

**Expulsion of Residents
from the South
Mt. Hebron Area,
October-November 1999**

בצלם
B'TSELEM

The Israeli Information Center for
Human Rights in the Occupied Territories



מרכז המידע הישראלי לזכויות האדם בשטחים [ע.ר.]

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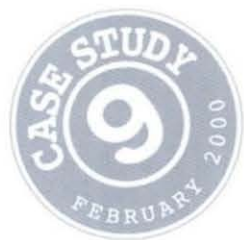
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Introduction

During October-November 1999, some 700 residents of the South Mount Hebron area were expelled from their homes.¹ For dozens of years they had been living in caves and shacks in Mufqara, Tuba, linba, and other sites.² Their source of income was farming and grazing. Some of the residents have documents proving their ownership of the land.³

Since being expelled, the residents, together with their flocks, have been living with acquaintances or in rented houses in nearby villages, among them Tawaneh and Ma'in, under harsh conditions. Their access to the land where they had lived is currently restricted to Fridays, Saturdays, and Israeli holidays, making it impossible for them to cultivate their land or graze their animals as they had in the past. The Israeli Committee Against House Demolitions (ICAHN) is providing them with humanitarian aid until they are able to return to their homes.

In addition to residents who live in the caves and shacks throughout the year, the area also has seasonal residents from nearby villages, who come to work their fields. These persons, too, are

currently unable to enter their land and cultivate it.

On 21 January 2000, B'Tselem organized a gathering with the expelled residents. The purpose of the gathering was to return with them to their homes and plant olive trees there. Some 150 B'Tselem supporters and persons from other organizations participated. Despite efforts of the IDF to undermine the event, the gathering took place and received wide media coverage. The same day, *Ha'aretz* published a petition of seven leading Israeli writers calling on the government to allow the expellees to return to their homes. The petition was initiated by the ICAHD, which also organized other protests against the expulsion.

At the weekly Cabinet meeting on 23 January, Ministers Yossi Sarid and Haim Oron raised the issue of the expulsion. In response, Prime Minister Barak directed Deputy Defense Minister Ephraim Sneh to reexamine the expulsion decision.

Along with the public battle, two petitions against the expulsion were filed in the High Court of Justice. On 20 January, the Association for Civil Rights in Israel filed

1. See the figures below.

2. See the annexed map.

3. For a description of life in the caves, see Ya'akov Habakuk, *Life in the Mt. Hebron Caves* (Ministry of Defense - Lior Publishing, 1985).

a petition on behalf of four permanent residents who had been expelled from their homes.⁴ On 16 February, attorney Shlomo Lecker filed a petition on behalf of eighty-two Palestinians who had been harmed by the expulsion. Some of the latter petitioners live permanently in the area, some seasonally, and some are not residents of the area but own property there.⁵ The petitions have yet to be heard.

Despite the public pressure, the Civil Administration continues to prohibit the expelled residents from returning to their homes. On 11 February, Deputy Defense Minister Sneh informed ICAHD that he

had completed his examination of the matter and had decided not to allow the residents to return to their homes.⁶ Also, OC Central Command, Major General Moshe Ya'alon, informed four writers with whom he met concerning the expulsion that he does not intend to allow the expellees to return to their homes.⁷

This report documents the expulsion of the residents from their homes, noting the considerations involved in the decision to implement the expulsion. This report also describes the state's position, as presented to the High Court of Justice in *ACRI Petition*.

4. HCI 517/00, *Mahmud Hussein Jabber Hamamdch et al. v. Minister of Defense et al.* (hereafter: *ACRI Petition*).

5. HCI 1199/00, *Ahmad 'Issa Abu 'Aram v. IDF Commander of Judea and Samaria*.

6. These comments were made to B'Tselem by Amos Gevirtz, of ICAHD.

7. The meeting was held on 15 February. The writers who participated were David Grossman, Dalia Rabinowitz, S. Yizhar, and Haim Guri. Grossman provided this information to B'Tselem.

Background

Chronology

The area in which the expellees had lived was first declared a closed zone "for military needs" in the 1970s.⁸ Since then, several revised military orders have been issued regarding the area. The last order was issued on 5 May 1999. The state contends that it was made in "the context of updating closing [of areas] orders in Judea and Samaria upon reorganization of IDF forces in the area."⁹

On 5 October 1999, the residents of the area, except for those residing in Mufqara, received orders to vacate their homes. Following the orders, many families left, but some returned a short while later. At least 307 residents did not return because of threats by Civil Administration personnel that their property would be confiscated.

On 15 November, evacuation orders were served on residents of Mufqara. The orders stated that the residents had to vacate within twenty-four hours. The following day, soldiers came to the site and forcefully removed the residents of Mufqara and those who had not left the area pursuant to the order of 5 October.

The soldiers destroyed the residents' tents, sealed the caves where they lived, and drove away their flocks. The residents' personal property, including mattresses, blankets, utensils, and food for their animals, was confiscated. Two residents who refused to vacate were arrested and held for eight days. The hasty expulsion made it impossible for the residents to appeal the orders of evacuation and try to prevent being expelled from their homes.

Information collected by BTselem indicates that on that day at least 430 persons were evacuated. Altogether, during October and November, some 700 residents were evacuated from the area that had been declared a closed zone.

Although the area had been declared a closed military zone many years earlier, the residents continued to live in the caves almost undisturbed until at least June 1997. It was then that Israeli settlers established the Ma'on Farm nearby, within the closed zone, without governmental approval. The settlers harassed the caves' residents continuously. Residents reported cases in which settlers beat Palestinian children who were tending sheep, damaged their

8. *ACRI Petition*, response of the state, par. 3.

9. *Ibid.*, par. 6. Previous orders were issued on 30 June 1991 and 1 September 1992. See HCI 6754/97, 6798/97, 2356/98, *Yusuf Ahmad 'Awad 'Ali et al. v. Military Commander of the West Bank* (hereafter: *'Awad 'Ali*), response of the state, pars. 6 and 8.

property and burned their crops, drove away their sheep from the grazing lands, threatened them, and demanded that they leave their homes.¹⁰

Over the years, orders to vacate had been issued to the residents, and the army even destroyed some of the caves and confiscated some of their property. However, the violent expulsion and stubborn refusal to allow the residents to return to their caves were unprecedented.

