

The Jerusalem Supreme Court
In session as the High Court of Justice

Appellants

1. **Muhammad Shaker Ahmad al-Hawaja**
2. **Hamed Shaker Ahmad al-Hawaja**
3. **Ayman Said Ibrahim Nafa, Na'alim Village Council Chairman**

Represented by Attorneys Michael Sfard and/or Shlomy Zachary and/or Neta Patrick and/or Avisar Lev and/or Muhammad Shuqier- on behalf of Yesh Din - Volunteers for Human Rights; all from 49 Ahad Ha'am St., Tel Aviv 65206; tel: 03-6206947, fax: 03-6206950

V.

Respondents

1. **Defense Minister Ehud Barak**
2. **Major General Gadi Shamni, commander of the IDF forces on the West Bank**
3. **Brigadier General Yoav Mordechay, head of the Civil Administration**
4. **Commander Shlomo Kaatabi, chief of Samaria and Judea Police**

All Represented by an attorney from the State Attorney's Office, the Justice Ministry, Salah al-Din St., Jerusalem

5. **The Modi'in Ilit Municipality**

From 4 Sha'ar Hamelech St., Modi'in Ilit 71919

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Petition for an Interim Injunction¹

This is a petition for an interim injunction in which this honorable court is requested to order the Respondents to show cause, should they so desire, why should they not take all the necessary steps for the implementation of demolition orders issued against

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

a park that is being built at the entrance to the settlement of Modi'in Ilit on the private lands of the Appellants, residents of the Village of Na'alín (hereunder: "the Park").

An aerial photo of the park - the subject of this petition, located at the entrance to the settlement of Modi'in Ilit - on which the scope of its terrain was marked, is hereby attached and marked Appendix 1.

Below are the arguments for this petition for an interim injunction:

A. Introduction

1. This petition deals with a vast public Park that was built for the wellbeing of the residents of the settlement of Modi'in Ilit. The problem is that these green grass carpets and seemingly innocent playgrounds were all placed on lands that are the private property of the Appellants, residents of the nearby Village of Naalin, in violation of the law, and without obtaining their permission. Works for the completion of the Park, which started in 2003, are about to end and in this case, as in many other cases of illegal construction by Israelis in the West Bank, a law-enforcement authorities are nowhere to be found.
2. This petition is filed, therefore, for lack of better choice, after years of attempts to remove this nuisance, based on a realization that unless the honorable court intervenes in this matter, the fate of these plots will be the same as the fate of other plots on which parts of the settlement of Modi'in Ilit were built. The settlement expanded, often while Respondents 1-4 turned a blind eye, steadily growing while denying the residents of the nearby villages access to their lands.

B. Factual Background

I. Parties to the Petition

3. Appellants No. 1-2 are Palestinian civilians, residents of the Village of Na'alín on the West Bank, heirs of the late Shaker Ahmad Mahmud al-Hawaja, the owner of Plot 249 on Block 9 of Muwaka Halat Salah on the Na'alín lands, on which the Park, subject of this petition, was built. Appellant No. 3, Mr. Ayman Said Ibrahim Nafa, is the head of the village council of Na'alín, a village on which the park was built on its lands. Most of the village is located in Zone B in the west bank, but the village's agriculture land and its surroundings are in Zone C, under the total control of the IDF forces in the west bank
4. Before the year 2000, the Appellants and their family members had access to their fields and were able to use and cultivate them, but from then on - due to the Second Intifada and traffic restrictions imposed on the Palestinians in its wake, which worsened after works on the construction of the separation fence started in that area in 2004 - it became impossible for them to access their lands. After 2004, when works on the Park started, the Appellants and their family members were completely denied access to those lands. .
5. Respondent No. 1 is the Minister of Defense in the State of Israel. As such, he is in charge of the Civil Administration in the West Bank and is comprehensively

responsible for law enforcement there, including for the performance of the law-enforcement authorities in the region.

