The 12 Villages of Masafer Yatta (Firing Zone 918) in the South Hebron Hills

Summary

For the last two decades, the residents of twelve traditional Palestinian villages in the area of Masafer-Yatta in the South Hebron Hills have lived under the constant threat of demolition, evacuation, and dispossession. In the 1980s, the IDF declared the area in which they live a "firing zone," and, in 1999, evicted the residents of the area, based on a misleading claim that they are not permanent residents. In 2000, following a petition to the Israeli High Court of Justice by the Association for Civil Rights in Israel (ACRI) and Attorney Shlomo Lecker, residents were allowed to return to the villages until the Court reached a final decision. Since then, residents have been in legal limbo and living under the constant threat of losing their homes.

In July 2012, the State announced that in accordance with the position of the Minister of Defense, the active firing zone would be slightly scaled back, such that four of the twelve villages would be able to remain, with the remainder slated for evacuation. In response to the State's announcement, the Court decided to dismiss the old petitions and permit the petitioners to file new ones.

In January 2013, two renewed petitions were filed against the forcible removal of approximately one thousand residents of the area.

The State has maintained its position supporting expulsion of the village residents since then, but in March 2018, it submitted a proposal for a pilot program to the Court, according to which residents of several villages would be evacuated for fifteen weeks in a six-month period so that military training could take place in the area.

In a hearing held on August 10, 2020, likely to have been the final hearing in the case, the judge gave the petitioners sixty days to state whether they are willing to compromise. No compromise was reached during this period, as any compromise entails the Palestinian residents being expelled from their homes for significant periods of time. The court must now issue a verdict, as the leading judge in the case is retiring in April 2021 and can issue judgments until July 2021.

It is possible that the verdict would entail the full expulsion of all residents or, on the opposite end of the spectrum, the removal of the firing zone. However, neither of these options are very likely, and it is instead most likely that a verdict would allow hundreds of residents to be forced to leave the area for set periods of time that would total over half the year annually at a minimum (which is in line with the minimum standards set by the State's most recent opinion).

It must be made clear that the option of evicting, whether in full or in part, hundreds of residents is unacceptable. Seven villages are now facing expulsion, an escalation beyond what we have seen in previous years with the eviction proceedings against, for example, Khan al-Ahmar and Susiya.

Possible Interventions to Prevent the Expulsion of the Villages

There are two possible points for intervention:

- Until court issues a verdict: Until a verdict is issued, it is crucial to raise the profile of the case, and any diplomatic intervention to advance this should be exerted.
- After a verdict has been issued: The verdict will not order the expulsion of residents but rather will permit expelling them in order to allow military training to take place. Therefore, at this stage, it is important to exert pressure so that the State does not carry out the expulsion of the residents, even if permitted by the court.
- When expulsions take place: If and when expulsions take place, it will be important to intervene and protect the communities, to ensure that the residents' homes and property are not damaged

by the military training, and to ensure that residents are able to return to their homes following the completion of the training.

Further, it is important to note that this case will have far-reaching implications for other villages in firing zones in other parts of the West Bank and so the precedent set in this case is relevant to broader struggles for Palestinian communities living in areas that have been declared firing zones.

Even if the Court abolishes the Firing Zone and the threat of Court-ordered expulsion is no longer relevant, there are, as of April 2020, 455 demolition orders for structures in Firing Zone 918 (which constitutes the vast majority of structures in the Firing Zone). Requests for building permits are systematically denied and planning proposals hang in limbo for years, meaning that residents have no way to build legally. Thus, even if legal expulsion, which is what this document focuses on, is avoided, *de facto* expulsion via home demolitions remains a serious issue in need of addressing.

Background – Firing Zone 918

The area designated by the IDF as "Firing Zone 918" is located in the South Hebron Hills near the town of Yatta. Spread over 30,000 dunams, it includes twelve Palestinian villages: Jinba, Al-Mirkez, Al-Halaweh, Halat a-Dab'a, Al-Fakheit, A-Tabban, Al-Majaz, A-Sfai Megheir Al-Abeid, Al-Mufaqara, A-Tuba, and Sarura. Research conducted by the human rights organization B'Tselem, in cooperation with ACRI, shows that today there are approx. 1,300 people living in the area.