In the past, the IDF had even reached agreements with representatives of the residents that ostensibly allowed them limited entry to their lands. In practice, these agreements were almost never implemented, and the residents could continue to live, work the land, and graze their flock there throughout the year. For example, in November 1986, the IDF reached an arrangement with the attorney of some of the residents that would allow residents entry to the closed military zone. According to the agreement, "permits would only by

granted for Fridays and Saturdays, and Israeli holidays, and for consecutive monthly periods twice a year (in the planting and harvesting seasons)."¹¹

After receiving new orders to vacate in October and November 1997 and April 1998, seventeen families, represented by attorney Linda Brayer, petitioned the High Court of Justice.¹² On 13 August 1999, the parties reached an agreement identical to that reached in November 1986, except for an addendum providing that residents whose source of income was affected could request a permit to enter the closed zone and apply for compensation for their lost income. When the agreement was reached, the petitions were dismissed.¹³

It is important to note that, contrary to the position taken more than once by Israeli officials, the fact that the High Court of Justice accepted the agreement does not indicate that the Court adopted the state's position that it has the authority to expel the residents from the area.¹⁴ These contentions mislead the

10. See testimonies below. See, also, Amos Harel and Sami Sokol, "Criticism of Settlers' Conduct in the Incident in which Dov Driban was Murdered," *Ha'aretz*, 20 April 1998; Sagi Green, "Lehu Resha'im Le'ehol Treyfot," *Ha'aretz*, 22 October 1999.

11. Letter from Captain Eval Zamir, assistant to the legal advisor for Judea and Samaria, to attorney Elias Khoury, 4 November 1986.

12. 'Aviad Ali.

13. 'Aviad Ali, judgment of 13 August 1999 (unpublished).

14. This position was stated, for example, in the letter of 29 December 1999 from Captain Ran Tal, assistant to the legal advisor for Judea and Samaria, to attorney Netta Amar, of ACRI. Captain Tal claimed that, "as regards the petitions dealing with the aforementioned firing zone, the Supreme Court accepted the position of the area's authorities that the petitioners did not live permanently in the closed area." Deputy Defense Minister Sneh wrote to MK Naomi Hazan on 11 January 2000 that, "On 5 August 1999, the High Court of Justice denied the petitions." At a meeting held on 15 February 2000 between OC Central Command and the writers Grossman, Rabinowitz, Yizhar, and Guri, Major General Ya'alon stated that the High Court of Justice approved the expulsion, and that there was, therefore, no intention to return them (Grossman provided this information to B'Tselem).

public and give the impression that the expulsion is lawful because it was done with the High Court's approval. In effect, the Court did not accept the military's position, and did not deny the petitions,¹⁵ but only accepted the agreement reached by the parties, which is a common occurrence. Furthermore, agreement was not reached with all the families expelled in November 1999, but only with the families who had petitioned the Court. The High Court of Justice also ruled explicitly that "nothing prevents the litigants from continuing to carry on discussions among themselves."¹⁶

Authority to Evacuate the Local Population from Occupied Territory

According to the Order Regarding Defense Regulations, the military commander has the authority to close any area, prevent entry thereto, and evacuate from the area any person who enters it without permission.¹⁷ However, the commander's authority to close the area is not absolute, and applies only as long as closing the area serves a vital military need, based on substantive considerations and intended to meet a proper purpose.¹⁸

15. Quite the opposite, Justice Dalia Dorner's decision stated that, in accordance with the notice of the State Attorney's Office, "The Respondent does not intend to evacuate or remove the applicants from the area in which they reside and from the area on which they graze their flocks, subject to the applicants being demanded to remove their flocks from the area in which the IDF conducts training" (our emphasis). Justice Dorner gave her decision on 16 May 1999.

16. 'Awad 'Ali, judgment.

17. Section 90 of the Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730-1970.

18. See HC1 69, 493/81, *Basil Abu 'Itta et al. v. Commander of Judea and Samaria et al.*, Piskei Din 37(2) 197, 285; HC1 392/82, *Iam'iyyat Iskan al-Mu'aliman al-Mahddudat al-Mas'uliyah, Teachers' Housing Cooperative Society, Duly Registered at Judea and Samaria Headquarters v. Commander of IDF Forces in Judea and Samaria et al.*, (hereafter: *Iam'iyyat Iskan*), Piskei Din 37(4) 785, 810; HC1 2320/98, *'Abd al Fatah Mahmud v. Commander of IDF Forces, Takdin Elyon* 98 (2) 571; Georg Schwartzenberger, "International Law as Applied by International Courts and Tribunals," Vol. 2: *The Law of Armed Conflict* (London: Stevens & Sons, 1968), p. 253.

International law provides that the occupying country must act in accordance with two principles: on the one hand, the welfare of the local population, and on the other hand, military needs.¹⁹ It should be noted that many jurists hold that, as the duration of the occupation increases, the needs of the local population attain greater weight, and override military needs.²⁰ In any event, where there is no alternative to evacuating residents from their homes, compensation must be paid to those who are harmed by the evacuation.²¹

According to the Fourth Geneva Convention, transfer of the local population is allowed only "if the security of the population or imperative military reasons so demand."²²

According to the commentary to this

article by the International Committee of the Red Cross, "Evacuation is only permitted... when overriding military considerations make it imperative; if it is not imperative, evacuation ceases to be legitimate."²³ In any case, the evacuation must be temporary, and the occupying country must supply the evacuees with alternative housing and basic living conditions.²⁴

It is clear that closing the area and evacuating the residents was not done for their welfare. Therefore, in order for the expulsion to be legal, both Israeli and international law require that it be done for a necessary and pressing military need, where the state has no option other than evacuating them from the area. As will be shown below, such was not the case in this instance.

19. See the comments of Justice Aharon Barak in *Iam'iyat Iskan*, pp. 794-795: "The Hague Regulations revolve about two main pivots: one - ensuring the legitimate security interest of those holding the land by belligerent occupation; and the other - ensuring the needs of the civilian population in the territory subject to belligerent occupation."