6. Respondent No. 2 is the commander of IDF troops on the West Bank. As such, he has the all the administrative, government, and legislative powers over the territories that Israel is holding, according to International Humanitarian Law and the laws of belligerent occupation. Specifically, Respondent 2 has been entrusted with observing public order and protecting the property of the residents of the region that is under belligerent occupation, as will be explained below.
7. Respondent No. 3 is head of the Civil Administration and thus holds powers of management over civilian life in the occupied territories. Among other things, Respondent 3 is entrusted with enforcing the planning and construction rules that apply in the region.
8. Respondent No. 4 is the Chief of the Samaria and Judea Police District who, among other things, is entrusted with enforcing the law on violators of the law in the West Bank committed by Israelis.

Respondents 1-4 will be referred to hereunder as "the Respondents."

9. Respondent No. 5 is the Municipality of Modi'in Ilit. As far as the Appellants are aware, it is the party responsible for **the construction and maintenance of, and any other operation related to the Park, regardless of its illegitimacy.** A photograph showing a sign announcing that works on the Park were initiated by Respondent 5 is attached to this petition.
10. It should be stressed here that the fact that Respondent 5, which directly impairs on the private property of the Appellants, is a **official authority** - and as such is in charge of, among other things, enforcing planning and construction laws within its jurisdiction - further exacerbates the gravity of its offence against the Appellants' property. The Israeli Courts have recently established that:

"When a governing authority is the party that violates the law, law enforcement becomes a supreme public interest. That interest precedes the public interest when the matter concerns a private body that violates planning and construction laws. The local authority's duty to adhere to the planning and construction laws is an interest that takes precedence over all other interests, including the delay of proceedings. A governing authority may not violate the law and, I feel that it may not argue for a delay when steps are taken that pertain to the violation of the law by a governing authority." (Accentuations added, M.S., S.Z., A.L.) 192/80 *The Givat Alonim local Planning and Construction Committee v. the Shefaram Municipality*, 2008(4), 284 (2008).

We shall elaborate on this when we introduce the legal arguments in the petition.

II. The Park, Subject of this Petition

11. Modi'in Ilit (hereunder: "the Settlement") was established in 1990, declared a local council in 1996, and in 2008, the Minister of Interior approved the recommendation of Respondent 2 that it be declared a city in Israel. Dubbed by

its residents "the future ultra-Orthodox town," it has 42,000 residents, which makes it the most populated settlement on the West Bank.

12. The Park, subject of this petition, covers 22 dunams. Wide and well-lit paths crisscross it; on its southern end, a modern open-air theater is being built; on its northern end stands a roofed children playground; and in its center, there is a court that looks like a tennis court. The Park is partly fenced by a high wall with gates.
13. The land of the Appellants is entirely covered by that Park. The plot that was taken from them without permission and became part of the Park covers some 20 dunams.
14. Blueprint Plan No. 210/3 applies to a small part of the Park. It was approved already in 1984, before the settlement was established, designating the site as an open public space. The vast majority of the Park's territory, however, is outside the Settlement's jurisdiction, that sits on plots to which the RJ5 Mandatory Blueprint Plan applies, designating those lands to agriculture use.
15. It should be noted, beyond immediate necessity, that expropriating land for public purposes should serve the entire public, including the Appellants, as instructed by this honorable Court's consistent rulings over the years (see, HCJ 393/82, **Jamait Askhan v Commander of IDF Troops in Judea and Samaria**, PD 37(4) 785).
16. Apparently, the Park was built based on the specifics of Blueprint Plan 210/9/2, which was deposited in 2002, but was never published for validation. This is explained in the State's reply, as filed with this honorable Court on 11.6.06, in HCJ **2645/04 Fares Ibrahim v the Prime Minister** [[tk-al]] 2007(2), 602, 603 (judgment given on 25.4.2007). In that appeal, which dealt with the separation fence between the Settlement and the village of Dir Kadis, the following was stated with regard to that plan (accentuations below added, M.S., S.Z., A.L.):