Palestinians began living year round in the area in the early 19th century, settling on land that had been long used for grazing by residents of Yatta. Pushed by the favorable climate in the area and the draw of cheaper land, poorer families from the city started moving to the area, subsisting through farming and shepherding. Initially, most families lived in the area seasonally and, as time progressed, their residence in Masafer Yatta gradually became more and more year round.

As families moved into the area, they renovated or dug new caves and have now lived, often in the very same familial cave, in Masafer Yatta for many generations. The residents of the villages continue to maintain a traditional lifestyle to this day, living in or beside caves and relying on farming and husbandry of sheep and goats for their livelihood.

The area was turned into Firing Zone 918 in stages. In June of 1980, the northwestern part of the area was declared a military training area, followed by the southeastern part of the area in November of 1982. In 1993, the two areas were joined and officially became known as Firing Zone 918.

In August and November 1999, the majority of inhabitants of the twelve villages were served with evacuation orders due to their "illegal dwelling in a fire zone". On November 16, 1999, the Israeli military forcibly removed over 700 residents. The IDF destroyed homes and cisterns and confiscated property. The villagers, dispossessed of their lands and their livelihoods, were left homeless. In 2000, the Court allowed the communities to return to their homes until a final decision was reached.

Even though the residents were allowed to return, they have lived under the threat of expulsion since then. Although eviction proceedings cannot advance until the Supreme Court case is resolved, because the villages are in Area C, they do not receive building permits and face regular home demolitions. Several petitions have been submitted over the years to defend different structures in the area, including humanitarian structures, such as toilets and water cisterns (which are often donated by EU Member States). Detailed plans for four of the villages (Jinba, Al-Mirkez, Al-Majaz, and A-Sfai) have been submitted and have not yet been decided. The current case on expulsions will also have implications for these cases.

In addition, although live fire is not used in the firing zone because the case is still pending, the area's status as a firing zone provides several additional challenges. Military training without live ammunition takes place in the area, causing damage to land and property. As part of standard training for the Nahal brigade in the area, soldiers drive in Armored Protected Carriers through Palestinian residents' wheat fields (see soldiers' testimonies on this here and here). Soldiers also carry out raids and

searches on the villages (see this soldier's testimony and this article from Haaretz), and blocking the roads in and out of the villages is also a standard practice.

In addition, the army prevents non-residents from entering the area, including those who provide essential services to the area. For example, the army has confiscated the only vehicle of the Palestinian medical team that serves the area, a car belonging to teachers who live elsewhere but teach in the area, and veterinary ambulances that provide medical care to livestock.

Central Legal Arguments

A few central arguments are at the core of the Palestinian petitioners' case.

1. Using occupied territory for the occupier's own benefits is against international law and, therefore, the firing zone must be nullified.

Declarations 46 and 52 of the Hague Convention and Section 53 of the Geneva Treaty set clear guidelines for the use of public or private land of the protected population. In particular, Declaration 52 of the Hague Convention makes clear that the occupying power may only make use of occupied land when there is an urgent, direct, and temporary military need that necessitates the use of resources of the occupied territory. Private land cannot be used routinely or when the occupying power's military need is general or not directly related to the management or security of the occupied territory and its protected population.

The State itself claims that it needs the area for general military training, including basic training for the Nahal brigade and training for other units for activity in Lebanon-like terrain. Both of these reasons are counter to international law -- basic training is not a "temporary, direct, immediate need" and training in the West Bank for combat in Lebanon does not meet the criteria of use of the land for the management or security of the occupied territory itself. It therefore violates international law on both fronts.
According to data from the Civil Administration, the majority of the land the firing zone seeks to use is either recognized (even according to the Civil Administration) private Palestinian land and survey land (meaning land whose status has not yet been decided).

The illegality of an occupying force using private land for general training in occupied territory is further detailed in opinions by Professor Michael Bothe and by Professors Eyal Benvenisti, David Kretzmer, and Yuval Shany and submitted to the Court by the Association for Civil Rights in Israel.