20. See *Iam'iyat Iskan*, pp. 801-802; Yoram Dinstein, *Laws of War* (Tel-Aviv: Schocken, 1983), pp. 216-217; Antonio Cassese, "Powers and Duties of an Occupant in Relation to Land and Natural Resources," in Emma Playfair (ed.), *International Law and Administration of Occupied Territories* (Oxford: Clarendon Press, 1992), p. 439.

21. Hague Regulations on the Laws and Customs of War on Land (The Hague, 18 October 1907), article 52.

22. Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, article 49.

23. Jean S. Pictet (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), p. 280.

24. Dinstein, *Laws of War*, p. 225.

Political Considerations in Expelling the Palestinian Residents

Examination of the circumstances under which the area was closed and the residents expelled raises the suspicion that the state's contention that the area was needed for military training was made solely to conceal political considerations totally unrelated to "military needs."²⁵

The state contends that the IDF conducts infantry training in the area "all year long in four-month cycles, during which the entire area is used."²⁶ Since residents of the area "hinder the IDF's ability to conduct training and [the residents] endanger their lives," it is necessary to evacuate them from the area.²⁷

Testimonies of residents dispute this contention. They claim that, from the time that the area was first closed, the IDF did not conduct training in the area where they lived, nor did they conduct training there after they had been expelled from their homes.²⁸

Furthermore, the state's contention that the area is used as a firing zone year round raises several questions. It is unclear how the residents who were expelled could have lived there for many years, even for six months a year as the state contends, if the area was an active firing zone. It is also unclear why the evacuation orders given to the residents earlier were not enforced. In addition, no explanation is given for the fact that the Ma'on Farm settlement remained in the area for a year and a half before it was evacuated, despite the IDF's demand that the residents vacate the settlement. On this latter point, *Ha'aretz* reported in April 1998 that the Civil Administration requested that residents of Ma'on Farm vacate the area, but "the Civil Administration settled for maintaining contact with the settlers and has not yet initiated court action. Since training is conducted in

25. *ACRI Petition*, response of the respondents, par. 1.

26. *Ibid.*, par. 8.

27. *Ibid.*, par. 24

28. The testimony of Matyar Ibrahim Maghanem, resident of Tuba, was given to B'Tselem fieldworker Raslan Mahagna on 21 February 2000 in Tuba; the testimony of Hani Salameh Shahadeh Makhmreh, resident of Maghayer al-'Abid, was given to Raslan Mahagna on 15 February 2000 in Tawaneh; the testimony of Nasser Muhammad Ahmad Rab'i director of Yata municipality, was given to Raslan Mahagna on 16 November 1999 in Yata; the testimony of 'Abd al-Hadi Yusuf 'Abd al-Hani Hantesh, surveyor for the Hebron municipality, was given to Raslan Mahagna on 21 February 2000 in Dura.

the area only infrequently, the defense establishment did not consider evacuation of the structure to be urgent."²⁹

It is important to note that Ma'on Farm was ultimately evacuated not because of the argument that it is located within a "firing zone," but in the context of an agreement between the government and the Judea, Samaria, and Gaza [settlers'] Council, and as part of the evacuation of other encampments established without permission in the Occupied Territories.³⁰

The fact that, over the years, the army did not conduct training in the relevant area is also apparent in the state's contention that, "the importance of the area as a firing zone recently arose, a result of the reduction of training areas available to the IDF because of the redeployment in Judea and Samaria, following which units were added, and will be added in the future, to the training program in the said area, thus increasing even further use of the firing zone."³¹ Thus, the pressing need in the area for a "firing zone" arose only afterwards, and the contention that the first order to close the area was issued in the 1970s because of "military needs"

cannot be accepted. Therefore, this order and all its subsequent orders are unlawful.

The state's argument that, because of Israel's agreements with the Palestinian Authority and IDF redeployment in the Occupied Territories, it has no alternative to conducting training in the area in which the expelled residents lived, is unconvincing. Even after redeployment of the IDF in the Occupied Territories, most of the West Bank is Area C, that is, under the sole control of Israel.³² However, large areas, some belonging to settlements, that could serve as firing zones have never been used for that purpose.

The reason that the state used the argument that the area was needed immediately for military training was to justify its refusal to grant the residents any possibility of appealing their expulsion. According to the state, "where evacuation of a firing zone is involved, the area must be evacuated immediately, because allowing persons to remain in the area endangers their lives and affects the training that the IDF regularly conducts in the area."³³ In addition to the fact, mentioned above, that the IDF does not conduct training

29. Amos Harel and Sami Sokol, "Criticism of Settlers' Conduct in the Incident in which Dov Driban was Murdered" (our emphasis).

30. See Ze'ev Schiff, "The Bench and Shed Strategy," *Ha'aretz*, 11 October 1999; Nadav Shargai, "Barak Agreed to a Compromise, but Those at the Farm Were Opposed," *Ha'aretz*, 11 November 1999. On the agreement, see Nadav Shargai, "The Encampments Agreement - the Judea, Samaria, and Gaza Council's Version," *Ha'aretz*, 8 November 1999.

31. *ACRI Petition*, response of the respondents, par. 10.

32. After the second closing of the area, 61.2 percent of the West Bank remained in Area C. See Gina Pinto, "Evacuation of Ma'on Farm Completed," *Ha'aretz*, 11 November 1999.

33. *ACRI Petition*, response of the respondents, par. 30.

in the area, the argument regarding denial of the right to be heard was previously raised by the state in other matters, such as deportation from the Occupied Territories and demolition of houses. The High Court of Justice rejected this argument and ruled that the right to be heard is a fundamental right that may not be denied, even if the relevant law does not specifically grant it.³⁴

The unreasonableness of the state's principal contention - that the area is used as a firing zone - raises the suspicion that other, hidden, reasons exist for closing the area and expelling the residents. Examination of the circumstances of the case indicates two alternatives.

1. Ensuring Israeli sovereignty over the area under the final-status arrangement

As noted, on 15 February 2000, OC Central Command Ya'alon met with writers David Grossman, Dalia Rabinowitz, S. Yizhar, and Haim Guri. Ya'alon told them that Israel was about to reach a final-status arrangement and establish the final borders between Israel and the Palestinian Authority, and that it is in Israel's interest for the area to remain in Israeli hands.³⁵

On 21 February, *Ha'aretz* reported that "the defense establishment recommends

that Israel retain sovereignty over: ... the eastern block of the towns and villages of Mount Hebron (Susya, Ma'on, Karmel, with a link south in the direction of Biqat Arad)." This area is the area from which the residents were expelled.