*"The Supreme Planning Council in Judea and Samaria decided on 31.7.02 that the plan be deposited for objections. The problem, which is the main issue, is that most of the territory to which Plan 210/9/02 should have applied is not registered as state lands or as owned by anyone associated with the initiation of the plan, though the future plan for that territory apparently includes two plots that were proclaimed as state-owned. This, therefore, is a plan that was designed to establish a neighborhood of an Israeli settlement on **private lands**, most of which is not owned by the state, and the claims that Israelis purchased those lands from their Palestinian owners did not end with registering the lands in the name of the Israeli buyers."*

It further said:

"Being aware of the great legal problem associated with building a neighborhood in an Israeli settlement under such circumstances, the Supreme Planning Council established in its deposit decision that objections would not be discussed and that the plan would not be presented for validation before a specific approval of the legal advisor for the Judea and Samaria region is obtained."

Finally, the State noted that:

"The approval of the legal advisor for the Judea and Samaria region of Plan 210/9/2 has not been obtained to this day. The legal adviser of the region believes it is legally difficult to approve the establishment of an Israeli neighborhood on plots that are not defined as "state lands," or registered in the name of Israelis or anyone associated with the initiation of that plan. The Law Bureau of the Judea and Samaria Region even made it clear to the Defense Ministry that it refuses to approve the legal probability of Plan 210/9/2 before the attorney general rules on the legal matter in principle - namely, whether they may approve a blueprint for the construction of an Israeli neighborhood on private Palestinian lands that were claimed to have been purchased by Israelis, but which, if indeed a transaction took place, was not completed with the registration of those plots in the Land Registrar log, as required by the law that applies in Judea and Samaria" (accentuations added, M.S., S.Z., A.L.).

17. As long as no other plan has been approved, the plan that applies to the territory on which the Park was built is the RJ5 Mandatory Blueprint (except for the segment that falls within Plan No. 210/3, as described above), which designates the lands for farming and agriculture use, and certainly does not allow the construction of a public park. In conclusion: We are dealing with a Park that was built on private lands, contrary to the blueprint plan that applies to the site, and without construction permit as required by law. The state openly remarked in this spirit in other proceedings discussed before this honorable court.

III. Exhausting Proceedings

18. As early as on 25 July 2006, Mr. Dror Etkes, then in his capacity as coordinator of the settlement monitoring team for the "Peace Now", contacted the Civil Administration head at the time and updated him on the situation, presenting him with the fact that works performed for the construction of the Park take place on privately-owned lands.
19. On 27 August 2006, a representative of Respondent 3 replied as follows: ***"Upon receiving your notice, the issue was examined with the assistance of the Judea and Samaria legal adviser and it turned out that works performed on site probably received no permits."*** The representative further added that ***"The Civil Administration's Supervisory Unit has been instructed to issue a work-termination order for the works performed on that site and to summon the contractors to appear before the supervisory subcommittee."***
20. When, soon after that, it turned out that despite this response, construction works on the site continue, the undersigned contacted Respondent No. 3 again on 18.9.2006, demanding that the said work-termination orders be imposed. The undersigned sent similar letters on 26.11.2006 and 11.2.2007, but received no response at all. Another appeal was made on 24.5.2007.
21. Only then, some 10 months after the initial letter, came the long-awaited reply of the Civil Administration's spokesman, representing Respondent 3. The reply stated laconically:

"As for future treatment of the works performed on site, if required, it will be determined according to procedures and order of priorities."

