July 21, 2021

To:

Mr Karim A. A. Khan
Prosecutor of the ICC

Dear Sir,

Re: Request to launch a criminal investigation as to the allegation of a commission of a war crime, against the Israeli officials who are responsible for the expulsion of the Shepherd Community in Khirbet Humsah in the Jordan Valley

1. This letter is sent to you on behalf of ‘Combatants for Peace’, an Israeli-Palestinian group acting to promote peace and to end the Israeli military rule over the Palestinian territories. The movement’s activity is based on the establishment of partnerships for bi-national activities on the basis of nonviolence and activism.

2. The activists of Combatants for Peace, together with other Israeli and Palestinian organizations and activists, seek to help the Shepherd Community in Khirbet Humsa survive the decades-long attempts of the Israeli military forces to expel them from their place of residence.

3. As shall be elaborated below, Combatants for Peace believe that the repeated efforts of the Israeli military forces to expel the community in Khirbet Humsah constitute a war crime, as defined by the Rome Statute of the International Criminal Court, 1998.

4. As shall be explained below, pursuant to the principle of complementarity, the International Criminal Court in Hague is authorized to address crimes committed by Israeli individuals against the Shepherd Community in Khirbet Humsah, and accordingly, the Chief Prosecutor must initiate an investigation in this matter.

Background on the Shepherds Community in Khirbet Humsah and the attempts of the Israeli military to expel it

5. As published by ‘Kerem Navot’¹, Khirbet Humsah is a shepherds’ village, whose residents originate in the Hebron area. They came to their place of residence in the Jordan Valley decades ago, for its pasture areas.

¹ https://www.keremnavot.org/post/%D7%94%D7%92%D7%99%D7%A8%D7%95%D7%A9-%D7%94%D7%92%D7%93%D7%95%D7%9C-%D7%9E%D7%96%D7%94-%D7%A0%D7%99%D7%9D
6. Several months after Israel’s occupation of the West Bank, in August 1967, it declared hundreds of thousands of acres east of the villages and towns on the central mountain ridge of the West Bank as “firing zones” and prohibited Palestinians from entering these, with the goal of creating a partition between the large Palestinian population concentrations in the West Bank and the Kingdom of Jordan. Among the declared areas is also Firing Zone 903, where Khirbet Humsah is located.

7. In the 1970s, the State of Israel established in the area where Khirbet Humsah is located, the settlements Bkaot (in 1972) and Roei (in 1976) (and to that end, more than 4,200 acres were seized, although these lands are privately owned by Palestinians).

8. The organization ‘Kerem Navot’ has examined aerial photographs that were taken between 1980-2002 and found that the residents of Khirbet Humsah did not leave the area, notwithstanding its declaration as a firing zone. They continued living in the area until the first years of the second Intifada – when, due to the aggressive closure and segregation policies applied by Israel between the Jordan Valley and the rest of the West Bank, they were forced to leave the area, since their access ways to the villages west of them were blocked. 8-9 years went by, and the Shepherd’s Community in this location started to gradually recover, with the lifting of the closure on the Jordan Valley, until its final removal at the end of 2012.

9. The village residents live mostly in temporary buildings and engage in livestock grazing and agriculture. Due to the declaration of the area as a firing zone, they cannot obtain building permits, and the Israeli Civil Administration occasionally demolishes, on varying scales, the makeshift buildings and evacuates the village in its entirety for the purpose of “training”.

10. Regarding the use of “training” for the implementation of demographic changes, journalist Amira Hass published on “Haaretz”, on May 21, 2014, the words of Colonel Einav Shalev, Operations Officer of the Central Command, at the subcommittee of the Knesset Foreign Affairs and Defense Committee, headed by former MK Motti Yoogev:

“I think one of the best processes, that can slip through our fingers, is the return of firing zones to where they should be, and are still not there. (This is) one of the reasons why we, as a military system, locate much of our training in the Valley. In other words, looking at the latest division maneuver, with fighter aircraft, helicopters and tanks, firing etc., looking back decades, I can’t remember anything like it. Now we are planning another division maneuver in this region. The dispute over firing zones is more than the committee here, and the excellent supervision work carried out by Marco (Ben Shabbat, the manager of the Ministry of Defense Supervision Unit in Judea and Samaria, A.H.), together with us. I think that the movement of combat armed vehicles, and other vehicles and so forth, in this area, and thousands of soldiers on the ground, it pushes aside. when the forces are

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2 https://www.keremnavot.org/post/579065

3 https://www.haaretz.co.il/news/politics/.premium-1.2327155
on the ground, people move aside, and I make no distinction here between Jews and Palestinians, just generally speaking… in places (where) we significantly reduced the amount of training, weeds have grown”.

11. The military forces deliberately ignore the fact that those families have been living in Humsah for decades, excluding a break of several years against the background of the restrictions imposed during the second intifada, and deems them fresh trespassers in the firing zone, beginning in 2012. According to the military spokesperson, from 2012 until today, the community has been evacuated 6 times for the purpose of “training”.

