

## **I. Introduction**

- 1. The village of Susiya is in danger of imminent demolition after 64 final demolition orders were handed out to all 100 structures in the village, and its outline plan was rejected. Without the intervention of the Honorable Court, an entire, vibrant and lively village, home to 340 residents, men, women, elderly and children, will be wiped off the face of the earth. The structures in the village include residential structures and public structures including a clinic, a kindergarten, an elementary school, a solar system, a cultural center and a churn. Now that the outline plan has been rejected, the entire village is in danger of demolition, which would severely and irreversibly violate the basic rights of protected persons in an area subject to military rule.**

  - Attached are pictures of the village, marked as C/1/C/b.
  - Attached is an aerial photo marked with the area of the plan and the illegal construction that is the subject of the petition and is marked as C/2.
- 2. The village of Susiya, which was established in the area decades before Israeli rule, has a unique history. Its residents were evicted from their land three times by way of the expropriation of private land, inspection procedures and raw violence. In recent years dozens of final demolition orders were signed in the village. In an attempt to rescue the village from complete demolition, Petitioners 1-21 (henceforth: the petitioners) raised many resources in a short time period and submitted to the planning and licensing committee five alternatives for outline plans to legalize their planning status.**

  - Attached is a copy of the outline plan for Susiya marked as C/3.
- 3. On October 24, 2013, the respondents' decision from May 19, 2013, to reject all of the planning alternatives presented by the petitioners was sent to the petitioners. This document is a paragon of unreasonableness, unfairness, lack of good faith and cynicism. Among other things, the respondents presented cultural claims that indicate social judgment of the village population and a paternalistic perception that intervenes in the civilian life of the protected persons beyond what is permitted by the law in force in the area. The respondents' arguments indicate that they decided to demolish the village and throw its 340 residents to the mercy of the desert "for their own good," and particularly, as the decision unbelievably argued, for the benefit of the village's women and young children.**

  - Attached is a copy of the minutes of the planning committee deliberations and the decision to reject the plan from May 19, 2013, marked as C/4.
- 4. The respondents' decision is based primarily on two unreasonable claims: One, that the size of the village population does not justify a plan – an argument that the committee raises solely when it comes to Palestinian residents, because the respondent themselves have planned dozens of settlements for smaller Israeli populations. Two, the location of the**

village negates the possibility of connection to infrastructures and provision of services by the City of Yata and the Palestinian Authority. **This is an erroneous claim**, completely based on the erroneous assumption that the residents of the village came from the city of Yata. The claim is not based on an examination with the Palestinian Authority, the party that supplies infrastructures and services to the village population. The respondents decided for the relevant parties. The petitioners checked and found the opposite. Not only does the village currently provide health and education services until age 12 as well as solar electricity infrastructures, but the Palestinian Authority has declared it would support the residents of the village and help them hook up to additional infrastructures if their plan were approved in its current location.

- **Attached is a copy of a letter from the Palestinian Authority Minister of Local Government, marked as C/5.**

5. Throughout the entire decision, the respondents categorically ignore the petitioners' history of settlement in the village and their own responsibility for their fate. The arguments for rejection are unfair, unreasonable in the extreme, do not give weight to essential considerations, are devoid of material authority, are factually erroneous, discriminatory, and violate international law and human rights law. The respondents' decision was given in the context of the absolute absence of Palestinian local or district planning committees and in the context of the existence of a military regime in an occupied territory. Therefore its outcomes are implausible: the demolition of an entire place of settlement on pseudo-professional planning and building grounds.

6. **Rejecting the plan means realizing 64 demolition orders and demolishing the entire village. The demolition will create a severe humanitarian disaster and a fatal violation of the petitioners' human rights.** Demolition of the village will mean the forced transfer of protected persons. Beyond the simple fact that the petitioners have nowhere to go, and the respondents' decision is a death sentence for the village and its residents, forced transfer is a grave violation of international humanitarian law, human rights law, and Israeli public, administrative and constitutional law. Note that at no stage was it argued that there was a military need to demolish the village. **The present case is an example of forced transfer under the guise of planning and construction. The forced transfer will be facilitated by denying planning from the residents of the village – protected persons in an occupied territory.**

7. **This petition is filled with details about the history of the petitioners because it cannot be deliberated separately from their story. For half a century the respondents evaded providing a comprehensive solution to the petitioners' complicated situation, which was caused by the former's actions and omissions. This time, the petitioners are turning to the court with an appeal to give them and their families a just solution while giving**