22. The Appellants waited patiently to see whether their turn would come in the Respondents' order of priorities. After nearly 2 years, the undersigned contacted the Respondents again, in the Appellants' name, and asked that the said orders that were issued against the Park be finally imposed so that the structures built there, against the Appellants' stands and without their consent, be demolished. The Appellants added that the fact that the Park sits on their private property is a harsh violation of their property rights and makes a mockery of the rule of law, which seems to have all but vanished from the region. Judged by the results of the supervisory moves they made so far, clearly the authorities failed to make their best efforts to realize their duty to protect the Appellants' property and left it defenseless.
23. One day later, another response was received from Respondent 3, which was similar in content to the replies given on the issue in 2006 and 2007 -- namely, that law enforcement operations in the region will be timed according the customary order of priorities.
24. By then, it was already clear to us that, as far as the private case of the illegal construction work, subject of this petition, and as far as all illegal construction works in the territories are concerned, the response means one thing: That time is -- Never!
25. **Once again it appeared that, as in many other cases of illegal construction by the settlers in the occupied territories, the law-enforcement authorities shame themselves and us. The construction of the Park in the Settlement -- though illegal -- continued undisturbed until it was completed. This took place with the full knowledge of the law-enforcement authorities that refrained from performing their elementary duty - to prevent the shaming of the law and damage caused to the private property of the Appellants. This took place despite the fact that all along, the Respondents were notified of the construction violations and were given plenty of time to perform their duty.**
26. These are the reasons for this petition to be hand.

C. The Legal Argument

I. Appellants' Property and Respondents' Duties

27. The Appellants are owners of some of the plots comprising the Park, most of which was built outside the jurisdiction boundaries of the settlement of Modi'in Ilit. An aerial photo that maps the Appellants' lands in relation to the Park clearly shows that the Park is partly located on the private lands of the Appellants, mostly outside the boundaries of the Settlement's jurisdiction and, as noted, all without their consent and without obtaining the necessary permits.
28. The Appellants are civilians who reside on a territory under belligerent occupation, as are the lands they own, on which the Park was built. Being civilians who reside on a territory under the legal regime of belligerent occupation, their legal status is of "protected persons," according to the international humanitarian law.

29. The instructions of the International Humanitarian Law apply to the West Bank territory and to the Appellants, as this honorable court established long ago. See in this matter remarks made by Court President (Ret.) Aharon Barak in HCJ 393/82, **Jamait Askhan v Commander of IDF Troops in Judea and Samaria**, PD 37(4) 785).
30. Much of the humanitarian law that applies to the region, as noted, is expressed in the Fourth Geneva Convention of 1949, which deals with protecting civilians in the course of an armed conflict, and in regulations appended to the Hague Regulations concerning the 1907 laws and practices of war on land. These treaties dominate the set of relations between the occupying force and the occupied residents of the West Bank, as this honorable court established on numerous occasions, and recently in HCJ 7957/04 **Zahran Yunes Mahmud Maraba et al. v. Israel's Prime Minister et al.** (3) 2005, 3333.
31. One of the duties assigned to the occupying power according to international humanitarian law is the duty to protect the property of the protected persons. The Hague Regulation 46 states:

Art. 46. Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Private property cannot be confiscated.

32. The Fourth Geneva Convention carries a similar instruction, according to which:

Art. 53 – Prohibited Destruction:

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

33. Clearly, operations taken by Respondent 5 - which probably was the Park initiator and is responsible for its construction, and thus prevented the Appellants from working their land or accessing it - constitute a destruction of property, or at least deny the owners' ability to enjoy it and have it yield the fruit they had expected. It should be remembered that the said activities took place while Respondents 1-4 were fully aware of that, since they had been updated on the construction process from the onset, but did not lift a finger to prevent it, except for issuing orders that then lied in the Respondents' offices and collected dust. On top of that, we must refer to the unequivocal stand of the State, in its response to a petition in the matter of **Faris Ibrahim Naser v the Prime Minister**, that addressed property issues in the region and the impossibility of planning for or building on such lands.
34. The duties assigned to the military force in the region - in our case, as far as it pertains to the international humanitarian law, the Civil Administration and the IDF Central Command - includes the duty to protect the property of protected individuals in an occupied territory. As this honorable court stated in the past:

“The duty of the military commander according to the basic rule is twofold: First, he must avoid operations that might offend the local populace; this is his “negative” duty. Second, he must take necessary

