



Ban on Palestinian Movement on Route 443: Background Information

The Association for Civil Rights in Israel (ACRI), June 2009

Introduction

Route 443 is a major thoroughfare located in the midst of the Occupied Territories, in the vicinity of the city of Ramallah, and which connects it with the villages to the west.

Some 40,000 Israelis use it daily, most of them as an alternative route leading from Tel Aviv and the Coastal Plain to Jerusalem. For a variety of reasons of convenience, they prefer this road to Route no. 1.

Since 2002, Israel has sweepingly banned the movement of Palestinians on Route 443, thereby severely violating basic rights and disrupting the fabric of life of tens of thousands of Palestinian villagers. Continuing this situation over a period of years has severely harmed the fabric of life of the village residents and their ability to maintain economic, social, and family ties.

The ban on Palestinian movement on Route 443 is a flagrant example of Israel's segregation policy in the West Bank, which is made even worse due to the disturbing historical background: In the 1980s, the High Court of Justice approved the expropriation of Palestinian lands by Israel, as it was claimed in court that these lands were needed in order to construct a road (Route 443) for the primary benefit of the local Palestinians. As of today, the court has failed to rule against the exclusive use of Route 443 for Israelis only, while Israel continues to implement a policy that explicitly advances discrimination and segregation in the Occupied Territories.

The case of Route 443 therefore constitutes a serious violation of the fundamental human rights of the Palestinians residents of the Occupied Territories, as well as Israel's expropriation and confiscation of essential public resources in the Occupied Territories – in total breach of International Humanitarian Law – for the purposes of rendering these resources available for the exclusive use of Israelis.

This case is just one instance of a **process of institutionalized, systematic and deliberate discrimination against Palestinian residents of the West Bank vis-à-vis Israelis in the area.**

Background – Chronology of Events

- **1980s** – The Israeli military administration announces expropriation of Palestinian lands in order to build a new road system. A group of Palestinian land-owners, who had received permits for the construction of a new residential neighbourhood, petitions the High Court of Justice against the pending expropriation, claiming the new roads (Ben Shemen-Atarot and Ramallah-Jerusalem) are to serve Israelis, rather than the residents of the occupied territory. Hence, it was argued, the military commander's decision was outside of his authority and in breach of international law. The army, for its part, claimed in court that the planned roads would benefit the local population, and the fact that they would serve Israelis as well was immaterial. The military commander further claimed that the current roads are timeworn and had ceased to serve the growing needs of the local population.

In a precedent-setting ruling, the High Court rules that if indeed the expropriation is meant to serve Israeli interests, it is unlawful:

"The military administration is not authorized to plan and build road systems in areas that are in military custody, if these are nothing other than a "service path" to the sovereign country... If the Petitioners are indeed correct that the purpose of the enterprise is not the (civilian or military) needs of the area but rather those of Israel, then they are correct in their legal claim that this objective is extraneous to the legitimate considerations of the military commander."¹

However, taking into account the Respondents' position (the IDF), the court rejected the petition, stating that:

"In light of our conclusion – which we have reached without reservation or doubt – that Israel's considerations and civilian needs were not at the basis of the road plan, we are left to decide on the legal issue between the two sides, namely the power and authority of the military administration to plan and implement 'civilian' projects in the area which do not have any military ramifications but which are liable to have long-term implications on the area, at times beyond the actual life span of the military administration itself."

This ruling paved the way to the expropriation of the land required to complete the construction of several roads, including Route 443.

¹ See High Court of Justice Petition 393/82 Jam'iyyat Iskan al-Mu'aliman Altauniya Almahduda Almasauliya vs. Commander of IDF Forces in Judea and Samaria.

- **Late 1980s** – Route 443 (Ben Shemen-Atarot) is built. In 1988, one year after the outbreak of the first Intifada, the Israeli authorities altered the route of the road in some sections and widened it with the aim of ensuring the security of Israelis traveling on it, to prevent them from passing through Arab villages. At the time, the authorities claimed that the road would serve Israelis and Palestinians alike.