**weight to the respondents' responsibility for creating the present situation.**

**This petition relies on a number of opinions by Israeli and international jurists, which are attached herein:**

- Prof. Eyal Benvenisti, "The prohibition of forced transfer in the village of Susiya," (henceforth: The Benvenisti opinion on forced transfer), marked as C/6.
- Prof. Eyal Benvenisti, "The demolition of structures needed for the survival of the protected civilian population as a result of the absence of building permits" (henceforth: The Benvenisti opinion on demolition), submitted as part of HCJ 5667/11 Village Council of Deirat Rafiyya et al. V Minister of Defense et al. (henceforth: HCJ 5667/11), marked as C/7  
[rhr.org.il/heb/wp-content/uploads/eyal-ben-benishti.pdf](http://rhr.org.il/heb/wp-content/uploads/eyal-ben-benishti.pdf)
- Prof. Iain Scobbie, Sarah Hibbin and Alon Margalit (henceforth: the Scobbie opinion), submitted as part of HCJ 5806/11 Dkeika Village Council et al. V Minister of Defense et al., marked as C/8.  
[rhr.org.il/heb/wp-content/uploads/Expert\\_Opinion\\_Forced\\_Removal\\_FINAL\\_15.11.11.pdf](http://rhr.org.il/heb/wp-content/uploads/Expert_Opinion_Forced_Removal_FINAL_15.11.11.pdf)
- Prof. Marco Sassoli and Dr. Theo Boutruche, "Expert Opinion on International Humanitarian Law Requiring of the Occupying Power to Transfer Back Planning Authority to Protected Persons Regarding Area C of the West Bank" (henceforth: The Sassoli opinion), submitted as part of HCJ 5667/11, marked as C/9  
[rhr.org.il/heb/wp-content/uploads/62394311-Expert-Opinion-FINAL-1-February-2011.pdf](http://rhr.org.il/heb/wp-content/uploads/62394311-Expert-Opinion-FINAL-1-February-2011.pdf)
- Prof. Lobel, expert on international law, "Expert Opinion Regarding the Threatened Destruction of Solar Panels in the Village of Sadat Al Tha'alah That are Essential to the Survival of the Protected Civilian Population" (henceforth: The Lobel opinion), marked as C/10  
[rhr.org.il/heb/wp-content/uploads/Lobel-Expert-Opinion-Second-Draft-Thaalalah-PDF-20.4.12.pdf](http://rhr.org.il/heb/wp-content/uploads/Lobel-Expert-Opinion-Second-Draft-Thaalalah-PDF-20.4.12.pdf)

## **II . Factual framework**

### **a. The parties to the petition**

#### **a.1. The Petitioners**

11. Petitioners 1-21 (henceforth: the petitioners) are residents of the Palestinian village of Susiya, who were evicted from the area of their village as a community at least three times in the past, as shall be specified below (sections 24–29). They and their families possess 100 temporary structures made out of tin, fabric and cinderblocks, which constitute the total of structures in the village. The shabby structures are threatened with imminent demolition by final demolition orders. The structures include bedrooms, restrooms, kitchens, storage rooms, public buildings like a nursery school, a clinic, a churn, solar panels to provide minimal electricity to the village, etc.

12. The petitioners represent members of the Nawajah, Shanaran, Abu Sabha, Moghnm and Balal families in the village: about 40 families including 340 people. About half of the village population is women and 140 are children under the age of 15. All of the residents of the village make a living from farming their private lands which are near their residencies.

13. **The village of Susiya is an ancient and independent village.** The residents of the village have a separate communal life and they rely on the towns and villages of the area to receive particular services such as religious and higher education services, just like any other small settlement relies on its neighbors. Petitioner No. 1 is The Susiya Village Council. The village council was recognized by the Palestinian Authority, and the identity of its members and its head is accepted by all the residents of the village. The village council sees to health, education, welfare and cultural services in the village, as well as electrical infrastructures and maintenance of the water holes.

14. Among the petitioners are people who contribute to community life and are responsible for providing services to its residents. Thus for example, Petitioner No. 3 is a member of the Village Council; Petitioner No. 5 is the President and Director of the Susiya Association for Agricultural Management; Petitioner No. 7 is in charge of marketing for the association; Petitioner No. 19 is a member of the Village Council and in charge of maintaining the solar electricity on its behalf; Petitioner No. 12 is a community organizer employed by different organizations to provide aid to the community; and Petitioners No. 4 and 9 are village elders, who maintain their ancestors' traditions and pass them on to future generations.

15. The village of Susiya has an elementary school and kindergarten under the supervision of the Palestinian Ministry of Education; a clinic attended by a physician once a week on behalf of the Palestinian Ministry of Health; a structure that serves for community gatherings; a solar electricity system that serves all the residents of the village; a cultural-tourism center that employs the village women; and a churn that helps support all of the families in the village.

The residents of the village are not connected to the water system that passes only a few meters from their homes on the way to the next door settlement of Susiya and its outposts, or to the Palestinian Water Authority, and therefore they collect rainwater in 30 water holes they and their ancestors dug on their private land, and buy water from water tanks, which costs them up to 10 times as much as it costs the average Israeli consumer. The residents of the village are not connected to the Israeli electricity system that passes above their homes on its way to provide electricity to the next door settlement of Susiya and its outposts or to the Palestinian Energy Authority.

Therefore, together they set up a solar electricity system. The solar electricity system enabled the residents of the village to establish a joint churn that enables them to make a living from the milk products they manufacture. The residents of the village have also established a cultural center, where the village women do elaborate handicrafts, sold to residents of the area and to tourists. It is a close-knit community that is sticking to its private ancestral lands.

16. The community is supported by international organizations. For instance, the clinic was donated by the Government of Spain along with an Australian humanitarian aid organization called Action for Australia. The churn was donated by the Government of Poland. The solar panels were donated by the governments of Germany and New Zealand, along with a Swiss international humanitarian aid organization. The restroom facility was donated by the British international humanitarian aid organization ERM. About 10 structures were donated by the Italian international aid organization GVC. Five structures were donated by the UN Office for the Coordination of Humanitarian Affairs.

