

October 3, 2022

H.E. Mr Karim Khan  
Prosecutor  
International Criminal Court  
The Hague

Your Excellency,

Re: **Urgent need for preventive intervention – Israel moving forward with war crime of forcibly transferring some 1,000 protected persons from their homes in occupied territory**

Israel is currently working to expel about 1,000 Palestinians from the South Hebron Hills in the West Bank and destroy their communities, by making the conditions they live in so unbearable they are forced to leave the area they have lived in for generations. While these efforts have been underway for decades, Israel has recently massively stepped them up – in scope, severity, and frequency. This, following a May 2022 ruling by the Israeli Supreme Court – which contravened international law provisions and basic moral principles – that the residents have no right to live on the land and there is no legal impediment to expelling them.

We request your urgent intervention to prevent Israel from continuing to carry out this policy and clarify to the Government of Israel that the forcible transfer of residents from their homes – either directly or through the establishment of a coercive environment – constitutes a war crime under Article 8(2)(a)(vii) of the Rome Statute.

### **Background**

In the early 1980s, Israel declared about 3,000 hectares of land in the South Hebron Hills “Firing Zone 918”. At the time, dozens of Palestinian families had been living in 12 small villages in the area, known as Masafer Yatta, for many years, dating back before Israel occupied the West Bank in 1967. The families lived in natural or man-made caves, some permanently and others on a seasonal basis, and subsisted on farming and shepherding.

In the years after the declaration, the communities remained virtually undisturbed and continued to cultivate their land and graze sheep. In late 1999, in a sharp policy change, Israel expelled the 700 or so residents living there at the time on the grounds they were dwelling within a firing zone. The residents petitioned the Supreme Court against the expulsion. The Court issued an interim order forcing the state to allow them back in their homes, pending a ruling in the petition. Over the years, the original petitions were struck out and new ones submitted, but the interim order remained in effect – until May 2022, when the Court handed down its final ruling.

While the 1999 interim order did enable the residents to return to their homes, over the years Israel did everything in its power to make their lives unbearable, trying to force them to leave ostensibly of their own accord. Among other actions, the state barred them from constructing homes or structures needed for livelihood, and prevented them from connecting to water, power and road networks – effectively sentencing them to life in inhuman conditions. With no choice left, the residents built structures without permits, for which the state quickly issued demolition orders, implementing some of them. Since 2006, B'Tselem has documented the demolition of 66 residential structures in these communities that were home to 355 people, 175 of them minors. Since the beginning of 2012, B'Tselem has also documented the demolition of 32 non-residential structures in these communities.

Another of the state's means for pressuring these communities is settler violence. Jewish settlers physically assault Palestinian shepherds and use their land, sabotage water sources, and enter homes, among other violent acts, with full state backing and often the active participation of Israeli soldiers and police.

A few months ago, in May 2022, more than 20 years after the first petitions were submitted, the Supreme Court ruled there was no legal impediment to expelling the residents from their homes. The Court held that the military commander's power to declare a firing zone within the occupied territory, enshrined in military decree, overrides the restrictions laid out in international law on the occupying power's use of the land. It also determined that the prohibition on transferring residents from their homes does not apply in this case, as it only refers to mass deportation. The Justices devoted most of the ruling to the question – irrelevant in terms of international law – of whether the petitioners were permanent residents of the territory prior to its declaration as a firing zone, and found they were not. This entirely overlooked the documents, affidavits, aerial photographs and opinions submitted to the Court, showing unequivocally that Palestinian communities have been living in the area for generations, years before Israel occupied it.

### **Developments on the ground since May 2022**

Since the Supreme Court handed down its ruling, Israel has escalated the measures it uses to commit a war crime and try and drive the communities out. As such in recent months the military conducted in the area activities presented as military trainings, which included the usage of live fire and the movement of armed vehicles, including tanks, in and around the Palestinian communities.

In addition, Israel has stepped up its efforts to cut off residents from their lifelines, making it increasingly difficult for them to reach the nearest major town – Yatta – and the village of a-Tuwani. In pursuit of this end, the army has placed roadblocks on major routes and in-between the Palestinian communities and soldiers confiscate residents' vehicles using various excuses. This has a dramatic effect on the residents, for in this remote, sparsely populated area, with no public transportation, it is virtually impossible to move about without vehicles.

