

1. **Said Zahdi Muhammad Shehada**
2. **Mustafa ‘Abdallah ‘Abd al-Qadr Hamad**
3. **Rashed Ahmad Rashid Zaghlul**
4. **Raiq Ahmad Zaghlul Musallah**
5. **Fuad Mahmoud Faiz Musallah**
6. **Yesh Din – Volunteers for Human Rights** (Registered NPO No. 58-0442622)
7. **B’Tselem – the Israeli Information Center for Human Rights in the Occupied Territories** (Registered NPO No. 58-0146256)

all represented by Counsel, Michael Sfard and/or Shlomi Zachariah and/or Natalie Rosen and/or Neta Patrick and/or Muhammad Shaqir and/or Avi Berg, Attorneys at Law, of 49 Ahad Ha-Am Street, 65206 Tel Aviv; Tel. 03-5607345; Fax 03-5607346

Petitioners

– v. –

1. **Ministry of Defense – Ehud Barak**
2. **Commander of the IDF Forces in the West Bank – Maj. Gen. Gadi Shamni**
3. **Head of the Civil Administration – Brig. Gen. Yoav Mordechai**
4. **Head of the Samaria and Judea District, Israel Police – Maj. Gen. Shlomo Kaatbi**

all represented by Counsel, an attorney from the Office of the Attorney General, Ministry of Justice, Saladin Street, Jerusalem

5. **Ofra Cooperative Village for Community Settlement Ltd.** (Cooperative Society No. 57-002611-2), M.P. Binyamin, Tel. 02-9973190, Fax 02-9974013
6. **Mateh Binyamin Regional Council**, Psagot, M.P. Mizrah Binyamin 90624, Tel. 02-9977105, Fax 02-9973113

Respondents

Petition for Order *Nisi* and Interim Injunction

This is a petition for an order *nisi*, pursuant whereto the Honorable Court is hereby requested to instruct the Respondents to come and show cause, should they desire to do so –

- a. Why stop work orders should not be **enforced without delay**, and why demolition orders should not be **carried out** immediately, with regard to nine

buildings which are currently under construction, and for site preparation which is currently under way, in Parcels No. 1, 2, 6, 11, 13, 14 of Bloc No. 7 of the lands of the village of Ein Yabrud in the West Bank (hereinafter respectively: the “Buildings” and the “Site Preparations”).

- b. For reasons of prudence only and, should it transpire that orders as set forth above were not issued for any of the Buildings – why stop work orders and demolition orders should not be issued without delay for the Buildings and the Site Preparations.

This is also a petition for an interim injunction, pursuant whereto the Honorable Court is hereby requested to instruct the Respondents –

- a. To take, immediately and without delay, all of the actions required in order to prevent the occupancy of the Buildings which constitute the object of the petition, until the issue of a final ruling on this petition.
- b. To take, immediately and without delay, all of the actions required in order to prevent the connection of the aforesaid Buildings to electrical power, water and sewage, and if they have been so connected, to disconnect them.

Summary of the Petition:¹

1. This petition concerns nine buildings which are currently under construction by settlers, with great speed, on **private land, which is properly registered at the Land Registry Office**, belonging to Palestinians from the village of Ein Yabrud. The buildings are being constructed on land which is located within the confines of the illegal settlement of **Ofra**, east of Ramallah, and the construction thereof is taking place in contravention of the law, as follows:
 - a. The Buildings are being constructed on **private** Palestinian land and without the consent of the owners.
 - b. The Buildings are being constructed in violation of the Outline Plan which applies to the location (Mandatory Outline Plan RJ5).
 - c. The Buildings are being constructed without building permits.
 - d. The Buildings are being constructed in violation of stop work orders and demolition orders which were issued for them.
2. As in any case of illegal construction by Jews in the West Bank, which is carried out in a manner involving the theft of private lands, so, in this case as well, the presence of the law enforcement authorities is not perceptible.
3. This petition is accordingly being filed because there is no other choice, with the understanding that, without the intervention of the Honorable Court – the fate of the parcels of land owned by Petitioners No. 1 through No. 5 shall be identical to the fate of the other lands on which the illegal settlement of Ofra was constructed, the aforesaid

¹ That set forth in this section is in the nature of a summary only and is not intended to reflect the petition in its entirety and/or the entire set of arguments set forth therein.

settlement being mostly, if not entirely, built on private land registered in the name of the residents of the villages of Ein Yabrud and Silwad.