*legal action to ascertain that the local populace is not harmed; this is his "positive" duty" (HCJ 4764/04, **Physicians for Human Rights-Israel et al. V IDF commander in Gaza**, PD 58(5) 385, pp 393-394).*

And -

*"As part of the incorporation of the international humanitarian law, it should be stressed that the duty of the military commander does not suffice with the army's avoiding harm to the lives and honor of the local populace (the "negative" duty), but his duty is also "positive" in that he needs to protect the lives and honor of the local populace (**ibid.** p. 408).*

In the same matter, see also -

*"[Property rights] are also recognized as a basic, protected, constitutional right. It is acknowledged as such by the Israeli constitutional law, according to Article 3 of Basic Law: Human Dignity and Liberty. It is protected by international laws too. Harm to property rights, including harm to real-estate property of individuals, is banned by the Rules of War in the International Law, except when such damage is required for military needs." (HCJ 7862/04, **Zuhariya Hasan Murshad son of Hussein Abu-Daher V the IDF commander in Judea and Samaria**, PD 59(5), 368, pp 376-7).*

It is further worth noting that in the case that is the subject of this petition, even the "negative" duty was violated because, as noted, the active violator and wrong-doer was the official authorities themselves. We will elaborate on this below.

35. Thus, clearly and presumably, according to international law, the Appellants have the right to have their property protected by the military commander on the ground, **all the more so** when the parties that damaged and destroyed that property belong to the occupying population, **and even more so when the damaging and destroying party is a official authority**. While the Appellants have this right, it is also the duty of Respondents 1-4 to **actively** make sure that that right is observed, as the "positive" aspect of that duty requires that the authorities take all necessary measures at their disposal to make sure that protection is secured. The problem lies in the fact that while the authorities may have issued demolition orders against structures placed on the Appellants' lands, the execution of these orders is nowhere to be seen, despite the Respondents' recurring promises to execute them, and thus the Respondents added insult to injury.
36. Similar instructions that compel the Respondents to take all necessary action to give the Appellants their land ownership back exist in Israeli laws as well, which apply to their activities on the West Bank by the power of administrative law. For example, Article 3 of Basic Law: Human Dignity and Freedom states that "*There shall be no violation of rights of the property of a person.*" Thus, according to this instruction, the constitutional status of property is not restricted to residents or citizens, but applies to all **individuals**. A person is a person, and Clause 11 of the said Basic Law states: "*All governmental authorities are bound to respect the rights under this Basic Law.*" Thus, the legislature made a point of

making it clear to all "governmental authorities" - the Respondents included - that they **must protect persons' property** and make sure it is not harmed.

37. It is, however, clearly visible that one governmental authority, Respondent 5, is violating the ban against actively causing damage to the Appellants' property, while other governmental authorities, Respondents 1-4, are in violation of their duty not to remain passive in view of the damage caused to private property. Both violate the duties assigned to them by the international law and the State of Israel's constitutional law.

II. A Birds-Eye View: The Non-Enforcement Project of the Supervision and Enforcement Department

38. Tens and even hundreds of thousands of words have been written on the absence of effective law-enforcement against Israeli law violators on the West Bank. This problem has been part of the Israeli occupation ever since the settlement enterprise was launched. This is twice as grave when the violations are perpetrated by the very governing authorities.
39. In the early 1980's, following H CJ 175/81, **Al-Natshe et al. V. the Defense Minister et al.**, PD 35 (3) 361 - where the residents of Hebron complained that the Bet Hadassah settlers were harassing and abusing them - a coordinating team was established, headed by Attorney Yehudit Karp from the State Attorney's Office (SAO), to examine ways of and draw procedures and instructions for the enforcement of the law against Israeli violators on the West Bank and in the Gaza Strip. Published on 23.5.1982, the Karp Report that the team produced was a first in a series of public reports that have since addressed the issue of non-enforcement of the law in the occupied territories.
40. In 1994, the national commission of inquiry into the massacre in the Cave of the Patriarchs published the Shamgar Report that also criticized the failing law enforcement.