Thus, Israel wants to attain, at the expense of those who were expelled, objectives on the eve of signing the final-status agreement. It is clear, therefore, that the residents were not expelled for a pressing military need, and that the order closing the area and the subsequent expulsion were, under these circumstances, illegal. As Justice Barak stated,

The military commander may not weigh national, economic, or social interests of his country insofar as they have no ramification on his security interest in the area, or on the interest of the local population. Even military needs are his [i.e., the military commander's] needs and not national security needs in their broad sense.³⁶

2. Connection with the evacuation of Ma'on Farm

On 10 November 1999, Ma'on Farm was evacuated following an agreement between Prime Minister Barak and the Judea, Samaria, and Gaza Council. The

34. See HCJ 358/88, *The Association for Civil Rights in Israel v. OC Central Command*, Piskei Din 43(3) 529 and HCJ 320/80, *Qawasmeh et al. v. Minister of Defense et al.*, Piskei Din 35(3) 113, 119. See, below, criticism of the state's contention that the necessity of using the area for training is immediate.

35. Ya'alon's comments were provided to B'Tselem by David Grossman.

36. *Iam'iyyat Iskan*, pp. 794-795.

expulsion of the Palestinian residents from their homes in the area took place a week later, on 16 November.

According to press reports, the expulsion of the Palestinians was part of the agreement. On 18 November, *Ha'aretz* reported that, "the evacuation [of the Palestinians] was conducted in accordance with an agreement between the government and the Judea, Samaria, and Gaza Council, pursuant to which both Jews and Palestinians would leave the firing zone on which the farm was built."³⁷ Prior to signing the agreement, the press reported the possibility of a compromise over evacuation of Ma'on, one possibility being "evacuation of the few Palestinians remaining in the area of the Farm."³⁸

The order closing the area in which the residents lived was signed as early as May 1999, and the evacuation orders

were served on most of the residents in October. Yet only after evacuation of Ma'on Farm did the army evacuate the Palestinian residents by force. The proximity of the events reinforces the suspicion that evacuation of the Israeli settlement and expulsion of the Palestinians were connected.

No parallel can be drawn, however, between the rights of the settlers and those of Palestinians expelled from the area. Unquestionably, even accepting the state's contention that the land is "state land," the right of Palestinians to live on land on which they resided for dozens of years, even if only for six months of the year, as the state claims, is substantially greater than the right of the settlers, who lived there for two and a half years, were strangers to the area, and whose settlement there violated international law.³⁹



Photo: Lior Yavne

37. Nadav Shargai, "Demonstrations in Gush Etzion against Palestinian Construction," *Ha'aretz*, 18 November 1999. See, also, Amira Hass, "Evacuation Orders Pending against Families of Palestinian Farmers in the Hebron Area," *Ha'aretz*, 11 January 2000.

38. Nadav Shargai, "Ministers Requested Barak to Postpone Evacuation of Ma'on Farm," *Ha'aretz*, 10 November 1999.

39. See B'Tselem, *Israeli Settlement in the Occupied Territory as a Violation of Human Rights: Legal and Conceptual Aspects* (March 1997).

The State's Position: They are not Permanent Residents in the Firing Zone

The Order Regarding Defense

Regulations states that the authority to remove a person who enters a closed area without permission does not apply to a person who is a "permanent resident of the closed area."⁴⁰ To justify the expulsion and to conceal the political considerations leading to the expulsion, the state contends that the persons expelled are not "permanent residents" in the closed area; rather, they only use the land for farming and grazing. Thus, the argument continues, the exemption does not apply to them, and the state is entitled to expel them.⁴¹

The state's attempt to focus the discussion on whether the expelled persons are permanent residents of the closed area should be rejected, since, as noted, the area was closed from the start without authority, and the state therefore certainly had no power to expel them. Even if they had not been living in the area, which was not the case, the state had no authority to expel them absent a pressing and authentic need to do so.

Furthermore, if we accept the state's position that the legality of the expulsion must be examined within the context of the military orders, the state errs in basing its argument on the contention that those expelled are not "permanent residents." The specific order closing the South Mount Hebron area provides an even broader exemption, pursuant to which the order does not apply to "persons living in the closed area."⁴² The fact that the specific closure order issued by OC Central Command Ya'alon changes the language of the general order, broadening the exemption, indicates that the explicit intent was to make it easier to meet the requirement of residency in the area, and did not require permanent residency to obtain the exemption.

The state raises a few contentions that prove, in its view, that the residents are not "permanent residents" of the closed area, and that they live in Yata village.

40. Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730-1970, sec.90(c).

41. *ACRI Petition*, response of the respondents, par. 16.

42. Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730-1970, closing area order no. 706/99, of 5 May 1999, sec. 4(2).

1. Yata is the Population Registry address of the persons expelled

The state argues that "the address that the petitioners provided to the Population Registry... is Yata."⁴³

Reliance on the Population Registry to prove that the expellees live in Yata is problematic for two reasons. First, the villages in which the expellees lived prior to the expulsion are not recognized by the Population Registry, and it is impossible to use them as an address. Second, the Order Regarding the Population Registry states that,

"Registration in the registry, every copy or summary of it, and any certificate given pursuant to this order shall be *prima facie* proof of the accuracy of the details of the registration mentioned in clauses... (13)."⁴⁴ Clause 13 mentions registration of address. As a result, registration in the Registry cannot provide definitive proof of place of residence, and the state may not rely on this registration when conflicting proofs are presented.

