MOCK ENFORCEMENT

THE FAILURE TO ENFORCE THE LAW ON ISRAELI CIVILIANS IN THE WEST BANK

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אגודת מתנדבים לזכויות אדם
Volunteers for Human Rights
متطوعون لحقوق الإنسان

May 2015

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This publication was made possible through the support of the Norwegian Refugee Council.

Yesh Din activities in 2014-15 were made possible thanks to the support of the Catholic Agency for Overseas Development (CAFOD) (UK), the European Union, EPER – HEKS Swiss Interchurch Aid, the Human Rights/ IHL Secretariat, Irish Aid, the Moriah Fund, the Norwegian Ministry of Foreign Affairs, the Norwegian Refugee Council, the Open Society Foundation, Oxfam-Novib, the Spanish Agency for International Development Cooperation (AECID), the United Kingdom Foreign and Commonwealth Office, the United Nations Development Program, and individual donors.

Yesh Din bears full responsibility to the contents of this publication.

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MAIN FINDINGS AND RECOMMENDATIONS

Only 7.4% of SJ (Samaria and Judea) District Police investigations following complaints from Palestinian victims of offenses committed against them or their property by Israeli civilians result in indictments. The remaining investigations are closed, in most cases (some 85%), due to investigative failure, largely because investigators were unable to find suspects or collect enough evidence for an indictment. These statistics are derived from a sample of more than a thousand SJ District Police investigation cases conducted by the SJ District Police from 2005 to 2014 and monitored by Yesh Din. This figure does not include all of the offenses committed against Palestinians by Israeli civilians in the West Bank, nor all the complaints filed by Palestinians following such incidents, but only the files reported to and monitored by Yesh Din.

This report discusses the reasons for the failure to enforce the law on Israeli civilians in the West Bank. To this end, we examined the investigative materials in files that were conducted and closed by the investigators of the SJ District of the Israel Police. An analysis of these materials revealed substandard investigations characterized by failures and deficiencies at every stage of the investigation.

The findings show that police investigators do not always examine the scene of the incident, and when they do, their examination often takes place long after the incident, when the odds of finding any evidence or making forensic discoveries that would lead to suspects are greatly diminished. In many cases in which the scene is examined, investigators exhibit negligence and lack of professionalism with respect to the simple tasks of collecting findings and evidence and documenting the scene. In many cases, investigators had information about eyewitnesses who might have shed light on the incident and helped identify suspects, yet made no effort to find these witnesses or bring them in for questioning. Major deficiencies were also found with respect to bringing suspects in for interrogation, suspect interrogations themselves and various aspects of suspect identification by complainants and witnesses. Finally, the process of analyzing the evidence that was gathered and determining whether it could support an indictment often ended with what we believe was an erroneous decision to close an investigation file without charges, despite the presence of sufficient evidence.

The main part of the report (Chapter 3) outlines the major deficiencies that were identified, analyzes them in detail, and provides many examples from the investigation files themselves. **The main conclusion that arises from the examination of investigation files that were closed without charges is that police investigations are characterized by investigators' negligence and failure to perform basic investigative tasks. As stated, the result is that very few investigations lead to indictments.**

In addition to the deficiencies in police investigations, law enforcement in the West Bank also suffers from structural issues stemming from the unique arrangements in effect in the area. These are reviewed in Chapter 4. Some of these issues result from the fact that the division of powers between the IDF and the Israel Police has never been fully completed, and from inadequate cooperation between these two agencies. This is reflected in the lack of constant police presence in areas where offenses take place and in serious deficiencies on the part IDF soldiers who arrive at scenes of incidents and often stand idly by, take no action to stop the incident, refrain from detaining Israeli civilians and fail to properly secure the scene.

One of the most serious structural issues is mistrust of Palestinian crime victims in the will and ability of the Israel Police to assist them and investigate their complaints. This mistrust is expressed in the decision made by many not to lodge police complaints, not an unreasonable choice given that lodging a complaint, a time consuming and sometimes unpleasant process, will most likely achieve the same result as remaining passive and not complaining. Naturally, the fact that complaints are not lodged and the refusal to cooperate with the police impede its ability to investigate offenses, or even assess their prevalence, and weaken the rule of law in the area.

Amending protocols and orders may address some aspects of these structural issues and bring some improvement in the state of law enforcement in the area, but these issues are endemic to the existence of a prolonged regime of military occupation over a civilian population. We believe they cannot be fully resolved so long as the occupation continues.

Over the years, law enforcement failure in the West Bank has led to widespread use of two types of administrative orders: area closure orders that bar access to a certain area or locality and individual administrative orders which are issued against specific individuals. Chapter 5 focuses on administrative orders, the circumstances under which they are used and their prevalence.

Use of administrative orders is unacceptable and inconsistent with the rule of law in a democracy, as it is designed to bypass the checks and balances of the criminal process, on which democracy is founded. **The absence of a sound law enforcement apparatus, which includes a proper investigation mechanism, effective intelligence information and increased presence in flashpoint areas, leads to the use of undemocratic tools which violate the rights of those subjected to them, and to their incorporation into the failed law enforcement system in the West Bank.**

The reality described in the report evinces a profound failure of the law enforcement apparatus in the West Bank and Israel's inability to uphold its obligations under both Israeli and international law to protect the Palestinian population living in the areas it holds under military control. Throughout the report, we provide specific, operative recommendations for addressing each of the identified deficiencies. In addition to these, the report also presents cross-cutting recommendations which, if implemented, may foster real improvement in law enforcement in the West Bank:

RECOMMENDATIONS

The existence of the settlements constitutes a severe and comprehensive violation of the human rights of Palestinians in the OPT.[1] Only their dismantling and the end of the occupation can resolve the problems of law enforcement on Israeli civilians in the West Bank. However, so long as the situation continues as it is, reducing ideological crime and harm to Palestinians requires deep reform with proper resource allocation, a change in organizational culture and clear goal setting.

1. Protection of Palestinian civilians must be defined as a core mission of the IDF, as the agency in charge of law enforcement in the West Bank and as the agency with the highest visibility in the area.
2. The IDF and the Israel Police must allocate sufficient, skilled personnel for law enforcement activities, including protection, deterrence and investigation.
3. Steps must be taken to ensure that SJ District Police investigations are conducted professionally and effectively and include investigative measures such as collecting

1 Yesh Din, **The impact of the settlements on Palestinian rights in the West Bank**, position paper submitted to the international fact-finding mission appointed to investigate the impact of the settlements on Palestinian rights in the OPT, including East Jerusalem (November 2012).

evidence at the scene of an incident, bringing suspects in for questioning, collecting statements from all persons involved, holding lineups, verifying suspect alibis and more.

4. The State Attorney's Office must institute an effective mechanism for oversight of SJ District Police investigations, setting a clear goal for improving investigation quality and outcomes.
5. Action must be taken to eradicate mistrust and concerns harbored by Palestinian crime victims toward the police, which stop them from filing complaints against offenders. Steps must be taken to ensure that complaints to the police are not followed by acts of revenge either from the authorities or from the impugned individuals. Trust building with the Palestinian community, similar to that carried out with the settler public, should be considered.
6. International humanitarian law must be incorporated into IDF training at all levels. Steps must be taken to ensure that soldiers serving in the West Bank are aware of their duties with respect to protecting the occupied population and its property, including the duty to take action to prevent or stop an offense, detain suspects and secure the scene. Steps must be taken to ensure that soldiers are aware of their powers in this regard. Soldiers and commanding officers who breach their duty to protect Palestinians and Palestinian property and stand idly by must be investigated and prosecuted.
7. Permanent, trained and sufficient forces must be stationed in areas known to security forces as constant friction zones. Trained and sufficient forces must be dispatched to areas where clashes are expected to occur following specific incidents or when there is another reason to expect their occurrence.
8. The State Attorney's Office and the SJ District Police must collect and publish complete annual figures and reveal the number of indictments served by both agencies against Israeli civilians for harming Palestinians and their property. This type of crime must receive a distinct classification, allowing to isolate it from indictments served for other offenses. Figures on the incidence of convictions and the severity of the penalties imposed must also be published.
9. The duty of IDF soldiers and officers who witnessed offenses by Israeli civilians to provide statements to the Israel Police on their own initiative should be incorporated into military orders. In addition, the army must assist the Israel Police, immediately and without delay, in locating soldiers who witnessed alleged offenses.

INTRODUCTION

Incidents in which Israeli civilians harm Palestinians and their property are commonplace in the West Bank. While these acts, also referred to as ideological crimes, are usually attributed to a small number of extremists, in reality, they are widespread occurrences throughout the West Bank and involve many people. Acts of violence and vandalism usually take place on Palestinian farmland or on the edges of Palestinian villages and are intended to intimidate Palestinians and create a tangible threat to deter them from tending their land. These acts of violence are motivated by a calculated strategy designed to restrict and dispossess Palestinians of their land.

Israeli law enforcement authorities exhibit criminal negligence when it comes to handling ideological crime against Palestinians. Only 7.4% of police investigations carried out by the SJ (Samaria and Judea) District Police into offenses committed by Israeli civilians against Palestinians and Palestinian property in the West Bank have resulted in indictments against the suspects. This figure is based on a sample of more than 1,000 investigations conducted by the SJ District Police from 2005 to 2014 that are being monitored by Yesh Din. The remaining investigation files were closed without charges being brought, the vast majority of them (about 85%) in circumstances indicating investigative failure, such as the investigators' failure to find suspects or collect enough evidence for an indictment.

These figures reflect an ongoing law enforcement failure in the West Bank. This situation has been noted over the years in official reports, such as State Comptroller reports, reports authored by representatives appointed by the Government of Israel and reports by human rights organizations and others.[2]

Law enforcement consists of bringing offenders to justice and creating prevention and deterrence mechanisms, with the objective of upholding public order and protecting civilians. Efficient, professional investigations that allow the prosecution to serve indictments and bring offenders to justice are an important and essential link in the chain of law enforcement. Without them, the ability to enforce the law no longer exists, as a person cannot be tried and convicted without an evidentiary basis which is the product of a proper investigation.

2 The Karp Report (1992), the Shamgar Report (1994), the Sasson Report (2005), and several State Comptroller reports: 52A (2001), 54B (2003) and 56A (2005). State Comptroller Report 63B, published in 2013, also addressed law enforcement in the OPT but did not refer to how the police handles ideologically motivated crime by Israeli civilians against Palestinians.

In this report, Yesh Din seeks to examine the reasons for the failure to enforce the law upon Israeli civilians in the West Bank. The main part of the report focuses on analysis and diagnosis of the main failures in the investigations carried out by the SJ District Police into crimes perpetrated by Israeli civilians against Palestinians and their property in the West Bank. We also highlight structural issues specific to the West Bank which impede the ability of the police and other law enforcement agencies to operate efficiently. The final part of the report focuses on the wide use of administrative orders against Israeli civilians in the West Bank, often as a substitute for due process. Due process includes proper investigations that produce evidence, and evidence sufficient for indictment and prosecution.

The absence of a sound law enforcement system, founded on a proper investigation apparatus that allows bringing offenders to justice, is one way in which Israel eschews its obligation under international law to ensure the safety of the Palestinian population living in the territory it occupies. This report analyzes law enforcement upon Israeli civilians who commit offenses against Palestinians in the West Bank in view of Israeli law, and in light of Israel's obligations under international law.

ABOUT YESH DIN'S LAW ENFORCEMENT UPON ISRAELI CIVILIANS PROJECT, AND THE METHODOLOGY USED IN THIS REPORT

Yesh Din began monitoring SJ District Police investigations into suspected offenses by Israeli civilians against Palestinians and their property in the West Bank in 2005. The purpose of the monitoring project is to assess the degree to which Israel complies with its duty to protect residents of the OPT and their property, identify failures in the fulfilment of this obligation and take action to correct these failures.

To monitor the quality and outcomes of these investigations, specially-trained Yesh Din volunteers, along with the organizations' field researchers, visit Palestinian communities where there have been reports of attacks by Israeli civilians. They collect testimonies from victims and eyewitnesses, obtain documents and, where possible, photograph the scene and record the damage. If the victims wish to file a complaint to the police regarding the harm, Yesh Din representatives provide accompaniment and assistance. Complainants who wish to do so give Yesh Din's legal advisor power of attorney to monitor the investigation of their case.

When an investigation is closed with no suspects indicted, Yesh Din's legal team asks to receive a copy of the investigation file for examination, to see, based on the investigative materials in the file, what investigative measures had been taken. Where this examination reveals that the investigation had not been exhausted before the file was closed, or that the file contained enough evidence to indict the suspects, Yesh Din appeals the file's closure on behalf of the victim.

Yes Din is often asked to assist investigation and prosecution officials who are working on complaints from victims it represents in order to ensure optimal processing of those complaints. For example, Yesh Din assists in the filing of the complaint, provides the investigators with documents (such as video footage and photographs, medical documents, etc.), helps locate witnesses, and accompanies witnesses who give their statements. This means that the monitoring results presented in this report are somewhat skewed in favor of law enforcement agencies: the rate of failure in the investigation of complaints filed by Palestinian crime victims who do not receive assistance from human rights organizations or private lawyers is presumably even higher than the figures presented below.

The figures and analysis presented in this report are based on a database that has been created through Yesh Din's work over the last ten years and includes the research conducted by our volunteers and field researchers, and the monitoring of investigation files opened by the SJ District Police.

In June 2006, Yesh Din published a report entitled **A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank**, which was based on a sample of 92 investigation files and a similar methodology. The report pointed to a general failure to properly enforce the law with respect to Israeli civilians' crime against Palestinians, and revealed structural defects throughout the law enforcement process: beginning with the failure to prevent crime, continuing with the police complaint stage and ending with the investigation – where the main defects were identified. In this report, Yesh Din sought to examine, based on a much broader sample of files, whether the quality of the investigations had undergone any significant change, and to identify the main systemic failures in the investigations conducted by Israel Police SJ District.

This report includes figures from a wide sample of 1,067 investigation files – all files investigated by the SJ District Police that were monitored by Yesh Din from its establishment in 2005 until the end of 2014. The analysis of the quality of the investigations and their main failures is based on the review of investigation materials in 204 files conducted by the SJ

District Police that were transferred for our review after their closure.[3] Most of the reviewed files were opened by the police with respect to offenses committed between June 2009 and May 2013.[4] The report also includes figures regarding the IDF's use of administrative orders against Israeli civilians, provided by the IDF Spokesperson under the Freedom of Information Act, as well as additional information provided by the Israel Police Freedom of Information Officer.

3 The investigation files reviewed are those in which we had received all investigative materials at the time research for this report was conducted.

4 One investigative file into a serious assault perpetrated in February 2014 is also included in the report although the date of the offense is not included in the time period covered in the report. The file is brought as an example of serious investigative failures.

CHAPTER 1:

BACKGROUND ON LAW ENFORCEMENT IN THE WEST BANK

THE OCCUPYING POWER'S DUTY TO PROTECT CIVILIANS LIVING IN AN OCCUPIED TERRITORY

Israel is the occupying power in the West Bank, and as such, has a duty under both international law and Israeli administrative law, to enforce the law in the OPT. The provisions of international humanitarian law (also known as the international laws of war), define the obligations an occupying power has toward the population living in the occupied territory. The Hague Convention and its Regulations concerning the Laws and Customs of War from 1907 and the Fourth Geneva Convention of 1949 are the two central instruments among those provisions.[5]

Article 43 of the Hague Regulations is considered to be the fundamental principle of the laws of occupation, a constitution of sorts, which provides the general framework for the occupying force's conduct and for the relationship between state and individual in the occupied territory. The regulation grants the occupying army governmental powers and authorities and outlines the central considerations that must guide how they are used: the interests of the local population in the occupied territory and the preservation of the status quo.

> *The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.*[6]

Through legal interpretation, this foundational principle of the laws of occupation, which expressly stipulates the occupying power's duty to see to the welfare of the occupied

5 Israel considers the Hague Regulations, but not the Fourth Geneva Convention, to be part of customary international law, by which it is bound. This position has been affirmed by the HCJ. See, e.g.: HCJ 393/82 **Jam'iyat Iskan al-Mu'allimin v. Commander of the IDF Forces in Judea and Samaria**, judgment issued in 1983.

6 Hague Regulations concerning the Laws and Customs of War on Land (1907), art. 43.

population, has been augmented with the need to safeguard the security interests of the occupying power.[7] These two poles, the interests of the occupied and the security of the occupier, are the forces that drive the laws of occupation, creating the tapestry of considerations an occupying power weighs when it exercises governmental powers and administers the occupied territory.

The requirement in Article 43 to ensure "public order and safety" encapsulates the occupying power's duty to enforce the law, in terms of preventing crime, but also in terms of enforcement after the fact, through investigation, prosecution and even restoration, for instance, in the context of illegal construction and land seizure.[8]

Humanitarian law also requires the military forces on the ground to actively protect the property of protected persons from third parties, and take measures to ensure their ability to enjoy their property and exercise their other fundamental rights. Article 46 of the Hague Regulations stipulates that the occupying power has a duty to protect the private property of protected persons: "Family honour and rights, the lives of persons, and private property […] must be respected."[9]

Article 27 of the Fourth Geneva Convention stipulates that, in all circumstances, protected persons living in the occupied territory are entitled to "respect for their persons, their honour […]. They […] shall be protected especially against all acts of violence or threats thereof and against insults."[10]

LAW ENFORCEMENT IN THE WEST BANK

As stated, law enforcement in the West Bank is the responsibility of the State of Israel, which stands in for the sovereign in the area. The military is given governmental powers and authorities in the occupied territory for the duration of the occupation in order to be able to discharge its duties. Thus, law enforcement in the West Bank is the responsibility of

7 HCJ 393/82 **Jam'iyat Iskan al-Mu'allimin v. Commander of the IDF Forces in Judea and Samaria**, judgment issued in 1983.

8 HCJ 9593/04 **Murar v. IDF Commander in Judea and Samaria**, judgment issued 2006, par. 33, p.25 (official English translation available at: http://elyon1.court.gov.il/files_eng/04/930/095/n21/04095930.n21.pdf).

9 **Hague Regulations concerning the Laws and Customs of War on Land (1907)**, art. 46.

10 **Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949)**, art. 27.

the IDF Commander in the West Bank (the GOC Central Command), who acts as sovereign with effective control over the territory.

The responsibility international law places on the IDF includes a negative duty to refrain from harming protected persons and their property and a positive duty to ensure their safety and protect them and their property from harm by third parties. The IDF, as the entity in charge of upholding law and order and maintaining security in the area, has the powers that enable it to carry out this duty – on a temporary basis, for as long as the occupation continues.

Thus, the duty to enforce the law is primarily the responsibility of the IDF, as the occupying army and as the sovereign in the occupied territory. However, the IDF may delegate this power, as it has, to other entities.[11] The IDF has accordingly empowered the Israel Police to enforce the law in the West Bank in a military order. The Order regarding Police Forces Operating in Cooperation with the IDF (the West Bank Area) (No. 52), 1967, granted the police the powers granted to any soldier in the OPT as well as the powers that were granted to police officers in the West Bank prior to its occupation by Israel. This order was revoked in 2009, when the Order regarding Security Provisions Incorporated Version] (Judea and Samaria) (No. 1651) 2009 was issued.[12] Like its predecessor, Section 4 of the new order, addressing "police officer powers," grants police officers the same powers granted to any soldier under security legislation and the powers granted to any police officer under the laws in force on the day the occupation of the West Bank commenced (June 7, 1967).

Since the IDF plays the role of sovereign in the territory, under the Order regarding Security Provisions, the police and police officers are subordinate to the IDF in the area: "For this matter, every police officer and every commanding officer of the Israel Police operating in the Area on behalf of the Israel Police, is deemed to have been put in the service of the IDF Commander in the Area."[13]

11 **Order regarding Security Provisions (Judea and Samaria) (No. 378), 2009**, sec. 2(b). The Order stipulates that the IDF Commander in the Area may delegate some or all of the Military Commander's powers (The Order regarding Security Provisions was amended numerous times, and was issued as a separate Order rather than an addendum to the Proclamation in 1970).

12 On November 1, 2009, the **Order regarding Security Provisions - Consolidated Version** was signed, aiming to serve as a criminal codex that includes all the major orders issued under security legislation with respect to security-criminal matters, primarily the Order regarding Security Provisions (Judea and Samaria) (No. 378), 2009, which was amended more than 110 times over the years, as well as some twenty additional orders.

13 **Order regarding Security Provisions [Consolidated Version] (Judea and Samaria) (No. 1651), 2009**, Chapter A – General Provisions, sec. 1.

Law enforcement with respect to offenses committed by Israeli civilians is carried out through two channels: The administrative channel, under the responsibility of the IDF, through the Civil Administration. This channel includes administrative action on offenses, such as removing trespassers, demolishing buildings that were built unlawfully, evacuating outposts, removing agricultural trespassers etc. The other channel, the criminal channel, includes opening criminal files and conducting investigations, which is the responsibility of the SJ District Police of the Israel Police. Depending on investigation outcomes, the criminal channel also includes the power to draft indictments and prosecute offenders. Other entities involved in law enforcement in the West Bank are the IDF, the Civil Administration and the Israel Security Agency (ISA).

Shortly after the West Bank was occupied, the Israel Police assumed the power and the duty to enforce the law there, and it is the entity charged with enforcing the law in the criminal channel, which is the focus of this report. In the next sections, we will examine to what extend the State of Israel fulfils this obligation, and in particular, the operation of the SJ District Police, which is responsible for criminal law enforcement in the OPT.

THE DUTY TO INVESTIGATE

Preventing crime, investigating offenses that have been committed and prosecuting offenders are the bedrock of a regime based on the rule of law. Law enforcement agencies, including the police, must prevent crime, investigate offenses once committed and prosecute the offenders. Without proper investigation there can be no prosecution or punitive measures, and without those, there is no deterrence and no public order and safety.

The Israel Police National Headquarters Ordinance stipulates that any police employee must receive a complaint regarding the commission of an offense regardless of whether the complaint actually raises suspicion that a criminal offense was indeed committed.[14] Complaints regarding offenses are received in one of four ways: The complainant speaks to police personnel outside of a police facility; the complainant reports in person to a police station; the complainant contacts the police in writing or by phone.[15]

14 Israel Police National Headquarters Ordinance, No. 14.01.01, (issued, August 1, 1994), sec. 2: "Processing complaints and investigations," http://www.police.gov.il/Doc/pkodotDoc/sug_2/140101_1.pdf (Hebrew).

15 Ibid.

The duty to investigate is enshrined in the Criminal Procedure Law and in the Police Ordinance. Section 3 of the Police Ordinance (New Version) 1971 stipulates: "The Israel Police shall handle the prevention and detection of offenses, the apprehension and prosecution of offenders […] and shall uphold public order and safety and security of person and property." Section 59 of the Criminal Procedure Law (Incorporated Version) 1982 stipulates that once the police is made aware that an offense has been committed, whether through a complaint, or by other means, it must launch an investigation. The obligation incumbent on the police to conduct an effective investigation has been acknowledged in case law: "The investigating authority must perform all the required investigative actions […] as part of its duty to locate offenders and collect sufficient evidence to prosecute and convict them."[16]

The Police Ordinance stipulates eight causes that warrant a police decision not to prosecute suspects: absence of criminal culpability, offender unknown, insufficient evidence, suspect or offender deceased, the statute of limitations has run out with respect to the offense, suspect or accused exempt from criminal liability (for reasons of age or mental capacity), another investigating agency has authority to investigate, and lack of public interest.[17]

The duty to investigate is also stipulated in international humanitarian law. As stated, the requirement in Article 43 to ensure "public order and safety," encapsulates the occupying force's duty to enforce the law, including retroactive enforcement through investigation and prosecution.[18]

Yet, international humanitarian law does not spell out principles for fulfilling the duty to investigate, and what this duty actually means is discerned from other legal sources, such as the provisions of international human rights law which apply directly to the duty to investigate and specify its terms: independence, impartiality, efficiency and professionalism - the investigating body must have the ability to collect evidence that uncovers the truth and allows the provision of remedies to the victims of the unlawful conduct that is revealed in the investigation; promptness – the pace of the investigation must not impact its efficacy or its ability to provide a remedy to victims and deter potential offenders; transparency and public oversight of the investigation – the investigative process must allow the public to follow the decision making process, accommodate public oversight and provide victims,

16 CC (Jerusalem) 102/99 **State of Israel v. Osama Salem**, IsrDC 99(3), 104.

17 **Ibid**., section 5.