To widen the road and alter its route, lands belonging to Palestinian residents of the neighboring villages were expropriated – a swathe of land ten kilometers long and 150 meters wide was taken, extending from the village of Tira to the village of Beit Sira, and thousands of olive trees were uprooted.

From then until the outbreak of the second Intifada, the road was used by both Palestinian and Jewish residents. For the Palestinians, the road was the sole route of transportation to Ramallah and the nearby villages.

- **2000 onwards: Movement Ban on Route 443** – In the wake of the second Intifada in 2000, Palestinians were increasingly banned by the IDF from using Route 443, following several attacks on Israeli vehicles. In the early days of the movement prohibition, some residents of the villages continued to try to use Route 443. Since all access roads to the highway were blocked, they tried to reach the highway via dirt roads and steep hills. Residents who were caught were subjected to various punitive measures by the soldiers deployed in the area – from warnings and threats to detaining them extensively for no reason, confiscating their car keys, and even blows and more serious abuse. Palestinians who traveled on this highway also met with sanctions from the police, who cited them for traffic violations and imposed fines. The aim of these actions was to make clear to the Palestinian residents that traveling or walking on Route 443 was prohibited to them.

- Since **2002**, prohibition on use of the highway by Palestinians has become absolute. IDF commander of the Ramallah region, Colonel Gal Hirsch, claimed responsibility for the decision:

"I made Route 443 an Israelis-only road,' he said with satisfaction, while insisting it had been his decision, "I ordered all the exits serving Palestinians to be barricaded."²

² See Shelah O. and Drucker R. *Boomerang – the Failure of Leadership in the Second Intifada*, Keter Publishers 2005, pg. 31.

Legal proceedings

- **On 23 May 2006, the Association for Civil Rights in Israel appealed to the IDF**, on behalf of six Palestinian villages adjacent to Route 443, demanding the removal of the roadblocks and the cancellation of the unlawful directives prohibiting and preventing Palestinian movement on the highway.

In its response issued on 18 October 2006, the Department of the IDF's Legal Advisor denied that the IDF prevented the movement of Palestinians on the road:

“IDF forces do not prevent the movement of Palestinians on the section of the highway located in Judea and Samaria, but merely limit access to Route 443 from the village areas at a number of exit junctions, where gates have been erected and IDF soldiers conduct security checks as required.”

- Since this statement did not correspond with the situation on the ground, **ACRI appealed to the IDF again on 23 October 2006**, and requested a detailed account of those intersections where access to Route 443 was possible for Palestinians. ACRI's appeal has yet to be answered.

- **In March 2007, ACRI petitioned High Court of Justice** on behalf of six villages (Beit Sira, Saffa, Beit Liqya, Kharbata al-Misbah, Beit Ur at-Tahta, and Beit Ur al-Fauka) located near the road, which have been severely affected by the travel ban, urging the court to order the removal of the roadblocks and to open the road for free movement for the Palestinians residing in the area.

The petition claimed that access to the road is vital for the local villagers, and that their access to Ramallah – which is an essential centre for commercial and social services – depends on it. Moreover, since Route 443 runs through agricultural lands, the ban prevents villagers from accessing their lands on the sides of the road. The petition made clear that for the local population, there are no alternative thoroughfares to Route 443; they are confined to neglected, damaged, narrow and meandering roads, passing through the villages. This state of affairs has inflicted critical damage on the local economy, commerce and daily fabric of life.

The petition maintained that the ban imposed on the Palestinians, which bars them from using a road situated inside occupied territory (which was constructed on their lands under the claim that it was designed to serve their needs), constitutes an unlawful infringement of basic human rights, and contravenes the duties of the military commander as stipulated in international law. In addition, restriction on movement on the basis of a person's national or ethnic origin amounts to illegal

discrimination. The military commander of an occupied territory is obliged by law to respect and promote the welfare and rights of the protected population. In no way is he allowed to promote the interest of Israelis seeking to use the road over the rights and well-being of the protected residents of the territory.

Denying the Palestinians' right to use the road, and restricting it to the use of Israelis only, stand in stark contrast to the High Court ruling in the Jam'iyyat Iskan case.