2. The residents own homes in Yata

A letter from the office of the legal advisor for Judea and Samara to attorney Netta Amar, of ACRI, states: "The persons mentioned in your letter have permanent homes in Yata. Therefore, we find no support for your contention that these persons are included within the term 'permanent resident' of the closed area."⁴⁵ Both the Deputy Defense Minister and the OC Central Command also used this contention to justify their decision not to allow the residents to return to their homes.⁴⁶

Attorney Amar's attempts to obtain precise information on the location in Yata of the homes of the persons expelled, or to clarify the basis upon which the state made its statement, were fruitless. Attorney Orit Koren, of the State Attorney's Office, indicated to attorney Amar by telephone that the information about the expelled persons having homes in Yata is of an

43. ACRI Petition, response of the respondents, par. 22.

44. Order Regarding Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729-1969, sec. 11A (our emphasis).

45. Letter of 28 December 1999 from Captain Ran Tal, assistant to the legal advisor for Judea and Samaria. See, also, ACRI Petition, response of the respondents, par. 23.

46. Deputy Defense Minister Sneh's comments were provided to B'Tselem by Amos Gevirtz, of ICAHD. The comments of the OC Central Command were provided to B'Tselem by David Grossman.

"intelligence nature" whose details may not be provided. In any event, she stated, the information does not include material on specific homes belonging to those expelled.⁴⁷

Two points raise doubt about this argument of the state. First, in many cases, the relevant house in Yata is owned by a member of the extended family, which does not mean that the house belongs to the entire family. It certainly does not indicate that all members of the family, and their flock of animals, can live there. If they had homes in which they could live, they would probably have moved into them after being expelled. This did not occur. Second, even if we accept the state's contention that all the expelled residents had an empty house in Yata, this does not prove that they were not living in the area from which they were expelled, since ownership of a property does not prove that the owner resides there.

The state used these two arguments to "prove" that the Palestinians do not reside in the closed area. According to the state, land-ownership records proffered by the Palestinians regarding the land within the closed area are unconvincing, since "they explicitly state that the land belongs to the head of a family that contains many sons. Even if it indicates an ownership relationship with the land in the firing zone, it does not indicate anything about staying on

the land, and certainly nothing about permanent residency."⁴⁸

Therefore, according to the state's reasoning, ownership of property proves permanent residency only if the houses are in Yata, and not if they are in caves within the area closed by the IDF.

3. The Palestinians maintain seasonal residence in the area

According to the state, "information collected by the Civil Administration, which for years has been in charge of governmental civil activity and supervision of building and land-use in the area of Mount Hebron, including the firing zone, and which is well acquainted with the firing zone and the way of life conducted within it, indicates that the firing zone is not used as a place of permanent residence, but as land used partially for grazing and farming, and for seasonal residence for those purposes."⁴⁹

The state explains the meaning of the term "seasonal residence:" "These persons do not remain in the area for many months of the year, but come periodically to graze their flocks and in November-December to sow the fields under cultivation. As a rule, they reside in the area from February to the beginning of the summer, May to June."⁵⁰

47. *ACRI Petition*, Application for an Order *Nisi* and Temporary Injunction, par. 21.

48. *ACRI Petition*, response of the respondents, par. 18.

49. *Ibid.*, par. 21.

50. *Ibid.*, par. 11.

Thus, even according to the state, the residents live in the area at least six months a year in cyclical periods. It is unclear why the state attributes greater importance to the six months of the year that they live in Yata than to the six months that they live in the area from which they were expelled.

To strengthen its argument that those expelled do not reside in the area, the state cites the research of Ya'akov Habakuk on life in the caves. Habakuk states that, in 1981 and 1982, some 100 to 120 families permanently resided in the caves.⁵¹ He estimates that, since permanent residency in the caves is becoming less common, and many residents are moving to constructed houses, the phenomenon of living in the caves "will cease within a short time, a period of years."⁵²

This argument cannot support the state's position that the expelled residents were not permanent residents in the caves. Habakuk makes a forecast for the future; the state has no proof that this forecast will in fact be realized. Furthermore, even if the number of

permanent residents there decreased, this does not prove that permanent residency in the caves ceased altogether.⁵³

4. Temporary arrangements allowing entry into the area indicate that they are not permanent residents

According to the state, arrangements to enter the closed area temporarily, reached by the IDF and the residents, indicate that "even previously it was unquestionable that there are no permanent residents within the area of the firing zone."⁵⁴

This argument is an overstatement. The most that these arrangements can prove, if anything, is that the residents of the area learned how to live with the fact that the IDF does not consider them permanent residents of the area, and that they accepted, as the "lesser evil," the arrangements that were forced on them. In addition, some of the residents contend that they knew nothing about

51. *Ibid.*, par. 19. See Habakuk, *Life in the Mt. Hebron Caves*, p. 33.

52. Habakuk, *Life in the Mt. Hebron Caves*, p. 33.

53. Furthermore, this argument does not relate to those who lived there seasonally, since they, too, were harmed by closing the area, because they cannot go to their lands as they had in the past. Their number, Habakuk emphasizes, has remained fixed. *Ibid.*, p. 65.

54. *ACRI Petition*, response of the respondents, par. 13.

these arrangements and never agreed to them.⁵⁵

The arguments raised by the state to prove that the evicted Palestinians were not permanent residents are weak and unconvincing. The question of where the center of a person's life lies is complex and dependent on numerous circumstances. The state attempts to state the facts in an unyielding and

simplified manner in the face of a complex reality, and relies on marginal details to prove residence in Yata. It does this to justify an unacceptable and illegal policy.

Since the state did not provide sufficient proof of the lack of permanent residency, it did not have, even according to its own argument, authority to expel the Palestinians from their homes.