18 HCJ 9593/04 **Murar v. IDF Commander in Judea and Samaria**, judgment issued 2006, par. 33, p.25 (official English translation available at: http://elyon1.court.gov.il/files_eng/04/930/095/n21/04095930.n21.pdf).

their relatives and their counsel and representatives the opportunity to examine the quality of the investigation and whether its findings are reasonable. This requirement forms an inherent part of the requirement for efficiency and professionalism in investigations.[19],[20],[21] Without public involvement, without the involvement of the victims and those representing them, without oversight of the investigation process – this process is destined for failure and abuse.[22]

LANDMARKS IN THE HISTORY OF LAW ENFORCEMENT IN THE WEST BANK

The Karp Report (1982)

In April 1981, then Attorney General Yitzhak Zamir appointed a "coordinating committee" charged with examining the investigation of Israeli civilians in the West Bank.[23] The Deputy Attorney General at the time, Attorney Yehudit Karp, was appointed to head the team, which also included the Jerusalem District Attorney, the legal advisor to the Judea and Samaria Area Command and the head of the Prosecutions Desk in the Israel Police.

The appointment of the team was preceded by two events in which severe criticism was voiced against police conduct with respect to investigating offenses committed by settlers against Palestinians. The first of these was an open letter from lecturers of law at the Hebrew University of Jerusalem and Tel Aviv University, in which they expressed their concern for the rule of law in Israel. The letter listed a string of incidents in which settlers broke the law and harmed Palestinian residents that were either never investigated or not thoroughly investigated. The second was the Beit Hadassah affair and the High Court petition filed in its wake.[24] During the hearing in that petition, the court severely criticized the

19 See, e.g., International Covenant on Civil and Political Rights, arts. 2 and 7, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 12.

20 See, e.g., International Covenant on Civil and Political Rights, Arts. 2(b) and (c) – "competent authorities," "effective remedy."

21 See, e.g. UN Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, sec. 15, "promptly;" UN Human Rights Committee, General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), sec. 14, "Complaints must be investigated promptly and impartially […] so as to make the remedy effective."

22 See, e.g. Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989), sec. 16.

23 Yehudit Karp is a member of Yesh Din's public council.

24 HCJ 175/81 **Mustafa Anabi a-Natsheh v. Minister of Defense**, IsrSC 35(3). The Beit Hadassah affair revolved around

faults discovered in the work performed by the police in the investigation of the complaints in Hebron, and the state undertook to prevent public disturbances and thoroughly investigate any complaints and suspicions in that regard.

The Karp Report, considered groundbreaking at the time, was submitted to the Attorney General in May 1982. It was the first time an official was asked to profoundly assess the work of law enforcement agencies in the OPT, and the way they handled crimes committed by Israelis against Palestinians in the West Bank. Karp distinguished this type of crime from ordinary criminal activity and characterized it as ideologically motivated criminal activity.[25] The grim reality presented in the Karp Report and the team's severe conclusions regarding the failure of all law enforcement agencies in the OPT was the first time such open and scathing criticism of these agencies was heard.

Karp's team's methodology included monitoring the investigation of incidents in which Israeli civilians were involved in offenses against Palestinian residents of the West Bank. The team examined investigation outcomes, causes for closing investigation files, as well as the duration and quality of the investigations. The findings led the team to determine that police investigations were seriously flawed.[26] According to Karp, the nature of the actions or offenses in the complaints was an impediment to effective investigation from the outset, as was the fact that the perpetrators were not typical offenders. The team was under the impression that the police investigated these offenses ambivalently and that this was reflected in the investigation outcomes.[27]

The team also determined that its severe findings regarding the failure of investigations could not be explained by "budget constraints alone" and that the situation clearly evinced "unique contextual characteristics and serious issues" derived from specific problems such as understaffing, investigators' skill level, priorities, language barriers, etc., which could explain why investigations were slow and deficient and why files were closed before the investigation was exhausted.[28]

complaints by Palestinian residents of Hebron regarding harassment and abuse by settlers from Beit Hadassah with the aim of intimidating Palestinian residents into leaving the site in order to seize it.

25 Yehudit Karp (chair), **The Investigation of Suspicions against Israelis in Judea and Samaria – Report of the Monitoring Team**, Ministry of Justice, 1982, p. 24 (Hebrew).

26 **Ibid**., p. 31.

27 **Ibid**., pp. 25, 28.

28 **Ibid**., pp. 7-8.

In addition, in a rare move, Karp also identified ministerial-level responsibility for the overall failure to enforce the law and for the deficiencies exhibited by law enforcement officials, by determining that these were symptomatic of a much deeper problem and that this problem required swift and determined action to thoroughly resolve the problem and halt erosion of the foundations of the rule of law.[29]

> *… it appears that said failures, though they require very thorough solutions, are no more than symptoms of a much deeper problem which signals the beginning of a dangerous process, whose conclusion cannot be foreseen. As such, it would be wrong to focus exclusively on the police, or the MPCID and their actions. It appears that immediate action should be taken to bring the reality and its harsh impacts up for debate at the ministerial level in order to urgently resolve this situation and formulate an official government position to be implemented by all government agencies in order to prevent matters from deteriorating and eroding the foundations of the rule of law.*[30]

Eight months after the report was published, Karp warned the Minister of Justice in an internal letter that the state of law enforcement in the OPT had not improved, and in some areas had even deteriorated.[31] Approximately a year after the report's publication, Karp wrote to the Attorney General stating that "no real action has been taken to draw the necessary conclusions from the report, and it has been shelved."[32] These letters led to correspondence and discussions between various political and legal figures, a process that continued for years, but did not lead to any real change in the way the law was enforced in the West Bank.

The Shamgar Report (1994)

In 1994, twelve years after the publication of the Karp Report, an official commission of inquiry appointed in the wake of the massacre perpetrated by Baruch Goldstein in the Tomb of the Patriarchs in Hebron and headed by former Supreme Court President Meir Shamgar, submitted its findings. The Shamgar Commission Report described law enforcement agencies' failure to implement the Karp Report conclusions and recommended a series

29 **Ibid.**, p. 31.

30 **Ibid.**, ibid. (translated from Hebrew by Yesh Din).

31 Baruch Meiri, "State of Law Enforcement in the Judea and Samaria Area – Deteriorating," **Maariv**, January 5, 1984 (Hebrew).

32 Quoted in the **Report of the Commission of Inquiry into the Massacre at the Tomb Of The Patriarchs in Hebron**, 1994, Jerusalem, (the Shamgar report), p. 173 (Hebrew).

of reforms in the field of law enforcement in the West Bank, principally consolidating the responsibility for investigative procedures and the authority to conduct such investigations in the hands of the Israel Police. Accordingly, the report recommended allocating sufficient personnel to meet the needs of the police, and introducing procedures regulating the division of labor and coordination between the IDF and the police in order to supervise police personnel in the performance of their tasks and ensure the exchange of information between the two bodies. The commission further recommended instituting arrangements that would help the police carry out investigative tasks. It also proposed that public disturbances by Jews should be handled by the police, rather than the army, and recommend operating police stations in the main Jewish settlements in the West Bank.[33] The Shamgar Commission recommendations led to the establishment of the SJ District Police of the Israel Police, and the introduction of coordinated guidelines for law enforcement upon Israelis in the West Bank.

The Establishment of the SJ District Police (1994)

As stated, following the Shamgar Commission recommendations, and in response to ongoing criticism regarding deficient law enforcement in the area, the SJ District Police was established in 1994. The SJ District Police currently employs about a thousand officers and has four regions and stations: the Hebron region in Kiryat Arba, the Samaria region in Ariel (with two sub-regions: the Ma'ale Ephrayim post and the Kadum post in Kedumim), Binyamin station in Beit El and Ma'ale Adumim station, located at the entrance to Ma'ale Adumim. Officers are also posted in the District Liaison and Coordination Offices located near the Palestinian cities of Nablus, Qalqiliyah, Jenin and Tulkarm.[34]

Procedure regarding Law Enforcement with respect to Israeli Offenders in the West Bank – Division of Labor between the IDF and the Police (1998)

In September 1998, four years after the publication of the Shamgar Report and the establishment of the SJ District Police, sharp criticism from settler leaders regarding some of the report's operative recommendations prompted Attorney General Elyakim Rubinstein to publish the "Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area."[35] The procedure defined the

33 **Ibid**.

34 SJ District Police page on Israel Police website, http://www.police.gov.il/contentPage.aspx?pid=301&mid=6 (Hebrew), **Israel Police – Annual Report 2013**, under the Freedom of Information Act 5758-1998, p. 132 (Hebrew).

35 The Attorney General at the time, Michael Ben Yair, began working on the procedure several months before the massacre Baruch Goldstein perpetrated in the Tomb of the Patriarchs. The document, known by the title "Special Procedures," led

responsibilities of the army and the police, stipulating that the agency responsible for handling law enforcement in the OPT will be determined by two criteria – the location of the incident (inside the settlements or elsewhere) and whether or not there was prior information about the incident. The procedure assigns the majority of the responsibility for law enforcement in the West Bank to the police, but does not release IDF soldiers from the duty to respond to incidents that require immediate attention or from apprehending suspects.[36]

The Sasson Report (2005)

The next time an official was called to conduct an in-depth inquiry into the issue of law enforcement in the OPT was in 2004, when Adv. Talya Sasson was appointed by then Prime Minister Ariel Sharon to look into the issue of unauthorized outposts. In the report she submitted to the Prime Minister in the winter of 2005, Sasson devoted an entire chapter to law enforcement in the West Bank, including the SJ District Police.[37]

Sasson highlighted a number of structural problems affecting the work of the SJ District Police: 1) Insufficient personnel which fails to meet needs; 2) SJ District Police officers' dependency on cooperation with IDF soldiers (this dependency is usually the result of the proximity between criminal and security incidents); 3) IDF soldiers, rather than police officers, are the ones with massive presence on the ground. IDF soldiers are reluctant to report incidents to the police. When offenses are not reported immediately, the police arrives on the scene late, and its ability to collect evidence is impaired; 4) Reluctance among IDF soldiers who witnessed offenses committed by Israeli civilians to provide information that would assist in the collection of evidence and the investigation of the offense.

In addition to these issues, SJ District Police officers face difficulties handling the settler population, parts of which view the SJ District Police as an "almost foreign" authority.[38] Working with the Palestinian population presents an additional difficulty, as Palestinian

to pressure from settler leaders who complained that it reflected discrimination against the settler population, pegging it as criminal. The pressure led to the appointment of a ministerial team headed by the Minister of Justice to look into the special procedures. Ultimately, on September 2, 1999, Attorney General Elyakim Rubinstein circulated the amended procedure - "Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area."

36 Attorney General, **Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area**, sec. 11(a)(5)(c).

37 Adv. Talya Sasson, **Opinion Concerning Unauthorized Outposts**, Jerusalem, February 2005, Chapter 10.

38 **Ibid**., p. 266.

residents are not always prepared to cooperate with the Israeli police and often refrain from lodging complaints regarding offenses.

However, the main failing identified by Adv. Sasson was the mixed signals Israeli governments throughout the years have been sending to those who perform the work on the ground, security forces and civilians alike, regarding law enforcement. Sasson found that when it comes to law enforcement in the OPT, the ministerial level sends a message of non-enforcement. “Not only do offenders go unpunished, the overall picture demands the conclusion that no one seriously intends to enforce the law.” Sasson described the situation in the West Bank as a brazen breach of the law “through a false pretense that there is an institutional system in place, operating according to legal requirements.” The mixed signals, says Sasson, trickle down to the IDF, its soldiers and commanders and to the Israel Police and its officers, as well as to the settlers and the general Israeli public.[39],[40]

Like its predecessors, the Sasson Report also included a series of reforms and recommendations for improving law enforcement in the West Bank. Though some of its recommendations have been implemented, the sub-standard law enforcement upon Israeli civilians in the OPT remains unchanged.

39 **Ibid**., pp. 43-47.

40 **Ibid**., p. 268.

CHAPTER 2:

LAW ENFORCEMENT UPON ISRAELI CIVILIANS WHO HARM PALESTINIANS AND THEIR PROPERTY

SAMARIA AND JUDEA (SJ) DISTRICT

The agencies in charge of enforcing the law with respect to offenses committed by Israeli civilians in the West Bank are the Israel Police SJ District Police, the IDF, the ISA and the Civil Administration. The SJ District Police is in charge of all aspects related to criminal enforcement, including opening criminal files and conducting investigations. If required, depending on investigation outcomes, the SJ District Police is also responsible for prosecuting relatively minor offenses and helping the State Attorney's Office draft indictments and prosecute offenders.

The SJ District Police was established in 1994, following the publication of the Shamgar Committee Report. Geographically, the SJ District Police covers the territory between the Bezek checkpoint in the north (near Beit Shean) and the Shoket Junction in the south (near Beersheba), making it the largest Israel Police district in terms of geographical coverage. The district includes two regions, Samaria and Hebron, each of which operates a number of police stations and police posts. The SJ District Police also fields two district units – the Special Patrol Unit (known as Yasam in Hebrew) and the Central Investigation Unit (known as Yamar in Hebrew), which is responsible for complex investigations. According to police statistics, the SJ District serves three million residents – 327,000 Israeli citizens living in 229 settlements, and 2,632,000 Palestinians living in 510 villages.[41]

According to Israel Police statistics, in 2013 about 1,000 police officers served in the district.[42] (The district employed 580 police officers when it was initially established. By 1995, the number had increased to 1,175, but has declined again in recent years).[43] Over the years, there have been complaints about the inferior quality of investigators and police

41 Freedom of Information Act 1998, p. 132 (Hebrew).

42 151.5 non-commissioned officers, 411 officers, 11 conscripts serving their mandatory military service in the police, and 4 national civic service volunteers; **ibid**., p. 132.

43 Figures obtained from the Israel Police website,www.police.gov.il/contentPage.aspx?pid=24&mid=6 (Hebrew).

officers serving in the SJ District compared with other districts. Officers are eligible for hazard pay (which can reach NIS 2,000 per month) but the police has trouble attracting recruits to the district. Even when the new district was established, other districts refused to give up high-quality investigators and police officers to it and police personnel and high ranking officers still regard the district's work as heavily routine, grinding police work, with few challenging cases of serious crime. As a result, its officers are relative beginners or regard it as a transitional posting.[44]

A police officer who previously served in the district maintained, in an article published in the Israeli daily Haaretz, that in recent years there has been change and improvement. "The SJ District had been a refuge for problematic officers and there were poor investigators here in the past. However, I feel that in recent years there has been change and that the police is trying to focus on the district," he was quoted as saying. "The latest commanders have been tougher and are shaking up the staff. But it takes time to reformat, especially when it is still difficult to attract new officers."[45] In the same article, another officer who had served in the SJ District argued that there was no improvement. According to this officer, the unique characteristics of the district and their impact on the type of police officers who serve there are mutually reinforcing. "It is a comfortable workplace for a lazy police officer because the distance, the security arrangements and the presence of the army, make it possible not to work as hard. So, there are many police officers in the district who are primarily interested in the salary perks," he maintained. "So they came up with the four pillar theory in the district (four pillars of law enforcement in the Territories: the police, the IDF, the ISA and the Civil Administration). And in the name of these four pillars, things don't get done."[46]

At the beginning of 2013, the **Nationalistic Crime Unit** was established in the SJ Central Investigation Unit to deal with ideologically motivated crimes by Jews against Palestinians. According to the Israel Police website, "The disturbing increase in the number of criminal incidents linked to Jewish nationalist sentiment has led to the decision to establish a significant police force to deal with these manifestations on various levels." Work on the establishment of the unit began at the end of 2011 following an incident in which right-wing activists broke into the IDF Ephraim Regional Brigade Headquarters, vandalized vehicles and beat the deputy brigade commander. The Nationalistic Crime Unit has a complement

44 Chaim Levinson, "Dozens of criminal cases closed due to Israel Police negligence in West Bank," **Haaretz English website**, December 9, 2011 (partial English translation of the original story published by Haaretz in Hebrew).

45 **Ibid**.

46 **Ibid**.

of eighty police officers, most of them investigators and detectives. The aim is that within a year or two, the unit will be able to handle all nationalistically motivated crime (currently dealt with by units responsible for handling public disturbances in the regions and police stations).

In addition to the establishment of this unit, nationalistic crime was defined and a list of offenses that fall under the definition was determined:

> *Incidents of nationalistic crime were defined as criminal acts including harm to person or property by an individual or a group (in which the perpetrator is a Jew [right or left-wing], Arab [Israeli/Palestinian] or foreigner), which were executed or planned in order to influence a political, ideological or religious matter […] This list includes many different crimes included in statute: bodily harm, crimes against liberty or property, threats or extortion, intimidation, public mischief and more, when such crimes are motivated by racism or hatred as defined in statute …*[47]

The SJ District Police employs a very broad definition for the term nationalistic crime – any crime where nationalistic motivations are even remotely suspected is transferred to the unit, especially when such crimes were perpetrated in the district's known friction zones.[48] According to Haaretz, the rationale for this policy is that every crime must be investigated with full force in order to create deterrence, and that even if arrested suspects do not ultimately serve prison sentences, the accumulation of short arrests, house arrests and removal orders from the area deter troublemakers.[49]

The primary investment in the new unit is detective capabilities and intelligence work. However, despite the intentions and the resources that have been directed to it, the establishment of the unit has not yet aimed at the SJ District Police vulnerable spot, which is the failure to carry out basic investigative tasks. It also seems that for the time being, the unit's activities have not resulted in any substantial change – either in the number of indictments, or in the scope of criminal activity in the area.

47 Letter from Superintendent Adv. Hamutal Sabag, Israel Police Freedom of Information Officer, March 18, 2014, sent in response to Yesh Din's application under the Freedom of Information Act.

48 Meeting with Police Deputy Commissioner Kobi Cohen (at the time), Commander of the SJ District Police, August 25, 2013.

49 Chaim Levinson, "West Bank crime fighters - a richly funded farce," **Haaretz English website**, August 4, 2013.

Price Tag

The term "price tag," which usually refers to crimes that are committed to deter decision-makers and the public from evacuating illegal buildings in outposts and settlements was introduced in 2008 and has since exclusively dominated the discourse on ideologically motivated crime by Israelis in the West Bank.

In the annual Police Report for 2009, Price Tag operations were defined as follows: "Price Tag means the price that security forces will pay for every action to evacuate an outpost. The means used include blocking intersections, throwing stones at Palestinian and security forces' vehicles, public disturbances against locals, damage to religious sites and actions against security forces."[50]

The Israeli and international attention this phenomenon has attracted has pressured Israel and its law enforcement agencies to show action is being taken to reduce it. In view of the resounding failure to indict those involved in these activities, use of administrative orders has increased.[51]

To better cope with these offenses, the Nationalistic Crime Unit was established under the SJ District Central Investigation Unit at the beginning of 2013. Its mission is to handle ideologically motivated crime by Jews against Palestinians. In June 2013, the government's Political-Security Cabinet passed a resolution authorizing the Minister of Defense to declare "price tag" activists as members of an "unlawful association" in accordance with the power vested in him by the Defense (Emergency) Regulations of 1945. The declaration allows the ISA, the police and the State Attorney's Office to arrest suspects for longer periods of time, prevent them from meeting with a lawyer during the investigation, remand suspects in custody pending the end of legal proceedings against them, and seize property, real estate and bank accounts. The declaration also allows security forces to use harsher measures against these activists and the courts to impose heavier sentences on them.[52]

50 Israel Police, **Annual Report 2009**, p. 179 (Hebrew).

51 See, e.g. Yehoshua Breiner, "Escalation in Battle against Price Tag: Right Wing Activist Confined to Community," **Walla!**, June 26, 2013 (Hebrew); Chaim Levinson, "12 Price Tag activists expelled from West Bank for up to a year," **Haaretz**, August 2, 2011 (Hebrew); Yair Altman, "12 settlers expelled from West Bank: 'Posed danger to life," **Ynet**, January 5, 2012 (Hebrew).

52 The decision was made after the government shelved a recommendation by the ISA, Justice Minister Zippi Livni and Public Security Minister Yitzhak Aharonovitch, and supported by the Attorney General, to declare Price Tag activists as members of a terrorist organization under the Terrorism Prevention Ordinance of 1948. See, Barak Ravid, "Netanyahu:

Yesh Din maintains that there is no substantial difference between events defined as "price tag" and other ideologically motivated crimes that Israeli civilians perpetrate throughout the West Bank against Palestinians and their property, and that all such perpetrators should be included in the declaration and dealt with harshly. In fact, Yesh Din monitoring indicates that the primary criminal activity of Israelis in the West Bank, the aim of which is to take over Palestinian-owned land and prevent access to it, does not meet the "price tag" definition, but its impact on the rights of Palestinians is far more serious.

RESULTS OF YESH DIN MONITORING OF THE PROCESSING OF PALESTINIANS' COMPLAINTS AGAINST ISRAELI CIVILIANS (DATA)

Yesh Din's legal team monitors the investigation of complaints by Palestinian crime victims represented by the organization, whose complaints are investigated by the SJ District Police.[53] The figures presented here are based on a broad sample of 1,067 investigation files that have been monitored by Yesh Din since its establishment in March 2005.

Types of Crimes

Yesh Din divides the investigative files it monitors into four broad categories: violence, property offenses, seizure of Palestinian land, and a fourth category of "other" offenses.

34% of the files (366) involve complaints of violence by Israeli civilians against Palestinians in the West Bank. Violent incidents include instances of shooting, beatings, stone throwing, assault with clubs, knives and rifle butts, running Palestinians over with a vehicle, threats and more.

47% of the files (501) involve complaints by Palestinians of damage to their property, including arson, theft, damage to farming equipment, cutting down of trees or other

Price tag attacks cannot be compared to Hamas terror," **Haaretz English website**, June 17, 2013; Barak Ravid and Gili Cohen, "Defense Minister approves move that allows harsher police action against 'price tag' attacks," **Haaretz English website**, July 1, 2013.

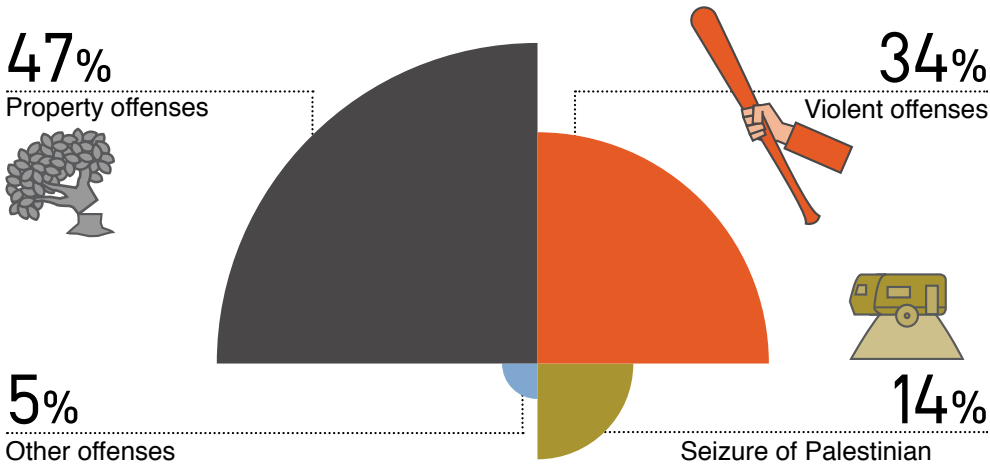
53 As stated, the monitoring results presented in this report are somewhat skewed in favor of law enforcement agencies, as Yesh Din attempts to assist investigation and prosecution officials who handle complaints by crime victims represented by the organization. This assistance presumably has a positive effect on investigation outcomes and likewise, the failure rate in the investigation of complaints by Palestinian crime victims who do not receive assistance from human rights organizations or private lawyers is presumably higher.

damage to crops, theft of crops, torching of cars, damage to houses, livestock theft and more. Approximately half of the property offenses involve vandalization and destruction of fruit trees.