2. Forcible transfer of a protected population is prohibited under international law.

In the words of Professor Michael Bothe, "Forcible removal of persons from their homes (whether or not relocating them somewhere else) constitutes a 'forcible transfer' which is prohibited according to Art. 49 para. 1 of the IVth Convention and according to customary international law." This was also the position taken by the Chief Military Prosecutor, Colonel Meir Shamgar, who wrote in 1967 regarding the illegality of expelling Palestinians in order to create firing zones: "In our opinion, one should not evacuate a civilian population from the territories in order to create a training area for the Israeli army. This is both for political and humanitarian reasons and also for reasons bound up in the provisions of international law. Section 49 of the Convention for the Protection of Civilian Persons in Time of War, which Israel is party to, expressly forbids the forcible transfer of citizens in occupied territories, except for cases in which imperative military reasons require it. In our case, it is impossible to say that imperative military reasons require evacuation of territory so as to designate it as training fields. Therefore, forcible transfer of the population from these territories would be a violation of the terms of the aforementioned treaty."[1]

Lastly, and perhaps most nefariously, protocols, located by the organization Akevot, from a joint meeting on settlements between government officials and the World Zionist Organization demonstrate that the state not only knew that there were communities living in the area it declared a firing zone but the existence of Palestinian communities was the very reason for the declaration of the firing zone. That

[1] The organization Akevot found this document in a state archive. It can be viewed in Hebrew here.

is, the government chose the area of the firing zone in order infringe upon Palestinian land. Then-Minister of Agriculture Ariel Sharon, who chaired the meeting, responded to the army's concern that the construction of Nataf, which is within the Green Line and whose territory had been used as a firing zone, precluded the possibility of the army continuing to train there. In response, Sharon offered the army land in Masafer Yatta, which would also aid additional strategic priorities he wanted to advance. He explained, "We now have a thought that we need to close off additional training areas at the border of the lower parts of the Hebron Mountains and the Judean Desert. This is in light of the phenomenon that I explained earlier -- the spread of rural, mountainous Arabs towards the desert. We definitely have an interest in increasing these areas there and can add many training areas for you there, and we have a significant interest in you being in that area."[2]

3. Expelling the residents is illegal, even according to Israeli military law in the West Bank.

The declaration of Firing Zone 918 in the early 1980s closed the area to entry from outsiders, but this did not apply to permanent residents of the area. The 1999 military order closing the area, which is the basis of the expulsion, also excludes residents from expulsion. Thus, the expulsions that took place in 1999 were illegal, and any expulsions that would take place now would also be illegal.
While the State claims that the Palestinian communities in question are not permanent residents because they live in the area seasonally, the 1999 order excludes from expulsion "anyone who lives in the area" (and not only permanent residents), meaning that the order does not apply to the village residents and that the expulsions in 1999 were illegal.

In addition, the State claims that the residents are seasonal, stating that they reside there 5-7 months a year. However, residence in a place for half the year is considered permanent residence and, hence, they should be exempted from either the orders in 1999 or those in 1980.

It is important to note that, regardless of whether residents are there seasonally, it is possible to be a permanent resident in two places, which the judge made clear in the most recent August 2020 court hearing.

Further, and notably, state records from the process of declaring the firing zone in the early 1980s show that the State recognized there were permanent Palestinian residents in the main villages of the area. This is contrary to the State's claims that there were not permanent Palestinian residents in the area at the time the firing zone was declared. An official 1981 letter states: "The situation on the ground is getting worse. The phenomenon of seizing land and additional cultivated land is gaining traction from the residents of Yatta and Samua, who have moved to permanent residences in Khirbet Mirkez, Khirbet Jinba, and Khirbet Halaweh." In addition, a report by an inspector from the Nature Reserves Authority from 1984 relates that there were already "massive" permanent dwellings in the area at the end of 1980. In the report, it is made clear that residents were turning the area into their permanent homes and were not leaving the area seasonally. The historical existence of the villages is documented even further back in aerial photos by the German air force from World War I, which show the stone walls of animal pens built by the communities.

Overview of Legal Proceedings

Petition to the High Court Against Expulsion from the Firing Zone

In January 2000, ACRI petitioned against the evacuation orders before the High Court of Justice on behalf of four families (HCJ proceeding 517/00) and requested an interim injunction that would allow them to remain in their homes and retrieve their confiscated property or be reimbursed for destroyed property. In February 2000, an additional 82 residents, represented by Adv. Shlomo Lecker, petitioned the HCJ (HCJ proceeding 1199/00), and in July 2001, 112 additional residents joined ACRI's petition. In all, more than two hundred households challenged the evacuation orders. The Court joined the two petitions and granted an interim injunction, allowing the villagers to temporarily return to their homes. Many residents had nothing to return to after the destruction, and Israeli military forces interpreted the

[2] The protocols can be viewed in Hebrew here.

interim injunction as narrowly as possible, allowing reentry only to the named petitioners and denying access to their relatives.