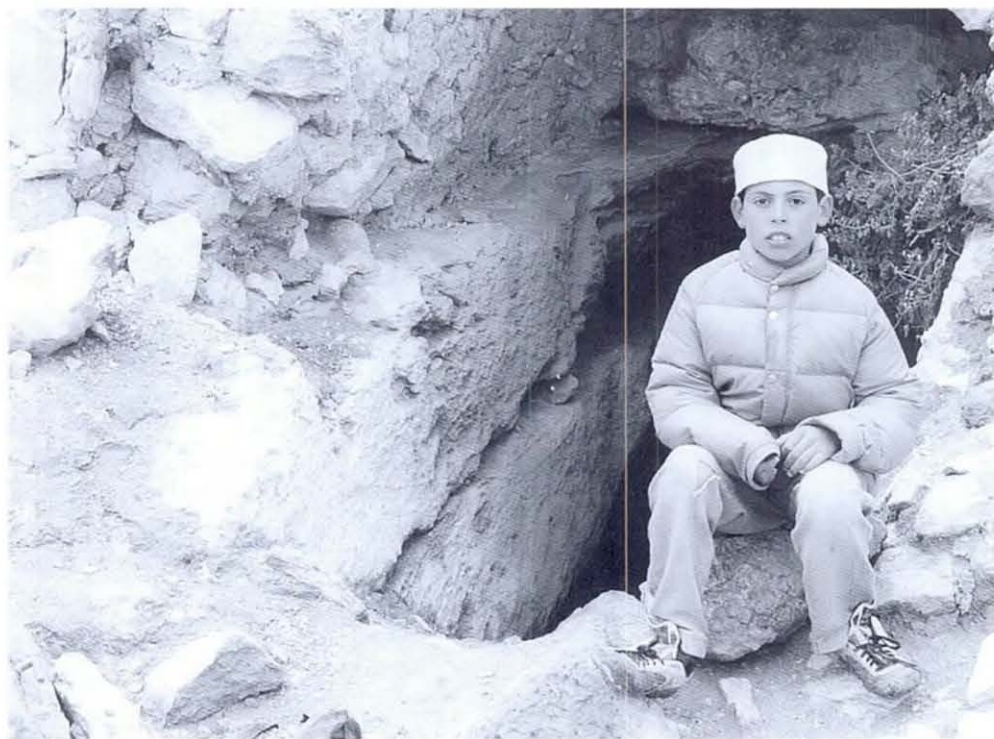


Photo: Chen Yanay

55. For example, the testimony of 'Izzat 'Abdullah al-Makhamreh, born in 1947, resident of Sefai, given to B'Tselem fieldworker Raslan Mahagna on 16 February 2000; testimony of Hani Salameh Shahadeh Makhamreh, born in 1977, resident of Maghayer al-'Abid, given to Raslan Mahagna on 15 February 2000.

Testimonies

Testimony of Matyar Salman Ibrahim Maghanem, born in 1960, married with eleven children, resident of Tuba⁵⁶

I was born in Yata. Twenty-three years ago, when I was seventeen, I married Ibrahim Abu Iancida, a resident of Tuba. We were married there. I remember that I was taken from Yata to Tuba riding on a camel. All my children were born in the cave at Tuba. None of my children were born in the hospital, all were born with the help of a midwife who came to the cave.

We had a good and peaceful life. In the morning, my husband would go out with the flock, and my children would go to school. I would clean the cave, cook for my husband and children, and wait for them to come home. The cave was large and roomy, not like where we live now. We lived in peace and quiet all the time. Things became hard only when Ma'on Farm was established, in 1997, almost three years ago.

The settlers used to come to our village when my husband and the men were with the flocks. They would shout at the children. They would tell us, "This is Israeli land, why are you here?" They would come with dogs, and the children were always afraid of their dogs. One

time, they approached my eldest son, who was alone at home, and told him to tell his parents to leave, and that if they didn't, they would kill them and burn their home. I would be lying if I said that we weren't afraid. But there was nothing we could do.

In November 1997, somebody named Asher came to us. He was from the [Civil Administration] Planning and Building Committee and he gave my husband an order to vacate. I remember that he gave us twenty-four hours to get out. My husband consulted with me and we decided that we were staying in Tuba because we had no place to go. We were frightened because we felt threatened both by the settlers who were harassing us all the time and by the army, which could at any moment come and expel us from our home. But we decided to stay in our cave, because that was the only place we had. We have no other home.

Two weeks after receiving the order, soldiers came with a bulldozer and sealed the opening of the cave with large boulders. They also destroyed the tents that were outside, which were used for housing the flocks. Even this did not make us leave. My husband went to the Land Defense Committee, and they asked a lawyer to handle the case.

56. The testimony was given to Raslan Mahagna on 21 February 2000 in Tuba.

We were not calm after that. We lived with the fear that any day they would come and expel us. The settlers began to torment us even more. They would prevent our children from going to school in Tawaneh the way they normally did. They had to go a different way, which took them more than the hour it had taken when they went by the regular route.

Sometimes my children would run home, leaving their school bags along the way, fleeing in fear from the settlers. Almost every day, the settlers beat and harassed them. Two years ago, settlers burned our barley. My husband complained to the Israeli police, but nothing happened. Despite this, we continued to live in Tuba, because, as I told you, we had no other place to go.

We lived like that until 5 October 1999, when Civil Administration personnel came and gave my husband an order to vacate the house. We refused to vacate, and we lived there until 16 November 1999, when the soldiers came. It was close to 9 a.m. My children were in school. Only my husband and I were at home. They looked for the head of the house. My husband went to them. I did not understand what they were saying, because they spoke in Hebrew. After a while, the soldiers took my husband, but where to I didn't know. They told me to remove the personal property

from the cave, but I refused. They began to remove things from the house and destroyed the tents that were outside. They even took the dough I had prepared for the children. I begged them to leave the dough so that the children would have food when they returned home from school.

They began to expel others from the village. Nothing remained in the house - they even took the mattresses. My children and I were left to live outdoors because they once again sealed the cave with large boulders. Residents from Tawaneh came at night and told me that my husband had been arrested. They offered to host us at their homes in the village, but I refused. For four days I continued to live outdoors with my children. Residents from Tawaneh brought us mattresses to sleep on. On Thursday, the army came and threatened that if I didn't vacate, they would remove us by force. My husband was under arrest, and I couldn't fight alone, so I vacated and moved to Tawaneh to live.

For almost three months we have been living in Tawaneh. It is hard for us to live like this: we are thirteen persons in a room of sixteen square meters, which serves as our kitchen, shower, and bedroom. My children and I are suffering, and we pray to God and wait for the day that we return to our home.

**Testimony of Mahmud Hussein
Jabber Hamadeh, born in 1965,
married with nine children,
resident of Mufqara⁵⁷**

My father was born in 1926 in the village of Tawaneh, which is near Mufqara. In the early 1930s, he and my grandfather moved to Mufqara, where they had land that they cultivated. When they moved to Mufqara, they dug and expanded the caves there, and dug a well.

My family lived permanently in Mufqara year round, because they worked the land and used it every season of the year. In winter, they would plant barley and wheat, and in summer vegetables and tobacco. In the spring there was grass for grazing the flock.