14% of the files (149) involve complaints of attempts by Israelis to seize control of Palestinian land. These files were opened following attempts made by Israelis to take over Palestinian land, by means such as fencing, unauthorized cultivation, placement of structures, portable homes or greenhouses, driving Palestinians away from their plots or denying them access, trespassing, and so forth.

5% of the investigation files (51) involve other offenses that do not fall under the previous three categories. These include the killing of farm animals, desecration of mosques and cemeteries, discharging of sewage into Palestinian farmland, dumping of waste on land belonging to Palestinians, and other offenses allegedly committed by Israeli civilians.

Investigation Files by Category of Offense, 2005-2014



Outcome of Police Investigations

As this report was being prepared, Yesh Din was monitoring 1,067 investigation files conducted by the SJ District Police following complaints filed by Palestinian crime victims. Investigation and prosecution bodies had completed processing 996 of the files.[54] Suspects were indicted in only 74, or 7.4% of the files in which processing was concluded by the investigation and prosecution bodies and a decision had been made.

The remaining files were closed on various grounds. An examination of the grounds for closure reveals that 85.3% of the files were closed in circumstances indicating investigative failure.[55] The overwhelming majority were closed due to the failure of police investigators to find suspects or gather sufficient evidence to bring them to trial. Others were closed apparently unjustly on grounds of "absence of criminal culpability" or because the police lost the complaints.

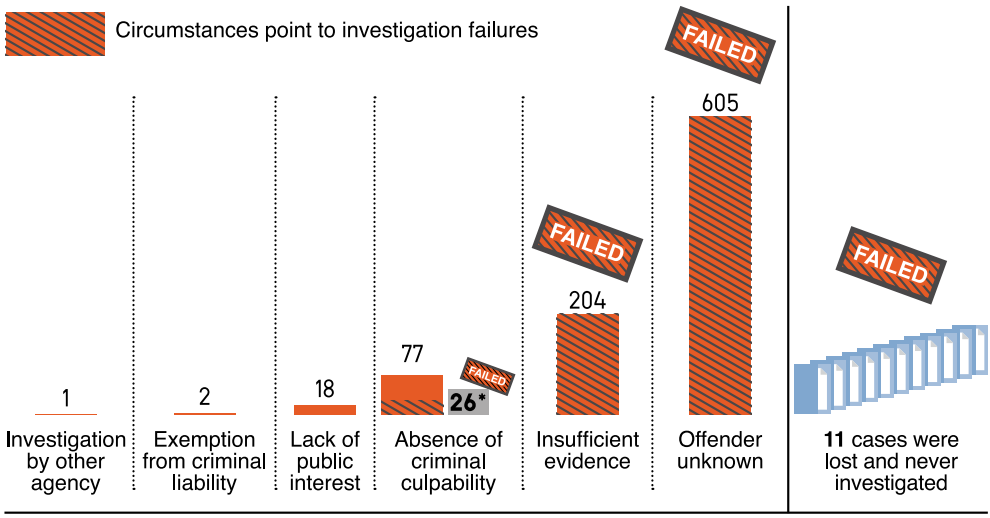
- 605 files were closed on grounds of "offender unknown," reflecting the failure of the police to find suspects;
- 204 files were closed on grounds of "insufficient evidence," due to the investigators' failure to collect and consolidate sufficient evidence to prosecute suspects who had been located;
- 77 files were closed on grounds of "absence of criminal culpability," meaning that no criminal offense had been committed or that the suspect had no connection to the offense. Yesh Din appealed against 26 of these decisions, after the legal team that reviewed the file believed the decision to close it on these grounds was unreasonable.
- 11 files were lost and never investigated;
- 18 files were closed on grounds of "lack of public interest;"
- 2 files were closed on grounds of "exemption from criminal liability;"
- One file was closed on grounds that another agency was competent to investigate the incident.
- In four other files, Yesh Din was unable to obtain information from the police as to the grounds for closure.[56]

54 71 additional cases are in various stages of processing, investigation or prosecution review.

55 Cases evincing investigative failure are cases closed on grounds of "offender unknown" or "insufficient evidence," cases lost by the police and some of the cases that were closed on grounds of "absence of criminal culpability," where our review revealed the investigation had not been exhausted. We appealed the closure in these cases.

56 The infographic does not include the files in which the police did not provide information on the grounds for closure.

Grounds for closure of investigation files, 2005-2014



*An appeal was filed against the closure of the investigation

It should be noted that it is impossible to receive an official figure regarding the total number of indictments served as a result of harm to Palestinians or their property allegedly caused by Israelis. Indictments are served by the prosecution unit of the SJ District Police or by the State Attorney's Office. The police provides Yesh Din (in response to an application under the Freedom of Information Act) with an annual figure regarding the number of indictments served by the SJ District Prosecution Unit. However, according to the Freedom of Information Officer, the State Attorney's figures are not available to the police.[57] Thus, it appears that the police does not have the total number of indictments served each year and therefore has no way of estimating the success rate of its investigations.

Furthermore, to the best of our understanding, the police has not established a distinct definition for crimes committed by Israeli civilians against Palestinians and their property. As a result, the figure provided by the police regarding the number of indictments includes charges for crimes such as "insulting a public servant," "obstructing a police officer in the fulfillment of his duty," and more. To illustrate, from figures provided by the police for 2013, it appears that the police filed 30 indictments regarding public disturbances in the SJ District Police, but an examination of the circumstances reveals that only six of these concerned

57 Letter from Superintendent Adv. Hamutal Sabag, Israel Police Freedom of Information Officer, March 18, 2014, sent in response to Yesh Din's Freedom of Information application for figures on the investigation and prosecution of Israeli civilians suspected of offenses against Palestinians and their property.

incidents in which Palestinians were harmed while the rest involved other alleged offenses, such as offenses against security forces.

The results of legal proceedings in cases monitored by Yesh Din in which indictments were served show that even in the rare cases in which Israeli civilians suspected of harming Palestinians are indicted, conviction and accountability are unlikely.

Of 57 cases in which legal proceedings have concluded:

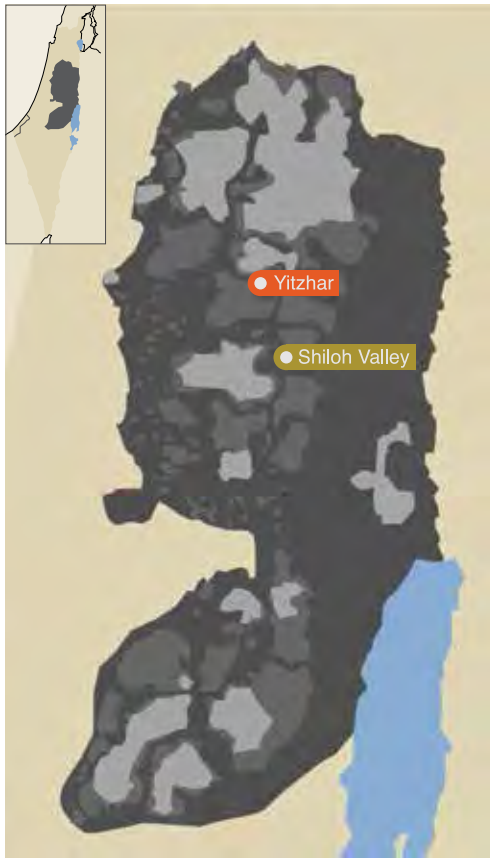
- Six cases (10.5%) ended with a full conviction;
- 13 cases (22.8%) ended with a partial conviction (i.e., conviction of only some of the defendants, conviction of only some of the original counts or conviction of lesser counts than originally included in the indictment);
- 14 cases (24.6%) ended with a finding of guilt without a conviction (i.e., a ruling that the defendant committed the offenses attributed to him, but no conviction is entered in the records to spare the defendant the implications of a criminal conviction);
- Five cases (8.8%) ended with an acquittal;
- 13 cases (22.8%) ended with the indictment being dropped;
- Two cases ended with different results;
- Yesh Din has no information regarding the results of four other cases.

The results of legal proceedings are incongruent with declarations made by law enforcement officials regarding the law enforcement establishment's commitment to putting an end to Israeli civilians' violence against Palestinians and to ensuring Palestinians' safety, as required by their status as protected persons under international law. While 58% of the cases did result in findings of guilt, in almost more than 40% (42.4%%), the defendants were only found guilty, but not convicted. This number is exceptionally high, especially given that most defendants were not minors at the time the offense was committed. The rate of cases that ended with indictments dropped, almost a quarter of all cases, is also exceptionally high.[58]

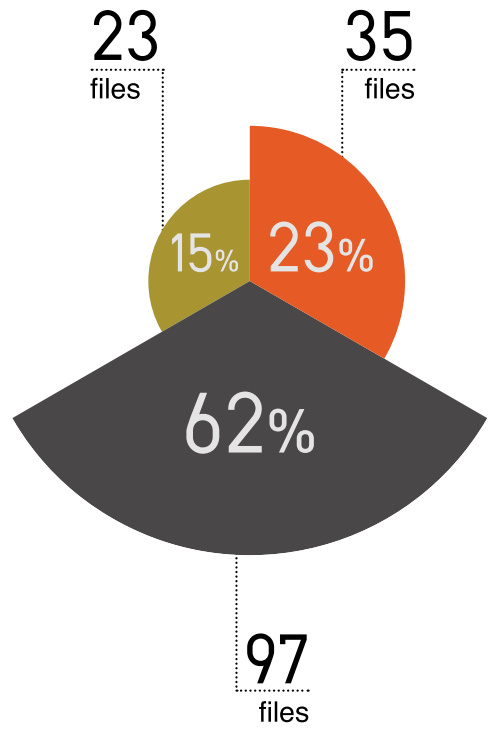
58 For full figures and analysis see: Yesh Din, **Law Enforcement on Israel Civilians Suspected of Harming Palestinians in the West Bank**, monitoring figures, March 2015.

Location of Offenses

A breakdown by location of the offenses documented by Yesh Din in 2013 reveals that 38% of the offenses took place in and around the settlement of Yitzhar (Nablus area) and the Shilo Valley (north of Ramallah), both of which are known to the army and the police as friction zones. The term friction zone refers to areas where many incidents between Israeli civilians and Palestinian take place, and are therefore treated by law enforcement agencies as volatile. Another friction zone is the South Hebron Hills.



Friction zones:
Geographic breakdown of Yesh Din cases in 2013



In these known trouble spots, one might expect a smaller number of crimes and, most significantly, law enforcement activity that would substantially reduce crime.

Yesh Din and other organizations have been warning for several years that these are two primary flashpoints of criminal activity in the West Bank and that the police and the IDF, which are responsible for law enforcement in the area, must take action to increase law enforcement in these areas, including crime prevention measures. Despite this, a concentration of 58 offenses in these three friction zones (of a total of 155 that were documented in 2013) reveals that even if there is increased presence in the friction zones and special enforcement measures are pursued in them, not been enough has been done to eradicate crime.

An additional geographic breakdown of criminal activity documented by Yesh Din in 2013 and up until August 2014 reveals that more than a quarter of the offenses (28.3%)[59] were committed inside Palestinian villages, close to residents' homes and yards, sometimes while the residents under attack were inside their homes. In order to perpetrate such attacks, the Israeli offenders had to enter the village in a premeditated and planned manner. Given such a high rate of offenses committed inside Palestinian villages, law enforcement agencies should deploy in the area in order to better protect the residents, as they do in the Israeli communities in the area. The remaining offenses were perpetrated in agricultural and pasture land (much of it privately-owned Palestinian land situated in natural blocs of village land), highways, roads, etc.

59 Of 101 files opened by the SJ District Police in 2013, and monitored by Yesh Din, 32 complaints (31.6%) were filed following incidents that took place inside communities; of the 58 investigation files opened by the SJ District Police up to August 2014, 13 complaints (22.4%) concerned incidents inside communities.

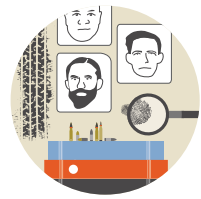
CHAPTER 3:

MAIN FAILURES IN SJ DISTRICT POLICE INVESTIGATIONS

Following the figures regarding SJ District Police investigation failure rates presented in the previous chapter, this chapter focuses on the reasons for these failures.

Yesh Din's legal advisor, who represents the complainants in the files monitored by the organization, received copies of investigation files the police decided to close, in order to consider appealing the closure. Reviewing closed investigation files makes it possible to examine the materials in the files in an attempt to ascertain the nature and quality of the investigative measures taken by the investigators. Such examinations also reveal what actions the investigations failed to take in their efforts to investigate the offense.

For the purpose of this report, 204 investigation files closed by the SJ District Police were reviewed. The findings of this review revealed different types of deficiencies and investigative failures. This chapter attempts to identify the major investigative failures, explain them and present examples we believe to be representative and illustrative of the main deficiencies and failures.



COLLECTION OF EVIDENCE AND INFORMATION RELEVANT TO THE INVESTIGATION

Scene Examination and Evidence Collection

One of the first and most fundamental measures in a criminal investigation is an examination of the scene of an incident. The purpose of the scene examination is to document where

the offense took place, collect evidence and items that may lead to the suspects, connect suspects to the incident, or help find witnesses who might assist in bringing the suspects to trial. The sooner investigators arrive at the scene, the better the chances are that the scene examination will turn up leads that might help solve the case.

The webpage of the Israel Police Forensics Department states that "physical evidence" are items collected from crime scenes that allow the police to make connections between different crime scenes, or between the crime scene and a suspect. Physical evidence is usually collected by crime scene investigators and mobile lab experts who arrive at the scene and search for evidence or traces left by the perpetrators at the scene. "Crime scene investigators search for fingerprints, shoe impressions, tool marks or tire marks left at the scene. They investigate the perpetrators' access and exit routes with the object of uncovering body fluids, hair or fibers from their clothes. When a serious crime is suspected, mobile labs or latent fingerprint processing labs are called to the scene, and when fires are involved the arson investigation lab is called."[60]

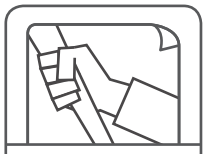
Despite the importance of the scene of the incident and the findings collected there, a review of police investigation files reveals various failures at the critical scene examination stage.

- No scene examination conducted

Despite the aforesaid importance of examining the scene of the incident, some investigation files contained no documentation of a scene examination. We are aware of a recent decision to end the monthly hazard pay to one hundred SJ District Police investigators. According

60 Israel Police Website, Forensics Department webpage, http://www.police.gov.il/contentpage.aspx?pid=344&mid=9 (Hebrew).

to the media, one of the reasons for ending the payment is that "the investigators spend more time in the office than on the ground and therefore are not entitled to additional pay."[61]



Police File 34629/09-1
Yesh Din Case 1912/09

19-year-old violently assaulted by four young men. Investigators do not examine the scene in search of evidence that might lead to the assailants

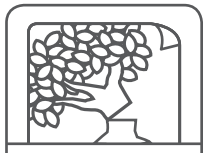
On September 16, 2009, at roughly 8:00 p.m., Ashraf Issa was walking by the side of the road close to the Yitzhar junction. A car suddenly pulled over next to him, and four Israeli civilians armed with guns and clubs emerged from it. The four began beating him with clubs, punching and kicking him all over his body. After he fell down, they continued beating him on the arms and face. The assault lasted about ten minutes, after which the assailants lifted Ashraf off the road, dragged him and threw him into the thorn bushes on the side of the road, while spitting at him. After they left the scene, Ashraf managed to crawl back to the road, where, half an hour later, a Palestinian car stopped to help him and called the Red Crescent Society. Ashraf was taken to Rafidiya hospital in Nablus.

On September 21, 2009, Ashraf complained to the police. Despite the severity of the incident, the investigators did not see fit to examine the scene of the attack in an attempt to uncover findings that would shed light on the assailants' identity (for instance, objects they might have dropped during the attack). On December 31, 2009, the investigation file was closed on grounds of "offender unknown."

61 Hadas Shteif, "Hazard pay for SJ investigators cancelled: The wives pick up the fight," **IDF Radio**, October 22, 2014, http://glz.co.il/1064-51991-he/Galatz.aspx (Hebrew).

- Late scene examination

In other cases, the police inspected the scene long after the incident, when the odds of finding any evidence, or making forensic discoveries that would lead to suspects were greatly diminished. As stated, examining the scene as close as possible to the time of the incident increases the chances of making findings at the scene.



Police File 4352/10
Yesh Din Case 2117/10

Examination of vineyard where saplings were uprooted conducted almost two months after the incident

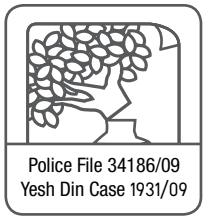
On 25 April 2010, Imad Khalil was told by a young shepherd from Halhul that he saw three Israeli youths on his land. Imad went to his land the next day and saw that all 250 vine saplings he had planted in the plot had been uprooted and destroyed. On April 26, 2010, Imad filed a complaint with the Hebron Regional Police.

The investigation file contains a memo from June 16, 2010, almost two months after the complaint was filed, documenting a visit to the scene by the police investigator, the Civil Administration enforcement coordinator, and the complainant. In the memo, the investigator, Solomon Desta, notes that given the time that had elapsed since the incident, no proof of damage was found at the scene and therefore the scene was not documented. Needless to say, two months after the incident, the chances of finding evidence at the scene that could lead to suspects are negligible. On November 18, 2010, the Hebron Regional Police stated it had closed the investigation file on grounds of “offender unknown.”

- Deficiencies in identifying and collecting evidence at the scene

In many cases in which an inspection of the scene was conducted, the investigators were negligent and unprofessional with respect to the basic actions of collecting findings and

evidence and documenting the scene. So, for example, scenes were not swept to uncover findings (such as objects that may have been left in the area, shoe impressions that mark the escape route etc.), simple forensics measures were not taken (such as searching for fingerprints or the presence of a fuel source), crime scenes were not documented by investigators etc.



No fingerprints lifted from items uncovered at the scene of an incident

A.N. and B.A.,[62] residents of Halhul, own agricultural plots inside the Special Security Area (SSA) of the settlement of Carmei Tzur. In order to access their land, they must coordinate in advance with the Civil Administration. On October 21, 2009, after coordinating with the Civil Administration and receiving the necessary permit, the two arrived at their plots and discovered damage: the stone fence in A.N.'s plot had been taken apart and the stones were used to build a small room. In B.A.'s vineyard, most of the grapes had been harvested and the amount of fruit that remained on the vines was negligible – from a yield of 170 crates, only four crates remained.

The two complained to the Hebron police on the same day, and were joined by an investigator and a forensics technician to examine the plots. During the examination, the investigator documented the damage to the fence and the trees, as well as the structure that had been built on A.N.'s land, which he described as "3m X 3m in size, 1m in height. On the eastern corner inside the structure, there is a small wooden cabinet and a black plastic bucket in the center of the structure."

62 Full names are on file with Yesh Din.

The forensics technician did not carry out any forensic testing, such as lifting finger prints off the cabinet and the bucket found in the structure. The remaining investigative measures were a conversation between the investigator and the Civil Administration Infrastructure Officer regarding the procedure for Palestinians' entry into the SSA and how land is secured in the absence of the owners, as well as a single attempt to inquire what the Carmei Tzur security coordinator knew about the incident. The security coordinator said he was busy, and the investigative materials contain no documentation of any further attempts to reach him. The remaining investigative measures in the file related to the status of the land, a matter that had no bearing on the offenses under investigation. On January 18, the Hebron police issued notice that it had closed the investigation on grounds of "offender unknown." Clearly, lifting fingerprints off the objects found in the structure might have shed light on the identity of the individuals occupying it and prevented the closure of the investigation without any leads on the suspects.

Police File 33486/09
Yesh Din Case 1888/09

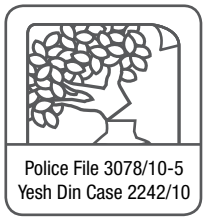
No fingerprints lifted from three vandalized vehicles because the gate was locked

On August 26, 2009, at around 2:00 A.M. Musbah Za'tari heard a noise near his home in Hebron. He noticed six or seven people fleeing, but was unable to see them well in the darkness. The next morning he discovered the windows of three cars owned by him and family members had been smashed and that the tires had been slashed.

Za'tari called the police the next morning. At the officers' request, Za'atri went to the Kiryat Arba police station that morning to give a statement. Za'tari told the police that he suspected some settlers from Giv'at Haharsinah. On the same day, the investigator went to the scene of the incident along with the complainant and a forensics technician, but as they approached the site, it turned out that the gate blocking the trail leading up to it was locked. The investigator tried to find out how the gate could be opened, but the inquiries

took some time, and the three left without going to the scene of the incident and without having lifted fingerprints off the damaged cars.

The only other investigative measure in the file was another statement from the complainant, three days later (on August 30). The investigation file contained no documentation of a further attempt to examine the scene and search for fingerprints on the vandalized cars. On October 25, 2009, the Hebron police issued notice that the file had been closed, but did not cite on what grounds.



No tracker present during scene examination

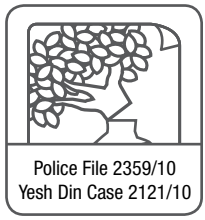
On October 2, 2010, Hasan Ahmad Awis from the village of a-Lubban a-Sharqiyah discovered that 42 of the olive trees in his orchard had been cut down. The trunks of the trees, planted 15 years ago, had been cut down with an electrical saw.

A few days later, Hasan filed a complaint with the police, and the next day, the scene was inspected and photographed, but there was no tracker on scene to search for traces and clues that might lead to the suspects. The investigation file was closed within less than a month, on October 27, 2010, on grounds of "offender unknown," and without any further investigative measures other than the scene examination and the complaint.

Further Failures in the Collection of Evidence and Relevant Information

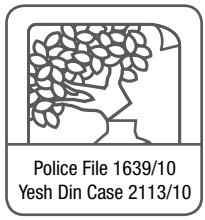
Many investigation files reveal negligence on the part of investigators with respect to the basics of gathering evidence that might help solve the case or lead to the perpetrators. Such basics include ascertaining whether there are military security cameras in the area (commonly situated near settlements), and seizing the footage they captured, cellular triangulation (obtaining information about the location of a cell phone user by the location

of the antenna that received a cellular signal) in order to find out where a suspect was at the time the offense was committed, or to verify an alibi. Investigators sometimes fail to collect information that is relevant to the investigation such as a suspect's criminal record, intelligence information and more.



Investigators did not check whether a plot of land where olive trees had been cut down was captured on IDF security cameras

On April 30, 2010, Saleh Shteiwi, from the village of Kafr Qadum, discovered that 36 24-year-old olive trees on a plot he owns had been uprooted. There are military security cameras in the area, some of them directed at Shteiwi's land. Although police investigators are aware that there are IDF security cameras in many parts of the West Bank, the investigative materials contain no indication that the investigators tried to find out whether the plot where the trees had been cut down was covered by the security cameras and whether the vandalizing of the trees had been captured on them. The investigation file contains only Shteiwi's complaint, given at the Qalqiliyah DCO, and photos of the uprooted trees. The investigation file was closed on July 7, 2010 on grounds of "offender unknown."



Investigators did not try to locate uprooted fruit trees despite reasonable suspicion that they had been taken to a nearby settlement

On the night of April 11, 2010, Yasser Eid Hadhalin noticed four people cutting the fence surrounding his plot. He was afraid to approach them and could not see them well in the darkness, but under the lighting from the settlement of Carmel, which is located near the plot, he noticed that they were adults. The four left the plot about 30 minutes later. Yasser saw them going into the

settlement of Carmel and walking toward “the new yellow houses.” Two were holding a white crate or container. The next day, Hadhalin discovered that two almond trees and one olive tree had been uprooted and stolen from his plot, the fence around it had been cut in several places, and ten of its support bars had been toppled.