12. Each evacuation was traumatic for the families and children, caused damage to their meager property and required a lengthy recovery process, due to their little resources. In May 2019, the evacuation was carried out during the month of Ramadan.

13. The last evacuation, on July 7, 2021, was particularly hard. According to ‘B’Tselem – The Israeli Information Center for Human Rights’, the armed forces demolished the homes of at least nine families, leaving some sixty human beings with no roof over their heads, of whom half are children. Soldiers and Civil Administration staff uploaded the content of the residents’ makeshift homes onto military trucks. The IDF prevented representatives of humanitarian organizations, including the UN office for coordination of humanitarian affairs (OCHA) from arriving in the place of demolition.

14. Hagit Ofran, human rights activist and the expert in charge of the settlement monitoring project of “Peace Now”, published a video on Twitter, showing the property of the families dumped elsewhere, and wrote: “In the middle of the desert. The Jordan Valley. A pile of all personal individual belongings of the 60 residents of Khirbet Humsah. Our soldiers were sent to load their stuff onto trucks, and unload all this equipment somewhere in the desert. Meanwhile, in Humsah, people were left with nothing but the clothes they wear. With nothing. Someone brought them water. The army threatens anyone who enters that their car will be seized”.

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4 https://www.ynet.co.il/news/article/h1wjv3rto
5 https://www.btselem.org/hebrew/press_releases/20210707_khirbet_humsah_demolition
7 https://twitter.com/hagitofran/status/1413096050883405825
15. Combatants for Peace activists photographed the water tanks demolished by the armed forces and some of the property of the residents, which was seized and dumped elsewhere:

![Image of water tanks and property]

16. ‘Kerem Navot’ published, after a prior evacuation in February 2021, that the military “proposed” to Humsah residents to relocate to an “alternative site” where they would be able to reside, in such manner as to prove that the goal is to effect demographic changes in the region. “This is a close to 700 acres area that was registered by the Jordanian authorities as governmental property. Israel considers itself eligible to treat this area as its own, and offer the Humsah people to live there, although other individuals live there and cultivate a significant part thereof. And why would Israel want to transfer the residents of Khirbet Humsah to that place? Because it is very close to areas which were transferred, under the Oslo agreements, to the responsibility of the Palestinian Authority. As in the cases of the residents of Palestinian Susya and Khan al Ahmar, Israel is trying to force Palestinians to leave their places of residence and transfer them to areas where there are already concentrations of Palestinian population”.

17. On July 15, 2021, the military forces demolished the small tent encampment established by the residents, with the help of humanitarian organizations, outside the fire zone and near the place from which they were evacuated – thus proving that the goal is to expel them from the area.

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8 [https://www.keremnavot.org/post/%D7%97-%D7%A8%D7%91%D7%AA-%D7%97%D7%95%D7%9E%D7%A1%D7%94](https://www.keremnavot.org/post/%D7%97-%D7%A8%D7%91%D7%AA-%D7%97%D7%95%D7%9E%D7%A1%D7%94)

The fact that the Israeli Military expels the Palestinian shepherd community in Khirbet Khumsa, while finding creative solutions to allow settlers who live in and near Firing Zone 903 to remain - proves that the real goal is to make demographic changes in the area.

18. As will be explained below, while military forces are working to expel the shepherd community in Khirbet Humsah, creative solutions have been found for settlers living in and near Firing Zone 903 - indicating that the need for “training” serves only as an excuse to make demographic changes.

19. At a distance of 4.7 km from Khirbet Humsah, the Hemdat settlement (initially was a Naha’l outpost) was established in 1980 within the 903 firing zone. In 1999, an amendment was made to the declaration of the firing zone in order to adapt it specifically to the jurisdictional boundaries of the Hemdat settlement, in the strange form of a balloon (the settlement is the balloon and the access road to it is the balloon-bound wire). In December 2012, the Civil Administration approved a master plan for the settlement:

20. Beginning in late 2016, settler Uri Cohen established in the Firing zone 903 area an Outpost known as the “Uri’s Farm,” north of the Hemdat settlement, and also took over areas deep within the firing zone that are used by him for grazing and agriculture.

https://peacenow.org.il/settlements/settlement43
21. In a response submitted by the army to the High Court of Justice, in a petition to cancel the declaration of Firing Zone 903 since the settlers from Uri's outpost are building and using it as they wish (HCJ case 435/19), the military admitted that at least one building of the outpost is currently inside the fire area. Nor does it disagree with the petitioners’ claim that the settlers graze and make use of the agricultural land within it. The petition was dismissed because the Judges found no reason to interfere in the military policy 11.

22. Below are aerial photographs attached to the army's response, in which the location of “Uri's farm” and the settlement of Hemdat can be seen, as well as how “Uri's farm” is located on both sides of the border line of Firing Zone 903:

23. Similarly, at the end of 2018, the outpost known as the “Menachem's Farm” was established next to the Hemdat settlement by the settler Menachem Goshen, also within Firing Zone 903, and Menachem also uses the agricultural and grazing areas within the zone:

11 https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts\19\350\004\b05&fileName=19004350.805&type=2
24. The military forces also allowed the settlers to erect a barbed wire fence between the Hemdat settlement almost as far as "Uri’s farm" in order to prevent Palestinian shepherds from entering the grazing areas within Firing Zone 903, which the settlers took over.