17. Petitioner No. 22, Rabbis for Human Rights, is a registered association in Israel and its purpose is strengthen the Jewish tradition of human rights.

**The factual description in this petition is based on the affidavits of petitioners 1-12 enclosed herein.**

## **B. Factual background**

### **B.1 The village of Susiya: A history of eviction along with a planning freeze**

24. The petitioners represent all the residents of the village, 340 people, 40% of which are minors. They, their forefathers and a number of additional families lived in Old Susiya consistently for decades before the Israeli occupation of the area and the establishment of the settlement of Susiya (1983).

25. At least two Israeli sources support the fact that Susiya was a populated Arab village. One, David Grossman in his book “The Arab village and its satellites – processes in Arab settlement in

the Land of Israel during the Ottoman period," from 1996, wrote that in 1986 there were still about 25 families living in caves in Susiya (p. 226). The other is the opinion by Ms. Plia Albeck from 1982, in which she wrote: "The synagogue is located in a place called the lands of Khirbet Susiya, and is surrounded by an Arab village between the ancient ruins."

26. The Palestinian village of Susiya appears on historic maps from 1917 and is known and familiar to the respondents as an agricultural village as part of Mandatory plan RJ5. It is a "village" with all the social significance of the term. Despite the clear recognition of the organic existence of an Arab village on the site, the respondents' behavior as far as planning is as if the village did not exist. **Even worse, as if the village of Susiya did not have the right to exist. The respondents are making efforts to disperse the village and devoid the area of its protected residents. In order to demolish the village, the respondents exercise enforcement measures under the guise of maintaining the planning and building laws, illegally and immorally. What will be described hereforth is not legal enforcement of planning and building in order to maintain public order.**

**Attached is the marking of the village of Susiya on a copy of a map of the area from 1917, marked as C/14.**

27. **The first eviction:** In June 1986 an expropriation order for "public needs" was signed for the land of Old Susiya, home to the petitioners and their neighbors. The site was declared an archaeological site. **The use of the expropriation order, as opposed to a declaration of state land, relied among other things on the opinion of the aforementioned Plia Albeck. The petitioners and their neighbors were evicted from their caves and their homes without a housing solution.** Later the original village land was included within the jurisdiction of the settlement of Susiya and today houses an unauthorized outpost.

28. **The second eviction:** After the expropriation the residents of the village of Susiya settled on their private agricultural land in a place known by the name of Rujum al-Hamari, about half a kilometer from their village, and continue to cultivate their nearby agricultural land. They lived at the site for about five years. One night in 1991, soldiers came to their tents, ordered the residents to get on trucks and dropped them and their belongings off about 15 kilometers from their land. **The residents were not given demolition orders or any explanation for the sudden eviction.** It was retroactively claimed unofficially that the background for the eviction was enforcement of planning and building laws, but that claim is baseless both because of the nature of the eviction and because in the information provided under the Freedom of Information Act no demolition orders for those years were found. **The eviction did not include any solution for the residents of the village.** In their despair, each family settled in the caves and sheds near their agricultural land while maintaining contact with their neighbors. Since the forced transfer almost 25 years have gone by, in which the petitioners have clung to their present location (henceforth: the village).

29. **The third eviction:** In 2001, about 15 years after the eviction from Old Susiya, an especially violent eviction occurred. Over the period of a few days, tents and residential caves were destroyed, water holes were plugged up, fields were vandalized and farm animals were killed. The demolition campaign included many plainclothes Israelis, who were identified by the petitioner as settlers from the area, and military forces. Following the eviction, the village residents, including some of the present petitioners, petitioned the Supreme Court in HCJ 7530/01 *Shreitah v the Civil Administration* (henceforth: HCJ 7530/01). As part of an interim order granted in the petition, the court ordered that: "The respondents, or any one of them, or anyone acting on their behalf, shall not act to evict the petitioners from the land that is the subject of this dispute, and will take no action of demolition of structures or any other change of the status quo on the ground at the time of granting this order, until any further decision by the court." The court ordered to withdraw the petition from 2007 and the petitioners continued their attempts to legalize the construction on the land of their village by applications for building permits as part of Mandatory Regional Outline Plan RJ/5. **All of the applications for building permits submitted over the years were rejected.**

30. Meanwhile, since 2001 the petitioners' de facto access to 3000 dunams of their private agricultural land surrounding the settlement of Susiya has been limited without legal basis. Access to their agricultural lands has actually been prevented by violence and harassment by residents of the settlement of Susiya and its outposts, who were backed by representatives of the respondents – soldiers and police forces. Representatives of the petitioners went back to the the Supreme Court as part of HCJ 5825/10 *Nawajah v Minister of Defense* (henceforth: **HCJ 5825/10**). After the petition was submitted, the military commander declared part of the petitioners' land "closed to Israelis" for security reasons, in order to maintain public order and prevent the settlers' continued takeover of the petitioners' lands.