On April 12, 2010, the day after the incident, Hadhalin filed a complaint with the Hebron police. After collecting Hadhalin’s statement, Officer Amitai Amosi, Inspector Yossi Amoyal and forensics technician Eli Bar Sheshet, went to examine the scene. During the examination they documented the damage to the fence and the plot. However, though the complaint was filed the day after the incident, and although Hadhalin told the investigators that he saw the suspects going into Carmel and walking toward the new yellow houses, none of the residents in those houses were investigated and none of the homes were searched in an effort to find the stolen trees. The fact that the officers refrained from making attempts to locate the remains of the trees in the area identified by the complainant is a serious police omission, amounting to severe negligence.

Criminal record of suspect with history of violent offenses against Palestinians not checked

On September 3 2009, while picking figs in his plot, Ibrahim Tawil, a resident of the village of Far’ata, was attacked by three Israelis – two wore face masks and carried axes. The other, whose face was not masked, was carrying a stick and had a large dog with him. The three assaulted Tawil, beating him on the back and chest with the stick and the axe handles. Three more masked men joined the attack, and together they took off Tawil’s belt and hit him with it in the head and face. They then stripped him down to his undergarments, and left with his clothes, shoes, watch and wallet, which contained documents and NIS 200. When he started walking toward his home, they threw stones at him. Tawil was later

taken to hospital in Qalqiliyah by some relatives, where he was referred to an orthopedic specialist for treatment.

On September 8, 2009, Tawil made a statement to the Ariel police, and gave a description of the unmasked assailant. He was later shown a police photo album containing photographs of offenders. Tawil pointed at one suspect out of the 178 images he was shown. The investigation file contains a memo by an investigator with the SJ District Police Central Unit, asking to check whether the suspect identified by Tawil was connected to an outpost located near the site of the assault, and whether he was connected to public disturbances in the Samaria district. The response was handwritten on the memo itself, noting that intelligence officials said the identified suspect had no connection to the district or the incident.

Contrary to the intelligence officials' assertion, the identified suspect had a long history of violent offenses against Palestinians in the Samaria area and a prior conviction for using firearms against Palestinians. He had also been a suspect in the aggravated assault and kidnapping of a Palestinian youth and had been interrogated in the case. **The simple act of checking the suspect's criminal record would have revealed that the person in question had a history of violent offenses against Palestinians in the area, but that was never done, and the suspect, though identified by the complainant in the police photo album, was never brought in for questioning**. The investigation file was closed on grounds of "offender unknown."

The failure of the intelligence officials who did not provide the district investigators with any information about the suspect's past involvement in incidents of violence against Palestinians in the West Bank is added to the fact that no one took the trouble to check the suspect's criminal record to obtain information about his history. These failures are added to the investigators' own profound failure to use their discretion properly when they opted not to bring a suspect in such a serious offense in for questioning, despite the fact that he had been identified in the police photo album.

Given the questionable decision to close the file without bringing the suspect in for questioning, Yesh Din appealed the closure. On July 22, 2010, the State Attorney's Office Appeals Department notified Yesh Din that it had decided to accept the appeal and return the file to the police for investigation completion. When the investigation was reopened, further investigative steps were taken but failed to lead to a breakthrough, and the file was once again closed. The suspect was interrogated only on September 1, 2010, denied he had any connection to the incident and said he did not "hang around" the area where the assault had taken place. The suspect offered no alibi, nor was he asked to give one by the investigators. The file was closed again on May 24, 2011 on grounds of "offender unknown."

Recommendations (A)

1. Efforts to bolster law enforcement in the area should include the introduction of protocols and arrangements that would allow routine police patrols in the area with the object of increasing police presence - a common practice in high crime areas. This is particularly important in known "friction zones" where a standing unit should be stationed.

2. Steps must be taken to ensure the ability of police officers to arrive at the scene in real time, or as close to the time of the incident as possible.

3. Drafting binding protocols for collecting evidence at the scene should be instituted (if none such exist). Police officers must have the means and knowledge required for collecting evidence, documenting the scene and carrying out forensic and other tests.

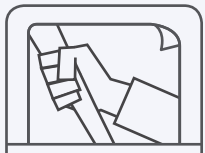
COLLECTION OF STATEMENTS FROM SOLDIERS, ISRAELI CIVILIANS AND PALESTINIAN WITNESSES

In many files, investigators had information about witnesses who might have been able to shed light on the incident and help identify suspects, and yet, no efforts were made to find or question them. Additional testimony can help decide between contradicting accounts given by the complainant and the suspect, and a witness can help identify suspects in a lineup and place them at the scene and time of the incident, etc.

A witness' ability to remember the details of the incident – the sequence of events, the offenders' physical appearance, their clothing and other details that may help identify the suspects and solve the case – diminishes as time goes by, reducing the benefit that can be gained from the testimony and undermining its value. For this reason, questioning witnesses promptly, while their memory is still fresh, is of the utmost importance.

In many cases, investigators did not question witnesses whose identities were reported by the complainant or other witnesses. Collecting testimonies in criminal incidents is a basic, fundamental investigative step, certainly when investigators know who the witnesses are. In other files, investigators did not try to find potential witnesses who might have been able to shed light on the identity of the offenders or call them to the police station to give a statement, even when it would have involved a simple inquiry.

Serious Omissions in Assault Investigation



Police File No 107249/14
Yesh Din Case 3064/14

Two residents of Huwarah viciously attacked while on their land by a group of masked men. Police investigators took the testimony of one of the injured victims two months after the incident and did not search for or question witnesses

Fuad Shehadeh, 54, a resident of Huwarah, has a curtain manufacturing business and his family owns a plot of land with an olive orchard located about 2.5 kilometers from the settlement of Yitzhar. On the morning of Friday, February 28, 2014, he went with a friend, Ahmad Odeh, to the plot which he visits almost every day. The two tended to the plot and trees, and when they were finished, they decided to return to the village. When they got into their car, seven masked Israelis approached them, throwing stones, and smashing the car's windows. Ahmad, who was driving, tried to back up and flee, but in the scurry, the car got stuck between rocks. The two decided to get out of the car and run for their lives. Fuad fled down the slope leading to Huwarah, but as he was running, one of the assailants hit him on the leg with a metal club. At the end of the slope, six other masked attackers were waiting. They began kicking and hitting him with clubs. Shehadeh said:

… I put my hands up to protect my head. While my hands were up, protecting my head, they hit my hand and gave me two fractures. I got a very strong blow to the head and a blow under the jaw. I have at least eight fractures in my right leg, including the knee, the whole leg. It was a gift from God that six people were hitting me at the same time because the metal clubs kept hitting each other. That might have been my only protection, because they kept getting stuck together. If it were only one or two attackers, they probably would have killed me.

While Fuad was being attacked by the six masked men down the slope, Ahmad was beaten by the masked men who had thrown stones at the car earlier. He then ran toward Fuad and lay beside him, trying to help him. During the assault, four more masked Israelis came from the direction of the settlement. After them, two IDF soldiers arrived at the scene. They simply stood there, watching, and did nothing to stop the brutal attack. Shortly after Ahmad lay down beside Fuad, one of the soldiers said "enough." "He just said 'enough' and they stopped beating me and went back toward the settlement," Fuad said.

After the assault, Fuad was taken to the medical center in Huwarah and from there to Rafidiya Hospital in Nablus, where he remained for two weeks. He received follow up care at Ichilov Hospital in Tel Aviv, where he remained for about six more weeks, suffering from severe injuries: eight leg fractures, two fractures in one arm and contusions in the other and in the head. Ahmad, whose injuries were less serious, was taken to Rafidiya Hospital and released on the same day.

On March 3, 2014, Ahmad filed a complaint at the Israeli DCO in Huwarah (after the Palestinian police took his initial testimony at the hospital in Nablus). Despite the severity of the incident, Fuad's testimony was not collected for about six weeks. On April 7, Adv. Noa Amrami, of Yesh Din's legal team, contacted the Public Disturbances Officer, asking to have police investigators collect the crime victim's testimony at Ichilov Hospital, but to no avail. It was only after Haaretz journalist Gideon Levy contacted the police on April 17, 2014,[63] more than six weeks after the assault, that SJ District Police investigators arrived at Ichilov Hospital to take Fuad's testimony. A complaint was also

63 Haaretz devoted its Twilight Zone column to the case the next day, Gideon Levy, "When Yitzhar settlers attack," **Haaretz English website**, April 18, 2014.

filed with the MPCID against the soldiers who stood idly by during the attack and did not stop it promptly or take any action to detain the assailants.[64]

The long period that elapsed until Fuad's testimony was taken is a serious investigative failure. The crime victim was hospitalized at Ichilov Hospital, a 40-minute drive from the settlement of Ariel, where the Samaria Regional Police is located, but his testimony was taken long after the incident and only after Yesh Din and Haaretz newspaper intervened. It is difficult to imagine any serious progress was made in the investigation without this pivotal testimony that is so essential for understanding the incident, and there is no doubt that the long delay negatively impacted the outcome of the investigation.

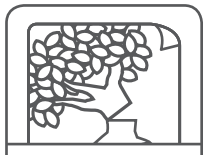
In his statement to the police, Ahmad Odeh said the security coordinator of the settlement of Yitzhar was present at the time of the incident. In a telephone conversation between the police investigator and the security coordinator, the latter said he was on military reserve duty during the incident and therefore was not working. The investigator did not ask the security coordinator whether he had been present at the scene at the time of the incident and if not, who was acting security coordinator during his absence (the security coordinator must make sure he has a substitute when he is away from the settlement). The investigator asked the security coordinator no further questions and did not verify his alibi by checking with the army whether he had in fact been on reserve duty on the day of the incident.

Though Odeh and Shehadeh told the police in their statements that there were soldiers at the scene, other than one telephone call to the military's Samaria Regional Brigade Command, in which the investigators were told that the incident did not appear in the command center's operational log, no attempt was made to locate those soldiers in

64 The MPCID investigation had not been completed at the time of writing.

order to collect their statements about the incident and the possible identity of the assailants.

On May 26, 2014, the Ariel police issued notice that the investigation file had been closed on grounds of "offender unknown," despite several investigative angles that were never explored.[65] Other than collecting the complainants' statements, no significant investigative measures were taken in the file, and as stated, even that basic step was significantly delayed, diminishing the investigation's chances of success.


Police File 35801/09
Yesh Din Case 1953/09

Soldiers who were notified of theft by a complainant (on the ground) and spoke to the thieves were not questioned

On the morning of November 16, 2009, Adel Yamin and his wife Ayesha were working their land, adjacent to the outpost of Havat Gilad, when three Israelis arrived. One of them asked Yamin what he was doing there. A few minutes later, he walked away and sat at some distance with his companions. Suddenly, the three got up, took Yamin's donkey saddle and other items placed on the donkey's back – two sacks and a blanket – and fled the area toward the homes at the edge of Gilad Farm. The Yamins chased after them for about 70 meters, but were unable to catch them. A military jeep passed by, and Adel told the soldiers about the theft and asked for their help in retrieving his property. The soldiers promised to help. They telephoned him later that day, after trying to locate the men who had fled and the stolen items at Gilad Farm. The soldier who called Yamin said he had

65 On July 17, 2014, Yesh Din appealed the closure of the case on grounds of "offender unknown" and demanded the file be reopened to complete the necessary investigative steps, such as locating the soldier who was present on the scene, completing the interrogation of the security coordinator and verifying his alibi. Following the appeal, the case was reopened for completion of the investigation (the investigation had not been completed at the time of writing).

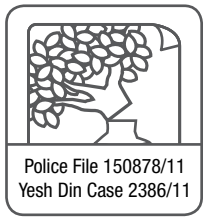
spoken with the settlers and that they had promised to return the stolen items that evening or the next day. Yamin waited to be contacted, but to no avail.

The investigation file contained a document from the Grizim DCO, documenting the complaint Adel made to the soldiers. According to the document: "Inquiries with the Border Police Company 43 Operations Officer indicate that, while in the field, they received a complaint from a resident regarding theft. The issue was referred to the Gilad Farm security coordinator for the purpose of searches." Though the document proves that Adel did complain to them, the soldiers were not called in for questioning. It is noted that the Israel Police does have the power to call soldiers in for questioning.[66] The Gilad Farm security coordinator, to whom the case was referred, was not questioned either. Questioning the soldiers and the Gilad Farm security coordinator is a simple, obvious investigative step that would certainly have helped identify and locate the suspects and return the stolen items to their owner. The fact that this was not done is a serious investigative failure.

The failures in this investigation did not end there. On December 6, 2009, Adel and Ayesha were called in to try to identify the thieves by looking at a police photo album. Adel pointed to the photo of a minor, following which he was questioned again and confirmed that he was certain about the identification he had made. The identification matched the description Adel and Ayesha gave before they were shown the photographs. Despite this, **the suspect was not interrogated for three months**, without any reason justifying the delay (the investigation file contains no explanation for the delay). When questioned under caution, the suspect, Z.H., remained silent and did not answer the interrogator's questions.

66 **Israel Police National Headquarters Ordinance, No. 14.01.08**, "Summoning of witnesses, suspects and defendants – summoning of soldiers for police investigations" (sec. 6A(1)).

Adel positively identified the minor as one of the people who had stolen his property. The minor did not cooperate with the investigation, which could help the case against him.[67] Despite this, on July 25, 2010, the case was closed on grounds of "insufficient evidence," though the investigation file seemed to contain enough evidence for an indictment.[68] This notwithstanding, if the investigators believed the file did not contain sufficient evidence, calling the soldiers in for questioning was all the more necessary, as they had apparently seen the thieves, or at least talked with them or with another person who knew who they were.



Police File 150878/11
Yesh Din Case 2386/11

Witnesses who could have led to the offenders were not questioned

On March 14, 2011, Yasin Rifa'i, a resident of Anata, received a telephone call from a Civil Administration officer informing him that residents of the settlement of Anatot (Almon) had uprooted about twenty trees on his land, in revenge for a murder in the Samaria

67 Remaining silent during investigation is a basic right to which all suspects are entitled, and it covers the right to remain completely silent throughout the investigation (**Criminal Procedure Ordinance (Testimony)**, Sec. 2(2)). However, though silence has no evidentiary force per se, it can support other evidence against the suspect. See Yaakov Kedmi, **Evidence**, Part 2, (Tel Aviv: Dyonon, 2008), pp. 596-604 (Hebrew). The court may draw negative conclusions from a suspect's silence during police interrogation. See CrimApp 5424/95 **Mazhar Amir v. State of Israel** (published in Nevo, September 13, 1995), para. 3, (Hebrew): "However, like the Defendant's silence in Court […] so the interogee's silence during interrogation may be interpreted, in certain circumstances, as bolstering the prosecution's evidence…;" CrimA 230/84 **Hajbi v. State of Israel**, IsrSC 39(1), para. 5, (Hebrew): "When a defendant claims complete innocence and he is confronted by police interrogators who have material pointing to his involvement in a crime, how does he expect to be believed when he refrains from enlightening the interrogators when they throw the facts in his face, facts to which they have been made privy by an accomplice, and which implicate him in the very same offenses? In these circumstances, his silence may serve as somewhat of a support for the prosecution's evidence."

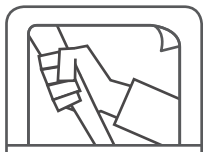
68 Yesh Din appealed the closure of the investigation file without charges, but the State Attorney's Appeals Department rejected the appeal and decided not to indict. Letter from Eti Kahana, Appeals Department Manager, State Attorney's Office, to Adv. Ido Tamari, Yesh Din's legal team, September 11, 2011 (Yesh Din File 1953/09).

region. In 2004, the settlement was fenced in, and Yasin's land was caught inside the settlement's area, giving Anatot residents free access to the land and enabling them to vandalize trees and try to take over the land. During the telephone call, the officer told Yasin that the residents had confessed. The settlement's administration compensated Yasin for the damage and its security coordinator accompanied Yasin to a nursery where he bought new saplings. The saplings were planted in Yasin's land by a laborer hired by the settlement.

On March 28, 2011, the security coordinator gave his statement to the police, confirming that Yasin had been compensated by the settlement. When the investigator asked if he suspected anyone of uprooting the trees, the security coordinator answered: "I'm keeping that to myself." There is no indication that the investigators pressured the security coordinator to provide information about his suspicions and no disciplinary or other measures were taken against him, despite the fact that his conduct appears to constitute an obstruction of the investigation and a misappropriation of his law enforcement role.

In addition, the investigators of the Ma'ale Adumim police made no effort to locate the Civil Administration officer and collect his statement, though he appeared to know who was involved in the offense. On December 26, 2011, without exhausting all possible directions in the investigation, and despite the fact that there was a definite lead that could result in the identification of the suspect, the file was closed on grounds of "offender unknown."[69]

69 Yesh Din appealed the closure of the investigation file on grounds of "offender unknown" without exhausting the investigation, but the State Attorney's Appeals Department rejected the appeal and decided not to renew the investigation. Letter from Nehama Sussman, Senior Deputy (A), State Attorney's Office, Appeals Department, May 15, 2012.



Police File 1153/11-9
Yesh Din Case 2359-1/11

No statement collected from the driver of a security patrol car who passed by the complainant's house and was told by him that some youths were throwing stones at the house

On March 19, 2011, at about 2:30 a.m., three or four youths threw stones at the home of Khalifah Da'na, a resident of Hebron. The youths were hiding among the olive trees inside the fence surrounding the settlement of Kiryat Arba. Khalifah was woken by the sound of the stones hitting the house, got up and went to the back of the house. He saw the Kiryat Arba security patrol car and went up to it to report the incident. After the security patrol car left the area, the stone throwing resumed. It stopped only when the security patrol car returned with two military jeeps.

The only step documented in the investigation file is the collection of the complainant's statement on March 22, 2011, during which he gave the investigator a poor-quality photo saying he tried to document the incident "but the photo did not turn out well because it was dark." The file was closed on April 11, 2011, on grounds of "offender unknown," though no efforts were made to locate the person who drove the Kiryat Arba security patrol car on the night of the incident to ask him if he saw the stone throwers, nor did anyone bother to take the simple action of talking to the Kiryat Arba security coordinator to find out who was driving the car that night.

Recommendations (B)

1. Statements must be collected from eyewitnesses – soldiers and civilians – where these might shed light on the incident or the identity of the offenders and help with the investigation of the offense. In this regard – cooperation between the police and the IDF with respect to locating soldiers who witnessed a criminal offense should be improved.

2. Witnesses who refuse to assist in the investigation, particularly those in public office, must be held accountable.

SUSPECT INTERROGATION

Failure to Call Suspects in for Questioning

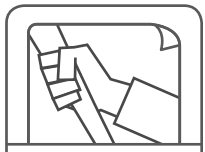
A suspect is any person an investigator has reason (no matter how weak) to believe was involved, in any manner and to any degree, in the commission of the investigated offense

and who may be tried for said involvement.[70] Calling a person who may be a suspect in an offense in for questioning is clearly one of the basic investigative steps to be taken when investigating a criminal incident.

- Failure to call suspects in for questioning

Calling suspects in for questioning is a basic investigative step. Aside from the legal requirement to do so, it is self-evident. And yet, in SJ District Police investigations, suspects are often not called in for questioning. In many investigation files that contained information that might have led to the suspects, the investigators did not try to find them and bring them in for questioning.

Worse still, in some cases investigators knew who the suspects were and still refrained from bringing them in for questioning.



Police File 33657/09
Yesh Din Case 1864/09

Assault suspect identified in police album, but was not called in for questioning. Soldiers who witnessed the incident were not questioned either

On July 1, 2009, Salah Shurabi, a driver with a beverage company, was driving home to Awarta, at the end of the work day. While driving on Route 55, three Israelis blocked his way across from the bus stop at the entrance to the settlement of Kedumim. They pulled him out of the vehicle, pulled his hair, tore his shirt, pushed him to the ground and beat him all over his body. A military jeep was parked near the scene. At some point, the soldiers came out of the jeep and walked toward Shurabi. The assailants then fled in the direction of the gas station near Kedumim.

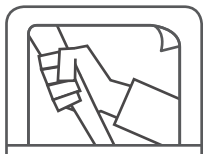
70 Yaakov Kedmy, **Criminal Procedure – Part 1: Pretrial Procedures**, B, (Tel Aviv: Dyonon 2008), p. 785 (Hebrew).

After the assault, Shurabi drove home, where he lost consciousness and was taken to Rafidiya Hospital. He remained in hospital until the next day.

In his statement to the police, Shurabi gave a description of his assailants and said he would be able to identify them. He was then shown 300 photographs from the police album. While looking through the album, Shurabi pointed to the photograph of D., identifying him as one of the assailants. D.'s appearance matched the description Shurabi gave before he was shown the photos. The investigator asked him if he was certain about the identity of the assailant, and Shurabi explained that he identified him by his light colored hair, his face and his healthy physique. Shurabi noted he was 80% to 85% sure since the photo did not show D.'s entire body and because during the attack D. was wearing a skullcap, which was absent in the photo.

On September 9, 2009, the file was closed on grounds of "offender unknown." The police investigation file contained no indication of any further investigative measures – the identification of the suspect in the police photo album was the last step in the investigation of the serious assault. Though Salah pointed to a suspect whom he identified as one of his assailants, **the man was never called in for questioning**, **nor was he put in a live lineup**. The investigative materials contained no indication that the investigators questioned the complainant's reliability or his ability to identify the suspect, making the fact that the suspect identified in the police album was never interrogated a serious investigative failure. In addition, **no steps were taken to find and collect statements from the soldiers who witnessed the assault**, though they would have likely been able to assist in the identification of the assailants, including the one identified by the complainant.[71]

71 On July 15, 2010, Yesh Din appealed the police decision to close the file before the investigation was exhausted. On September 9, 2010, Superintendent Adv. Gil Deshe, Assistant Investigations and Intelligence Department Officer, Samaria Region, notified that the appeal had been admitted and the investigation was reopened for completion. Ten days later, the file was closed again. Reexamination revealed that the person indicated by the complainant was not abroad at the time the offense was committed – this inquiry could and should have been made before the file was closed. An inquiry



Police File 35824/09
Yesh Din Case 1962/09

Investigators make no attempt to locate the owners of two dogs and question them as assault suspects

On the morning of November 26, 2009, Ibrahim Tawil, a resident of Far'ata, went to plow his olive orchard along with a tractor driver. Shortly after the tractor driver began plowing, four masked Israeli civilians arrived from the direction of the outpost of Havat Gilad. They had two dogs with them. The tractor driver fled in his tractor. Ibrahim, who also tried to flee, was caught by the four men, who beat him on the head with a rock and on the left hand and back with a stick. When people from Far'ata arrived at the scene, the assailants fled.

Ibrahim complained at the Samaria Regional Police on the same day. In his statement, he described the clothes the masked men who attacked him were wearing and their dogs. He also said he had been attacked and beaten in a similar manner two months earlier and that he had complained to the police then too.

The police closed the investigation file a month later, on grounds of "offender unknown," without any attempt to find the dogs' owners among the residents of Gilad Farm and question them as suspects in the assault. This would have been a simple undertaking given the fact that there were no more than twenty residents living at Gilad Farm at the time, and only a small number of men who were potential suspects.[72]

with the IDF revealed that they had no record of the incident.

72 According to Peace Now figures, in 2008 the outpost had about twenty residents. According to the Gilad Farm English website: "There are now six families, some youths… and a few watch dogs" (http://havatgilad.rjews.net/indexheb.html) (the Hebrew version of the site mentions four families).

Police File 39338/11-0
Yesh Din Case 2426/11

Debris dumped on complainant's plot, but the owner of the building that was the source of the waste was not questioned and the file was closed on grounds of "offender unknown"

Ali Qadus owns a 6 hectare plot of land with hundreds of olive trees south of the settlement of Elkana. The settlement's fence goes through the plot, leaving a substantial part of it on the settlement side of the fence. Ali cultivates the plot several times a year, coordinating his entry with the settlement's security coordinator. On February 27, 2011, when Ali went to the plot, he noticed that construction debris and rocks had been thrown on the olive trees, and the plot had essentially been turned into a dump site. There was a construction site adjacent to his plot at the time, and the laborers there referred Ali to the building's owner, a resident of Elkana who had contracted the work.