- **On 7 June 2007, following a court hearing, the High Court of Justice issued an injunction**, ordering the respondents to explain within 60 days their unwillingness to remove the roadblocks and allow free movement of Palestinians on the road.
- **On 28 August 2007, the IDF commander in the West Bank** signed a written order officially banning Palestinian vehicles from using the road.
- **On 2 September 2007, the Respondents filed a response to the petition**, claiming that security considerations are at the basis of the travel ban, in light of a string of attacks on Israelis using the road. The respondents claimed that there were no other measures that could provide the sufficient degree of security, and the ban should therefore remain in place. They also claimed that the residents were at liberty to use alternative roads and therefore were not affected as gravely as had been argued. Furthermore, they said they were in the process of building alternative 'fabric of life' roads that would minimize the damage caused to the local population.
- **On 20 November 2007, the Petitioners responded**, insisting that the Respondents' declaration contradicted the claims they had made to the court during the Jam'iyyat Iskan case, in which they stated that the construction of Route 443 was for the benefit of the local residents. The Petitioners also claimed that building an alternative and separate road system is equally unlawful, because it requires further expropriation of private lands, as well as creating a two separate road systems on the basis of national origin – one for Israelis and another, inferior one, for Palestinians.
- **On 20 February 2008**, the Respondents submitted a 105-page-long supplementary response, which reiterated the security justification for the harm inflicted upon the Petitioners, while scrutinizing the alleged harm in great detail so as to demonstrate that it was not as grave as argued. The response included numerous erroneous factual assertions.

- **On 2 March 2008, ahead of the court hearing scheduled for 5 March, the Petitioners submitted to the court the main points of their petition, in which it was written:**

"This petition raises substantive legal questions that warrant discussion on the basic principles of the occupation regime, as they were determined and communicated by the Respondents and this court since it first heard petitions by residents of the territories occupied by Israel in 1967. This petition offers a historical case-study of the Israeli occupation regime in the West Bank. The court ruling in the case at hand will bear considerable consequences as to the true legal status, in terms of the State of Israel, which is prevailing in the West Bank and to the jurisdiction of the military commander. Accepting the Respondents' position, and authorizing the movement restrictions imposed on the local Palestinian residents, would constitute a dangerous step – the authorization of the expropriation of the resources of the occupied territory for the benefit of the occupying power. Such a ruling would be diametrically opposed to the previous ruling in the High Court of Justice case no. 393/83 Jam'iyyat Iskan vs. Commander of IDF forces in the West Bank.

The ruling in this case will also bear serious ramifications on the way Israel officially interprets the prohibition on discrimination as stipulated in international law. Endorsing the position of the Respondents – who seek a stamp of approval for declaring a road in the heart of the occupied territory as "Israelis-only" – would grant legal authority to a practice of segregation on the basis of national origin, while discriminating against the protected population of the occupied territory.

It is not only legal questions that are at stake here; there are also questions concerning the legitimacy of the judicial process and of the seriousness of the jurisprudence established by this court.

The ruling on this case shall have, therefore, fateful ramifications on the Israeli judicial system as a whole."

- **The High Court of Justice held a hearing on the case on 5 March 2008.**
- **On 12 March (a week after the hearing), the Petitioners received an injunction dated 5 March** stating that the Respondents should provide within 6 months an account of the progress in building the alternative road system. This injunction was delivered by the court without any explanations or reasoning, and with no reference to the principled claims raised in the petition.

ACRI's Position:

The court's interim decision bestows a stamp of approval on the unlawful and irreversible actions on the ground, and entails an implicit endorsement of a policy that officially segregates Palestinian and Israeli movement in the occupied territory, in a way that unlawfully violates the freedom of movement and basic rights of tens of thousands of Palestinians.

Current Status of the Case:

The petition is still pending. In January 2009, the construction of the 'fabric of life' road in the area was completed. A segregated road system for Palestinians and Israelis in the West Bank is now a reality, and Israel's High Court has failed to speak out against it. In July 2009, the State announced that the military order forbidding Palestinian movement on Route 443 has been extended until May 2010.