31. **We emphasize that the respondents have never denied the history of the village as described above, including the expropriation of the village land and two additional attempts to demolish it. Nonetheless, the petitioners were never given a planning solution.**

## **B.2. The village of Susiya: The enforcement practice and the policy of denying planning**

32. The village is currently under Regional Outline Plan RJ/5 from the time of the British Mandate. From the respondents' perspective, it is possible to draw an outline plan as an amendment of the Mandatory plan. **Even though the village of Susiya moved to its current location only because of the expropriation by the respondents, the latter did not initiate an outline plan for the village.**

33. Until 2010 only a handful of demolition orders had been distributed in the village. Some of the petitioners submitted applications for building permits but all of their applications were

rejected. As a result of the respondents' planning failure and their refusal to grant building permits, the petitioners were unable to legally build even one single building, neither residential buildings needed for their survival, nor restrooms, nor public buildings to provide education, health or religious services. Furthermore, the planning failure denied the petitioners permanent and orderly access to modern infrastructures, such as a connection to the water and electricity systems, or internal access roads.

34. In 2011 another 17 demolition orders were distributed in the village. Their recipients had also applied for building permits (buildings subject to illegal building procedures 393/11, 423-424/11, 429/11, 442-451/11, 453-454/11). **All of the applications were rejected.**

35. In February 2012 the Regavim organization submitted petition HCJ 1556/12 **Regavim V Minister of Defense** (henceforth: **HCJ 1556/12**). The petition asked to enforce the planning and building laws on the Palestinian residents of Susiya. It was a political petition submitted by a nationalist organization whose purpose is "to protect national lands," and by residents of the settlement of Susiya, which is itself full of illegal construction, under the guise of concern for the rule of law and in revenge for HCJ 5825/10.

- **Attached is a copy of an aerial photo with marking of illegal Israeli construction in the settlement of Susiya and outposts, marked as C/15.**

36. As part of the response to HCJ 1556/12, the respondents initiated an expedited, law-bypassing and offensive procedure. In June 2012 the petitioners were given six notices of the right to submit objections (henceforth: the notices). Each notice was based on a final demolition order given to the occupant of a single building about 20 years ago, and referred to dozens of buildings that exist today. By this offensive process the respondents put 70 buildings in danger of demolition. In this way the respondent tried to deny the petitioners the right to due process and to shorten their path to demolishing the village. The petitioners objected to the legality of this administrative procedure on grounds of deviation from authority, lack of relevant authority, and undue, unreasonable exercise of planning authority, violating human rights and Israel's obligations under international law.

- **Attached are copies of the notices and the aerial photos attached to the notices, marked as C/16.**

- **Attached is a copy of the objections submitted by the petitioners and marked as C/17.**

37. In June 2013 the respondents distributed 33 stop work orders for about 50 buildings throughout the village of Susiya. More than half of the buildings were included in the polygons attached to the notices. In a hearing before the inspection committee on August 5, 2013, the occupants/petitioners were told that some of the claims raised by the petitioners in the objections were accepted and therefore new and individual orders had been signed. After the hearing, final demolition orders were signed for all of the buildings (see C/11/a).



38. Meanwhile, in light of the planning failure concerning their village, the petitioners submitted an application to join as respondents H CJ 5667/11 Deirat Village Council v Minister of Defense (pending) (henceforth: H CJ 5667/11). The subject of that petition is restoring local and regional planning committees.

- **Attached is a copy of the petitioners' request to join as respondents H CJ 5667/11, marked as C/18.**

39. Meanwhile, and without conceding their claim that the burden is on the respondents to arrange planning in the village of Susiya, the petitioners acted to draw up an outline plan for their village by themselves. For a number of years concerted efforts were made to raise the necessary economic resources to that end. The process in question is long and complicated, requires engaging professionals and involves high costs, a lot of bureaucracy, mapping abilities, surveys and more. It is for good reason that this large and complex task normally rests with the planning authorities and not with individuals.

40. The petitioners chose to act to draw up the plan while relying on criteria recently established by the Higher Planning Council to legalize illegal construction. The petitioners thought these criteria would allow their plan to be approved.

- **Attached is a copy of the summary letter of a meeting with the representatives of the respondents from March 13, 2011 (see section b/1), marked as C/19.**

41. On December 12, 2012 the petitioners submitted to the respondents an outline plan for their village. The plan was drawn up by a leading planner in the area of planning in the Palestinian sector, Prof. Rassem Khamaisi, and included a photogrammetric map; a topographical survey; an incline survey; a building status survey; a population survey; an agricultural land survey; an economic basis survey; a social composition survey; a road survey; an archaeological survey; a building constraints survey; a program preparation and planning guidelines that reflect the planning needs. All of the planning work was made on the basis of discussions with the community and reliance on their land ownership array. The plan included five alternatives for the reorganization of the population in its present surroundings and included bylaws and relevant planning appendixes.

42. On May 19, 2013 the planning and licensing subcommittee held a meeting with representatives of the petitioners. During the open part of the meeting, the planner presented the details of his plan, repeatedly emphasizing that the plan was based on community inclusion, and asking the committee to guide him how to improve the plan so that it could be approved for deposit. Immediately at the end of the open discussion the committee members held a closed discussion

43. **On October 24, 2013, the petitioners received the decision of the planning and**

licensing committee rejecting all of the alternatives the petitioners submitted for an outline plan for their village.