The owner would have been an obvious suspect in the offense investigated (trespassing for the commission of an offense and causing damage to property), and there would have been no difficulty locating him, yet the investigators did not speak to him or call him in for questioning.

The investigation file was closed in December 2011 on grounds of "offender unknown." These grounds are reserved for cases in which there are absolutely no leads or clues regarding possible suspects. The investigative material in the file indicates that other than taking Qadus's complaint, no further investigative action was taken in the file and it was closed even before the debris was removed from Qadus's land.[73]

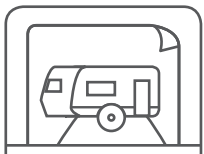
73 Yesh Din appealed the closure of the investigation, demanding it be reopened for completion of necessary investigative steps, such as locating and interrogating the building owner. The appeal was accepted in March 2012 and the investigation was reopened, but was closed again on March 13, 2013.

Suspects who threatened the complainant several times in the weeks leading up to the vandalizaton of trees in his plot were not questioned

On the night of September 6, 2009, olive, lemon and fig trees in plots belonging to residents of Deir Nidham, near the settlement of Halamish, were vandalized. Some of the trees were cut down, others had branches broken off. Two weeks before the trees were vandalized, two residents of Halamish threatened Munjed a-Tamimi, one of the Palestinian plot owners, saying they would break trees in his plot. About a week before the incident, a resident of Halamish threatened Ahmad Sultan, another plot owner, that he would damage his plot. In addition to these threats, the settlement's security coordinator threatened him with a weapon and drove him off his plot a number of times.

On September 8, 2009, the two complainants gave their statements. The two reported the threats that preceded the vandalization of the trees. They told the investigators that they would be able to identify the individuals who had made the threats, and one of them described them. No investigative action was taken subsequent to collecting the complainants' statements and the file closed on grounds of "offender unknown" a little less than two months after it was opened.

Though the two complainants explicitly said they would be able to identify the individuals who had threatened them, the investigators did not attempt to find them through the police photo album. The Halamish security coordinator, who is familiar to the police, **was not called in for questioning** regarding threats and unauthorized use of weapons and was not put in a lineup.



Suspects not questioned despite significant evidence against them in investigation material

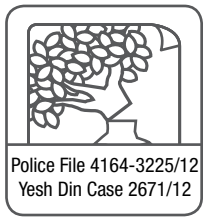
On October 24, 2010, J.M.[74] filed a complaint in the Hebron regional police regarding trespassing. His complaint was filed following two previous trespassing incidents in his plot of land during the same month, and after on October 12, 2010, A.J., J.M.'s cousin, arrived at the land and found 40 trespassers, likely residents of Neve Daniel, who were causing a disturbance and shouting that they would not let him work the land. One of them threatened A.J. that if he did not leave the area, a war would break out. When J.M. heard from his cousin about the trespassing he immediately went to the plot and informed the police and the army, which arrived at the scene, and after negotiations, removed the trespassers. J.M. and A.J. gave the police officers photographs they had taken in which the faces of at least two of the trespassers were clearly visible.

In his statement, A.J. said he had photographs of the man who had threatened him and knew the model and color of the car he drove. In his supplementary statement to the police, he was asked to identify the man who threatened him in the photos he provided, which he did. Despite this, the suspect was not called in for questioning and was never interrogated. The Neve Daniel security coordinator, who was one of the trespassers in the preceding incidents, was not questioned as a suspect either, though there was no difficulty locating him. The suspects who were clearly visible in the photographs provided to the investigators were not questioned either, nor were the soldiers and police officers who witnessed the incident and removed the trespassers called in to give their statements.

The investigation file remained open for more than a year without these basic investigative steps being taken, and was ultimately closed on grounds of "offender unknown." This cause is reserved for cases in which there are absolutely no leads or clues regarding possible

74 The complainants' full names are on file with Yesh Din.

suspects, rather than cases such as this, in which there was no difficulty questioning additional witnesses and locating the suspects. As stated, one suspect was identified by the complainant in his supplementary statement to the police, another was the Neve Daniel security coordinator, who is known to the investigators, and other suspects were clearly captured in photos contained in the investigation file, making their identification possible. The investigators had significant evidence against the suspects but none of them were questioned.[75]



Complainant says during questioning that he suspects a specific individual, hands photos of the suspect to the investigator, but the police makes no attempt to locate him and call him in for questioning

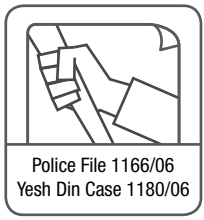
When Najeh Yasin, a resident of Yasuf, went to his plot of land, he noticed that three of the olive trees there had been cut down. When he made his complaint to the police, Yasin said he did not have a specific suspect, but did say that there was a shepherd in the settlement of Tapuah who often comes to a plot owned by his neighbor and lets his flock graze on the crops there. He said he thought that man might have cut down the trees. Yasin gave the investigator a CD with photos of the trespasser. The investigation summary, written just five days after the complaint was made, indicated that the complainant suspected people from Tapuah, but no one specifically. As a result of this determination, the investigation file was closed on grounds of "offender unknown," which is reserved for cases in which there are no leads on suspects.

75 Yesh Din appealed the closure of the investigation file and demanded it be reopened for completion of investigative steps, but the State Attorney's Appeals Department rejected the appeal and did not renew the investigation. Letter from Sharon Edry, Appeals Officer, State Attorney's Office, May 1, 2013.

Yasin pointed to a specific person he suspected, indicated he could identify him and even provided a CD with photographs, but no attempts were made to locate the suspect and call him in for questioning.[76]

Failure to Hold Confrontations to Decide between Accounts Given by Suspects and Complainants

Of the investigation files reviewed, there were very few[77] in which investigators initiated a confrontation in order to decide between conflicting accounts given by the suspect and the complainant. Confrontations are not held despite the fact that they can help investigators decide between conflicting accounts of an incident, and despite the fact that suspects may not decline to participate in them, though they may remain silent.[78]



Police File 1166/06
Yesh Din Case 1180/06

Confrontation between complainant and suspect ends with one sentence exchanged

During the investigation of an assault with multiple participants, during which a mare belonging to a Palestinian farmer was shot, investigators held a confrontation between the complainant and one of the suspects. The entire confrontation consisted of one sentence, the complainant's accusation that the suspect had taken an active part in the incident and had stood next to the person who shot and killed his mare. The suspect did not respond to the complainant's accusation, and the investigators did not attempt to elicit a response.

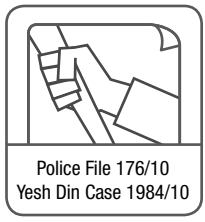
76 On October 31, 2012, Yesh Din appealed the closure of the investigation file on grounds of "offender unknown" without exhausting the investigation, but the State Attorney's Appeals Department rejected the appeal. Letter from Nehama Sussman, Senior Deputy (A), State Attorney's Office, Appeals Department, October 6, 2013.

77 Yesh Din Files 1180/06 and 2179/10.

78 Yaakov Kedmy, **Criminal Procedure – Part 1: Pretrial Procedures**, B, (Tel Aviv: Dyonon 2008), p. 811 (Hebrew).

Surprisingly, the confrontation ended with this, and the suspect's interrogation continued as usual.

A confrontation that includes only one sentence obviously cannot achieve its intended goal and therefore was of no use in deciding between the accounts or in identifying who shot and killed the mare. The investigation file was ultimately closed on grounds of "insufficient evidence."[79]



Police File 176/10
Yesh Din Case 1984/10

No confrontation to help decide between the account given by a complainant and the account given by the security coordinator who denied the allegations against him

The home of Mahmoud Eid, a resident of Deir Nidham, is located close to the fence of the settlement Halamish-Neve Tzuf. The house is very close to a gate in the fence which is used by the settlement's security coordinator, A., when he patrols the settlement perimeter. The gate is usually locked and A. is in charge of opening it.

On January 8, 2010, Mahmoud was sitting in his home with his family. His children, who were playing outside, told him: "there are settlers outside yelling at us." Eid then went outside and saw the security patrol car and two other cars. He also saw A. opening the gate for a group of people, some of whom were armed. He then saw A. departing. The rest of the people advanced toward Eid's house and started breaking the veranda windows and throwing stones at the water tank. Eid's brother, who lives nearby, telephoned A., who promised him he would take care of the situation. Later, when Eid tried to talk to the rioters,

79 Yesh Din appealed the closure of the investigation file without exhausting the investigation (there were other deficiencies in the investigation as well), but the State Attorney's Appeals Department rejected the appeal without renewing the investigation. Letter from Sharon Edry, Senior Deputy (A), State Attorney's Office, Appeals Department Supervisor, April 28, 2011.

he saw A., who was near them, departing the area and leaving the gate open. Once he was gone, the rioters started throwing stones at Eid again. One hit his right leg, causing a slight injury. Eid then received a call from a police officer who lives in Halamish and whom Eid knows from his work in the settlement. When village residents gathered in the area, the rioters fired shots at them. An Israeli photographer who was trying to evade the rioters also arrived at the scene. The incident lasted about 30 minutes until a police officer arrived and put an end to it.

On the same day, scores of olive trees were cut down in plots belonging to residents of Deir Nidham. In his statement to the police, Eid said that the individuals responsible for vandalizing the trees also entered through the gate A. had opened (separate police complaints were lodged by landowners whose trees had been cut off).

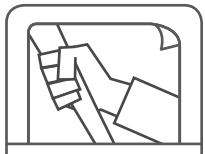
In his interrogation, A., the security coordinator, said that hundreds of Palestinians had rioted in several locations on that day and that residents of the settlement had gone out to confront them. A. admitted to opening the gate, but said he did so to let settlers who had gone to a nearby spring return to their homes, not enter the village. He did say that during the commotion “some people may have slipped out,” but said he had brought everyone back in and locked the gate. He denied helping the rioters enter Deir Nidham as well as any connection to the vandalization of the olive trees.

In this investigation, the account given by the complainant contradicted the one given by the security coordinator, who denied the complainant’s allegations. However, the police did not hold a confrontation between the two to decide between the conflicting accounts and clarify what happened.

Failure to Require or Verify Alibis

An alibi is a form of defense evoked by a person who is suspected (or accused) of committing an offense, wherein he claims to have been elsewhere when the offense was committed, and therefore there is no basis for suspecting him. The police must investigate alibis given by suspects during interrogation in order to confirm or disprove them.

Dismissing an alibi because of questionable reliability is different from disproving an alibi with clear, unequivocal proof that it is false. Disproving an alibi has independent probative value and it is highly significant because not only does it increase the weight and credibility of other evidence, but it also augments the probative value of that evidence. Disproving an alibi with clear and unequivocal evidence means a positive finding that the defendant has not been truthful regarding a substantial issue connected to the charge, which constitutes incriminating behavior.[80] Checking alibis provided by suspects is therefore crucial. Our review of investigation files in which the suspect supplied an alibi revealed that investigators often do not check or verify alibis.



Police File 649/11-5
Yesh Din Case 2354/11

Investigators did not check alibis supplied by three assault suspects

On March 17, 2011, Sami Snobar was doing construction work on the second floor of a house in the settlement of Shilo. At around 9:30 A.M., six to eight men arrived at the construction site. Most of them were masked. The group went up to the second floor of the house and attacked Snobar with metal bars, sticks, a cinder block and tear gas. The site guard, Moshe, tried to help Snobar but was also attacked. After the assailants fled the scene,

80 Yaakov Kedmy, **Evidence – The Law through Case Law (Part 2)**, Incorporated Updated Edition (Tel Aviv: Dyonon 1999), pp. 618-624 (Hebrew).

Moshe called the Shilo security coordinator who arrived and called an ambulance. Snobar said:

> *On March 17, 2011, I got to work at 7:00 A.M. and started working. At around 9:30, while I was deep into the work on the roof of the two-story building, I suddenly heard someone shouting. He said: "come." I just looked up to see and got hit forcefully on the head with a metal bar. The person who hit me was masked. After I was hit, I saw another one. They had earlocks. And then they sprayed me in the eyes with pepper spray. There were more than eight masked settlers. I started crying for help […]. I fell on the floor and the attackers kept hitting me. They all had iron bars. I kept shouting […]. After they had beaten me for about five minutes, the guard [Moshe] came. He tried to pull me away and push them, but they pushed him and sprayed him with gas too and he couldn't get me out. The man who was working on the bottom floor came to help too. His name is Nasser Salman. But he couldn't do it either. At some point I tried to get up, but they pushed me to the floor, took some cinder blocks and hit me on the head, shoulder and ribs. Also on the leg.*
>
> *[…] I have 14 stitches in my head, and it's bandaged. I have no fractures, but I have severe contusions […]. I looked death in the eye. All I wanted was to make a living. My head hurts. My eyes are burning, teary and red. I'm traumatized and I can't get back to normal.*[81]

The police inspected the scene of the incident on the same day and took blood samples. Searches in and around Shilo came up empty. The police collected statements from Snobar and the guard Moshe. Both said they would not be able to identify the assailants. The police also collected a statement from Nasser Amlah, the complainant's father-in-law,

81 Yesh Din File 2354/11

who worked with him and managed to flee the site when the assailants arrived. Amlah told the investigators he was not sure he could identify the assailants because most of them had been masked. He also said that the contractor, Ahmad, also saw the assailants standing outside the building prior to the attack.

The owner of the house, a resident of Shilo who arrived at the site after the incident also gave a statement. He said a Magen David Adom (emergency medical services) volunteer who was in the ambulance and studies at a yeshiva in Shilo saw some people who may have been the assailants around the yeshiva before the incident.

On March 23, 2011, the police took the statement of a Magen David Adom volunteer from Shilo. He said that on the morning of the assault he saw a group of six to eight young Jewish men approaching the area of his yeshiva and walking up toward the site of the attack, which is near the yeshiva. The volunteer said that about half an hour later he got a message on his pager about the assault. He did not know the individuals involved and assumed they were from the hills, or Yitzhar. He said there was a "chance" he could identify them and even gave a general description of some. At the end of his interview, he was shown a photo lineup. He identified two of the eight photographs he was shown. His level of certainty was 40% and 70%, and he noted that the faces were familiar to him from other incidents in the sector in which he also attended to injured people, not necessarily from this particular assault.

The statements of three suspects were collected over the next few days. All three refused to cooperate with the investigators, other than providing an alibi.

The suspect A.K., interviewed on March 23, 2011, answered the questions posed to him by briefly stating: "I have not broken the law. I am just being harassed, and since I have no faith in the system, I have no intention of cooperating." Though the suspect never provided an alibi of his own volition and, as stated, refused to cooperate with the investigation, the

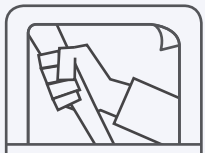
investigator told him that any phone call he asked to be made to verify his alibi would be made, especially if he worked laying tiles and got paid by the hour, and so he or his employer recorded his work hours. The suspect refused to answer when asked for the name and number of his employer. The investigation file contains no documentation of any attempts on the investigators' part to locate the employer, a record of the suspect's work hours, or any other effort to verify the alibi. The investigative material contains no explanation as to why the investigator found it necessary to suggest an alibi to the suspect.

Another suspect, A.L., was interrogated on March 31, 2011. In the beginning of the interview, the suspect said he had been surprised by the police summons as he opposed such actions. He gave an alibi, whereby at the time of the assault he was working in his parents' home in Shilo and his father was with him. He refused to answer any other questions posed by the investigators and simply repeated "this is a political investigation. I have nothing further to add." The investigation file contains no evidence of any attempt to contact the father in order to corroborate or disprove the alibi supplied by the suspect.

The suspect H.L., interrogated on April 3, 2011, denied any connection to the assault and said that on that date, he was working in his father's house in Shilo with his brother (the suspect A.L.). The suspect refused to answer any other questions posed by the investigator, including questions about when exactly he was at his father's house in Shilo. The investigators did not check H.L.'s alibi either.

The investigation file was closed on August 15, 2011, on ground of "offender unknown," and as stated, without the investigators having bothered to check the alibis supplied by two suspects, and without clarifying what role the third suspect played, the one to whom the officer suggested an alibi. The investigation material contains no indication that any other actions were taken to check where the suspects might have been during the assault, such as cellular triangulation.

One Investigation – Multiple Failures



Police File 22435/11-3
Yesh Din Case 2388/11

An assault suspect was identified by two complainants, but was called in for questioning only three months later. The interrogation included seven general questions and no demand for an alibi

On April 14, 2011, the Hizma family from Turmusaya went out to tend to their land, located near the outpost of Adei Ad, after they coordinated with and received approval from the Civil Administration. About an hour and a half after they started working, the army asked them to leave the area "so there are no problems with the settlers," but before they were able to leave, a blue Mitsubishi Magnum arrived in the area and seven Israeli civilians came out. Soldiers in the army jeep noticed the car and said "good morning" on the jeep loudspeakers.

The Israeli civilians, some of whom were masked, began attacking the Hizma family using clubs, stones and tear gas. Ribhi Hizma was beaten by a masked man all over his body, and on the head with a metal bar. His head required stitches. Abd al-Razeq Hizma, who tried to help him and pull him away from the assailants, was sprayed in the face with tear gas and assaulted as well. The assault continued for several long minutes before the soldiers intervened. They finally fired some shots in the air and the assailants fled. One of the assailants was photographed by a Palestinian farmer during the incident.

On the day of the incident, the police received complaints from three individuals and took a statement from another Palestinian farmer. Looking through police photo albums, Ribhi Hizma identified the man who attacked him with a stick. The same

assailant was identified by another man (who also took photos of one of the assailants), also while looking through police albums.[82]

The suspect identified by both complainants was called in for questioning only three months later. The investigation file contains no explanation for the delay. The questioning of the suspect, A., was short and incomplete. He was asked only seven general, abstract questions and was not asked to supply an alibi for the time of the assault.

The material contained in the investigation file indicates that **no effort was made to find and interview the soldiers who had witnessed the assault** and have them identify the assailants.[83] This was a substandard investigation which ultimately closed on November 13, 2011 on grounds of "insufficient evidence" – an outrageous reason given the negligent investigation.[84]

82 Note that the statement given by the farmer who had captured one of the assailants on camera and the identification he made in the police albums are not documented in the investigation summary of August 15, 2011, in which the reason for closure is given.

83 Yesh Din filed a complaint against the soldiers who stood idly by, failed to protect the Palestinian residents and allowed the assault to continue to the point of serious injuries before intervening. On July 2012, the Legal Service for Operational Matters decided to close the case (Yesh Din File 2388/11).

84 Yesh Din appealed the decision to close the case on grounds of "insufficient evidence" without having exhausted the investigation. The State Attorney's Office Appeals Department rejected the appeal and did not renew the investigation (Letter from Adv. Sharon Edry, Appeals Department, State Attorney's Office, August 12, 2012).

Recommendations (C)

1. Suspects must be called in for questioning, as close as possible to the time of the offense. Suspect interrogation must be viewed as a necessary, fundamental investigative tool and investigators must therefore make sure that suspects are located and questioned.

2. When a suspect denies connection to the allegations, he or she must be required to supply an alibi for the time of the offense. Alibis given by suspects must be verified or disproved.

3. Protocols related to police investigators' power to bring an uncooperative suspect or witness in for questioning must be updated.

LOCATION AND IDENTIFICATION OF SUSPECTS

Failure to Hold Live Lineups

Police lineups are meant to help ascertain the identity of an offender, prove his or her connection to the offense and establish criminal liability at trial. Naturally, a lineup can only be held when there is a specific suspect against whom there are reasonable suspicions.

The police lineup relies on the visual recollection of the person making the identification, who is presented with the suspect along with other individuals of similar appearance, and asked to isolate the suspect. It is therefore preferable to hold a lineup as close to the time of the incident as possible.[85]

In a live police lineup (also known as a formal lineup), at least eight people, the suspect among them, stand together before the person who is making the identification. This person is asked to point to the suspect. A live lineup has the highest probative value as it can be relied on as sole evidence for identifying, and even convicting, a defendant.[86]

In a photo lineup, the complainant is shown several photos (usually six or eight), including a photo of the suspect. Photo identification is considered less preferable to a live lineup in terms of evidence, and is therefore meant to be reserved for special circumstances that preclude a live lineup.[87]

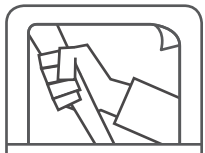
Live lineups are preferable to photo lineups because photo identification is more difficult, and therefore more limited. A photo does not capture the full extent of a person's facial features, nor does it convey facial expressions and gestures, which are also elements of an individual's personality and essence, and may be an integral part of a witness' recollection, and an important factor in the identification.[88] Thus, in cases in which there is a suspect, the legal rule is that the identification should be made in a live lineup. Nonetheless, our findings show that live suspect lineups were held only in isolated cases. In a few cases photo lineups were held.

85 Yaakov Kedmy, **Evidence – The Law through Case Law (Part 2)**, Incorporated Updated Edition (Dyonon: Tel Aviv University 1999), pp. 884-853 (Hebrew).

86 **Ibid**., ibid.

87 See CrimA 420/81 **Cohen v. State of Israel**, IsrSC 36(2) 29 (Hebrew); CrimA 4964/97 **State of Israel v. Hasan**, IsrSC 53(2) 399 (Hebrew).

88 David Mualem, "Lineup," **Hapraklit** 22 (5721), p. 381 (Hebrew).



Police File No 138833/13
Yesh Din Case 2834/13

Police arrested two suspects in an aggravated assault, and held a photo lineup in which the 80-year-old victim was unable to identify the assailants, though he was convinced he could identify them in a live lineup

On March 29, 2013, Hasan Barhush, an 80-year-old shepherd and resident of a-Labad, near Tulkarm, was assaulted. Two Israeli civilians arrived from the direction of the settlement of Avne Hefetz and brutally assaulted him with clubs.

Barhush lost consciousness and remained lying on the ground, alone, for some time. When he was late returning home and when his family members noticed sheep from his flock returning to the village on their own, they went looking for him and found him. Following the assault, Barhush was hospitalized at Ichilov Hospital in serious condition, suffering from fractures and contusions all over his body.[89] Barhush returned home after weeks of rehabilitation.

Almost three months after the attack, on June 18, 2013, Israeli news website Ynet reported that the police had arrested two residents of Avne Hefetz as suspects in the assault.[90] The suspect Y.N. invoked his right to remain silent during his two interviews, though he did find it necessary to mention that he did not have an alibi for the day of the incident, that he did not remember what he was doing at the time and that he did not attack Barhush. The second suspect, N.M. said in his interrogation: "I don't like Arabs" and that even if he knew who carried out the assault he would not tell the investigators.[91]

89 Barhush's relatives took him to the hospital in Tulkarm, but due to the severity of his condition, he was transferred to Ichilov Hospital in Tel Aviv, suffering from three fractures in the left arm, a fracture in the right arm, a fractured rib, a fractured collarbone and contusions in the left leg. Chaim Levinson, "Two arrested for brutal attack on elderly Palestinian in West Bank," **Haaretz English website**, June 18, 2013.

90 Itamar Fleishman, "2 arrested for suspicion of attacking 80-year-old Palestinian," **ynetnews.com**, June 6, 2013.

91 Note that it is possible to prosecute a suspect based on a single testimony without need for further corroborating evidence.

On June 19, 2013, Barhush was called in for a photo lineup at the Ariel Police, but was unable to identify his assailants. Immediately after the assault, and after the failed attempt at the photo identification, Barhush insisted that he would be able to identify the assailants, but during the lineup he was shown small, poor-quality photos which did not enable him to evaluate the suspect's body size or get a proper visual impression. Had there had been a lineup with the suspects present in person, as should have been the case, it is reasonable to assume that Barhush would have been able to identify them.[92]

The transcripts of the suspects' arrest hearing at the Jerusalem Magistrate Court indicate that the name of the suspect Y.N. was raised early in the investigation and that after reviewing the investigative material, the court saw fit to remand him in custody due to "reasonable suspicion."[93] Similar conclusions arise from an activity report dated June 17, 2013, indicating that the suspect was arrested following information received regarding his involvement in a nationalistic incident.