4. Petitioners No. 1 through No. 5 are Palestinian citizens, residents of the village of Ein Yabrud in the West Bank, who own, by way of private ownership, a number of lands on which intensive construction of permanent buildings in the settlement of Ofra is being carried out.
5. Petitioner No. 6, the organization known as Yesh Din – Volunteers for Human Rights, is a duly registered public NPO which was founded in March 2005 (hereinafter: the “Petitioner” or the “Organization”). The Organization is active on a variety of issues which concern human rights in general, and human rights in the territories of Judea and Samaria in particular. The first project which was selected by activists of the Organization dealt with criticism of the processes of law enforcement against Israelis in the territories of the West Bank, and was documented in a report published in October 2006 (“A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank”).
6. Petitioner No. 7, the NPO known as B’Tselem – the Israeli Information Center for Human Rights in the Occupied Territories, is an Israeli human rights organization which has been operating since 1989 in Israel and the territories controlled by Israel. The principal objectives of B’Tselem are to struggle against violations of human rights in the territories, in the various areas of life, by documenting those violations and bringing them to the attention of the general public and of policymakers.
7. The settlement of Ofra, most if not all of which is constructed **on properly registered private Palestinian lands**, has no outline plan and no area of jurisdiction. Accordingly, a contrast to the great majority of settlements throughout the West Bank, it is not part of any local council of any type whatsoever. Its existence and activity, which have been going on for quite sometime, are conducted within a legal framework which is an inexplicable hybrid: a combination of a cooperative society located on private Palestinian lands, a small part of which, according to an argument advanced by the Military Commander, had been expropriated by the Jordanian Army “for military purposes”.
8. At sometime in May 2008, the Petitioners discovered that rapid and accelerated construction work was being performed on nine new permanent buildings in the settlement of Ofra, a place inhabited by Israelis in the heart of the West Bank, which was established with no jurisdiction and with no outline plan. Accordingly, all of the buildings – both those now being constructed and those which already exist – in that settlement were unlawfully constructed.
9. Upon the discovery of the construction, a letter was sent on behalf of Petitioner No. 6, Yesh Din, to the Respondents. In that letter, a representative of the Petitioner, Yesh Din, called the addressees’ attention to the fact that illegal construction was going on within the confines of the settlement of Ofra, and that the construction in question was taking place on private Palestinian land.
10. The letter also stated that, notwithstanding the fact that most of the houses in the settlement of Ofra were constructed on properly registered land under private Palestinian ownership, and notwithstanding the fact that the great majority of the settlement of Ofra is located on private lands and has a similar planning status (or lack

of planning status), this does not make a wrong action right, nor does it justify the fact that the authorities are ignoring, and refraining from the enforcement of, the laws of planning and construction within the confines of the area under the supervision of the Respondents.

11. On June 2, 2008, the Head of the Civil Administration replied to the letter by the undersigned. In his letter, he confirmed all of that set forth above:

“I would like to state that the construction in question, in the settlement of Ofra, is illegal construction.

The area in question measures approximately 12 dunams [1.2 hectares / 3 acres], which has been prepared for construction. It is located in the heart of the constructed area of the settlement (on private land).

Upon ascertaining the facts, on June 5, 2007, a stop work order was issued... along with an order to report to the Supervision Subcommittee.

The file which constitutes the object of the IC [illegal construction] was discussed by the Supervision Subcommittee on June 28, 2007, in the absence of the possessors, who had been today ordered to report. The Subcommittee decided to issue a demolition order and to give an extension of seven days for the restoration of the status quo ante.

On September 24, 2007, the demolition order was actually delivered.”

12. The Assistant to the Head of the Civil Administration concludes the letter in the following words: *“The continued handling and demolition of the buildings shall be determined in accordance with the procedures in force and the priorities with regard to handling of illegal construction”* – and these words, as we know from a rich experience in similar cases in the past, actually mean: **“when we obtain political approval”**, or, in simpler language: **“never”**.