**B.3. The Planning and Licensing Committee's arguments for rejecting the plan**  
**"Absence of weighty reasons to promote a plan at this location"**

44. The respondents opened the internal hearing of the plan with the remarks of Higher Planning Council head, Mr. Daniel Halimi: **"The Planning Bureau has avoided providing the planner with detailed professional guidelines in light of the fact that the Planning Bureau determined in advance, that there were no weighty reasons to promote a plan in this place... despite the fact that the planner repeatedly requested them during the hearing"** (p. 10 a/4) (emphasis not in original.)

45. The history of the village, as laid out above (sections 24-25) is well-known to the respondents from many administrative proceedings conducted before them and judicial proceedings in which they were respondents before this court. The respondents never denied the military and planning omissions with regard to the village of Susiya, including land expropriation without a planning solution and two violent evictions without appropriate administrative procedures. **The respondents chose knowingly to ignore all of that and announce at the very outset that none of it concerned the committee.**

**Absence of proof of ownership**

46. The committee's first argument against the plan is the absence of proof of ownership. This argument ignores the fact that in the open hearing before the Planning and Licensing Subcommittee the architect and petitioners' counsel emphasized, as noted in the minutes, that the latter had documents of ownership of the land and these would be presented to the committee should it ask to see them. **At no point did the respondents ask the petitioners for the collected ownership documents in their possession.**

47. Moreover, the petitioners possess dozens of documents connecting them to the lands. Some of the petitioners' documents were previously examined by the Civil Administration, whether to review requests for construction permits or to coordinate access to agricultural lands. **The examinations indicated unequivocally that the petitioners were connected to the lands in the relevant *mawqa*.** In addition, as detailed in section 25, already in the 1980s, Ms. Plia Albeck checked and found that some 3,000 dunams of land in this area were private lands, owned by Palestinians and registered in their name. **Members of the Planning and Licensing Committee did not bother to test connection to the land using some of the petitioners' documents they held, did not ask the petitioners to complete the documents, and did not examine what Mrs. Albeck referred to in her opinion.**

48. As part of the committee's decision, various planning tests were employed to examine the

plan: minimal population level, ability to form a municipal/rural council to effectively manage the community's life, ability to provide services, ability to bear the expenses for infrastructure, and social dynamics. **Each and every one of the tests was utilized wrongly while leaning on flawed factual assumptions.**

### **Test I – Minimal population level**

49. The first test employed by the committee was a quantitative threshold population that can bear municipal services and provide itself with its needs in education, health care, and welfare. According to the committee: *“The number of families in question does not allow growth and decent community life, according to the standards used in planning”* (p. 12 a/4). In the village of Susiya there are 40 households, together numbering some 340 people. According to the committee, this size of population does not justify the creation of a town.

50. **First**, as part of the planning procedure, many area residents expressed a desire to live in the village after it was legalized. It is to be expected that once the village is legalized in terms of planning and the threat of destruction is removed, the village's population will grow. **Second**, throughout the West Bank are dozens of Israeli settlements numbering fewer people today than the village of Susiya: Avnat (119), Adora (268), Almog (159), Argaman (161), Beit HaArava (122), Beka'ot (165), Gitit (302), Gilgal (167), Vered Yeriho (195), Hemedat (174), Hamra (94), Hermesh (180), Yitav (167), Yafit (106), Mevo Dotan (272), Migdalim (138), Mekhora (116), Ma'ale Amos (264), Mitzpe Shalem (164), Masua (148), Maskiot (72), Negohot (266), Niran (58), Na'ama (95), Petza'el (209), Kalya (324), Ro'i (153), Reihan (181), Shim'ah (315), Tomer (236), and Telem (262) - **31 settlements, each and every one of which was given proper planning on behalf of the respondents despite the small numbers of their residents.** Needless to say, the number of settlements where the population at the year of their founding was fewer than Susiya's residents today, is larger by orders of magnitude.

### **Test II – Effective management**

51. The second test employed by the committee was *“the ability to create a municipal or rural council to efficiently manage the community's life.”* The committee claims the plan presented before them emphasized that the village residents' ability in this area is limited. According to them, the plan emphasized the disagreement between the residents. **The committee's claim ignores the planner's remarks at the open hearing, where he emphasized that the plan was submitted in collaboration with the community.** It should be noted that the village of Susiya today already has an effective governance framework. The village of Susiya was recognized as a village by the Palestinian Authority and a council was appointed, headed by petitioner no. 1.

52. For this matter, the plan presents the committee with exemplary community agreement on planning. The village residents gathered, discussed the options before them, agreed on an architect on their behalf and on counsel, compiled and submitted all of the information the architect

required for planning, and agreed unanimously to each and every one of the plan's proposed alternatives.

### **Test III – Provision of services**

53. The third test the Committee employed was “the ability of a central authority in the form of local or central government, such as the Municipality of Yata or the Palestinian Authority, to provide services for many years to a population that is not contiguous with the existing urban fabric.”