I was born in Mufqara in 1965. I got married in Mufqara and my children were born in the cave there. I own five dunams in Mufqara and 270 dunams in the area. Most of the land is not cultivated, and we use it for grazing our sheep. From the time that I was born,

my family and I have never left the village.

From the time that the occupation began until Ma'on Farm was established in June 1997, the Israelis did not bother us. It was then, June of 1997, that the settlers began to harass us. They would burn our barley and the grain for the flock. In 1998, they burned my family's barley. The army never acted against us, never served us with any order, never came close to Mufqara.

On 16 November 1999, the army came to Mufqara and expelled us from the village, even though we had never received any order to vacate. We were never informed that we were living in a firing zone.

I have no home other than my place in Mufqara. Not in Yata or in any other village. My grandfather had a two-room house in Yata, which my father inherited when my grandfather died, and he lives in it. I am now living in Tawaneh, with people who gave me a room in which I live with my wife and children.

57. The testimony was given to Raslan Mahagna on 14 February 2000 in Tawaneh.

**Testimony of 'Izzat 'Abdullah
Makhamreh, born in 1947,
married with thirteen children,
resident of Sefai⁵⁸**

I was born in Yata and when I was a child, our family moved to Sefai to live permanently. All of my children were born in Sefai and studied in the elementary school in Tawaneh. My family owns close to 500 dunams in the area of the village. We generally plant wheat and barely, but this year we did not work the land because, after the expulsion, we are not allowed to go there.

It was always quiet in our area, until June 1997 when the Ma'on Farm settlement was set up. Then the settlers began to harass us. After Dov Driban was killed, I was arrested for eight days.⁵⁹ The army also confiscated three tractors of ours. Only when we retained a lawyer were we successful in getting them back. It took two months and we

had to pay a high fine. I do not remember how much it was.

People from the Civil Administration's Planning and Building Committee came to us on 5 October 1999 at 11:00 a.m., and found some of the residents. They gave us an order to vacate the area within twenty-four hours. They threatened that if we did not leave, they would confiscate our sheep and our personal property. Prior to that time, nobody had ever informed us that we were living in a military zone. They only informed us of that on the day that they expelled us.

All the residents left Sefai on the fifth and sixth of October. We moved to Hamidah Village. We rented houses, and we are still living there. I rented a house for my family, for which I pay ID 150 [~\$210]. I have a house in Yata, which is used as a warehouse for grain for the sheep. I inherited it from my father. We are waiting to return to Sefai.

58. The testimony was given to Raslan Mahagna on 16 February 2000 in Tawaneh.

59. Dov Driban, a resident of Ma'on Farm, was killed on 19 April 1998 by Palestinians.

Conclusions

Some 700 Palestinians from the South Mt. Hebron area have not been living in their homes for more than three months. Hundreds of others who used to come to the area seasonally in order to work their land are no longer permitted entry.

The expulsion of these residents is an integral part of Israel's illegal seizure of land since 1967, in total disregard of Palestinian rights in the Occupied Territories. In implementing this policy, Israel has used all possible means: expropriation of private land, declaring large parcels of land to be "state lands," closing areas for "military needs," expulsion of residents, and demolition of houses. These methods have created a body of land reserves for establishing Israeli settlements or facts that will facilitate annexation of certain lands in the context of the interim and final-status agreements. Furthermore, military commanders in the Occupied Territories have issued a long list of military orders granting a cloak of legality to these acts, although they contravene existing law in the Occupied Territories and international law.⁶⁰

In the state's response to the petition to the High Court of Justice against

expulsion of residents of the area of South Mount Hebron in 1997, attorney Malhiel Blass, of the State Attorney's Office, wrote that, since issuance of the order closing the area in which the residents live, "the petitioners took no meaningful act to arrange their staying in the area, so they have no one to blame but themselves."⁶¹ The state continues to rely on dubious arguments to blame the residents for the expulsion, arguing that the residents were the ones who broke the law by entering a closed area in violation of arrangements that had been reached with them, and that they do not even live in the area.

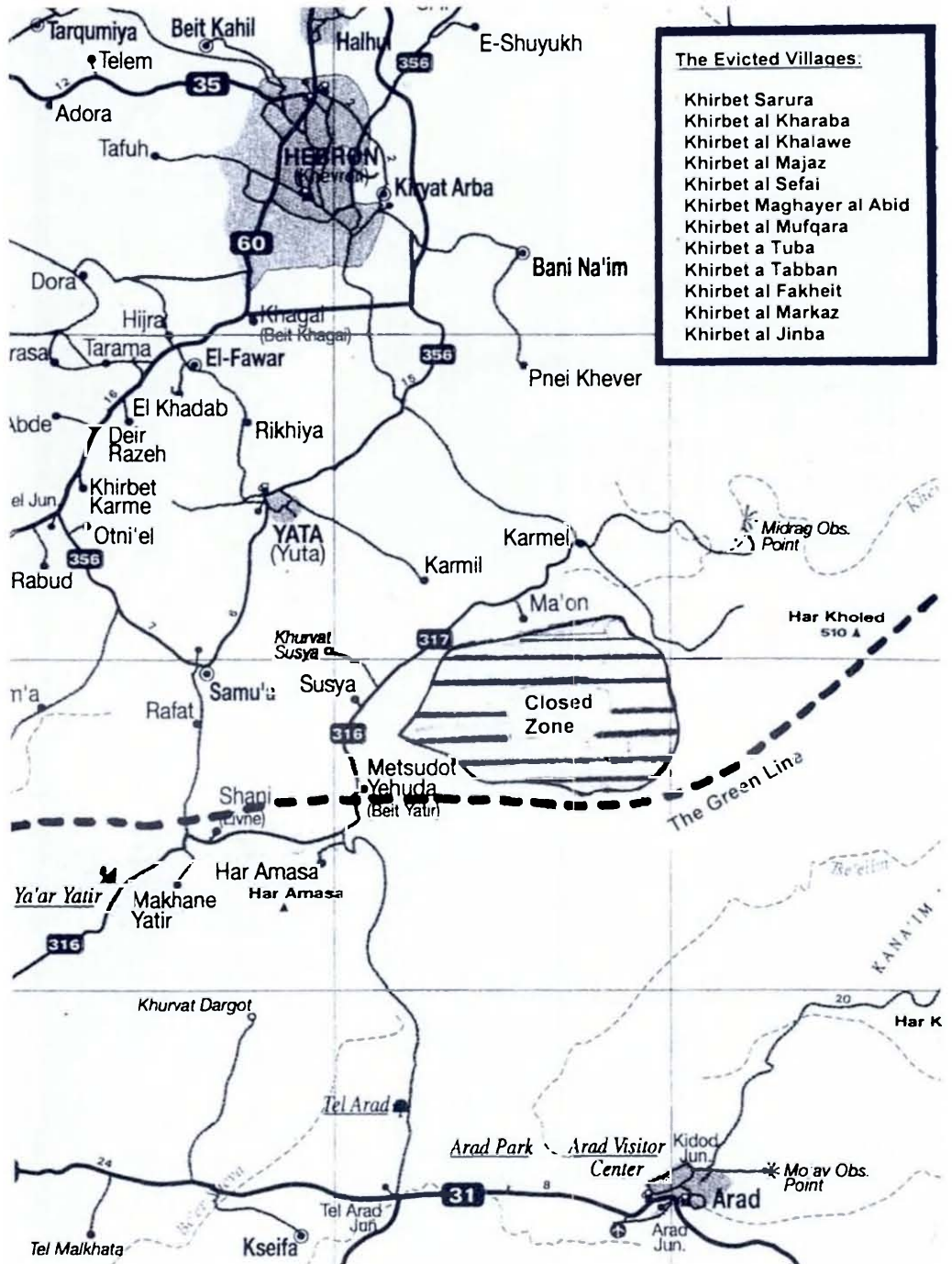
The state's attempt to free itself of all responsibility for expulsion of the residents and place all the responsibility on the victims of its policy is shameful and is intended to justify the unjustifiable: violation of the basic rights of hundreds of persons in order to realize an illegitimate political interest of Israel.