C. The legal arguments

I – Concerning the legal status of the “settlement” of Ofra

13. The takeover of the lands of the Palestinian villages of Ein Yabrud and Silwad, which are located in the District of Ramallah, by Israelis for the purpose of constructing the settlement of Ofra, took place in 1975 and was accomplished by way of deception: the future settlers convinced the foreman on the construction site of a nearby military camp to hire them as workmen for the purpose of erecting fences. A few months after they started working there, the settlers – without the approval of any entity whatsoever – took up residence in the area of the abandoned Jordanian Army camp at on the lands of the villages of Ein Yabrud and Silwad. Only retroactively did the authorities give their permission for the settlers to dwell in that location. This was the first settlement to be established in Samaria.
14. Over the years, the settlement was expanded beyond the confines of the Jordanian camp, the lands whereof had allegedly been expropriated by the Israeli government, although the aforesaid expansion was devoid of any basis in law. In other words: the expansion of the built-up area of Ofra was mostly, if not entirely, accomplished on real

estate registered at the Land Registry Office as under private Palestinian ownership. By means of various orders issued by the Military Commander over the years – confiscation orders for military purposes and expropriation orders for public purposes – the authorities took over additional private Palestinian lands for the purpose of paving roads to Ofra and/or the protection of its settlers. **However, the area of jurisdiction of the settlement was never established!**

15. Furthermore: aside from the Government resolution which allowed the construction of a settlement within the confines of the military, nothing was done, from the standpoint of the authorities, to regularize the borders of the settlement or its statutory status. **No outline plan or detailed plan was ever drawn up for the settlement**, and the construction therein is being performed in accordance with a building code which was formulated and prepared by the Cooperative Society and on its behalf, when it is obvious to all and sundry that this code is devoid of any statutory status. Admittedly, the building code states that, in order to complete the construction processes in the settlement, it shall be necessary to obtain the approval of the Local Planning and Construction Committee of the Mateh Binyamin Regional Council. The latter, however, is **devoid of any authority to approve construction without the existence of a valid outline plan, and, in any event, most of the land area of the settlement cannot in any way be included within the jurisdiction of the Binyamin Regional Council, because it is private Palestinian land which was never expropriated or confiscated.**
16. It is not impossible that the authorities deliberately refrained from creating an outline plan for the settlement. This is because even the part which had allegedly been expropriated, and on which one parcel is located (the confines of the abandoned Jordanian camp), is an area under private Palestinian ownership which was expropriated for “military purposes”. The existence of an outline plan for the settlement would have exposed the principal purpose for which the military expropriation was required – the construction of an Israeli settlement on private Palestinian lands in the heart of the West Bank.
17. All this means that the picture which comes to light is a gloomy one indeed. The authorities, and primarily the Civil Administration, which fulfills the role of a sovereign authority on the ground and is required to act as the trustee of that sovereign authority, which manages and is *de facto* responsible for the occupied territory, knew full well of the colossal building offenses which were being committed in the settlement of Ofra; they knew, and they did nothing. They knew, and they continued to close their eyes to the continued construction of the Buildings on private Palestinian lands – and the breaches which that construction involved. They knew and they saw, and they allowed the continued harm to the Petitioners’ rights, and the crushing of the rule of law in the West Bank, to rush forward undisturbed.
18. The report on the unauthorized outposts, which was commissioned by then Prime Minister Ariel Sharon, and which was written by Talia Sasson, Attorney at Law, who was then serving as Deputy Attorney General – (*Interim Opinion Concerning Unauthorized Outposts* (March 2005) – defined a number of criteria for the definition of an outpost as illegal. According to the Sasson Report, in order for a settlement to be considered legal, it must comply with **all** of the following **cumulative** criteria:
 - (a) A Government resolution concerning the construction of a settlement.
 - (b) A declared area of jurisdiction.

- (c) Planning and construction plans approved as required by law.
 - (d) The construction of the settlement on State lands or lands which were purchased by Israelis, and not on private Palestinian lands.
19. As a parenthetical note, we shall state that the Petitioners dispute the differentiation between a “settlement” and an “outpost”, and consider them all to be gross violations of international law regarding the laws of war and belligerent confiscation. In any event, it may be seen that the settlement of Ofra complies solely and exclusively with the first criterion (the existence of a Government resolution), and the majority of its land area *prima facie* complies with the fourth criterion. **In the absence of compliance with the remaining criteria, as set forth in the Sasson Report, what we have here is an outpost, or a hybrid which is to be considered as an illegal and unauthorized outpost. What is before us, then, is an illegal settlement, or, at the very least, “an especially large illegal outpost”.**

II – Concerning the status and rights of the Petitioners

20. Petitioners No. 1 through No. 5 are protected civilians located in an occupied territory, and the lands owned by them – the lands on which the Buildings which constitute the object of this petition are being constructed – are also protected. By virtue of their status as civilians in occupied territory, they have the status of “protected civilians”, according to international humanitarian law.
21. One of the duties incumbent upon occupying force by virtue of international humanitarian law is the preservation, *inter alia*, of the property of the protected population. Article 46 of the Hague Convention states that:

Art. 46. Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.