54. **The village of Susiya is and was an independent village and not an outgrowth of the city of Yata.** The village has stood at its current location for a long time, and effectively receives services with the support of the Palestinian Authority, which has authority over matters of education, health care, and welfare, even in Area C under the Oslo Accords (Section 6(2)). The village, like any other village, relies on larger neighboring villages, such as Tuwani and Mnayzel, to complement the services available to its residents. Education – The village of Susiya has an elementary school and a kindergarten under the supervision of the Palestinian Ministry of Education. The older children go to school in the neighboring village of Tuwani. Health care – The village of Susiya has a clinic which a physician attends to once a week with the support of the Palestinian Ministry of Health. For urgent care, the petitioners turn to the clinic in the neighboring village of Tuwani. Welfare – The village of Susiya has a structure used by the community for gatherings; a cultural-touristic center employing the village's women; and a butter churn which helps provide for all of the village's families. The villagers will be able to expand municipal services when their plan is approved.

55. According to the committee, “*neither the Municipality of Yata nor the Palestinian Authority are able to handle... education services, welfare services, religious services, health care.*” First, as noted, the village of Susiya is independent from the town of Yata. Secondly and more importantly – the Palestinian Authority's Ministry of Local Government actually thinks otherwise. The Minister of Local Government declares that after Ministry representatives held a series of professional meetings with the residents of the village, his Ministry would fulfill its role in implementing projects related to infrastructure and provision of services for the village of Susiya in the areas of development (health care, social, educational, etc.) The Minister declared that if the village plan is approved, his Ministry will begin implementing the plans according to the priorities determined by the villagers.

### **Test IV – Infrastructures**

56. The fourth test the committee employed was the question, “to what degree are the communities and families able to bear the cost of creating infrastructure in terms of electricity, water, sewage, roads, trash disposal.” According to the committee, the plan submitted by the petitioners bears “no hope to promote the population beyond the poverty and ignorance in which

their representatives keep them.”

57. This claim, like those before it, was not examined factually by the respondents:

Electricity – First of all, the residents of the village already provide themselves with solar energy. In addition, the Palestinian Energy Authority is in charge of the Palestinian Electric Company. **According to the aforementioned declaration by the Minister of Local Government, once the respondents approve the village plan, the Palestinian Electric Company will connect a power line to the village as was done with other villages nearby. The only reason why the petitioners have made do with solar energy for years is the respondents’ own refusal to permit them to connect to existing electrical grids.**

Water – Since time immemorial, the petitioners have collected rain water in storage cisterns. After the respondents sealed dozens of ancient cisterns in the village area in 2001, their ability to collect rain water has been limited. Nonetheless, the petitioners’ lands include some 30 cisterns today. When the rain water in the cisterns is depleted, the petitioners purchase drinking water in tankers, at great expense. According to the aforementioned declaration of the Minister of Local Government, if the respondents approve the village plan, the Palestinian Water Authority will connect the village to a water line as was done with other villages nearby. **The only reason why the petitioners are forced to spend great sums to purchase water, as much as ten times more than the average Israeli consumer, is the respondents’ refusal to give them a permit to connect to the water pipes or create an approved collection point.**

Sewage – For the time being, the petitioners are using cesspits, however the plan addressed the sewage issue in detail, including a small sewage purification facility which would water the groves. In addition, the Palestinian Authority has a number of mobile local purification stations. According to the aforementioned declaration by the Minister of Local Government, if the respondents approve the village plan, a mobile station will come to the village of Susiya as was done with other villages nearby. **The only reason for the petitioners making do with cesspits is the respondents’ refusal to approve the village plan.**

#### **Test V – Social dynamics**

58. The fifth test employed by the committee entailed a change in the petitioners’ traditional way of life and a coerced urbanization processes championed by the committee: “Insofar as the city serves as a meeting point of varied populations, it serves as a source of cultural, economic, and educational enrichment. On the other end of the spectrum, insofar as rural residence is fragmented, scattered, constructed on tribal and familial affiliation, closing in on the citizen, the individual, and does not give them tools for their own social advancement, to develop abilities for income opportunities, cultural or educational empowerment.”

59. The respondents claim that the “social dynamics” test described above is at the basis of the decision whether to approve master plans in general and the petitioners’ plan in particular, therefore writing: “The current plan constitutes another attempt to prevent a poor and downtrodden population from getting ahead, preventing their choice between a partial livelihood or other sources, preventing Palestinian women from getting out of the cycle of poverty, denying them opportunities in education and work. As aforementioned, such a plan prevents the Palestinian child from seeing all of the options available to any other person by sentencing them to life in a small, dilapidated village, without the tools for development” (!)

60. For two and a half decades the respondents neglected their duties towards the petitioners and stopped every attempt at advancement, such as connecting the village to solar power or the construction of a bathroom structure with four solid walls. Now the respondents choose to dismantle the petitioners’ social structures down to their foundations and force upon them an urbanization process under the guise of concern for their advancement. The petitioners, for their part, work as best as they can to promote the residents of their village. Without any help from the respondents and while coping with the many difficulties they have placed before them, the petitioners created a kindergarten and elementary school for the welfare of their children, a cultural-touristic center employing the village women, and a butter churn run on solar energy, enabling the village women to produce quality cheeses sold on local markets. They, and only they, advance themselves, while the respondents work to prevent and ruin any progress.