The two suspects were released on June 22, 2013, before the end of the remand period approved by the court, apparently due to Barhush's failure to identify his assailants in the photo lineup, despite his repeated statements (via counsel) that he would be able to identify the assailants in a live lineup and that the photos he had been shown did now allow for

Sections 5 and 7 of the State Attorney's Office Directive No. 1.3 – File Closures on Grounds of Insufficient Evidence or Absence of Culpability stipulate that the fact that an investigation file contains only one incriminating testimony against the suspect without further substantive support and this testimony conflicts with the suspect's own testimony, is not necessarily sufficient for concluding that the file does not contain enough evidence for an indictment.

92 On June 20, 2013, Adv. Noa Amrami, of Yesh Din's legal team, contacted the SJ District Police Commander, demanding a live lineup be held as the complainant insisted he would be able to identify his assailants. The response came on July 7, 2013, in a letter from Assistant-Commander Haim Rahamim, Investigations and Intelligence Officer, SJ District Police, who claimed a live lineup was not possible. Amrami then wrote to the Deputy State Attorney, Adv. Eli Abarbanel, and the Head of Investigations and Intelligence Department, Israel Police, Deputy Commissioner Yoav Segalovich on July 18, 2013. The letter was never answered.

93 Arrest Hearing 37022-06-13, Transcripts, June 18, 2013, p. 2, ll. 11-18 and p. 5, ll. 11-18 (Hebrew).

proper identification.[94] On July 24, 2013, the police closed the investigation file on grounds of "offender unknown."[95] The failure to hold a live lineup eliminated the chances of finding the culprits in the aggravated assault and bringing them to justice. Yesh Din appealed the closure of the file and demanded the investigation be completed and a live suspect lineup be held.

Over the last few years, Yesh Din has corresponded extensively with the SJ District Police and the State Attorney's Office regarding their preference for photo lineups rather than live ones. In a letter dated December 28, 2009, Adv. Shai Nitzan, then Deputy State Attorney (Special Functions) said: "According to SJ District Police, live lineups are preferable. However, in many cases the identity of the suspects is unknown, and therefore live lineups cannot be held at that stage. In addition, live lineups often present practical difficulties as they require the suspect's consent and the location of suitable lineup foils." In these circumstances, added Nitzan, there is no choice but to use photo lineups, yet he noted that photo lineups were resorted to by "default."[96] As Adv. Shlomi Abramson, Senior Deputy State Attorney stated in a letter from January 2012, this policy has not changed over the years: "SJ District Police policy is that live lineups are preferable and photo lineups are held

94 Yehuda Pearl, "Another arrest ends in release – 'gather evidence before you arrest,'" **Hakol Hayehudi website**, June 23, 2013, http://www.hakolhayehudi.co.il/?p=67793.

95 Note that the grounds "offender unknown" are reserved for cases in which the police has no leads on possible suspects, not ones in which suspects have been arrested and interrogated.

96 Letter from Adv. Shai Nitzan, Deputy State Attorney (Special Functions) to Adv. Michael Sfard and Adv. Neta Patrick, Yesh Din's legal team, December 28, 2009.

by 'default.'" Abramson also mentioned the difficulties in holding live lineups,[97] and said that the SJ District Police did "everything in its power to update the photo albums."[98]

With respect to the assault on Hasan Barhush, Cmdr. Haim Rahamim of the SJ District Police Investigations and Intelligence Department wrote: "Indeed, given the circumstances, a photo lineup was held due to the great difficulty to locate foils who look like the assailants, and in fact, such a lineup is not possible (and therefore the default was a photo lineup)."[99]

Identification in Police Photo Album instead of Lineup where there is a Specific Suspect

When the police does not have information about a specific suspect, a police offender photo album is used in order to find one. Police investigators show the person making the identification (a witness or a complainant) pictures from its photo album of offenders without knowing if the offender's photo is in the album. Photos are usually narrowed down by age group, hair color, type of offense etc., according to the description given by the person who is making the identification, but for the most part, the person is shown dozens and sometimes more than a hundred photos. A lineup is preferable to identification in the album, but so long as the album identification is done correctly and fairly, its probative value is the same as that of a photo lineup. A live lineup is obviously preferable to both.[100]

97 On February 25, 2008, several months after Adv. Dvori Nov's term as Head of Prosecution with the SJ District Police ended, she told Lior Yavne and Adv. Natalie Rosen of Yesh Din in conversation, that to her understanding, live lineups were not possible in the West Bank as there were no volunteers among the Israeli population in the OPT who would agree to participate in them.

98 Letter from Adv. Shlomi Abramson to Adv. Michael Sfard, Yesh Din's legal advisor, January 9, 2012.

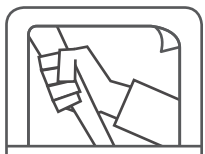
99 Letter from Cmdr. Haim Rahamim, Investigations and Intelligence Officer, SJ District Police, to Adv. Noa Amrami, Yesh Din Legal Team, July 3, 2013.

100 CrimA 10360/03 **Makram Shadid v. State of Israel**, TakSC 2006(1), 3018, paras. 16-17 (Hebrew); CrimA 2180/02 **Ramzi Qasem v. State of Israel**, IsrSC 57(1), para. 5 (Hebrew).

Therefore, identification though police albums should be done only when there are no suspects.

Yesh Din's data show that photo lineups are rare, and live lineups even rarer. On the other hand, contrary to both case law and common sense, there were cases in which despite the fact that there was a specific suspect, complainants and witnesses were asked to make the identification using the police offenders' album – which is entirely different from a lineup and meant only for cases where there are no suspects.

In addition to the fundamental problem of preferring identification through police albums over lineups (be they live or photo lineups), the police photo database includes scores or hundreds of pictures of possible suspects that are presented to the witness or the complainant, and this database of photos is not updated to reflect changes in the population. Many complainants have told Yesh Din that the database includes photos of people who have not lived in the area for several years, and does not have ones of newer residents who have been in the area for months or even years. They have also indicated that the photos are old rather than current, which makes identification harder. Needless to say, identification by looking at photo albums, which, as stated, does not constitute a lineup, is meant to be used only in cases in which no suspect has been found rather than as a substitute for a lineup.



Police File 720/11
Yesh Din Case 2338/11

Two suspects in an assault were not put in a lineup (photo or live). Instead, the complainant was asked to identify his assailants out of about a hundred photos in a police photo album.

On February 19, 2011, when A.a.A. and his family were herding their flock near the main road leading to the outpost of Mitzpe Yair, a white Toyota pick-up truck arrived in the area. Two people got out of the truck, and the driver,

who was armed with a gun, punched A.a.A. in the face, injuring his eye, nose and lip. The two men took A.a.A.'s pickaxe and drove toward the Mitzpe Yair intersection, where they were joined by two other vehicles, another white Toyota pick-up truck, with a green roof cover and a yellow Fiat Uno.

On the same day, A.a.A. went with an investigator to Mitzpe Yair to look for the white pick-up truck. Later, the police took A.a.A.'s statement, in which he described the two assailants and their car. A few days after that, he gave another statement, describing his assailants and noting that he would likely be able to identify them. The description he gave included their height, estimated age, their clothes and other identifying marks such as glasses, beards and earlocks, skin color and hair color. A.a.A. did not identify his assailants in the pictures he was shown.

On the same day there was another incident of a clash between Palestinian shepherds and settlers in the area. On February 24, 2012, a person who was present in that incident gave a statement, which included a description of a pick-up truck similar to the one described by A.a.A. This person also provided details about the pick-up truck's owner, a woman who lives in the settlement of Susiya. This led to a statement being taken from a Susiya resident. He told the investigators that he was not aware of the assault and that he had arrived in the area of the incident in the pick-up truck that belonged to the woman from Susiya. He also said who had been in the pick-up truck with him. One of the people who were in the truck, Y., was interrogated later, and told the investigator that on their way to the area where the clashes had taken place, they came across a grey car (a Mitsubishi pick-up truck). A. and E., two residents of Susiya, were inside it.

Following this information, A. and E. were questioned under caution. Both denied involvement in the assault. They also denied having ridden in the grey Mitsubishi and having seen each other on that day. The owner of the white Toyota pick-up truck was also

interrogated and statements were collected from A.'s mother and brother, who described the encounter between the assailants' car and the other, yellow and white, cars.

A.a.A. told the investigators he might be able to identify the assailants, but **no lineup, either live or photo, was held with the suspects who were investigated.** The investigation closed on grounds of "insufficient evidence," without this basic step having been taken. As aforesaid, looking through more than a hundred photos in a police photo album is not tantamount to a lineup and should be done only when there are no suspects. The Hebron police interrogated two suspected offenders, but nothing in the investigation materials points to any attempts to get their consent to a live lineup. Even if the suspects did not give their consent to a live lineup, a photo lineup, which does not require consent, should have been conducted.

Police conduct in this file demonstrates that the investigating authorities fail to apply the legal rule whereby when the police has a suspect, said suspect will be identified through a lineup (with a preference for a live lineup). As stated, looking through police albums is meant for cases in which the police has no suspects.

Failure to Seek Identification through Police Album despite Complainant's Stated Ability to Identify the Offender

The review of investigation files monitored by Yesh Din indicates that in some cases, complainants told the police that they could identify the person or people who harmed them or their property, but were still not asked to look through offender photo albums. This was the case, for example, in Yesh Din File 1891/09, which involved the vandalization of olive, lemon and fig trees in plots belonging to residents of Deir Nidham, near the settlement of Halamish (see also p. 61 in this report in the sub-section entitled Failure to Call Suspects in for Questioning). When the two complainants filed their complaint at the Binyamin Police Station, they told investigators they would be able to identify the people who had

threatened to harm their trees, whom they suspected. Despite these express statements, the complainants were not asked to look through police offender photo albums to find the suspects and the file was closed two months later on grounds of "offender unknown," and without any further investigative measures.

Police File No 106809/13
Yesh Din Case 2817/13

62-year-old shepherd assaulted by masked men who attacked his sheep and attempted to steal them. His son came to rescue him and saw the assailants, but was not asked to identify them in a photo album

On March 8, 2013, when 62-year-old Kamel Na'asan was herding his flock near his village of al-Mughayir, he was approached by eight Israelis, some of them masked, and at least one of them armed with a gun. One of the men punched Na'asan in the abdomen and he lost consciousness, fell and hurt his head. He was later hospitalized in Ramallah. The Israelis then attacked Na'asan's sheep with knives and stones. They killed five sheep and injured three others. They then turned toward the nearby outpost of Adei Ad, taking some of the flock with them. A resident of the village saw the attack and called Na'asan's sons. When the two sons came close to the area, they too were attacked with stones. Later on, the Adei Ad security coordinator, some other residents and some soldiers arrived at the scene. The offenders disappeared before the police arrived, and the soldiers who were present did not detain them.

Though Na'asan's two sons saw the assailants, some of whom did not wear masks, they were not asked to look through the police photo album, which might have helped identify them. The Adei Ad security coordinator, who had arrived on the scene before the police, was not questioned either, and in fact, other than collecting statements from the victim and his sons, no further investigative steps were taken. The file closed in June 2013 on grounds of "offender unknown."

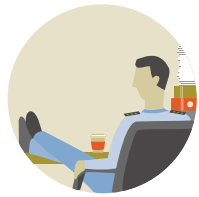
Recommendations (D)

1. In cases in which there is a specific suspect, and a witness who believes he or she would be able to make an identification, every effort should be made to hold a live lineup. Photo lineups should be a last resort choice only.

2. Identification by looking at police offender photo albums should be used only in cases in which there is no specific suspect. In every case in which there is a suspect – a lineup must be held.

3. Lineups and identification of suspects in police albums should be conducted as close as possible to the time of the offense. Consideration should be given to the fact that lineups rely on the recollection of the person making the identification and that the ability to make the identification declines with time.

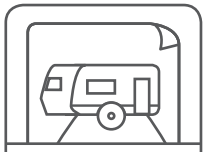
4. The police photo database should be updated periodically and photos used in lineups and albums must be clear and current.



CLOSURE OF INVESTIGATION FILES WITHOUT ANY INVESTIGATIVE STEPS OR WITHOUT BASIC INVESTIGATIVE STEPS

The duty of the police to conduct an effective investigation has been recognized in case law: "The investigating authority must take all the necessary investigative measures […], as part of its duty to find the offenders and obtain sufficient evidence for prosecution and conviction."[101]

A significant number of investigation files were closed after the only investigative action taken was collecting the complainant's statement, and possibly another action, but without performing elementary and obvious investigative measures.

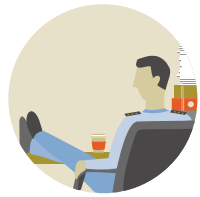


Police File 4164/12
Yesh Din Case 2788/13

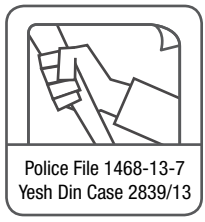
Complainant gives investigators the telephone number of a woman who was responsible for an invasion of his plot and damage therein, but investigators did not call her and closed the file the next day

On December 27, 2012, Atef Ahmad, a resident of Sanniriya, arrived to work his land which lies beyond the perimeter fence of the settlement of Sha'arei Tikva. He was shocked to see a tractor working on his plot, clearing a road. There was a woman there, who said her name was Orit. She told Ahmad she had decided to clear a road through his land because she had started building two homes in the settlement and this was the most convenient way for her to bring in the construction materials. On December 30, 2014, Ahmad filed a complaint regarding the incident at the Samaria Regional Police. He gave the investigators the phone number of Orit, the woman who had invaded and damaged his plot, but they did not bother calling her and asking her to come in for questioning, though this would clearly have been quite simple. The investigation file was closed the next day on grounds of "no offense committed," without a single investigative measure being taken.

101 CC (Jerusalem) 102/99 **State of Israel v. Osama Salem**, IsrDC 99(3), 104 (Hebrew).



In the months after the file was closed, work on Ahmad's land continued without interruption. A new road was cleared and construction waste was dumped, destroying the plot, where he grows olive trees, and changing it completely. On June 4, 2013, after Yesh Din's legal team managed to obtain a copy of the investigation file, which only contained a copy of Ahmad's complaint, an appeal was filed. Following the appeal, and before the investigative material and appeal were sent to the State Attorney's Office Appeals Department, the Samaria Regional Police decided to renew the investigation.[102]

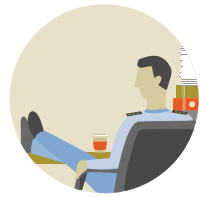

Police File 1468-13-7
Yesh Din Case 2839/13

Incomplete investigation into shooting and threats closed on grounds of "absence of criminal culpability"

The home of Bruce-Lee Eid (named for famed martial arts star), is located on the eastern edge of the village of Burin, about 500 meters away from the outpost of Givat Ronen. On March 31, 2013, in the early afternoon, while Eid was with his children and his neighbor, J.A., in a plot he owns, R., a resident of Givat Ronen who often harasses them, arrived in the area. R. cursed Eid and his children, threatened to kill them if they did not leave the area, pulled out a gun and fired three shots at Eid and his children. While Eid's family members fled into the house, R. was joined by two Israeli youths and together they chased them. During the chase, one of the youths shot at Eid's family members with a weapon he was carrying. An IDF unit that arrived at the scene after Eid called the Palestinian DCO found the youth who had fired the shots, but did not detain him.

On the next day, April 1, 2013, a similar incident took place. Eid took photos during the incident and later gave them to the police. On April 2, 2013, once again, about 18 Israeli civilians arrived at Eid's house in Burin and threw stones at him and his house using sling

102 At the time of writing, the renewed investigation had not been yet been completed.



shots. Some soldiers who were standing nearby drove the assailants away, toward the Givat Ronen unauthorized outpost.

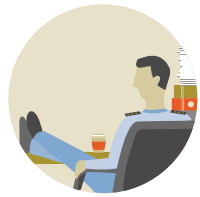
On April 11, 2013, Eid complained to the police about the three incidents. The investigative material in the file contains only Eid's complaint and a conversation with a soldier from the Samaria Regional Brigade. The soldier confirmed the details of the incident and noted that the military unit that arrived at the scene "located a minor resident of Givat Ronen who had descended toward Burin and was carrying a toy M16 rifle. The rifle and the bullets were confiscated." The soldier sent the youth away without recording his personal information.[103] This conversation was the only investigative measure the police performed.

Although Eid gave the investigators R.'s name, told them where he lived, and supplied them with the photos from the April 1 assault, R. was not called in for questioning. It also appears that no attempt was made to locate the youth who had carried the toy gun (the offense amounts to threats even if the gun was a toy, since Eid and his children believed the gun pointed at them was real and that their lives were in danger).[104] The police also failed to interrogate the third young man who took part in the threats or collect a statement from Eid's neighbor, who witnessed the first incident, and from the soldiers who were present in the third incident, in which stones were thrown at Eid's house.

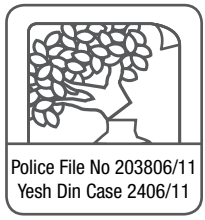
Two months later, on June 18, 2013, the file was closed on grounds of "absence of criminal culpability." The explanation was that the threats had been made using a toy gun. As stated, the shots fired by R. were not investigated at all, and the threats made with the toy gun

103 Memo from Advanced Chief Sergeant Ilan Daniel, April 21, 2013.

104 The determination as to whether there was a threat is made according to objective criteria, that is, if a reasonable person would have felt threatened in the same circumstances (see LCrimA 2038/04 **Shmuel Lam v. State of Israel**, IsrSC 60)4 95 (2006), para. 12 of the opinion of Justice Beinisch (Hebrew)). It has also been ruled that making threats using a toy gun with intent to intimidate unlawfully constitutes an offense under Section 192 of the Penal Code, see, CrimC (Tel Aviv) 153/95 **State of Israel v. Shlomo Siyahu** (Hebrew).



should have been investigated as they fully constituted the offense of threats. Aside from the incomplete, negligent investigation, there was no justification for closing this case, which involved several offenses, without bringing the suspects in for questioning at all and using a cause that is reserved for cases in which no criminal offense had been committed or where the suspect had no connection to the alleged offense. The investigation was reopened after Yesh Din appealed, but closed once more on grounds of "offender unknown."



No investigative measures taken other than collecting complainant's statement

On May 22, 2011, Muhammad Shteiwi, a resident of Kafr Qadum, arrived at his plot of land and discovered that 20 olive trees had been uprooted and stolen, and 50 others had been damaged. Shteiwi filed a complaint at the Ariel police station the next day. On December 7, 2011, the Samaria Region stated that the file had been closed on grounds of "offender unknown." A review of the investigation file revealed that in the months that passed until the investigation was closed, not a single investigative measure had been taken.

Recommendations (E)

1. Investigators must receive clarifications and refresh training on their duty to investigate, as stipulated in the Criminal Procedure Law and the Police Ordinance, and recognized in case law.

2. Officers and prosecutors authorized to close investigation files must receive clarifications and refresh training on the Police Ordinance provisions relating to causes for closing investigation files, with a focus on "absence of criminal culpability" and "offender unknown."

CLOSURE OF INVESTIGATION FILES DESPITE SUFFICIENT EVIDENCE FOR AN INDICTMENT

As described thus far, many of the investigations conducted by the SJ District Police are defective, negligent and incomplete. However, there are exceptions, cases in which the investigation was successful and produced significant evidence, and still, the police decided to close the file without charging the suspects. This practice is particularly aggravating given the already low indictment rate and high investigative failure rate (as recalled, most investigation files are closed on grounds of "offender unknown" or "insufficient evidence").

Police File 4352/09
Yesh Din Case 1908/09

Suspect caught with stolen grapes in his car, and filmed in the act, but the investigation file was closed on grounds of "insufficient evidence"

M.A.,[105] a resident of Beit Ummar, owns a vineyard located inside the Special Security Area (SSA) of the settlement of Carmei Tzur. On the morning of September 25, 2009, a resident of Halhul, who was working in a nearby plot, called him and told him that "there's a settler in a grey car who's loaded about 10 cardboard boxes from your plot." M.A. went to the plot, together with Hagit Ofran of Peace Now and Ezra Nawi, another activist. When they arrived, they saw a man, a woman and two children harvesting M.A.'s grapes and loading them in cardboard boxes onto the roof of their car. It was later discovered that it was L. and his family, from the settlement of Carmei Tzur. The couple did not stop even after they were told that what they were doing was theft and that the grapes were private property. Hagit Ofran filmed the grape theft on her video camera, and when it did not stop, she called the police. In response, L. offered M.A. a box of grapes and when he was turned down, the family left the area with their car loaded with the stolen grapes. The grapes were found and returned to M.A. later that day.

105 Full name is on file with Yesh Din.

On October 7, 2009, L. was questioned under caution. His wife was not questioned. The investigation file contained documentation of a consultation between the investigator and the prosecutor about whether or not the wife – who appears in the documentation of the incident – should be called in for investigation. The investigator was told there was no need. During his questioning, L. claimed he thought he had gone into a no-man's land that belongs to Carmei Tzur and that he had not been aware that this was private property. He claimed that he stopped harvesting the grapes as soon as he realized his mistake. He also said he had picked only two bags' full to bring to his mother and that he would not have done it had he known that this was private property, as it would have been an offense against Jewish law. L. also said he offered to give M.A. all the grapes he had taken but when M.A. refused, he ultimately turned the grapes over to the police.

L.'s claim that he stopped harvesting grapes as soon as he realized he was on private land conflicts with M.A.'s and Nawi's testimonies. Both said the couple ignored what they had told them, continued what they were doing and stopped only when they realized the police had been called. M.A.'s and Nawi's statements were collected before they knew what L. might say. Additionally, contrary to what L. had said, he did not turn the grapes over to the police on his own initiative, but was rather stopped by a police car when he tried to leave the settlement gate with the grapes in his car. The vineyard is located inside the settlement's SSA, which residents know is off-limits to Israelis and the entry of which is permitted only to Palestinian farmers working their lands.

There was ample and varied evidence against the suspect and his wife: the statements taken from the complainant and the two witnesses Hagit Ofran and Ezra Nawi, the video documenting the grape theft, the seizure of the boxes of stolen grapes in the suspect's car, the suspect's confession. Despite all this, the SJ District Prosecution Unit decided not to prosecute and to close the file on grounds of "insufficient evidence."[106]

106 Yesh Din appealed the decision of the SJ District Prosecution Unit not to prosecute and to close the file on grounds of

Police File No 239065/10
Yesh Din Case 2165/10

Despite the suspect's confession, and additional evidence against him, the investigation file was closed without charges

On the early afternoon of June 22, 2010, a herd of cows belonging to Aish al-Da'ajneh, from Fasayil in the Jordan Valley, was grazing near a water reservoir in Wadi Fasayil (Petza'el Springs). The shepherds, al-Da'ajneh's son and nephew, were about 150-200 meters away from the cows.

At around 3:30 p.m., the two shepherds noticed a grey car approaching from the direction of the settlement of Petza'el and driving toward the herd. The shepherds then heard gunshots and saw the car, parked near the cows. One man had come out of the car and another stayed inside. When the shooting stopped, the shepherds saw the car returning toward Petza'el. Once the car had gone away, the two shepherds went toward the herd and realized that the shots they had heard hurt the cows. Seven bullets hit one cow and it died immediately and two others hit another cow in the head. It died shortly thereafter. A while later, a blue car with a trailer arrived in the area. The car came close to where the shooting had taken place, but according to one of the shepherds: "Once the driver saw us, he got scared and went back toward Petza'el." Following the incident, some residents of Fasayil arrived in the area, as well as police and military forces.

Officers from the Samaria Regional Police who arrived at the scene took statements from the owner of the herd and from the shepherds. They scanned the area and found several M-16 shell casings. The officers took photos of the shell casings and the shot cows. Following intelligence information, the officers met the Petza'el security coordinator in the settlement's weapons depository on July 6, 2010. They asked if any of the members of the

"insufficient evidence," although the investigation file contained ample evidence. The State Attorney's Office Appeals Department rejected the appeal out of hand on claims of delay, and did not examine the arguments raised in it on their merits (Letter from Nehama Sussman, Senior Deputy (A), State Attorney's Office, Appeals Department, February 6, 2011).

