report, we have also shown that in recent years, the cave residents have been victims of settler violence and abuse. The police do little to enforce the law against the settlers. The army

does even less, and at times assists the settlers in their actions against the cave residents. On a few occasions, the army at its own initiative drove tanks and other armored vehicles onto the fields of the cave residents. Furthermore, the Civil Administration prohibits the residents from building in their villages, contending that the area is designated for agricultural use. The prohibition extends to construction to enable a proper water supply and other basic needs. The dismal picture of Israel's treatment of the cave residents presented in this report raises the concern that Israel is attempting to gradually wear down the residents and cause them to leave the area, an achievement they have been unable to attain in court.

B'Tselem protests the attempted expulsion and Israel's current policy toward the residents, which severely infringes their human rights and flagrantly breaches international law. For these reasons, B'Tselem urges the government of Israel to:

- revoke the order declaring the caves area in the southern Hebron hills a closed military area and cancel the eviction orders currently pending against the cave residents;
- instruct the army and police to protect the cave residents and to seriously enforce the law against the settlers;
- recognize the right of the cave residents to live in their villages and to build and develop them to meet their needs;
- to compensate the Palestinians whose land and personal property were damaged by settlers, the army, and the Civil Administration.

Appendix 1

Settlers Attack Jundiya Family and Block their Access Roads, Khirbet a-Tuba

Testimony of 'Omer Muhammad Ahmad Jundiye
h, 37, married with ten children, farmer, resident of a-Tuba, Hebron District⁸⁹



I live with my wife and our ten children in a cave in a-Tuba, which is situated about one kilometer east of the Ma'on settlement. My eldest child is seventeen years old. I have a parcel of land, some of which lies on land of a-Tuba and another part is situated west of al-Majaz. I grow wheat and barley on the parcel, and I also gain a living from raising sheep. I have eighty head of sheep. My brother Ibrahim, 55, lives with me and we work the land together.

I was born in a cave in the area of Khirbet a-Tuwani. When I was fifteen years old, my family moved to new caves that my father prepared in a-Tuba. We have not left the caves since then. I married in a-Tuba and all my children were born in the cave in which we live. In 1982, they [Israelis] began to build the Ma'on settlement and a few other settlements in the area. The settlements were built on land belonging to residents of Yatta. The settlers are continuously expanding the settlements.

In the early 1990s, the settlers took control of large areas of a-Sarura, al-Kharuba, Umm Zeituneh, and Maghayir el-Abeed. They prevented Palestinian farmers from getting to

their land and working it, and from grazing their flocks. They attacked the farmers. The army knew about this but did nothing. In 1997, the army destroyed a-Tuba. They sealed the caves, the pens, and the fodder warehouses. They wanted to expel us from the village, but we didn't leave. We received a warning from the army the day before the destruction took place. The reason they gave was that the area was a closed military area. In November 1999, the army came with trucks, and the soldiers piled our things and produce onto the trucks and dumped them on the western side of Route 60.

We went to live in Khirbet a-Tuwani. Four months later, the Supreme Court decided that we can return to live in a-Tuba. We returned to the caves.

After we returned, the settler abuse increased. They blocked the main road connecting the village with Khirbet a-Tuwani and Yatta. Along this road, it only took an hour to get to Yatta. They abused anybody who used the road. Sometimes they beat people, like the time my wife, sister-in-law, and two of my sons, Muhammad and Ahmad, were on their way home from Yatta. Two armed settlers blocked their way, beat them, and tried to steal the donkey. Sometimes, settlers summoned the police. The police officers arrested or stopped the residents on the grounds that the road was a closed military area.

Because of the attacks and abuse, we started to use an alternate road. It was hilly and very

89. The testimony was given to Musa Abu Hashhash in the witness's cave in Khirbet a-Tuba on 21 October 2004.

long, passing through Khirbet a-Tuwani, al-Mufaqrara, al-'Arqub, Maghayir el-Abeed, and a-Tuba. It takes about two hours by tractor. Having to use the alternate route is very hard on us, and also greatly increases our expenses in transporting fodder and water. Before the main road was blocked, we paid sixty shekels to transport fodder from Yatta to the village. Now it costs more than 200 shekels. The same is true about water.

