

Mandates of the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the human rights of internally displaced persons

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(Please use this reference in your reply)

11 May 2022

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and Special Rapporteur on the human rights of internally displaced persons, pursuant to Human Rights Council resolutions 1993/2A, 43/14 and 41/15.

Recent developments force us, collectively, to bring to the urgent attention of your Excellency's Government information we have received concerning the **recent judicial ruling that gives rise to an imminent risk of forcible transfer of about 1,200 Palestinian residents from their homes and communities in Masafer Yatta.**

According to the information received:

On 4 May 2022, the Israeli High Court of Justice rejected petitions against eviction orders issued to Palestinian inhabitants of several hamlets in Masafer Yatta, south Hebron Governorate, the area your Excellency's Government has designated as a closed military training site, "Firing Zone 918."

The concerned area includes 12 Palestinian villages and has been inhabited by Palestinians for many decades before its designation as "Firing Zone 918" in the 1980s. The residents have long maintained a traditional way of life, relying on farming and husbandry of sheep and goats for their livelihood. In November 1999, the Israeli Defense Force purportedly transferred over 700 residents by force out of the area, destroyed their homes and water cisterns, and seized their properties. The residents were allowed to return to their villages following a petition filed to the Israeli High Court of Justice in 2000. However, pending the Court's decision, the residents have lived under constant threat of forcible transfer, wanton and extensive destruction and dispossession of their properties. Israeli forces in the occupied Palestinian territory have reportedly demolished or confiscated 217 Palestinian structures in Firing Zone 918 since 2011, displacing 608 Palestinian residents, significantly increasing protection risks faced by the communities, and causing irredeemable damage to people's homes and source of livelihoods.

It is worth noting that on 16 January 2013, Israeli legal experts submitted an opinion to the Court in relation to the petition filed by residents of the villages in Firing Zone 918, in which they argued against the intention to transfer them

from their homes. The opinion addresses the status of article 49 of the Fourth Geneva Convention and challenges the existence of military necessity in order to accommodate needs for military training, in this case.¹

In its decision of 4 May 2022, the Court found that the claimants failed to prove that they were permanent residents in Masafer Yatta before the 1980s, despite evidence showing that the area has been inhabited for decades. The Court also dismissed the argument that forcible transfer is prohibited under international humanitarian law, on the basis that it is a treaty obligation that does not reflect customary international law or the domestic law of Israel, and that the provision is intended to prevent mass deportations of a population in an occupied territory for the “purpose of extermination, execution of forced labor or the achievement of various political objectives, and does not apply to the circumstances of our case.”

The Court’s decision brings to a likely end the legal proceedings that lasted for more than two decades, as the affected Palestinian residents have, with near-certainty, exhausted all domestic legal remedies. The decision allows the Israeli Defense Minister and the Military Commander to proceed to implement the eviction orders to use the area for purposes of military training, thereby forcibly transferring over 1,200 Palestinian residents, including over 500 children, and destroying their properties.

Over the past 55 years, the Israeli Government has established closed military areas in the occupied Palestinian territory, designating nearly 30 per cent of Area C as firing zones. The designation of firing zones has resulted in the confiscation and seizure of hundreds of thousands of dunams, including farmland and pastureland, from its Palestinian owners and residents in at least 38 Palestinian communities. This practice has allowed Israel to establish and expand settlements, comprising both residential neighborhoods, which are now home to over 600,000 settlers, agricultural lands, and industrial zones.

While we do not wish to prejudge the accuracy of these allegations, we express serious concern that the Court’s ruling will effectively allow the forcible transfer of the Masafer Yatta residents to be carried out, in grave breach of provisions of international law, including international humanitarian, criminal and human rights law.

The legitimacy of the Court’s decision is questioned on a number of grounds. As independent experts in various fields of international law, we read with serious concern that the Israeli High Court, a civil court and the highest jurisdiction in the Israeli system, rendered a ruling that affirmed the primacy of domestic law over international law, including customary law and jus cogens. International law should prevail over contrasting domestic law in case of normative conflicts; and be, in the case of customary international law, self-executing (as further elaborated below). This

¹ Yuval Shany, David Kretzmer and Eyal Benvenisti, “Experts Legal Opinion In relation with the Petition filed by Residents of Villages in Firing Zone 918 against the Intention to Transfer them from their Homes”, 16 January 2013, available at: <https://law.acri.org.il/en/wp-content/uploads/2013/02/918-legal-opinion-SKB.pdf> (unofficial translation).

is particularly relevant, considering the number of erga omnes prohibitions that this Court's ruling, as well as the policy that it seems to uphold, appear to breach. Dismissing as not relevant or not binding, norms and principles that are foundational of international law is a worrisome indication that the Israeli judicial system is supportive of laws and practices that have progressively crystallized the subjugation of the Palestinians in the occupied Palestinian territory. A Court that does not provide justice based on international norms and that perpetuates the violations of fundamental human rights of people who have been under a military occupation for 55 years, becomes itself part of the structural discriminatory system of oppression.