25. Therefore, unlike Khirbet Humsah, the military forces decided to change the boundaries of Firing Zone 903 for the settlement of Hemdat, and to allow the outposts established by Uri and Menachem to continue to expand freely within the firing zone.

26. The description above indicates that the expulsion of the shepherd community in Khirbet Humsah, stems only from the desire of the Israeli military forces to make demographic changes.

The conditions are met for the purpose of opening a criminal investigation into the war crime committed against the shepherd community in Khirbet Humsah

27. As is well known, on 3.3.2021 the former Chief Prosecutor of the ICC decided to open a criminal investigation into the situation in Palestine12, after the Honorable Judges decided on 5.2.2021 that the ICC has territorial jurisdiction in Palestine13.

28. In the specific case of Khirbet Humsah, there is also the principle of "complementarity", which is set out in Article 17 of the Rome Statute, since the judges of the High Court of Justice in Israel already accepted the military's position when they outright rejected a petition filed by the residents (together with the Association for Civil Rights in Israel (ACRI)) Against the eviction in the month of Ramadan in May 2019. This is a final decision and the residents can not apply again to the courts in Israel in the same matter.

12 https://www.icc-cpi.int/Pages/Item.aspx?name=210303-prosecutor-statement-investigation-palestine
29. This is what Judge Alex Stein stated in his judgment in HCJ 3326/19 Yasser Mahmoud Muhammad Abu al-Kabash v. Commander of Military Forces in the Judea and Samaria Area (published in Nevo, 22.5.2019), in complete disregard of the provisions of international law 14: "These are areas that were declared firing zones back in 1972. It is also undisputed that the petitioners do not have recognized property rights in these areas. In fact, these are invaders who use the areas for grazing. There is also no dispute that the IDF conducts training in these areas from time to time, and that during the training, the petitioners, together with the other local residents, are asked to evacuate the area not only for security reasons, but also for their personal safety. Moreover, construction on the site is unregulated and illegal. The implication is that the petitioners have not shown any reason for receiving the judicial relief requested in their petition, which means the cancellation of the IDF’s planned training."

30. It should be noted that the member of the Committee for the Selection of Judges in Israel, former MK Nurit Koren, revealed that Judge Alex Stein was chosen for the position due to his views on the limited obligations of the State of Israel to take care of the Palestinian population 15.

31. In the case of Khirbet Humsah, the provisions of Article 8 of the Treaty of Rome, which recognizes the following acts as a war crime, are relevant:

   Article 8
   War crimes
   1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.
   2. For the purpose of this Statute, “war crimes” means:
      (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
         (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
      ........
      (vii) Unlawful deportation or transfer or unlawful confinement;

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14 https://www.nevo.co.il/psika_html/elyon/19033260-F03.htm
15 https://www.haaretz.co.il/news/law/1.5863488
Article 49 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) prohibits the forcible transfer of protected persons within the occupied territory:

“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.”

The provision of section 49 provides for an exception according to which the evacuation of protected residents, as opposed to forced transfer or deportation, is permitted only for the purpose of protecting the residents' safety from combat taking place in their area or for necessary operational military activity which would be disrupted by the residents' presence, and all this is to be temporary, followed by returning the evacuees to their place of residence immediately at the end of combat or operational activities in the area. That is, the reference is to a state of emergency and only a temporary one:

“Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons do demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased. The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.”

With regard to the destruction and confiscation of the property of the residents of Khirbet Humsah, the provision of Article 53 of the Fourth Geneva Convention is relevant, which stipulates:

“Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”

The provision of Article 147 of the Fourth Geneva Convention defines as serious violations of the Convention both expulsion and forced transfer, as well as the demolition and confiscation of property on a large scale:

“Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”
36. Beyond the fact that military training cannot be considered an urgent military need\textsuperscript{16}, in the case of Khirbet Humsah the above exception does not exist because as described, the army does not want residents to return to their place of residence in or near the firing zone, instead issuing demolition orders and destroying temporary structures belonging to the residents, confiscating their meager property and putting constant pressure on them to persuade them to move "voluntarily" elsewhere.

37. If there had been an exceptional military need to evacuate the residents in the firing zone, the evacuation would have been carried out towards all the residents in the area, and not only regarding the non-Jewish residents. In other words, the military would also have evacuated the residents of the Hemdat settlement who live inside the "balloon" that exceeds the original area of the settlement’s jurisdiction and penetrate well into the firing zone, as well as the residents of the Israeli outposts "Menachem's Farm" and "Uri's Farm."

38. In light of all of the above, we would ask you to launch a criminal investigation as to the allegation of a commission of a war crime, against the Israeli individuals responsible for the expulsion of the shepherd community in Khirbet Humsah in the Jordan Valley.

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