In the spring of 2003, my brother Ibrahim and I returned at night to the village. We were riding on donkeys along the bypass road and we had a tin of oil that we had bought. Near Khirbet al-Menaqreh, two settlers on recreational tractors blocked our way. They were armed. One of them threw stones at us and the other fired in our direction. We left the donkeys and ran away. The settlers stole the oil on the donkey. My brother was injured by stones that struck him in the back.

The blocking of the main road particularly harms us when we need to get to the hospital. In January 2004, my wife was about to give birth. In the evening, I summoned a tractor from Yatta to come and take us to the hospital. There were no tractors in the village. When the tractor did not arrive, I decided to take my wife by donkey. We had no choice but to walk via the bypass road until we got to a-Tuwani. It took us about two hours. From there, we went by car to Yatta Hospital, where she gave birth as soon as she arrived.

A serious incident took place on the night of 16 May 2004. Settlers torched the crops in the fields around the village. They burned nine wagons full of barley and wheat. The grain was intended to feed our flock for a whole year. The police estimated the loss at 20,000 shekels. My nephews and neighbors saw settlers leave the fields and walk to the settlement after the fire broke out. We not only lost our produce, but also the effort of a year and a half's work by me, my wife, and the children. This was the first time that I bought fodder and wheat to feed my sheep and goats and for my family. I filed a complaint with the police. Police officers came a few times, took pictures of the area and questioned us, but we have not heard about the results of the investigation.

In July, Mahmud and my nephew were in the area of the village grazing the flock. Settlers from Ma'on came on foot and attacked them. The children ran away and tried to get the sheep to scatter. The settlers chased after the sheep and stabbed five of them with a knife. One of them died on the spot and the other four required special care for a long period of time. We filed a complaint for assault. The police came and investigated the incident. I have documents relating to these complaints.

Ibrahim and I filed lots of complaints, but the settlers don't stop assaulting us. I no longer believe that filing complaints can help, and I have not filed complaints about lots of attacks.

Appendix 2

Settlers Spread Poison on Grazing Area, Killing Sheep and Goats, Khirbet a-Tuwani

**Testimony of
Mafadi Ahmad
Jibril Rab'i, 35,
married with nine
children, farmer,
resident of Khirbet
a-Tuwani⁹⁰**



I live in the village a-Tuwani, which is next to the Ma'on settlement. I am a farmer and have twenty head of sheep. I graze them every day, and they are the main source of my family's income.

Two days ago [Tuesday, 22 March 2005], around 9:30 A.M., I was grazing my flock in the area of the cave west of the village, about fifty meters from the fields surrounding the settlement. My nephew, Ayman Khalil Rab'i, 13, was with me. He noticed green kernels of wheat scattered under thorns. He called me over and asked me what it was. I looked at it and began to look for other kernels. They were scattered all over the area under thorns. I suspected that it might be poison. I assumed that somebody had scattered the kernels to harm the flock. Also in the area were my cousins, Jum'a Musa Jabarin Rab'i, Na'im al-'Adreh, Mahmud Hamamdeh, and Yasser Hamamdeh, who are from al-Mufaqrara. They are shepherds. I told them what I had found, and they began to look for the green kernels of wheat. When we found kernels, we called out and told the others.

We decided to remove our sheep from the area immediately. I took my sheep to an area some 300 meters away. I thought there wasn't any poison there. I left my flock there and joined the others in looking for more of the wheat, and to clean the grazing area. We collected more than five kilograms of kernels. In the evening, I went home and noticed something unusual. The sheep had trouble breathing. When we noticed that, Jum'a called the organization Taayush for help, and to the Israeli police. Jum'a said that the police officers recommended giving the animals milk and olive oil to drink. I did as they suggested, and cared for them all through the night. In the middle of the night, one of the sheep died. A green substance came out of its mouth, and I was sure that the green wheat was poison and that the settlers had put it there.

I was told earlier today that one of the goats of 'Ali Hamamdeh, from al-Mufaqrara, had died, and that they found a dead deer. I know about ten of Mahmud Hamamdeh's flock are suffering from the poisoning, as are two of Yasser's flock and two of Jum'a's.

People from the Nature Preservation Society, Israeli army soldiers, activists from CPT and Operation Dove, and some farmers and shepherds came to the area. We cleared away the poison. We also found other areas where poison had been scattered. The people from the Nature Preservation Society took samples of the poison and of the dead deer for testing.