S. family, who live in the settlement, had an IDF-issue M-16 rifle. The security coordinator said A. had such a weapon, but that he had already talked to him and concluded that he had no connection to the incident.

From there, the officers went to A.'s home and ordered him to hand over his weapon so that it could be delivered to the forensics department. A. then went into the house for a short while, returned, and told the officers that the weapon was not there, but at his parent's house, within walking distance. The officers escorted A. to his parent's house. On the way there, one of the officers spoke with A. According to the officer, A. said they could cut the process short and that he had shot the cows because they were causing damage. When the officer asked whether A. was joking or serious he said "joking." Later, A. said that when the shooting had taken place, he was in the area in a blue car, collecting rocks with his younger brother, but that he did not hear the shots. He also said that he did not like the Arabs because they caused him damage and that he was "educating" them. A. said this was a joke as well. The other officers heard the conversation.

When they reached the father's house, A. said the weapon was inside, and went to get it, but he returned empty handed and said he was not going to turn over the weapon. According to the officers, he initiated a violent confrontation with them, raising his voice and assaulting them. During the confrontation, it became clear that the weapon was not in the father's house, but in A.'s house. They then went to A.'s house, got the weapon, and detained A. for questioning.

While questioned under caution, A. said he had assaulted the officers because he did not know they were officers, since they did not identify themselves to him, and therefore, he refused to hand over his weapon. He refused to answer other questioned, evoking his right to remain silent. On July 10, 2010, A.'s brother was questioned under caution on suspicion of involvement in the shooting and killing of the cows. In his interrogation, he said he had gone with his brother to Petza'el Springs to collect pebbles, but they could not find suitable

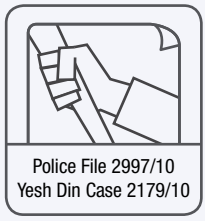
ones and returned to the settlement. He said his brother had not brought a weapon and that he had not seen him shoot the cows. He also said his family owned two cars, one silver, one blue with a trailer, and that on the day of the incident, his brother and he were in the blue car.

A ballistics report from the police forensics department determined that the nine shell casings found at the scene had been fired from A.'s M-16 rifle. Given the findings, A. was called in for another interrogation, which took place on September 7, 2010. A. denied having shot the cows. He said he used the weapon routinely to stay in "operational shape" and that his shell casings were "all over the Jordan Valley, especially around Petza'el." He denied having told the police officers that he had shot the cows and that he was "educating the Arabs." He also said that the Petza'el security coordinator supplied him with ammunition for his shooting practice.

The Petza'el security coordinator was questioned on October 10, 2010. He said there was no shooting range near Petza'el and that he was not aware of A.'s shooting practice near Petza'el. The security coordinator also denied having supplied A. with ammunition for personal shooting practice. He told the investigators that security forces, including himself, are dispatched whenever there is shooting without prior coordination, as was the case with the shooting of the cows.

Despite the ample evidence against A. - the shell casings found near the cows; the ballistics report that they had been shot from his rifle; his informal confession to one of the investigators; his refusal to hand over his weapon to the officers and their assault, which can be construed as incriminating behavior supporting the evidence against him; A.'s refusal to cooperate during his initial interrogation at the police and the fact that he owned a grey car which matched the shepherd's description – the SJ District Prosecution

Unit decided that there was not enough evidence to bring A. to trial, and on December 28, 2010, closed the investigation file on grounds of "insufficient evidence."[107]



Police File 2997/10
Yesh Din Case 2179/10

Despite significant deficiencies in the investigation of a serious assault in Hebron, evidence sufficient for an indictment was gathered. The file was still closed and only an appeal led to charges against the suspect

On the morning of July 17, 2010, M.M., a resident of Hebron, was on his way home when he was approached by a group of Israeli civilians who were coming from the direction of the Tomb of the Patriarchs. Two of them came up to him, held him by the shoulders, surrounded him and began beating him severely. After a while, M.M. managed to break loose and cross the street. M.M.'s father, A.M., who owns a shop nearby, arrived at the scene, but some Border Police officers prevented him from approaching the assailants, who went on their way uninterrupted, toward Gross Square. M.M. received first aid from the soldiers, and was then taken to al-Khalil Hospital with contusions in the left eye and the left leg. The assault took place on a main street and in broad daylight. The entire incident was caught on the security cameras located in the area.

V.G., a Border Police officer who was in a post located near the scene of the incident, gave his statement to the police on the same day. He said he had seen "settlers attack a local," and that he had called for them to stop after they began walking away, but they did not listen. He described the assault as follows: "I saw one of them grabbing him from behind and the other punching him and assaulting him." This description matches

107 Response of Adv. Eran Ori, Head of SJ District Prosecution Unit to Adv. Ido Tamari, Yesh Din's legal team, January 16, 2011. On April 14, 2011, Yesh Din appealed the decision to close the file without charges. On December 12, 2011, the State Attorney's Office Appeals Department announced that the decision would remain and the appeal was rejected.

the one given by M.M. that one of the assailants punched him and the other put his arms around him. An IDF soldier standing nearby did nothing to prevent the assault or detain the assailants after the fact. In his statement, Border Police Officer V.G. said he expected the soldier to step in, and at least detain the assailants.[108]

Before he arrived at the police station, the complainant told officers, on two separate occasions, that one of the assailants was Y.H., brother of A.H., whom he knows as they are neighbors.[109] With this information, the officer conducted a sweep during which he came across Y.H., who said he had been at a Bar Mitzva celebration and had not come from the direction of the Tomb of the Patriarchs. In his report of his meeting with Y.H., the officer noted that Y.H. looked excitable and that he was panting, but the officer did not detect any sign that he had been involved in a scuffle. M.M.'s father, who had arrived at the scene after hearing his son call for help, also noted that one of the assailants was A.H.'s brother. The suspect repeated his account during an additional interrogation, and in a confrontation held between him and the complainant, M.M.

Though the investigators had a suspect, they had the complainant look through the police photo album rather than hold a live lineup with the suspect, or at least, a photo lineup. The complainant was shown 46 photos matching the description he had given, but he did not identify the suspect. The investigation material did not indicate whether the suspect's photo was included in those shown). The police also conducted a photo lineup with a photo of Y.P., another man the suspect mentioned he

108 The complainant, M.M., filed a complaint to the MPCID (Complaint No. 730/10, to MPCID Beersheva), against the IDF soldier who had stood nearby and done nothing to prevent the assault or detain the assailants thereafter. The MPCID opened an investigation into this complaint (MPCID File 306/10). The file is under review by the Legal Service for Operational Matters.

109 The information was first given to V.G., the Border Police officer, who questioned M.M. immediately after the assault, and later to another officer on routine patrol of the area.

was with when he gave his alibi. The complainant did not identify any of the photos. In a memo regarding the lineup, the investigator noted that in a conversation he had with Y.P., the latter did not deny he was in Hebron on the day of the assault, but refused to come in to give a statement regarding the suspect.[110] The alibi witness's refusal to confirm the alibi or come into the station to give a statement raises suspicion that the alibi was false. In any event, the **investigators made no further effort to verify or refute the suspect's alibi**. The fact that Y.P. was not called in for questioning as a suspect is also baffling, given that two people participated in the assault (both according to the complainant's account and the footage in the security cameras). The investigation material in the file indicates that **no attempt was made to locate the second assailant**, other than the photo lineup with Y.P.'s photo.

Despite substantive failures in the investigation, there was sufficient evidence to indict Y.H. Nevertheless, **the Hebron Regional Police closed the file on grounds of "insufficient evidence."**[111] On January 23, 2011, Yes Din appealed the decision to close the investigation file without charges. On September 15, 2011, the State Attorney's Office notified us that the arguments made in the appeal had been accepted.[112] **The suspect, Y.H., was subsequently charged with aggravated assault**.[113]

110 The police has the power to call witnesses in for questioning, and to issue an order compelling a person to come into the police station to give a statement even if the person is not interested in doing so. See, **Criminal Procedure Law (Enforcement Powers – Arrests), 1996**, Chapter 1, sec. 68.

111 Letter from Inspector Yosef Ammoyal, Public Disturbance Officer, Hebron, in response to a letter requesting update on the status of several investigation files from Yesh Din's legal team, September 11, 2010.

112 Letter from Nehama Sussman, Senior Deputy (A), State Attorney's Office, Appeals Department, to Adv. Assnat Bartor and Adv. Ido Tamari, Yesh Din's legal team, September 15, 2011.

113 CC 38315-12-11 (Jerusalem Magistrates' Court), **State of Israel v. Yitzhak Horowitz** (the case has not been heard yet).

ABSENCE OF PROACTIVE INVESTIGATION OR INVESTIGATION WITHOUT COMPLAINTS

The major impetus for opening an investigation is a complaint that an offense has been committed. However, the police must also open an investigation on its own initiative in cases in which it is made aware of a criminal offense other than through a complaint.[114]

In other words, the police must investigate incidents of which it is aware even when neither the victim, nor anyone else, complains. Yet the police hardly ever investigates suspected offenses in which the Palestinian crime victim does not lodge a complaint. So, for example, most of the incidents reported by the media, the army or organizations active on the ground, are not investigated. In cases monitored by Yesh Din, in which the complainant is no longer interested in cooperating with the police (for example, after trying to lodge the complaint and being told to come back on another day since there was no Arabic speaking investigator in the station who could take the complaint), the file is usually automatically closed without any investigation. It is important to remember that law enforcement is not just the complainant's or crime victim's interest, but rather a paramount interest of society, and therefore, the approach that the investigation need not continue if the victim loses interest in it, cannot be accepted.

114 **Criminal Procedure Law (Incorporated Version) 1982**, Chapter D, Subchapter A, sec. 59 (Police Investigation).

CHAPTER 4:

STRUCTURAL PROBLEMS IN LAW ENFORCEMENT IN THE WEST BANK

In addition to the investigative failures reviewed in the previous chapter, law enforcement in the West Bank suffers from a number of systemic problems and failures related to the structures and arrangements practiced in the West Bank. Some of these issues could be resolved by changing procedures and orders, particularly with respect to the division of labor and the cooperation between the SJ District Police and the IDF. However, many of these issues are a direct or indirect result of the essence of the regime of military occupation which is ill-equipped to handle the complexities and contradictions between the different roles it plays. The duty to protect the Palestinian population under Israeli occupation and ensure its safety creates tensions that law enforcement agencies find difficult to resolve.

Below, we attempt to highlight some of the structural issues that significantly contribute to the law enforcement failure in the West Bank.

RELUCTANCE TO LODGE POLICE COMPLAINTS DUE TO MISTRUST IN ISRAELI LAW ENFORCEMENT AUTHORITIES

Palestinian victims of offenses committed by Israelis often refrain from filing police complaints. The three official reports that addressed law enforcement in the West Bank – Karp, Shamgar and Sasson – mentioned Palestinians' reluctance to lodge police complaints and lack of cooperation on their part with police investigators as factors that hinder police work in the West Bank. There are a number of reasons for this reluctance. The Karp Report noted the main reasons, and unfortunately, the situation remains the same today:

> *The range of possible reasons for the lack of complaints may span the gamut from accepting fate and a natural tendency not to complain, reluctance to come in contact with the authorities, fear as a result of threats or concerns regarding vengeance, as well as conclusions drawn from lack of results in previous complaints to the police, or police refusal to process complaints.*[115]

In 2013, Yesh Din began more extensive documentation of incidents in which the victim chose not to file a complaint. This monitoring shows that out of 282 offenses documented by the organization from January 2013 to November 2014, in 66, crime victims explicitly stated they were not interested in lodging a complaint with the Israel Police (about 23% of the incidents documented by Yesh Din at the stated time).

Of the reasons crime victims gave for not lodging a police complaint, 42 said they had no faith in the Israeli authorities.[116] Fifteen of them said that past experience with lodging complaints was the main reason for their mistrust in the Israeli authorities, and specifically, the will of the police to investigate and bring the offenders to justice.

So, for example, Farah 'Abbad, a resident of Jalud, decided not to file a complaint after masked Israeli civilians vandalized his home and attacked his relatives who were near the house. The 'Abbad family lives in Jalud's south-eastern neighborhood, which is very close to the outposts of Ahiya and Esh Kodesh. Residents of the neighborhood suffer from repeated attacks by Israeli civilians who arrive from neighboring outposts and throw stones, and sometimes Molotov cocktails at the houses and the residents. 'Abbad gave the following reasons for his decision:

115 Yehudit Karp (chair), **The Investigation of Suspicions against Israelis in Judea and Samaria – Report of the Monitoring Team**, Ministry of Justice, 1982, p. 26 (Hebrew).

116 Twenty-four offense victims did not indicate why they decided not to lodge a police complaint.

We filed many complaints to the police in the past, some with Yesh Din accompaniment, but unfortunately, the situation did not change, and if it did, it was only for the worse. The complaints did not stop the settler violence – it only increased. The settlers are using Molotov cocktails, which was not the case when they started attacking […]. Now, our young children are distressed […]. I have no faith in the Israeli establishment. I reached that conclusion after many complaints that led nowhere.[117]

Other crime victims said they did not believe Israel was able to investigate the incident objectively and impartially. Many mentioned a Palestinian proverb which translates into English as: "If your enemy is the judge – who will you complain to?" Other reasons mentioned were fear of retaliation from the settlers and concern that lodging a complaint would harm the complainant – for example, would result in the complainant or the complainant's relatives being interrogated as suspects, or defendants, in the incident following counter-complaints by the settlers, or otherwise make matters worse for them.

Many Palestinians believe that lodging police complaints would result in the cancellation of their Israeli entry permits or reduce their chances of obtaining such permits in the future. Over the years, Yesh Din has often been told this was the reason for a decision not to lodge a police complaint. Yesh Din is not aware of any cases in which an Israeli entry permit was cancelled because a police complaint was lodged. However, even if this is a rumor, or an unfounded subjective feeling, it is a common concern (as mentioned in our reports in the past), and therefore, the authorities should take action to dispel this fear and clarify unequivocally that they do not punish Palestinians who make police complaints regarding offenses committed against them. If there is any truth to these claims, harming complainants and their Israeli entry permits must cease immediately and permanently.

117 Yesh Din File 2933/13.

Another reason mentioned is the difficulty of lodging police complaints. Filing a complaint often involves lengthy waits at the police station, or to get to it, as some of the stations are located inside settlements, which Palestinians may not enter without police escort, and so the complainants must wait for the arrival of the police escort. Even when Palestinian victims do arrive to file a complaint, they often discover that there are no Arabic-speaking investigators at the station, and therefore their complaints cannot be taken, and they are asked to return on another day. One crime victim said he was concerned that he would be held up at the station until evening, and then sent home on foot, alone, without help getting back to his village safely. This, the complainant said, had happened to an acquaintance of his from Burin.[118]

Another common practice which is closely related to Palestinian victims' lack of faith in the authorities is humiliating attitudes on the part of the investigators. In a significant number of cases, Palestinian crime victims represented by Yesh Din said they received degrading and humiliating treatment from police investigators when making their complaints. This included, but was not limited to, irrelevant questions and comments that had nothing to do with the subject of the complaint, inappropriate, degrading language, insinuations that the complainant was himself suspected of committing the offense, despite the fact that he or she arrived on his own initiative to file a complaint and was not interrogated as a suspect (by law, investigators who wish to interrogate a person as a suspect must clearly inform said person that he is being questioned under caution), and more. There is no dispute that such experiences deter Palestinian crime victims and undermine their trust in the agency that is expected to see to their safety.

In serious cases of degrading and inappropriate treatment by investigators, Yesh Din files a complaint to the Public Complaints and Inquiries Officer at the SJ District Police. Below are two examples of cases in which such complaints were filed:

118 Yesh Din File 2997/13.

- On December 19, 2011, five cars whose owners live in one building were torched in the village of Beitin. The fire spread to the building and the occupants fled because of the smoke. Police officers who arrived on the scene that night summoned the car owners to file a complaint at the Binyamin Police Station the next day. When the complainants arrived at the station they received degrading treatment from the investigators, including suggestions that they were suspects in the arson themselves rather than its victims. The investigators accused one of the complainants of fabricating his testimony that he saw two individuals running toward the outpost of Givat Assaf, and tried to convince him that the arsonist was a resident of Burin. Three complainants were asked inappropriate questions of a personal nature, which had nothing to do with the complaints such as "Do you go to the mosque?" "Where do you get your money from?" "What do you eat for breakfast?" "Do you play cards with your wife?" and other such questions.[119] If the investigators suspected the complainants, they should have told them so and questioned them under caution. As stated, Yesh Din filed a complaint with the SJ District Police Public Complaints and Inquiries Officer regarding the inappropriate questions.[120]

- On March 26, 2013, A.A. arrived at the Hebron Police Station to file a complaint after he discovered that his front door and the adjacent wall had been set on fire. When the police investigator addressed him in Hebrew, the complainant said he spoke Arabic and was unable to have a serious conversation in Hebrew or English. The investigator replied: "Either speak Hebrew or get lost," or something to that effect. A.A. insisted on speaking Arabic and the investigator kicked him out of the room, despite the fact that he spoke Arabic fluently and in breach of police regulations, according to which complainants will give their statements in their own language.

119 Yesh Din File 2533/11, Police File 30780/11-2 (Binyamin).

120 Letter from Adv. Michael Sfard, Yesh Din Legal Advisor, to Superintendent Yaron Shitrit, Public Complaints and Inquiries Officer, SJ District Police, Israel Police, February 13, 2012.

- About thirty minutes later, the investigator came out of the room and shouted at A.A. that he was a "provocateur, a terrorist, making trouble for the police and the settlers," or similar comments, and repeated that if he wanted to file a complaint, he would have to do so in Hebrew. A.A. insisted on his right to file the complaint in Arabic, and the investigator responded by walking away. A short while later, the investigator called A.A. into the interrogation room, where he ordered him to empty out his pockets, lift his shirt and take his pants off. A.A. told the investigators that he found the demands humiliating and that he would complain to the DPI (Department of Police Investigations). The investigator replied: "Screw you and screw the DPI." A.A.'s statement was ultimately taken in Arabic, as required under police regulations, and Yesh Din filed a complaint regarding the investigator's inappropriate conduct to the SJ District Police Public Complaints and Inquiries Officer.[121] ,[122]

Recommendations (F)

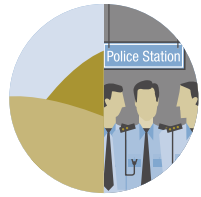
1. The authorities must take action to dispel the fear expressed by many Palestinians over the years that lodging a police complaint might result in the cancelation of Israeli entry permits or reduce the chances of getting such permits in future. The Israel Police and the IDF must clarify unequivocally that no sanctions are taken against Palestinians who file police or MPCID complaints. If there is any truth to these fears, such practice is extremely grievous. It undermines the basic tenets of law enforcement and the authorities must desist from it.

121 Yesh Din File 2840/13, Police File 1184/13

122 Letter from Adv. Adar Grayevsky, Yesh Din's legal team, to Superintendent Yaron Shitrit, Public Complaints and Inquiries Officer, SJ District Police, Israel Police, April 23, 2013.

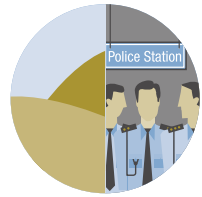
2. Steps must be taken to increase the accessibility of police stations to Palestinian crime victims and to make the process of filing complaints as seamless as possible, including shorter wait times for police escort to the station and at the station itself, availability of Arabic-speaking investigators etc.

3. Steps must be taken to ensure police investigators treat complainants and witnesses with respect. This includes determined action in cases of complaints regarding abuse or difficulties experienced by complainants when filing a complaint or giving statements to the police.



LACK OF POLICE PRESENCE ON THE GROUND

Because of the special complexity of the area, law enforcement is carried out by four agencies: the SJ District Police of the Israel Police, the IDF, the Civil Administration and the ISA. Unlike other police districts, in the West Bank the police plays only a partial role. The most significant agency in the West Bank is the IDF, which, as stated, has delegated some of its law enforcement powers in the area to the SJ District Police. The procedure on law enforcement on Israelis in the OPT, drafted by Attorney General Elyakim Rubinsten in late



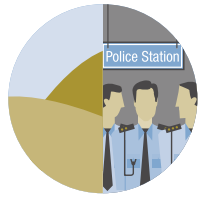
1998, defined the areas of responsibility of the police and the army and instituted a division of labor and powers between the two agencies.

The SJ District Police is subordinate to the Police Commissioner both in terms of chain of command and in terms of budget. There is no official definition of subordination between the SJ District and the IDF, but in practice, the district is also subordinate to the IDF, a situation that places significant restrictions on police action in the area, as the police depends on the army for many of its operations. The army is the agency that has constant presence in friction zones and it is always the first agency on the scene. In contrast, the police has almost no presence on the ground because of the distances and the security arrangements. This interferes with its functioning, both in terms of maintaining public order and preventing crime through presence and visibility and in terms of real time responses to incidents and speedy arrival on the scene. For security reasons, SJ District Police investigators require a military escort when they go into the field to investigate scenes of incidents, which are often located near or inside Palestinian communities. The army does not always provide the required escort, and sometimes provides it late, which hinders the police officers' ability to collect evidence at the scene. Former SJ District Police Commander, Deputy Commissioner Yaakov Rahamim, talked about the difficulty getting to the scene:

> *Here, in Judea and Samaria, I cannot get to a crime scene located in Area A or B freely. Sometimes you have to wait for army approval, and the Palestinians usually stage public disturbances at the entrance, and by the time you get to the scene and the evidence there, they have already cleaned it up. The Palestinian fire department has already washed everything and there is no evidence to collect.*[123]

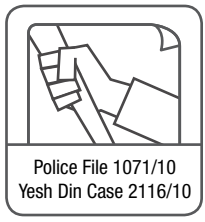
The dependency of the SJ District Police on IDF escorts limits what district investigators can do on the ground – inspecting scenes, collecting findings etc., and most of their work

123 Yehoshua Briener "Police have Mosque arsonist's DNA – but cannot charge," **Walla!**, October 7, 2012 (Hebrew).



is done in the stations. For more on this, see page 36-42 in this report. (Section entitled Collection of Evidence and Information Relevant to the Investigation).

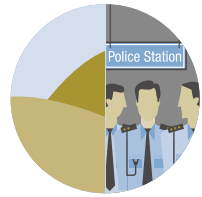
Another aspect of the dependency on the IDF is that due to lack of constant police presence on the ground, the IDF must inform the police of criminal incidents witnessed by soldiers or reported to them by Palestinians or others. The result is that some incidents are not reported to the police at all, and others are reported late, delaying the arrival of the police.


Police File 1071/10
Yesh Din Case 2116/10

Police did not arrive at the scene following report of assault, where swift action might have resulted in arrests

On February 18, 2010, while Muhammad Odeh and his wife, Natalia, were driving from Tulkarm to Jenin, they stumbled into an ambush near the Homesh junction. The couple's car was attacked with a metal bar and stones. It was surrounded by a group of people who gestured to Muhammad and his wife to get out of the car, took Muhammad's ID card and conducted a "search" of the car. One of them smashed the back window with a rock. Muhammad and his wife ultimately managed to extricate themselves from the area, and drove off while their car was barraged with stones. The couple was not hurt physically, but Natalia suffered from anxiety and had to take medication after the incident.

After their escape, the Odehs drove up to the entrance to the settlement of Shavei Shomron, where they spoke to an IDF officer. Muhammad told the officer, in English, that he and his wife had escaped by miracle, and asked him to go to the area to prevent further attacks. The couple then went to file a complaint at the Palestinian DCO in Nablus, but they were told they had to file the complaint at the Israeli DCO in Huwara. Palestinian DCO officials escorted them to the Huwara DCO, where they filed the complaint.



Though Muhammad reported the attack both to an IDF soldier and to the DCO as soon as he managed to escape, the investigative material contains no indication that police officers arrived at the scene of the incident or inquired with the army whether soldiers had been dispatched there after the report was received. Had police officers or soldiers been sent to the scene immediately after the report was received, they might have apprehended suspects (perhaps even in the act) and seized evidence that could lead to indictments.