In December 2002, the parties entered into mediation in order to determine the status of the area's residents and arrive at an agreement. Within the framework of negotiations, the State offered to transfer the petitioners to an alternate area. The petitioners refused. In early 2005, after more than two years of mediation, the process ended without an agreement being reached.

2012: Renewed Legal Proceedings

Ater years in which the State requested postponements of the case, the State presented its opinion in July 2012. The State Attorney submitted a response to the Court, which stated that military needs had changed and part of the Firing Zone would be sufficient. Therefore, the State Attorney called for the evacuation of eight or nine out of the twelve villages – that is, the expulsion of some 1,000 people from their homes. Despite preventing Palestinian residency in these villages, the Defense Ministry offered to allow residents of the villages slated for evacuation to access their land in the area to cultivate it and herd their sheep on days on which military training does not occur (Fridays, Saturdays, Jewish holidays, and during two 30 day periods over the course of each year). According to the position presented by the State Attorney, residents of the additional four villages would not be expelled, but they would remain unrecognized villages in Area C and so face constant demolitions without infrastructure. It is also important to note that those villages that were not slated to be evacuated are in the same area as three unauthorized settler outposts, and so it seems that the army's decision to exclude this land from the firing zone is connected to its desire to not have to evacuate settler outposts as well and pave a path to approving illegal Israeli outposts.

In August 2012, following the State's announcement, the Court dismissed the petitions without prejudice. The judges stressed that all of the parties' claims are preserved and that the petitioners would be permitted to file new petitions against the Defense Minister's position. The interim orders that allow the residents to continue living in their homes and working their land remained in place until November 2012 and were extended by request of the petitioners until mid-January 2013.

2013: New Petition to Protect Nine Villages from Expulsion

ACRI and Attorney Shlomo Lecker filed new petitions on January 16, 2013, on behalf of 108 village residents facing evacuation. The Court granted a temporary interim order the same day, preventing the State from forcibly transferring the petitioners and their families, pending any other decision.
The High Court of Justice held a hearing on the new petition on September 2, 2013. During the hearing, Supreme Court President Asher Grunis, together with Judges Hanan Melcer and Daphne Barak-Erez recommended that both parties begin a mediation process. The judges suggested that retired Supreme Court Judge Yitzhak Zamir be appointed as an external mediator. The petitioners informed the court that it was prepared to consent to the suggestion. The State requested some time to consult on the matter and a few weeks later also consented to mediation. On October 27, the judges issued their decision naming Yitzhak Zamir as the court-appointed mediator. The judges allocated a period of 4 months for the mediation process along with the possibility of an extension.

The mediation proceedings conducted before Judge Yitzhak Zamir lasted two years and four months. On February 1, 2016, the parties notified the Court that they had been unable to reach an agreement and that the mediation process had therefore come to an end. Following the announcement, the Court determined that the appeal hearing would be held soon and that the interim order issued prior to the mediation was still effective.

On February 2, 2016 – the day after the mediation ended – Israeli military forces destroyed 15 residential buildings in Jinba and 9 buildings in Al- Halaweh. 78 people, including 60 children, lived in the buildings that were destroyed. Following the demolitions, two urgent petitions were filed in the High Court with the intention of preventing further demolitions. Temporary injunctions were awarded in both petitions to prevent the use of additional demolition orders until a further decision was made.

2016: Renewed Legal Proceedings

At a hearing on 23 March 2016 before Judges Meltzer and Barak-Erez, the State presented a proposed outline for a new training area and the court ordered the petitioners to respond.

On 10 May 2016, the petitioners filed their response, claiming that the proposal presented by the State at the hearing was even worse than the proposals submitted during the mediation, which were not accepted by the petitioners. This proposal would mean that the Palestinian people living in the area would have to be evacuated for long periods, including during the agriculture season, to allow the IDF to train.