90. The testimony was given to Musa Abu Hashhash in the witness's cave in Khirbet a-Tuwani on 24 March 2005.

Appendix 3

The Zeyn Family, from Khirbet a-Tuba: Expelled by the Civil Administration and Harassed by Settlers

Testimony of 'Issa 'Ali 'Issa Zeyn, 86, married with thirteen children, farmer, resident of a-Tuba⁹¹



We live in a-Tuba, which is situated about one kilometer east of the Ma'on settlement. I was born in a-Tuba and have spent my whole life here. My wife, seven of our children, and I live in a cave. It is about sixty square meters. We make a living from raising sheep and goats and from farming. The village is situated about seven kilometers from Yatta, and we can get there via the main road in about 30-60 minutes. In the past, it was easy, and we did not suffer from any abuse or harassment, but since 1999, the settlers from Ma'on and the Civil Administration have been harassing us.

Officials from the Civil Administration came to the village. An officer name Ghazi gave us a document saying we had to leave the area. We did not leave because it has been our land for generations. In the two weeks after that, we received two more warnings to leave. Then a large contingent of police and Border Police came to the area. They came with a jeep from the Civil Administration, a bulldozer, and a truck. A few laborers took our things from the cave and piled them onto the truck. Then, one of the bulldozers demolished our cave. The police put the residents on a truck and drove us to the Beduin village Umm al-Khir, which is

situated about ten kilometers from the village. They dumped our things onto the ground there. It rained that day. The Beduin residents took us and our things and let us live in the cave until the problem is resolved.

Attorney Shlomo Lecker handled our case. He went to court and we got an order saying we could return to live in the area. All the families returned to the village. I repaired one of our caves and we moved back in. We couldn't fix the other cave. After we returned, the settlers blocked the main road linking the village and Yatta. Now we have to go by another road, which is longer and harder. It takes us about three hours to get to Yatta.

Living conditions are harsh. We go to Yatta to buy everything we need. Even water. Once, a container of water cost about 100 shekels, but now it costs 150 shekels. Our children have suffered greatly. My daughter, 'Aisha, who is sixteen, left school because it was hard getting to Yatta. My son Maher left school when he was twelve years old. Our youngest sons, 'Amer, who is seven, and Ru'ad, who is six, were not registered at school because we knew they would have trouble getting there. Two of my daughters study at the al-Ka'abneh Beduin elementary school. They walk to school an hour each way.

Once, my son 'Ali, who is nineteen, and I wanted to go along the main road. The security officer of the settlement stopped us. He

91. The testimony was given to Karim Jubran in the witness's cave in Khirbet a-Tuba on 21 October 2004.

detained 'Ali and told me to go home. I refused, and he delayed me for six hours, until the police came. The police arrested 'Ali and told me to go home. 'Ali got home about 11:00 P.M. I still

think that I was lucky. My cave is on the eastern side of the village, further away from the Ma'on settlement. The residents on the western side of the village suffer a lot of abuse by the settlers.

Appendix 4

Warning Prior to Eviction from Closed Military Area

Israel Defense Forces

Order Regarding Defense Regulations (Judea and

Samaria) (No. 378), 5730 – 1970

Civil Administration for Judea and Samaria

Central Division for Supervision

Warning on Obligation to Leave Closed Area

To:

| | | | | |
|------------|---------------|--------------------|-------------|----------------|
| Nu'aman | Shahadeh | Ahmad | Hamamdeh | Yatta |
| First Name | Father's Name | Grandfather's Name | Family Name | ID No. Address |

By virtue of my authority pursuant to Sections 70A and 90 of the Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970, and after it has been proven to me that on 15 November 1999 you entered and/or remained in an area declared a closed area, in the location of F.A. [Firing Area] 918, 704047603, I inform you that you must leave the closed area within 12 hours from the time this warning is served.

If you fail to comply with this warning, it shall be permitted to remove you from the closed area and to seize the livestock found in your possession in the closed area, and to charge you with the expenses entailed in seizing the aforesaid.

Date of warning: 15 November 1999

Time: 1:45 P.M.