61. In employing the “social dynamics test,” the respondents ignore the petitioners’ way of life, farmers since time immemorial. Their land is their entire world, it is their livelihood, and it is where they want to live. This is their way of passing on their traditional way of life to their children, as professional farmers and shepherds learning from early childhood to work the land. The petitioners employ the social dynamics test in isolation from the petitioners’ unique context. If the respondents force eviction on the petitioners, the latter will not be able to pass on their traditions to future generations.

#### **The village’s original site – an archaeological site**

62. In its decision, the committee adds that the Susiya archaeological site has a valid plan, “*which takes into account the special needs of the archaeological site...*” All alternatives the petitioners presented for the planning of their village include the land of their original village, today serving as an archaeological site. Only one alternative refers to it as a residential area, and the rest as an additional source of livelihood for the villagers. The committee notes in its decision: “*We saw no reason to approve a new plan for the site which effectively changes the use of the archaeological site in a manner which may potentially harm important archaeological values on the site.*” As noted, four of the five alternatives requested no change in the use of the site. The archaeological site is currently operated by settlers who created the “Susiya Touring and Learning Center.” Information handed over by the respondents under the Freedom of Information Act

indicates that it is actually under the aegis of the Susiya settlers' management that an illegal outpost was established on the site, in which Israeli families reside. With the site operated by settlers from Susiya, it is used for residence, bringing about harm to its archaeological value; it should therefore be considered whether its operation should be transferred to the petitioners and, at the very least, its revenues shared with them.

### **The respondents' proposal to transfer the petitioners**

63. Before it concludes its remarks, the committee recommends to the petitioners "not to abandon the planning route and to initiate an alternative plan... this plan should refer to a place closer to Yata, whereas for this purpose one may consider, in consultation with the relevant elements in the Civil Administration, all relevant planning possibilities, including making use of suitable state lands in the area." As noted above, the village of Susiya is an independent village and not a branch of the town of Yata.

64. In order to understand what "relevant planning possibilities" the respondents recommend, representatives of both parties met at the Planning Committee's offices on January 26, 2014. During the meeting it was revealed that there was one proposal in question. At the meeting, the petitioners were shown an aerial photo with circles marking an existing residential compound some 3 km northwest of their village, in Area B. **The respondents made it clear they had no intention of initiating any plan for the village, but instead recommend that the village residents initiate an additional plan at the indicated location. The recommendation included no information about the current number of residents or structures at the proposed site, the ownership situation of the lands at the proposed site, the availability of grazing lands and water cisterns, nor any solution for the villagers' livelihood.**

**– Find attached a copy of the aerial photo handed to the petitioners, marked C/20.**

65. The petitioners' initial inquiry indicated that the proposed site includes small enclaves of land, where homes stand, populated by some 130 residents claiming rights to the lands. The residents of the structures at the proposed site are the owners of the grazing lands around it, of the area's agricultural lands, and of the water cisterns, even according to the respondents and their recognition. After an in-depth inquiry, consultation with all of the petitioners and with planning officials, and contact with the residents of the proposed site, the petitioners reached the conclusion that the proposed site would not allow them to live normal lives, for a number of reasons:

- a. **Absence of affinity to property** – The village of Susiya is located today on its residents' lands, adjacent to their agricultural land. As noted, the petitioners hold documents connecting them in terms of ownership to the village's lands. Even according to the respondents, the village at its current site is not on state lands, nor on land allocated to a settlement or a closed military area. The proposal to transfer the petitioners to a site they have no proprietary connection with at all is questionable.

- b. **Absence of ownership of land for construction** – The original owners of the lands do not recognize the declaration and continue to treat the lands as their own. Even the respondents recognize the residents’ continued right to the state land and their residence there, as is evident: the structures at the site are specifically on the declared lands and to the best of the petitioners’ knowledge, the respondents have no enforcement proceedings against them. In order to build houses, the petitioners will be forced to try and purchase the declared state land from the current residents. The petitioners’ representatives conversed with representatives of the families living at the proposed site, and the latter declared presently that they are not interested in being joined by the 340-odd residents of Susiya, almost three times their current number, and will refuse to sell them any of their lands. As noted, it appears the respondents made no inquiry as to the number of residents and structures at the proposed site, nor regarding the feasibility of the proposed transfer.
- c. **No ownership of land for livelihood** – The petitioners own no grazing lands at the proposed site. The residents of the site hold all of the grazing lands around it, and these would not be sufficient for the herds of both villages.
- d. **The proposed site is some 3 km’s distance from the village’s current lands** – The distance from the grazing and farming lands owned by the petitioners would ruin their source of livelihood and harm their way of life as traditional farmers and shepherds. Negating their possibility of making a living from their traditional sources of livelihood would leave them destitute and unemployed. It appears that the respondents made no inquiry regarding vocational solutions at the proposed site.
- e. **Some of the state lands at the proposed site are intended for agriculture** – The state lands as marked on the proposal are not necessarily lands intended for construction. Some of them are fertile agricultural lands, intensively cultivated by their owners. These agricultural lands are not appropriate for construction. Representatives of the proposed site’s residents have already made note that they would refuse to sell them to the petitioners. It appears that the respondents made no inquiry into the nature of the state lands at the proposed site nor the feasibility of construction on it.
- f. **Topography** – a great part of the state land enclaves at
- g. The proposed site includes topography that is not appropriate for construction at steep inclinations. A thorough investigation revealed that without the dunams which are topographically unsuited for construction, only a few dunams remain, on which the site’s residents’ structures are already built. It appears that the respondents made no inquiry into the nature of the state lands at the proposed site nor the feasibility of



construction on it.