According to the petitioners, the State's offer proved once again that the State ignored the fact that there are people who live in the area and who make a living from the land. The petitioners also claimed that the State had not been able to explain why it needs this precise area of the firing zone and has refused to consider alternatives. This unwillingness to consider alternatives raises the concern that there are other reasons underlying the announcement of the firing zone, aside from military necessity – and that in fact the aim is to push Palestinians out of the area. The petitioners returned and asked the court to issue an *order nisi*, requesting that the State explain why they insist on expelling the residents from their homes and lands.

On 11 January 2017, following another hearing, the High Court at last issued an *order nisi*, requiring the State to provide alternative propositions within 45 days. The judges stressed they were interested in reaching a compromise that would be acceptable to both sides and asked that the army submit a new plan detailing its minimum needs for military training in the area. ACRI's Chief Legal Counsel, Att. Dan Yakir, told the court that the petitioners were not willing to be evacuated from their homes and stated that the establishment of the firing zone in a populated area of the Occupied Territories was done in violation of international law.

March 2018: Most Recent State Position

In March 2018, the State submitted to the Court a suggestion to embark on a pilot program for half a year (in 2018), whereby residents of 4 to 6.5 villages in the Firing Zone would be evacuated for 15 weeks in a six month period for the army to train in that area. The State claimed this was the minimum amount of time needed for military training and did not abandon its previous position supporting full expulsion.

August 2020: The Likely Final Hearing in the Case

The hearing in August 2020 largely focused on the major legal questions of the case, specifically the legality of declaring a firing zone in occupied territory and the question of who is considered a permanent resident of the area (because permanent residents are excluded from the expulsion order). The State claimed that there were no permanent residents in the area before 1980. The State further argued that it is impossible for a person to have two permanent residences at the same time and that all residents of the firing zone also have a home in Yatta, which is their main residence. The judge did not accept this argument and responded by explaining that there are many people who have two permanent residences, as well as the importance of taking international law into account on this matter.

The State claimed that because there were no schools and mosques in the area, it cannot be that the area was the residents' permanent residence.

In response, the petitioners argued that the language of the 1999 expulsion order, which excludes "those living in the area" (rather than "permanent residents") is intentionally meant to expand the category of those who must not be expelled to also include those who may not meet the legal definition of "permanent resident." The petitioners further offered proof of the state's own documents that demonstrate that there were permanent residents in at least three of the villages before the declaration of the firing zone, as well as evidence that the Israeli government intentionally declared a firing zone in the area in order to gain control of the land rather than for its need for military training.[3]

[3] For more on this evidence, see this article in Haaretz.

The petitioners further argued that the essential question of the case is whether international law permits the army to train in the area at all. Multiple expert legal opinions submitted to the Court argue that international law would permit training only for the sake of maintaining the order and security of the area and cannot be done on private land. The area has become a general training area for the Israeli army and, especially because it is used for training for activities that take place outside the occupied territories, is not related to the immediate needs of the occupation and is therefore illegal. This argument is further strengthened by the 1967 opinion by the Military Advocate General Meir Shamgar, now submitted to the Court, which warns against expelling residents for military training because doing so violates international law.

The judge expressed disappointment that the Palestinian defendants did not offer any suggestions for compromise during the mediation and rejected the State's offer. It is important to note that the reason for this is that any compromise entails the residents leaving their homes for significant periods of time, which will damage their ability to subsist.

The hearing concluded with the judge giving sixty days for the Palestinian sides to present an offer for a compromise and another thirty days after that to negotiate if an offer is presented. If there is no offer or if the negotiations are not successful by the end of ninety days, the judge promised to issue a verdict, noting that it would not be a favorable one. Because the main judge in the case is retiring in the spring, it is most likely that this was the case's final hearing.

Furthermore, according to the findings of a 2015 report by Kerem Navot, 18% of the West Bank is designated as firing zones. Within this 18%, only 20% of that land is actively used for military training. In Firing Zone 918 in particular, only about 1,000 dunam of the 30,000 dunam area of the firing zone is in use for military training. It follows that the "need" for the Israeli military to take over this area and expel Palestinians from their homes becomes even harder to understand and justify.

This info-sheet was prepared with information from the Association for Civil Rights in Israel, Breaking the Silence, Haqel, Kerem Navot, and Rabbis for Human Rights.

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