Contrary to the claim of the Court, the Geneva Conventions – that your Excellency's Government has ratified – have attained the status of customary international law, and as such, are binding on all States and international organizations. The applicability of the 1949 Fourth Geneva Convention to the situation in the occupied Palestinian territory has been the subject of consecutive legal reaffirmation (see the ICJ Advisory Opinion on the Wall 2004) as well as political affirmation (last but not least, UNGA res A/RES/76/82 of 9 December 2021).

Article 49(1) of the Fourth Geneva Convention reads as follows:

“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.”

Rule 129 of the ICRC Customary IHL Study reads: "Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand." In that regard, we recall that an occupying power is inherently limited in activities it can lawfully undertake in an occupied territory.

The prohibition on forcible transfer detailed in this provision, cannot be interpreted – as the ruling appears to suggest – in any way as being limited to ‘mass transfer of population in occupied territory for the purpose of extermination, execution of forced labor or the achievement of various policy objectives’, against the text of the prohibition, commencing with the explicit qualifier ‘individual’ when referring to the typologies of forcible transfer. Forcible transfer is defined as a war crime and a crime against humanity in the Rome Statute. “Forcible” in the context of the Rome Statute has been interpreted to mean not only physical force, but may also include “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.” While exceptions can be made, these are only permitted when evacuation of an area is required for security of the population or reasons of imperative military necessity, and in those cases, such evacuation must be temporary. This does not appear to be the case based on the circumstances of this case, as also argued by Israeli scholars in the expert opinion mentioned above. Further, if invoked, occupying powers do have specific duties to the evacuees, including the provision of accommodation, food, hygiene and other crucial needs.

Irrespective of the alleged failure of the claimants to prove that they were permanent residents in Masafer Yatta before the 1980s, the requirement that residents show permanent residence in a particular area to be able to benefit from the guarantees of the Fourth Geneva Convention finds no basis in international law. The residents' protection is absolute, and their displacement cannot qualify as temporary evacuations for reasons of military exigency, permitted under international humanitarian law.

Article 49 of the Fourth Geneva Convention further states that evacuated persons "shall be transferred back to their homes as soon as hostilities in the area in question have ceased." The reference to hostilities highlights the high threshold of "imperative military reasons". Similarly, the authoritative commentary to the Fourth Geneva Convention refers to "military operations". Firing zones would clearly fall below the threshold of "imperative military reasons". Therefore, expelling resident communities from closed military zones – or firing zones – for the purpose of generalized training of its armed forces is not permissible, and alternative training grounds are available within Israeli metropolitan territory where it may conduct such trainings. While the security of the civilian population appears to be neglected, the ruling appears to take for granted the military necessity justifying the forcible transfer. It is unclear why, in the eye of the Court, military training taking place in an illegally occupied territory constitutes stronger justifications than the claims for residence and security of tenure of the local protected population. Construing which rights deserve protection, *de facto* excluding the indigenous population from enjoyment of their rights, should be foreign to a Court of Law.

Protected persons cannot renounce their rights under the Fourth Geneva Convention even if they chose to do so. Article 8 provides that in no circumstances can inhabitants of an occupied territory renounce their rights under the Fourth Geneva Convention. Whether on their own initiative or as a result of coercion, such a renunciation would be null and void. This is to prevent the occupying authorities, acting from a position of strength, from exploiting the weak position of the inhabitants of the territories and thus to abrogate, apparently legally, the protections guaranteed by international law.

We wish to further recall that article 53 prohibits "[a]ny 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" except "where such destruction is rendered absolutely necessary by military operations".

Forcible transfer is also a grave breach of the Fourth Geneva Convention under article 147, and article 8(2)(b)(viii) of the Rome Statute criminalizes the "transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory".