Delivered by: Yuval Turtamek Position: Supervision Coordinator Signature: *[signed]*

Recipient of warning: Rasmiyeh Nu'aman Hamamdeh (wife of the possessor)

Signature: Delivered by hand in the presence of [name illegible]

צבא ההגנה לישראל
 جيش الدفاع الإسرائيلي
 צו בדבר הוראות בטחון (יהודה והשומרון) (מס' 378), תש"ל-1970

אשר בשלן تعليمات الامن (يهودا والسامرة) (رقم 378). 1970 - 1970

המינהל האזרחי לאזור יהודה ושומרון

الإدارة المدنية لمنطقة يهودا والسامرة

היחידה המרכזית לפיקוח

الوحدة المركزية للمراقبة

התראה בדבר חגות סיגור משטח סגור

تحذير بشأن إغلاق من منطقة مغلقة

לכבוד

לحضرة

| | | | | | |
|--------------|----------|----------|-------------|------------|---------|
| שם פרטי | שם האב | שם הסב | שם משפחה | ת.ז. | כתובת |
| الإسم الشخصي | إسم الأب | إسم الجد | إسم العائلة | رقم الهوية | العنوان |

בתוקף סמכותי לפי סעיפים 70א ו-90 לצו בדבר הוראות בטחון (יהודה והשומרון) (מס' 378), תש"ל - 1970, ולאחר שנוכחתי כי ביום 15/11/70 נכנסת ו/או שהית בשטח שהוכרז כשטח סגור, במקום מסומן 9/19, והינני להודיעך כי עליך לעזוב את תחומי השטח הסגור בתוך שעות מעט מסירת התראה זו.

سبقاً لتسליחתי بموجب الفواد 70-90 من الأمر بشأن تعليمات الامن (يهودا والسامرة) (رقم 378). 1970 - 1970, وبعد أن تبين لي بأنه في يوم 15/11/70 دخلت و/أو مكثت في المنطقة المعلن عنها كمسطقة مغلقة. في مكان نقطة الإحداثيات المركزية إني أعلمك بأنه يتحتم عليك إغلاق حدود المنطقة المغلقة خلال ساعة من وقت تسليحك هذا التحذير.

הינני להודיעך, כי אם לא תעלה אחר התראה זו, ייתן יהיה לפנותך מן השטח הסגור וכן לתפוס את בעלי החיים המנויים ברשותך בתחום השטח הסגור, ולחייבך בהוצאות הכרוכות בתפיסה האמורה.
 إني أعلمك بأنه في حالة عدم استجابتك لهذا التحذير, يمكن إخلالك من المنطقة المغلقة, وكذلك مصادرة الحيوانات الموجودة تحتك في حدود المنطقة المغلقة, وإجبارك على دفع المصاريف المتعلقة بالمصادرة المذكورة.

| | | |
|----------------|----------|----------|
| מועד התראה: | שעה: | 15/11/70 |
| מועד التحذير: | الساعة: | 13:45 |
| מספר התראה: | תפקיד: | |
| مسلّم التحذير: | الوظيفة: | |
| מקבל התראה: | חתימה: | |
| مستلم التحذير: | التوقيع: | |

Appendix 5

Order Closing Area No. 'ח/6/99, 5659-1999

Israel Defense Forces

Order Regarding Defense Regulations (Judea and

Samaria) (No. 378), 5730 – 1970

Order Closing Area No. 'ח/6/99

By virtue of my authority as military commander and pursuant to Section 90 of the Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970 (hereafter: “the principal order”), I hereby declare as follows:

Definition

1. In this order –

(a) “the map” means the map on a scale of 1:50,000 signed by me, attached to this order and constituting an integral part thereof.

Closing of area

2. (a) I hereby declare that the area demarcated in red on the map and which is located on the land of the villages Yatta, Bani Na'im is a closed area for the purposes of Section 90 of the principal order.

(b) So long as the order remains in effect, no person shall enter the closed area or remain therein except pursuant to a permit given by me or on my behalf.

Punishment

3. A person who violates the provisions of this order without having in his possession a written permit issued by me or on my behalf, or is not among the kinds of persons regarding whom I published a general permit, will be charged with violation of the principal order.

General permit

4. The provisions of this order shall not apply to:

(1) A soldier, police officer, or competent authority appointed for that purpose.

(2) A person who lives in the closed area or a person who received a permit from the commander of the Hebron DCO [District Coordinating Office] to remain in the closed area.

Publication

5. This order and the map shall be deposited in the following places:
- (a) The offices of the military commander of the Judea Regional Brigade.
 - (b) The office of the Hebron District Coordination Office.
 - (c) The police station in Hebron.