- h. **Disturbance of public order** – Coerced transfer of the petitioners to the proposed site, where families reside and claim rights to the land, holding all of the grazing lands and agricultural lands around it and opposing the transfer, would create day-to-day conflicts between the residents both over grazing lands and over lands for construction, conflicts which may easily lead to bloodshed. It is clear that this would cause a disturbance of public order.
- i. **Education** – The petitioners' children currently attend the school in their village. The proposal does not provide any educational solution for the dozens of children aged 0-12. It appears that no inquiry was made into the educational options for the petitioners' children at the proposed site.
- j. **Water** – The petitioners rely on dozens of rainwater storage cisterns both for the use and hydration of their families and for the hydration of the herds on which their livelihood hangs. A distance of some 3 km from the water cisterns they own would deny their right to water. The water cisterns at the suggested site are privately owned by local residents and are not sufficient for the needs of the petitioners at any rate. It appears that the respondents made no inquiry regarding water supply at the proposed site.
- k. **Infrastructure** – There is no water, electricity, sewage, or road infrastructure at the proposed site. In this crucial sense there is no advantage to the proposed site over the current location, rather the opposite is true. The current site has a solar energy system, water collection cisterns owned by the petitioners, a proposed sewage solution, and is located adjacent to a road, making a simple and cheap transportation solution possible. In terms of connection to infrastructure, the villagers' situation would deteriorate upon being transferred to the proposed site. It appears no inquiry was made into the infrastructure at the proposed site.
- l. **Contiguity** – In the committee's decision to reject the village plan submitted by the petitioners, the plan was examined by five different tests as detailed above. The proposed site does not change the result of the four tests the committee relied on in its decision to reject the villagers' plan, and supposedly addresses, partially, only one test – contiguous development.

The form of development of the urban and rural system of towns in the Hebron area is based on a scattered formation with a mother city and its satellites. In a rural environment such as the village of Susiya, the contiguity principle should be fitted to the rural character.

The contiguity principle supposedly comes to address problems of infrastructure and infrastructure costs, environmental damage, and provision of services, however the proposed site is 1.5 km away from the most far-flung houses of the city of Yata. This site does not provide redress for any of the considerations at the basis of the concept. As noted above, in terms of infrastructure solutions and delivery of services, moving to the proposed site would worsen the petitioners' situation, and at no point has it been argued that the village at its current site damages the environment.

Needless to say, the respondents regularly plan isolated settlements (cf. section 50) and act to legalize unlicensed outposts located far from recognized towns.

The ruling stated that the consideration of contiguity with existing development is one the committee must consider, among the other relevant considerations (AA TA 2419-06 *Sapir & Zohar v. National Planning and Construction Council Appeals Committee*.) In this case, the committee is using the planning concept of "contiguity" as a fig leaf, to embellish a proposal injurious to the village's residents.

- m. In addition to the above, we note that the petitioners fear moving away from their agricultural lands lest they lose their rights to them. As is known, the Palestinian land owners around the settlement of Susiya suffer frequent invasions of their private lands and only those who have managed to reside close to their lands like the residents of the village of Susiya have succeeded in maintaining most of their land rights. Others, forced to leave, have lost rights to agricultural lands (cf. HCJ 5825/10).

66. On February 17, 2014, the petitioners rejected the respondents' recommendation due to the reasons detailed above, and asked the Planning Committee to give the planner detailed professional guidelines how to amend his plan for the rural fabric at the village's current site for deposition, or that instead the Planning Committee initiate a plan for the village at its current site.

- **Attached is the petitioners' letter from February 2, 2014, marked C/21.**

67. For the time being, all of the houses in the village are under threat of demolition, subject to 64 demolition orders referring to some 100 structures serving some 340 protected residents, of them some 140 children. The five alternative master plans submitted by the village residents to legalize the planning of their village were rejected. As will be detailed extensively in the legal part, the rejection rationales are flawed, wrong, exceed jurisdiction, are unreasonable, in bad faith, scandalous, paternalistic, and cynical. The village's residents face the destruction of their village and forced transfer to an unknown location.

## **Conclusion**

"The point of departure, in principle, is that removing a person from their place of residence

and forcibly transferring them to a different place grievously harms their dignity, liberty, and property. A person's home is not just a roof over their head but also a means of their physical and social position, of their personal life and relationships... How many basic human rights are harmed by forcibly uprooting a person from their home and transferring them to another place, even if this transfer does not entail crossing a national border... These human rights come from the domestic legislation of the various countries, and some are also anchored in norms of international law," **H CJ 7015/02 Ajuri v Commander of IDF Forces in the West Bank, PD 56(6) 352.**

**Therefore, the Honorable Court is moved to issue an interim order and an order nisi as requested, and after receiving the respondent's response, to render the order nisi absolute. The court is also moved to charge the respondents with legal costs and lawyers' fees.**

Qamar Mishraqi-As'ad, Adv.  
Petitioners' counsel

Avital Sharon, Adv.  
Petitioners' counsel

**Submitted today, February 24, 2014, by messenger**