Since this situation undoubtedly poses a concrete risk of forced evictions, we would also like to draw your Excellency's Government's attention to article 11 (1) of

the International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by Israel on 3 October 1991, which recognizes the right of everyone to an adequate standard of living for himself and his family, including the right to adequate housing. In interpreting this provision, the Committee on Economic, Social and Cultural Rights stressed in its General Comment No. 4 that the right to housing includes guarantees of: (a) legal security of tenure; (b) availability of services, materials, facilities and infrastructure; (c) affordability; (d) habitability; (e) accessibility; (f) location; and (g) cultural adequacy. We further recall that in both General Comments No. 4 and 7, the Committee stresses that forced evictions are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law. Furthermore, there is an obligation to provide adequate legal protection from forced eviction, as well as to guarantee due process, alternative accommodation, and access to an effective remedy of those that are affected by eviction orders.

The destruction of property - that Palestinian communities in the areas have been subjected to for over 20 years - is strictly forbidden under international human rights law. According to the above-mentioned General Comments, Israel must refrain from undermining the right to adequate housing and security of tenure of the Palestinian communities living in the area under its control, pending the urgent dismantlement of the occupation of the Palestinian territory as demanded by numerous UN resolutions, following UN Security Council resolution 242 of 1967. In the present case, there is no evidence of any military necessity that can justify the homelessness of about 1,200 persons, including over 500 children.

The prohibition on forced eviction and forcible transfer is also in line with the Guiding Principles on Internal Displacement. The Guiding Principles define internally displaced persons as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”. Principle 6 provides that “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence”. Principle 6 (b) states that arbitrary displacement includes displacement in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand. As explained above, the available evidence suggests that the grounds on which displacement would be permissible are not met in this case and the eviction of the Palestinian inhabitants of Masafer Yatta could amount to arbitrary displacement. Moreover, Guiding Principle 7 states that “Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether.” Guiding Principle 9 further provides that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.” This is particularly relevant given the status of protected persons of Palestinians in the area, over which your Excellency’s government cannot exercise sovereignty, in line with Palestinian right to self-determination.

Furthermore, the Court's ruling in this case sheds light on the difficulty to disentangle the legal and judicial system of your Excellency's Government from its policies and practices in the occupied Palestinian territory. This is also manifested by the fact that some of the High Court's judges delivering this ruling are themselves civilians transferred to the occupied territory, as residents of settlements. With regard to the necessary guarantees of independence of the judges delivering the decision, we recall that international law requires that the judges shall be impartial and ensure the appearance of impartiality in the discharge of their judicial functions. According to the Code of Judicial Ethics of the International Criminal Court, judges must avoid any conflict of interest, or being placed in a situation that might reasonably be perceived as giving rise to a conflict of interest. While the Basic Principles on the Independence of the Judiciary guarantee members of the judiciary freedom of expression, belief, association, and assembly, it stipulates that "judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary." The dignity of their office and the independence of the judiciary cannot be upheld in violation of international law or serve to justify a system that is, in itself, a distortion of what international law aims to protect.

In reference to the expansion of settlements – which remains illegal under international law - we wish to recall article 5 of the Convention on the Elimination of Racial Discrimination, which poses an obligation upon State parties to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the rights, inter alia, to: equal treatment before the tribunals and other organs administering justice; security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; freedom of movement and residence; and housing. The stark contrast between the treatment enjoyed by the settlers illegally residing in the occupied Palestinian territory and the Palestinian residents, including in the allocation of land, is a matter of serious concern for us and the international human rights system that we are part of.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of this matter, we would appreciate a response on the steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please describe measures being taken in order to ensure that the Masafer Yatta residents are afforded the protections required by the

Fourth Geneva Convention, particularly the prohibition on forcible transfer. In particular, please provide assurances that the Government of Israel will not enforce orders or implement plans for forcible transfers, forced evictions or demolitions.

3. Please describe measures being taken in order to ensure that the Masafer Yatta residents are afforded the protections required by the Covenant on Economic, Social and Cultural Rights, particularly the prohibition against forced evictions and the security of tenure.
4. Please provide information on measures taken to ensure compliance with the Guiding Principles on Internal Displacement and the prohibition of arbitrary displacement of any individual.
5. Please provide information on the plan envisaged and any measures being taken to proceed with the dismantlement of the military occupation and the illegal settlements in the occupied Palestinian territory as required by international law.
6. Please provide information on remedies available to the affected residents and any steps taken to facilitate the return of Palestinian families and communities already subjected to forcible transfer or eviction to their original dwellings.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to halt the alleged violations and prevent their re-occurrence, and in the event that investigations support or suggest the above allegations to be correct, to ensure accountability of any person responsible.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue in question.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please note that a copy of this letter will be simultaneously transmitted to the Palestinian authorities.

Please accept, Excellency, the assurances of our highest consideration.

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