The roadblocks also serve Israel's efforts to conceal from the world its true agenda in the area and the outcomes of its policy. Soldiers at roadblocks make it difficult, and often

outright prevent, access to humanitarian agencies, human rights organizations, activists, journalists, and diplomats.

As a result of these escalations, life for Palestinian residents has become a nightmare characterized by daily threats to person and property from soldiers and settlers, noise and air pollution, daily harm to infrastructure, incessant invasion of privacy and complete uncertainty regarding the future.

Incidents documented in the area in the last few months only, detailed in the attached addendum, strongly illustrate this Israeli policy and its impact on the ground.

### **Israel's goal: transferring the land to Jewish-Israeli hands**

The Israeli apartheid regime, which controls the entire area between the Jordan River and the Mediterranean Sea, operates on the notion that land is a resource meant to benefit the Jewish population only; accordingly, it works to take over more and more land.

This policy is in action also in the South Hebron Hills, where Israel has been trying to take over land for many years and designate it for Jewish use. The Joint Settlement Committee of the Government and the World Zionist Organization (WZO) held a meeting on 12 July 1981, whose minutes indicate that declaring the firing zone was meant to further this goal. The committee chair, then-Minister of Agriculture Ariel Sharon, instructed the military to close off land in the South Hebron Hills for military training in order to prevent "Arab villagers spreading from the hills towards the desert."

Israel has also indicated its wish to take over land in the area through efforts to create Jewish-Israeli contiguity on either side of the Green Line. For example, a WZO Settlement Division plan slated the area for a "buffer zone" that would separate Palestinian villages there from the Bedouin population inside the Green Line. In the July 2000 Camp David negotiations over a permanent agreement with the Palestinians, then-Prime Minister Ehud Barak proposed that Israel annex 13% of the West Bank and retain another 10% for many years. Parts of the South Hebron Hills, including the section declared a "firing zone", were among the areas Israel proposed to retain.

To further this goal, Israel is also working to strengthen settlements in the area, all established in violation of international law and some also in breach of Israeli law, and is creating a settlement bloc stretching from northeast to southwest: from Carmel, through the Issachar Mann farm, Maon and Havat Maon, to Avigayil and Susiya. That is why no settlements were included in the "firing zone," and why the state has allowed bordering settlements to build inside it without enforcing demolition orders.

### **Israel moving forward with war crime**

Article 49(1) of the Fourth Geneva Convention prohibits the transfer of protected persons living in occupied territory. Indeed, since 1999 the Israeli apartheid regime has avoided the direct implementation of transfer. Instead, it has opted to achieve the same outcome through indirect means: enforcing a coercive environment. This tactic may better obscure Israel's original intent to transfer the Palestinian population, but there's no ambiguity about it: Israel's goal remains intact and its policy – which, as mentioned above was dramatically

escalated in recent months – is meant to force the 1,000 or so Palestinian residents of the South Hebron Hills into a humiliating bare-bones existence, making their lives miserable enough so that they will leave their homes and land, and the state will take over the area. This is a criminal policy.

We request your urgent intervention in this case in order to allow these communities to live with dignity, basic security and certainty about their future. When Israel sought to expel the Palestinian community of Khan al-Ahmar (located east of Jerusalem), intervention by the Office of the Prosecutor (October 2018) stopped Israel from carrying through the plan for fear of an ICC investigation. Israel’s minister of foreign affairs at the time, Israel Katz, later explained in a radio interview that the expulsion was shelved since “we decided in the cabinet that this was a sensitive point that could determine the decision of the prosecutor from Gambia (*sic*) whether to launch an investigation against Israel.”

Although this declared Israeli policy has been already under implementation for years, there are certain Israeli officials who are responsible for its current execution. We do not possess a complete list, yet the responsibility of top Israeli echelons for the criminal policies being currently applied in the South Hebron Hills is undoubted. These include the prime minister, the defense minister, the chief of staff, the OC Central Command, the head of the Civil Administration, and the Supreme Court justices who legally sanctioned the policy.

With the highest consideration,

Hagai El-Ad  
Executive Director

A handwritten signature in black ink, appearing to read 'Hagai El-Ad', is written over the typed name and title.