"The Israeli Governments and executive bodies in charge of the issue were unable to enforce the law on neither the Israeli nor the Arab sector in the wake of the intifada... Suffice if we note, by way of example, that until recently, incidents in which no Arab filed a complaint with the police were not handled at all despite the fact that other evidence of the felony existed, including eye witnesses from the military" (from the Report of the Commission of Inquiry into the Massacre in the Cave of the Patriarchs (headed by President Shamgar) 1994, p. 192).

41. In the wake of this report and the adoption of its conclusions, the Israel Police established the Samaria and Judea District Police (the SJ District), whose commander is Respondent 4. In addition, then Attorney General Michael Ben-Yair issued a new regulation that was meant to arrange the distribution of law-enforcement powers against Israelis in the West Bank and the Gaza Strip. That regulation was later amended and updated by Attorney General Elyakim Rubinstein.
42. The Attorney General's regulations clearly establish that the Israel Police is in charge of enforcing the law against Israelis on the West Bank. The IDF retains

its overall responsibility and, according to the regulation, if the IDF soldiers arrive first on a scene where public order is being disturbed, they are in charge of law enforcement until the Police arrive.

43. The problem is that all of these regulations and reports failed to improve the situation and the violations of law by Israelis in the West Bank remain devoid of proper response to this day.

44. In this matter, see also:

- "**A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank**," **Yesh Din** (June 2006);
- "**Tacit Consent: Law Enforcement towards Israeli Settlers in the Occupied Territories**," **B'Tselem** (March 2001);
- "**Free Rein: Vigilante Settlers and Israel's Non-Enforcement of the Law**," **B'Tselem** (August 2002);
- "**Standing Idly By: Non-enforcement of the Law on Settlers: Hebron**," **B'Tselem** (August 2002);
- "**Foreseen But Not Prevented: The Israeli Law Enforcement Authorities Handling of Settler Attacks on Olive Harvesters**," **B'Tselem** (November 2002);

45. Article 43 of the Hague Regulations establishes that the authority and duty of the military commander on the ground is to observe public order and security in the area under his domination. In addition, Article 27 of the Fourth Geneva Convention thereof states that:

"Art. 27. Protected persons are entitled, in all circumstances, to respect for their persons, their honour, 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 [...]"

(accentuations added, M.S., S.Z., A.L.).

46. The fact that settlers seized the lands of the Appellants and treated them as their own, while the Respondents failed to practically interfere, is a violation on the Respondents' part inasmuch as their duties according to the international humanitarian law are concerned, as well as a violation of their duties according to the Israeli Law. The Respondents' duty is, therefore, one that requires **active law enforcement**, as this honorable court established in the *Morad Case*:

"Clearly, one of the major duties assigned to the military commander in this framework is to guard the observance of the law in the region" (see H CJ 9593/04 **Morad Case**, Ibid, at p. 4377).

47. The authorities' negligence to enforce the law has spread to every aspect of life in the territories. furthermore, it seems that when it comes to felonies against construction and planning laws, the settlers were actually aided by the very authorities.

48. In her report, Attorney Talia Sasson made the following grave accusation:

"It turned out that in 1998, the supervising unit stopped supervising and attempting to enforce Israeli construction rules in Judea and Samaria settlements. The unit does not inspect and does not report on illegal construction works in those locations." (T. Sasson, **Report on Unauthorized Outposts (Interim)**, p. 217)

She added:

"Over the years, entire neighborhoods were built next to existing settlements without a detailed plan and at times on lands that do not belong to the state, and outposts were built within the jurisdiction of existing settlements - but the supervising unit never visited those sites, filed no reports, collected no data, and performed none of its supervisory duties." (Ibid., pp 219-220)

Referring to the importance of protecting the private property of Palestinian residents, Attorney Sasson stated:

"The right to property is constitutional. It is the duty of the regional commander to protect the property rights of persons under his rule. In theory, it is inconceivable that that state authorities could be involved in harming such basic human rights, but the Ministry of Construction and Housing actually paid for extensive works on Palestinian private lands." (Ibid., p 155)