Commencement of validity

6. This order shall take effect on the day it is signed.

Name

7. This order shall be called: "Closing of Area Order No. 'ט/6/99, 5659 – 1999."

15 Iyar 5759

5 May 1999

_____ *[signed]* _____

Moshe Ya'alon, Maj. Gen.

Commander of IDF Forces

in Judea and Samaria

Response of the Israel Police Force*

Israel Police Force

SHAI District Headquarters
Public Complaints Officer
Tel: 02-6279243
Fax: 02-6279293
Date: 21 June 2005

Ms. Antigona Ashkar
B'Tselem
8 Hata'asiyah Street
PO Box 53132
Jerusalem 91531

Dear Ms. Ashkar:

Re: **Response of the SHAI District to B'Tselem's report on settler abuse of the cave residents in the southern Hebron hills**

1. During 2004, following a number of incidents that involved Palestinians and Israelis, it was decided to map the friction points in the southern Hebron hills and have police units from the SHAI District, the IDF, and the Civil Administration patrol the area. These patrols have prevented many incidents, although it is impossible to give a number. Below, we shall describe a few of the cases that were handled.
2. Most of the offenses are handled by the prosecutions division [of the Israel Police Force] and not the State Attorney's Office, contrary to what was written, regarding files involving offenses the punishment for which exceeds three years' imprisonment, which are ostensibly to be handled by the State Attorney's Office. Thus, most files in which there are suspects are forwarded to the SHAI prosecutions division. In fact, there is nothing wrong with this practice, and it does not reflect a lesser degree of enforcement.

* Translated by B'Tselem

3. As regards most of the land area as to which the local residents claim ownership, no documents – other than purchase tax records, which alone do not constitute proof – exist to support the claim. Also, it is impossible to determine from these documents where exactly the land referred to is situated. As a result, when a dispute involving alleged trespass arises, it is impossible to state unequivocally that an offense has been committed. For this reason, most effort is directed toward cases involving violence and/or property damage.
4. **Figures for 2005 (to the present time)**
 - a. Forty files were opened in the Hebron sector, as follows:
 - 18 – assault
 - 7 – trespass
 - 2 – causing damage
 - 13 – other offenses
 - b. It should be noted that the percentage of uncovered cases – that is, files in which there are suspects and a legal proceeding is being conducted against them – is 57.5 percent. Everyone would agree that this is a high percentage, which indicates that the police work has been correct and effective.
 - c. In 2005, forty-five suspects were investigated, restraining orders prohibiting some of the suspects from entering the area were issued, and in serious cases, defendants were detained until the end of proceedings.
5. In general, each incident and complaint has received a proper and suitable response by all entities operating in the field, including, among others, the SHAI District Police Department. The land area is complex, SHAI District police officers encounter many problems, including the lack of cooperation by Palestinians and the lack of access to Areas A and B, which according to the Oslo agreements are under the complete civil control of the Palestinian Authority. Also, extremists on the Right refuse to cooperate. Despite these facts, the SHAI District has proven its persistence in handling the incidents, and has succeeded, as the above figures show.

Sincerely,

[signed]

Rotem Gantz, Superintendent
Public Complaints Officer
SHAI District

cc: Office of the District Commander/Spokesperson
Commander, Hebron Region

Response of the IDF Spokesperson

| Israeli IDF Int. | Defense Spokesperson Org. | Forces Unit Desk |
|---------------------------------|--|---------------------------------|
| Tel: | 972-3-6080220/358 | |
| Fax: | 972-3-6080343 | |
| 2005 | June | 16 |



To

Mrs. Antigona Ashkar

B'tselem

Re: IDF Spokesperson's response to the Report "Means of Expulsion"

Your request for a response to the report "Means of Expulsion – Violence, Harassment and Lawlessness against Palestinians in the Southern Hebron Hills" was received in our office.

In light of the fact that the subject in matter is pending in court, the IDF is precluded from responding to any subject related to this matter.

Furthermore, the IDF is waiting for the court's ruling and will act accordingly.

Sincerely,

**International Organization Desk
IDF Spokesperson**

Northern Section of the Closed Area (October 2004)





בצלם

בצלם מרכז המידע הישראלי לזכויות האדם בשטחים (ע.ר.).

בטיסלמ - מרכז המידע הישראלי לחقوق الإنسان في الأراضي المحتلة

B'TSELEM - The Israeli Information Center for Human Rights in the Occupied Territories

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