B'Tselem urges the government of Israel to enable the residents who were expelled from the area to return immediately to their homes, and to return to them their possessions that were confiscated.

⁶⁰ On these matters, see B'Tselem, *Israeli Settlement in the Occupied Territories*; B'Tselem, *Demolishing Peace: Israel's Policy of Mass Demolition of Palestinian Houses in the West Bank* (September 1997); B'Tselem, *On the Way to Annexation: Human Rights Violations Resulting from Establishment and Expansion of the Ma'aleh Adumim Settlement* (June 1999).

⁶¹ 'Awad 'Ali, response of the state, par. 27.

Map of Area



Response of the IDF Spokesperson*



דובר צה"ל
I.D.F. SPOKESMAN

Israel Defense Force
Operations Division
IDF Spokesperson Unit
Public Liaison Branch

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DOC.0050717
29 February 2000

Yael Stein - B'Tselem

Re: Report on Expulsion of Residents from the Mt. Hebron Area

Dear Ms. Stein:

The IDF Spokesperson's response to the draft of B'Tselem's report on the expulsion of residents from the Mt. Hebron area is as follows:

The draft includes partial facts, half-truths, and numerous factual distortions, while ignoring other relevant facts.

However, since the matter is currently in the midst of legal proceedings before the High Court of Justice (two petitions were recently filed with the Court), which are to be heard in March of this year, the IDF is prohibited from responding.

Sincerely,

/s/

Major Efrat Segev

Head, Assistance Division

* Translated by B'Tselem

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for transparency and accountability, particularly in financial matters. The text suggests that organizations should implement robust systems to track expenses, revenues, and other key financial indicators.

2. The second part of the document addresses the need for regular communication and reporting. It states that stakeholders, including investors, regulators, and the public, have a right to know about the organization's performance and financial health. Regular reports and updates are necessary to build trust and ensure that the organization remains on track with its goals.

3. The third part of the document focuses on the importance of ethical conduct and compliance. It highlights that organizations must adhere to all applicable laws and regulations, as well as internal policies and standards. Ethical behavior is not only a legal requirement but also a key factor in maintaining a positive reputation and long-term success.

4. The fourth part of the document discusses the role of leadership in setting the tone for the organization. It states that leaders must demonstrate integrity, honesty, and a commitment to high standards. By modeling these behaviors, leaders can encourage others to do the same, creating a culture of accountability and ethical conduct.

5. The fifth part of the document addresses the importance of transparency in decision-making. It suggests that organizations should be open about their processes, decisions, and the reasons behind them. This transparency helps to build trust and ensures that decisions are made in the best interests of the organization and its stakeholders.

6. The sixth part of the document discusses the need for continuous improvement and innovation. It states that organizations should regularly evaluate their performance and seek ways to enhance efficiency, effectiveness, and innovation. This ongoing process of improvement is essential for staying competitive in a rapidly changing environment.

7. The seventh part of the document addresses the importance of risk management. It suggests that organizations should identify potential risks, assess their impact, and implement measures to mitigate them. Effective risk management is crucial for ensuring the organization's long-term sustainability and resilience.

8. The eighth part of the document discusses the role of the board of directors in overseeing the organization's operations. It states that the board has a fiduciary duty to act in the best interests of the organization and its stakeholders. The board should provide strategic guidance, monitor performance, and ensure that the organization remains compliant with all applicable laws and regulations.

9. The ninth part of the document addresses the importance of stakeholder engagement. It suggests that organizations should actively seek input from their stakeholders, including employees, customers, suppliers, and the community. This engagement helps to build strong relationships and ensures that the organization's actions are aligned with the needs and expectations of its stakeholders.

10. The tenth part of the document discusses the importance of documentation and archiving. It states that organizations should maintain accurate and up-to-date records of all important documents, including contracts, policies, and financial statements. Proper documentation is essential for legal compliance and for providing a clear history of the organization's activities.



B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories was founded in February 1989 by a group of lawyers, literary figures, academics, journalists, and Members of Parliament. **B'Tselem** documents human rights abuses in the Occupied Territories, and brings them to the attention of policy makers and the general public. **B'Tselem**'s data are based on independent fieldwork and research, official Israeli sources, the media, and data from other human rights organizations.