Referring to failures to execute demolition orders, Attorney Sasson made the following harsh remark:

*"As far as it is known to me, thousands of demolition orders have been pending for years against illegal buildings built by Israelis in the territories (...). **These demolition orders are not executed. The execution of a demolition order requires a decision by the defense minister, but over the years, various defense ministers have generally failed to make such decisions. The result is that the Civil Administration arm that works against illegal construction is actually 'running on empty.'** It should be noted that the fact that demolition orders are not executed, in itself contributes to the atmosphere of lawlessness [in the territories]."* (Ibid., P. 221; accentuation in the original).

49. As noted, the Sasson Report was endorsed by the Israeli Government in Cabinet Resolution 3376 dated 13.3.2005. Evidently, even the Israeli Governments felt that stopping the law violations and ensuring law-enforcement is the right thing to do inasmuch as it concerns illegal construction works on the West Bank, including the Park, the subject of this petition. The problem is that it has been more than 4 years since that report was published and endorsed by the Israeli Government, but the Park still stands there in defiance of the rule of law. What we have there is a playground for children instead of an issue of law enforcement and protection of the right to property, which makes a laughing stock of the rule of law and cabinet resolutions. It should further be stressed that though the Sasson Report initially addressed the issue of illegal outposts, it eventually addressed the comprehensive issue of illegal construction throughout the West Bank.

III. Close-up View: Deliberate Non-Enforcement Against Illegal Construction Works on the Park in the Settlement of Modi'in Ilit

50. The fact that the authorities failed to prevent the colossal violation of the law as described in this petition - despite the fact that demolition orders against it were issued because the Park **is illegal and is located on private Palestinian land** - is an ongoing negligence through misdeed, which joins a years-long series of non-enforcement by the authorities. The only way to describe it is to call it **deliberate and conscious non-enforcement of the law**. This is intolerable and must not be accepted. Which is why the Appellants are asking the honorable court to order the Respondents to correct the wrong at once. This demand is further reinforced by the fact that, over the years, the undersigned made a point of updating the Respondents on the progress made in the park construction stages, but to no avail.
51. **In the absence of an effective enforcement of decisions and orders, clearly the law violators would not be deterred and leave the Park in place, on the Appellants lands, and perhaps take similarly illegal moves on other territories.**

IV. Law Violations by Official Authorities

52. Having discussed what we termed as "deliberate and conscious non-enforcement of the law," which constitutes a violation of the "positive" aspect of the duties Respondents 1-4 must uphold re the Appellants, we would like to turn the court's attention to the disturbing fact that Respondent 5, a governing authority, is the party that perpetrates the construction felony which harms the property of the Appellants, thus violating the "negative" aspect of its duties. This honorable court addressed that issue in a verdict dating back to the 1960's:

"The Law does not exist for the citizen only. It is there for the government as well. Furthermore, any government whose duty it is to make sure that the citizens observe the law must primarily itself serve as an example of law-observance. The law was created by the legislature for the state to follow, and a government may not claim a special status, as if it is above the law;" cited from the late Honorable President Olshan, in **421/61 the State of Israel v Haas**, PD 54 (16) p. 2193, 2200 (accentuations added, M.S., S.Z., A.L.)

53. It seems that the matter is quite clear: The principle of the legality of the administration necessarily follows from the very nature of democracy, which assigns sovereignty to the people. It is the people that assign, through laws, administrative and all the powers to the authorities, and the latter have no other powers, except those accorded to them by law. The law, therefore, is both the source and the limitation of every position and every power of all governing authorities. Given in a nutshell: an official authority is established by the force of the law and thus must not exceed its framework and must follow it alone. As Israeli courts have determined in the past, when an official authority violates the law it is a far graver matter than when a citizen violates the law:

"Not only is this the violation of the law, but the violator is the municipality itself, or individuals working on its behalf. As is known, the municipality and the local committee are the parties entrusted with enforcing the laws of planning and construction. Judging from experience and perusing past rulings, we gather that the municipality does not take lightly the enforcement of these laws, and so it should. It is, therefore, expected that the very Municipality avoid violating constructions laws, and be at least as harsh on itself as it is toward its subjects." 8781/08 (jr) **Simcha Rotem V. the Jerusalem Municipality** (728 (1) 2009, 7869, 7870 (2009) (accentuations added, M.S., S.Z., A.L.)