22. The duty which is incumbent upon the military entity in the area also includes the duty of protecting the property of protected individuals in the occupied territory. The Honorable Court, in the past, expressed this concept in the following words:

“The duty of the military commander, according to the basic rule, is a dual one. First of all, he must refrain from actions which harm the local residents. This is his ‘negative’ duty. Secondly, he must perform actions required by law, which ensure that the local residents shall not be harmed. This is his ‘positive’ duty.”

(High Court of Justice 4764/04 – Physicians for Human Rights et al. v. Commander of IDF Forces in Gaza, PD 58 (5), 385, at 393-394.)

23. **It may be seen that, both according to international humanitarian law and pursuant to the provisions of Basic Law: Human Dignity and Freedom, the right of Petitioners No. 1 through No. 5 to the protection of their property is recognized and secured. At the same time, Respondents No. 1 through No. 4 are subject to the duty of ensuring the exercise of the Petitioners’ property rights in the lands under their ownership, or, at the very least, ensuring that the Petitioners are not harmed.**

To the sorrow of the Petitioners and the shame of the State, the authorities which are in charge of enforcement are systematically refraining from enforcing the law – and we shall expand on this point below.

III – As a “satellite view”: the non-enforcement project of the Department of Supervision and Enforcement in the Civil Administration

24. Tens of thousands, and perhaps hundreds of thousands, of words have been written on the absence of any effective law enforcement against law-breaking Israelis in the West Bank. The problem of enforcing the law on Israelis has accompanied the Israeli occupation since the settlement enterprise began.

25. Article 43 of the Hague Convention establishes the authority **and the duty** of the military commander in the area to maintain order and security in the area under his control. To this, we must add that set forth in Article 27 of the Hague Convention, which states that:

“Protected persons are entitled [...] and they shall be especially protected against any act of violence, or threats of violence [...]” (Emphasis added by us: M.S., S.Z.)

26. The duty incumbent upon the Respondents, as set forth above, is a duty which requires active action toward enforcement of the law. As the Supreme Court has ruled:

“There can be no doubt that one of the principal duties which is incumbent upon the military commander, within this framework, is the duty of maintaining compliance with the law in the area.”

(See High Court of Justice 9593/04, **Rashed Murar, Head of the Kafr Yanun Council v. Commander of the IDF Forces in Judea and Samaria**)

The takeover of the lands of Petitioners No. 1 through No. 5 by the settlers, and their treatment thereof as their own property, with no real hindrance by the Respondents, accordingly constitutes a breach by the Respondents of all of their duties under international humanitarian law, and a breach of the duties incumbent upon the Respondents by virtue of Israeli law.

27. The situation which is described in this position is grave and infuriating. This is grave and protracted conduct, whereby [the Respondents] are closing their eyes and giving “tacit permission” to building offenses of colossal dimensions which are being committed on private Palestinian lands, all for the purpose of expanding a settlement which is devoid of any legal status and has no outline plan and no area of jurisdiction. The authorities are obviously aware of this situation and are doing absolutely nothing about it (not to mention demonstrating their indifference).

28. In the absence of any comments, or any steps toward enforcement, by the authorities, the Petitioners have no further choice but to seek relief from the Honorable Court and ask it to force the authorities to fulfill their legal duty and carry out what is incumbent upon them.

29. Accordingly, with regard to these Respondents, we are asking the Honorable Court to issue an order which shall require them to immediately take all of the measures which shall prevent the continuation of the illegal construction.
30. Our position is that, by failing to issue stop work orders immediately – and alternatively, should it transpire that such orders have been issued, by failing to enforce them – Respondents No. 1 through No. 4 are in breach of their legal duties. Moreover, our position is that the Military Commander not only has the authority to issue and enforce such orders, but also, in cases such as the case before us – it is **compulsory** for him to issue this order, and to take all of the measures required for enforcement thereof.
31. In addition, we shall state that the tens of buildings which have been constructed over the years in the settlement of Ofra, with no interference and no supervision in recent years, were built with the full awareness of the authorities, and nonetheless, the completion and occupancy thereof were not prevented. As we may recall, all of the construction in question was carried out in the absence of an outline plan for the settlement and in the absence of a defined area of jurisdiction for it, and the situation runs counter to the applicable law in the area.
32. Now therefore, in the case before us, the unfortunate outcome on the ground *proves, clearly and beyond all doubt, that the competent authorities have evaded, and are still entirely evading, their duty of enforcing the law, and that they are unreasonably refraining from carrying out their duties.*