D. The Requested Remedy

54. In this petition, we are requesting that the honorable court issue an order against Respondents 1-5 that would compel them to take all the necessary measures to realize the demolition orders that had been issued against the Park, which is located on the Appellants' lands. We maintain that by failing to execute work-termination and demolition orders and, what is worse, by building the Park in the first place, Respondents 1-5 have violated their legal duty toward the Appellants.
55. At the same time, the Appellants are asking for a specific mandatory injunction that would force the Respondents to execute a concrete order that addresses the defined boundaries of the specific Park, that was built through direct action by Respondent 5 in violation of local and international laws that apply to the Appellants' lands. This order is called for in view of the persistent and years-long refusal by the authorized governing authorities to enforce the law. This order is also required because the absence of any attempt to enforce the law (which can only be interpreted as deliberate) practically creates that threshold beyond which, according to court rulings, this honorable court is asked to intervene in the law-enforcement policy: The governing authority's total negligence of its duty to enforce the law.
56. Thus, in the case before us, years of correspondence, the state's stand concerning the private ownership of the land on which the Park was built, numerous official reports, particularly the Sasson's Report, and mainly the facts we outlined here, **prove clearly and beyond doubt that the governing authorities have totally neglected their duty to enforce the law** and that their **avoidance to fulfill their duty is unreasonable**. Law enforcement is the bedrock of any democratic society. By ignoring their duties in this respect, the Respondents fatally harmed the rule of the law.
57. It therefore appears that the destroyers of the rule of law are actually the parties assigned with the duty of enforcing it, and whose power derives from it. The Respondents' long-lasting negligence to perform this duty of theirs is shaming and dishonoring both them and the entire the State of Israel. As this honorable court had stated;

*"Indeed, the enforcement of the law, any law, is the solid foundation of the rule of the law [...] Law enforcement is one of the major roles of each government. Governing authorities may not renounce that duty. As Court Vice President Zilberg said in HCJ 295/65, **Oppenheimer V***

the Ministers of Health and the Interior, verdict 20(1) 328, 309: 'Avoiding the realization and implementation of an existing and binding law is not a policy, nor could it possibly be a policy of any kind; it merely demoralizes the relationship between the government and the citizen, and is followed by lawlessness with respect to all other rules of the state.'" (HCJ 551/99, **Shekem Ltd. v Director of Customs and VAT and 4 others**, 2000(1), 419, p. 425)

58. This is one of the few cases where the civil struggle for the promotion of the rule of the law would be futile without the intervention of the honorable court, and the damage suffered by the citizens - particularly the Appellants - will increase. In view of the fact that the authorities failed to respond or otherwise enforce the law, the Appellants have no other recourse but to ask this honorable court for remedy by forcing the authorities, Respondents 1-5, to uphold their legal duties and do their duty as assigned by the international law, the military laws, and the Israeli administrative and constitutional law.
59. Therefore, we ask the court to issue an order that would compel them to immediately take all the necessary action to prevent the continued illegal construction, inasmuch as it still is performed, and use means at their disposal to execute work-termination and demolition orders, means that exist but which, for political reasons, are not enacted or used.

In view of the above, this honorable court is hereby requested to issue an interim injunction, as requested in the first part of this petition and, after receiving the Respondents' responses and hearing their oral arguments, make it an absolute order.

The court is also asked to order the Respondents to pay the Appellants' their rightful legal expenses, lawyers' fees, VAT, and interest.

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Attorney Shlomy Zachary

Attorney Avisar Lev

The Appellants' Representatives