In photo lineups held more than two months after the incident, the Odehs were unable to identify their assailants. A resident of Yitzhar, who was questioned under caution regarding his involvement in the incident, denied any such involvement and was released without charge. The investigation file was closed on June 24, 2010, on grounds of "insufficient evidence." A review of the investigation file reveals that the failure to dispatch soldiers or police officers to Homesh on the day of the incident eliminated any chances of bringing the assailants to trial.

STANDING IDLY BY AND DEPENDENCY ON COOPERATION FROM IDF SOLDIERS

Section 6 of the "Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area"[124] concerns "Operational Responsibility for Law Enforcement," and divides the areas of responsibility between the police and the IDF. Section 6(c) of the procedure stipulates that incidents that develop without prior information are to be handled by the IDF, until the police arrives and takes over. The procedure, then, places most of the responsibility for law enforcement upon Israeli civilians on the shoulders of the police, but does not release IDF soldiers from responding to incidents immediately or from arresting suspects. Section 11(a)(5), of the procedure, which addresses incidents regarding which there is no prior information and to which IDF soldiers are first to respond, stipulates that the IDF must secure the scene until the police arrives. The section explicitly states "The provisions contained in this section shall not detract from the duty incumbent upon IDF forces to take any action necessary to treat injured persons, prevent loss of life, physical harm or damage to property as well as detain and arrest suspects who may flee the scene."[125]

Following the publication of the law enforcement procedure, the IDF drafted its own protocol stipulating that the responsibility for the prevention and treatment of offenses by Israelis in the West Bank lies with the police. However, the IDF protocol did stipulate that: "Any soldier who witnesses an offense committed by an Israeli, against either person or property, must take immediate action to prevent/end the offense, and if necessary, to detain and arrest the suspected offenders, and document and preserve the scene."[126]

124 As stated on page 22, on September 2, 1998, then Attorney General Elyakim Rubinstein issued the - **Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area**.

125 **Ibid**., sec. 11(a)(5)(c).

126 Letter from Captain Harel Weinberg from the office of the Legal Advisor – Judea & Samaria to Adv. Limor Yehuda of the

The IDF Spokesperson told Yesh Din in the past that: "In every briefing prior to an assignment during which public disturbances between settlers and Palestinians may develop, the soldiers are instructed to detain any settler who physically harms a Palestinian, or his property, and call the police to arrest the rioter […]. Commanders at every level who visit the various sectors emphasize to soldiers that Israelis who use violence toward Palestinians must be detained."[127]

A report published by the State Comptroller in July 2013 found deficiencies in the implementation of the division protocol governing the conduct required of IDF forces that arrive at the scene of a criminal incident (as well as a terror incident). The protocol stipulates, *inter alia*, that the force must detain the persons involved in the incident and break them apart. It must seal off the primary and secondary scenes and must not move or touch objects in them.[128]

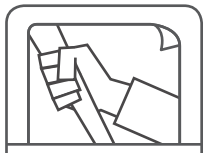
The findings made by the State Comptroller are consistent with cases documented by Yesh Din, in which soldiers stood idly by and, in breach of army protocol, refrained from exercising their authority to prevent or stop the offenders, allowed suspects to leave the scene of an incident and did not use their power to detain them until the police arrived. In more serious cases, soldiers aided Israeli civilians in the commission of offenses against Palestinians. In a discussion panel convened by the SJ District Police Operations Officer in 2008, police officers criticized soldiers and military officers for looking the other way when they come across settler violence in order not to "get in trouble with them."[129]

Association for Civil Rights in Israel, July 31, 2005.

127 Letter from Ron Roman, Head of International Organizations Desk, Office of the IDF Spokesperson to Lior Yavne, May 11, 2006.

128 State Comptroller **Annual Report, 63B**, July 17, 2013, p. 138 (Hebrew).

129 Uri Blau, "Behind closed doors, police admit 'turning a blind eye' to settler violence," **Haaretz English website**, August 15, 2008.



Police File 160/2012
Yesh Din Case 2568/12

Soldiers stood idly by while Israeli civilians threw stones at homes and residents in Far'ata

On February 28, 2012, dozens of masked Israelis armed with iron bars, clubs and sticks entered the village of Far'ata. Some of them were carrying guns and M-16 rifles. The group began throwing stones at houses in the village and at people who gathered around them. A short while later, a military jeep arrived. The jeep stopped near the Israelis but the soldiers did not attempt to remove them or stop the stone-throwing. An IDF officer went up to a resident of the village, S.T., and told him that the settlers claimed someone from the village had set fire to a house in the outpost of Havat Gilad. S.T. explained that village residents were too afraid to even go to their own lands, let alone get close to the outpost, so the settlers' allegation was false.

At some point, the soldiers began shooting tear gas and stun grenades at the village residents, and reinforcements arrived as well. The soldiers did not speak to the Israelis, did nothing to stop them and did not arrest or detain them. According to the testimonies of village residents, the incident went on for about two hours, during which the soldiers did not attempt to end the attack. Several village residents were arrested during the incident.

Following the events, several village residents made a statement to the MPCID. On January 19, 2012, the Military Advocate for Operational Matters, Lt.-Col. Ronen Hirsch, gave notice of the decision to close the file without launching an MPCID investigation: "The file was closed after receipt of the response of military officials, indicating that after receiving notification of an incident involving violence between Israelis and Palestinians in the area, military forces were dispatched. The forces separated the parties and used riot control measures to handle the situation. Given the aforesaid, and having found that the forces did not 'stand idly by,' a decision was made not to open an MPCID investigation."[130] The

130 Letter from Lt.-Col. Ronen Hirsch, Legal Service for Operational Matters, MAG Corps, Operational Matters, to Adv. Emily

Advocate's statements and decision indicate that he attached no importance to the fact that the soldiers did nothing to have the attackers desist from their actions. On the contrary, the "separation" and the use of riot control measures were directed solely at the Palestinian victims of the attack. The advocate also saw no reason to launch an investigation despite the fact that the soldiers failed to comply with the above-mentioned military regulations: they did not detain or arrest the Israeli rioters who had entered the village in order to assault its residents, and did not call the police.

The State Comptroller's Report also found deficiencies with respect to IDF soldiers' responsibility to preserve the integrity of the scene. The comptroller noted that "IDF forces sometimes failed to uphold the provisions stipulated in the Judea and Samaria Area Division protocol on conduct required of IDF soldiers who arrive at a scene of an incident. These deficiencies included soldiers taking items from the scene before the police arrived, not handing over items seized by IDF soldiers at a scene to the police or handing them over late. This conduct impedes the investigation of the incidents and the criminal procedures against offenders."[131] According to the comptroller, one of the explanations for these deficiencies is that IDF soldiers receive no training on preserving the integrity of a crime scene.[132] The responsibility for providing the soldiers with training on this issue lies primarily with the IDF, with assistance from the police. However, efficient training is undermined by the high turnover of soldiers, both reservists and conscripts, stationed in the area.

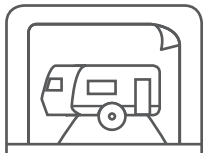
IDF soldiers also have a duty to cooperate with police investigations and give statements to the police. Despite this, the police often has difficulty locating soldiers who witnessed an incident and calling them in for questioning. To call soldiers in for questioning, police investigators contact various army officials and ask for their assistance in locating the force

Schaeffer, Yesh Din's legal team, in response to letter regarding several complaints made by Yesh Din, January 19, 2014.

131 State Comptroller, **Annual Report 63B**, July 17, 2013, p. 132 (Hebrew).

132 **Ibid**., p. 138.

that was on duty at the time and place of the incident that is under investigation, and in locating the witnesses and contacting them. Cooperation between the police and the IDF in this area is not successful, and investigators are often told that the forces had changed since the incident and that the army cannot locate the soldiers who witnessed it.



Police File No 55636/10
Yesh Din Case 2028/10

IDF officials were unable to respond to a police request to locate soldiers who witnessed agricultural trespassing

On February 7, 2010, Y.A., a resident of Qadum saw two Israeli civilians plowing his plot of land with a tractor. A troop of soldiers prevented him from going into the plot to remove the trespassers.

The investigative material includes documentation of attempts by the investigators to get information about the soldiers from the army. On March 15, 2010, a police investigator spoke to the sector company commander and asked for his help in locating the soldiers. The company commander explained that at the time of the incident a infantry (Givati) reserve company was on duty, but they had since finished their tour and he had no information about them. On March 31, 2010, the Samaria Region Investigations and Intelligence Officer wrote a letter to the “standing idly by” task force at the MAG Corps, asking for help in locating the soldiers. He received no response.

Recommendations (G)

1. Steps must be taken to incorporate into IDF soldier training the orders, protocols and guidelines regarding soldiers' duty to take immediate action to prevent or stop the commission of an offense, and their duties and powers to detain and arrest suspects if necessary. Where such orders, protocols and guidelines are deficient, prompt action must be taken to supplement them. Cases in which soldiers breached such orders and protocols, stood idly by or assisted in the commission of an offense must be dealt with harshly and the soldiers must be held accountable.

2. Steps must be taken to ensure soldiers and Border Police officers comply with their duty to secure the scene of an incident and detain suspects until the arrival of the SJ District Police. The cooperation and coordination between the IDF forces and the Israel Police acting in the area should be improved, and IDF soldiers should be trained accordingly.

3. Steps must be taken to ensure closer cooperation between the police and the army with respect to information and testimonies regarding criminal incidents investigated by the police and witnessed by soldiers, or in which IDF soldiers played a part. The army must respond to police requests and supply information about units operating in the area as part of its overall responsibility for law enforcement in the West Bank. As a rule, IDF soldiers should be instructed to report to the police immediately when they witness the commission of an offense, eliminating the need for special efforts to locate them by the police.

TIES BETWEEN THE POLICE AND ISRAELI CIVILIANS LIVING IN THE WEST BANK

Another factor impacting law enforcement in the area is the Israeli civilians living in the West Bank. The relationship between the SJ District Police and the settlers is complex. On one hand, the police maintains communication with settler leaders. When serving as SJ District Police Commander, Deputy Commissioner Yaakov Rahamim said: "There is no way to succeed here without working together with the army, the ISA, the Civil Administration and community leaders."[133] Working together means an open line of communication with settler leaders, which includes attempts by the settler leadership to tone down law enforcement efforts against them. The title page of the section on the SJ District Police in the Israel Police 2009 Annual Report, contained the following description of the district's work during that year:

> ***In 2009, the SJ District Police worked to strengthen ties with the spiritual and public leadership of the settlements****, continued its counter-terrorism efforts and addressed public disturbances, crime and road accidents. Working relations with the Palestinian Police continued to be supported through the Police Mechanism for Cooperation and Coordination with the Palestinian Police. Along with operational activity, attention focused on the "human behind the machine" – instilling values, building partnerships, personal growth and staff revitalization.*[134]

On the other hand, the police is the butt of scathing criticism from the settler public and leadership, alleging over-enforcement against them, violence and harassment. In a conference on Price Tag activities and selective enforcement held in late 2011 at Shaarey Mishpat College, Dani Dayan, then Yesha Council Head said: "I do not deny that we are sometimes paranoid, but even paranoids are sometimes persecuted, and I think this is

133 Yehoshua Briener "Police have Mosque arsonist's DNA – but cannot charge," **Walla!**, October 7, 2012 (Hebrew).

134 Israel Police, **2009 Annual Report**, p. 177 (Hebrew), (emphasis added).

the case here. Selective enforcement against the Jewish settlement movement in Judea and Samaria does exist."[135] In 2008, the Yesha Human Rights Organization published a report in which it claimed that various sectors in the West Bank are the object of selective enforcement and that Jewish settlers suffer from over-enforcement: "It deliberately and premeditatedly discriminates against Jewish settlers in the Judea and Samaria Area and treats them as second class citizens."[136]

However, cooperation between the police and the settler leadership does not usually help solve crime cases. Attempts made by the police to locate suspects or question witnesses in incidents in which Israelis harmed Palestinians and their property often come up against a wall of silence, and lack of cooperation from the offenders' communities, which refuse to turn in offenders and do not give investigators information. In late 2011, after an incident that came to be known as the "Ephraim Regional Brigade Break In," three IDF officers contacted an Israeli news website to air out some strong feelings they had about Israeli civilians who target Palestinians, as well as the military and the police, in the OPT. The officers said that this was not a case of a few bad seeds and that "these actions, and this population, just like terrorism, need the local population in order to survive and go on. There are several hundreds who actually participate, but they are part of a mainstream of tens of thousands who back them up, shelter them and do not turn them in even though

135 Ariel Hupert, "Distrust of the authorities is the problem," **Moreshet**, December 6, 2011, http://www.mishpat.ac.il/media/articles/2011/Dec/tag/06122011-moreshet.pdf (Hebrew). Yesha Council is a public association of Israeli municipalities, local councils and regional councils in the West Bank, founded in 1980. Yesha Council promotes the interests of the settlements by consolidating their political power and increasing their influence on government ministries and other public authorities.

136 Yesha Human Rights Organization, **Law Enforcement in Judea and Samaria: Solid Information – Facts not Slogans**, 2008 (Hebrew). The Yesha Human Rights Organization was founded in 2002 by Orit Struck (a member of parliament on behalf of Habayit Hayehudi since 2013). Its stated goal is to defend the human rights of Israelis living in the West Bank, who, the organization claims, are not defended by other human rights organizations. The organization promotes the interests of Israeli citizens exclusively and lacks the humanistic, universal approach to human rights commonly accepted by the international human rights community.

they know exactly who is involved."[137] In a Yesha Council conference held in Ofra to protest the vandalization of a car belonging to the director general of Amana, Dani Dayan, then Yesha Council Head, said: "Speaking honestly – how many of those of you who are here have done anything to stop the terrible and shameful phenomenon of masked Jews with a slingshot and a stone in hand'? Our hands are not clean. Our hands are partners in slashing tires."[138]

Some among the settlers even try to convince police officers and soldiers to refrain from enforcing the law on "Jews." In the summer of 2013, a pamphlet urging soldiers and police officers to turn a blind eye to illegal actions and allow offenders to carry on, was distributed to officers and soldiers serving in the Samaria area. It read:

> *Taking part in an incident against Jews and they're making "trouble?" Don't get upset […]. Enjoy the fact that they're not letting you fight them, enjoy them holding you up and not letting you get through. Enjoy it even if they give your jeep a flat tire. Yes, even if they give you a flat tire. You don't want to carry out these missions successfully. You don't want to hurt Jews. So what if Jews are in your way? It's for your own good.*[139]

137 Shai Levy, "We don't trust the religious soldiers anymore: Officers serving on the ground break their silence," **Mako**, December 19, 2011 (Hebrew).

138 Chaim Levinson, "Settler leader: Hilltop youth more dangerous to settlements than Netanyahu, Barak," **Haaretz English website**, June 25, 2012. Amana is a cooperative association founded in 1979, as the Gush Emunim building and settlement movement (Gush Emunim itself is a national-religious movement founded in 1974 and active until the 1980s in settling Israelis in the West Bank and in Israel). Most of Amana's construction activity is in the OPT, outside the Green Line, where it has built (through a subsidiary), thousands of homes illegally and without permits. Amana still has hundreds of mobile homes and dozens of illegal construction sites. Amana's general director is Zeev Hever (Zambish), a settler leader, who was a member of the Jewish Underground and was convicted of an attempt to cause injury, see: Chaim Levinson, "The organization behind illegal West Bank outpost construction", Haaretz English webiste, May 13 2013.

139 Hakol Hayehudi staff, "Pamphlets in Samaria: Soldier, don't get upset," **Hakol Hayehudi**, September 2, 2013 (Hebrew).

In 2004, Deputy Commissioner Shahar Ayalon, SJ District Police Commander at the time, said that settlers had threatened to murder some twenty police officers and commanding officers serving in the district for their involvement in exposing "nationalistic offenses" and investigating "hilltop youth," and that some of the officers had to relocate following the threats.[140]

With or without connection to the pressure and threats from elements in the settler public, some police officers prefer to turn a blind eye and refrain from taking action to enforce the law on Israeli civilians. In a discussion panel held by the SJ District Operations Officer in 2008, the commander of the district's patrol unit said that officers sometimes prefer not to take action against settlers rather than confront them. The officer said: "There are also instances where police have looked the other way in order to say 'I didn't see anything.'"[141] Security officials are often lenient towards Israeli civilians who break the law. So, for example, in the conclusion of the 2008 discussion panel, the ISA representative said that discussions should be held with the settlers to reduce public disturbances on their part.[142]

According to Hakol Hayehudi, the pamphlet was drafted and distributed by people from settlements in the Eastern Samaria Hills.

140 Efrat Weiss, "SJ District Commander: Far right activists threatened police officers," **Ynet**, March 24, 2004 (Hebrew).

141 Uri Blau, "Behind closed doors, police admit 'turning a blind eye' to settler violence," **Haaretz English website**, August 15, 2008.

142 **Ibid**.

DEPENDENCY ON OPINIONS OF THE LEGAL ADVISOR – JUDEA & SAMARIA

In some cases of trespassing and illegal construction, the police believe the ownership of the land on which the offense was allegedly committed must be clarified before proceeding with the investigation. To clarify the ownership status, the police must rely on the records kept by the Director of Governmental and Abandoned Property in Judea and Samaria. These inquiries are made through the Director of the Land Division at the Legal Advisor – Judea & Samaria (LA-JS).

Inquiries such as these tend to take months or even years, and are often left unanswered, leaving the ownership issue unresolved. The police often decides to close the investigation (on various grounds) after a lengthy wait for the report on the land ownership issue, and without receiving it. In many cases, the land ownership question has no bearing on the criminal offense and there is no justification for waiting so long to resolve it in order to investigate the offense, and certainly no justification for closing the investigation file.

The SJ District Police bears the responsibility to obtain the LA-JS Land Division Director's report. In the current state of affairs, files are closed without a thorough investigation and without proper enforcement because of the difficulty the police has in obtaining reports from the Land Division. This situation is unreasonable and it encourages continued criminality.

This, for example, was the case in complaints filed by three Palestinians from the villages of Tell and Far'ata regarding incidents in which olive trees had been uprooted from their plots and two mobile homes had been placed there by residents of the outpost of Gilad Farm. Several police complaints were lodged regarding these incidents, the earliest on May 14, 2009. When the complaints were lodged, police investigators were presented with title deeds and a sales contract proving the complainants' connection to the lands on which the mobile homes had been placed.

Following the complaint, the police inspected the land and located the owner of one of the mobile homes, a resident of the outpost. During his questioning the man admitted that he "built the mobile home," noting that he had received permission from the Farm committee. None of the residents of the outpost presented documents attesting to ownership of the land on which the trailers had been placed.

The police later contacted the LA-JS Land Division, asking for a report on the ownership of the trespassed land. The investigators waited for the report for no less than four years until they decided to close the files on grounds of "insufficient evidence" and "absence of criminal culpability." The requested report was never received.[143]

Recommendations (H)

1. The investigation of a criminal offense must not be suspended pending clarification of land ownership issues and receipt of the LA-JS Land Division report. The criminal investigation must proceed parallel to the land ownership clarification process.

2. Cooperation between police investigators and the LA-JS Land Division must be regulated, including the institution of a reasonable timetable for making the required inquiries and providing a report to the police.

143 Yesh Din Files 1801/09, 1817/09, 2018/09. An appeal filed by Yesh Din's legal team was admitted and the investigation was renewed. Letter from Superintendent Asher Dotan of the Samaria Region to Adv. Michael Sfard, Yesh Din's legal advisor, January 24, 2014. Yesh Din was recently informed that the police had again contacted the LA-JS Land Division for a report regarding ownership of the land.

POLICE REFUSAL TO ADDRESS CRIMINAL ASPECT OF ILLEGAL CONSTRUCTION

Another structural issue affecting law enforcement in the West Bank relates to the division of powers between the police and the Civil Administration with respect to illegal construction. The state comptroller report published in July 2013, found that both the police and the Civil Administration Enforcement Unit refused to address the criminal aspect of planning and construction offenses and take action against offenders in this area (Israelis and Palestinians), each claiming the matter was not in its purview. "This means that there is no agency in Judea and Samaria that is charged with investigating the criminal aspect of planning and construction offenses. This perpetuates the anarchy in this realm in the Judea and Samaria Area."[144] We note that construction offenses inside Israel are not handled by the police, but by the local authorities.

In May 2013, a few months before the State Comptroller issued his report, the media reported that Attorney General Yehuda Weinstein demanded Defense Minister Moshe Ya'alon institute a mechanism for the investigation and prosecution of illegal construction in the OPT. The demand was issued after 18 months of pressure from the Attorney General on this issue in an attempt to have such offenses criminally addressed alongside the administrative measures which are the purview of the Civil Administration Enforcement Unit.[145] According to these media reports, the Attorney General believed that the responsibility for addressing the criminal aspects of illegal construction in the OPT should lie with the Civil Administration, which is subordinate to the Ministry of Defense.

In an April 2014 session of the Judea and Samaria Subcommittee of the Knesset Foreign Affairs and Defense Committee, which focused on Palestinian illegal construction in

144 State Comptroller, **Annual Report 63B**, July 17, 2013, p. 132 (Hebrew).

145 Chaim Levinson: "AG to Defense Minister: Take personal responsibility for addressing illegal construction in Judea and Samaria," **Haaretz**, May 25, 2013 (Hebrew).

Area C, the Coordinator of Government Activities in the Territories, Major General Yoav Mordechai (Poli), said that the Attorney General, with approval from the Minister of Defense, had ordered the establishment of a Civil Administration unit to handle the criminal aspects of construction offenses by both Palestinians and Israelis. The unit would be in charge of investigating and filing complaints and prosecuting such offenses. The unit is currently in the initial staff work phase, which includes inquiries into how it would operate and under what government ministry, given that the Civil Administration currently lacks the appropriate knowledge and staffing capacity to conduct investigations.[146]

Illegal construction is clearly related to other ideologically motivated offenses.[147] Many of the illegal outposts or the illegal neighborhoods in the settlements are hotbeds of criminality against Palestinians and their property. Lack of criminal enforcement regarding illegal construction is part of the defective law enforcement apparatus, which allows illegal acts and offenses in the area to persist.

So, for instance, in May 2014, Attorney General Yehuda Weinstein accepted State Attorney Shai Nitzan's recommendation to close an investigation into the construction of a sewage treatment facility serving the settlement of Ofra. The file was closed on grounds of "lack of public interest," with no charges. The sewage treatment facility was built on privately-owned Palestinian land belonging to residents of Ein Yabrud, in breach of the area's master plan and without building permits. Worse still, the Binyamin Regional Council forged a building permit for the construction. After the Civil Administration Enforcement Unit issued cease-and-desist orders against the facility, the Council Engineer instructed the construction company, in writing, to ignore the orders and proceed with the work. Attorney General Yehuda Weinstein's explanation for his decision to close the file was that since the law had

146 Foreign Affairs and Defense Committee Judea and Samaria Subcommittee, Session Transcripts, April 27, 2014, p. 17 (Hebrew).

147 Yesh Din's report **The Road to Dispossession** (2013) addressed the obvious relationship between an illegal outpost and ideologically motivated crime in its vicinity.

thus far never been enforced with respect to planning and construction offenses, it would not be right to begin enforcement with this particular case "…Had an indictment been served in this case, it would have been a relatively precedential indictment, seeing as there has been hardly any criminal enforcement of planning and building offenses in Judea and Samaria to date, owing to the absence of an investigating agency in charge of the issue." Weinstein added: "It would not be right to begin criminal enforcement and serve a ground breaking indictment in this sphere in this particular case, which involves construction for public use."[148] The Palestinian land owners, and Yesh Din, petitioned the High Court of Justice against Attorney General Weinstein, Binyamin Regional Council Head Avi Roeh and former Council Head Pinchas Wallerstein. In the petition, the court was asked to instruct the Attorney General to prosecute the present and former Binyamin Regional Council heads for their part in building the sewage treatment facility.[149]

In another case, Yesh Din filed a petition to the High Court of Justice following the decision of then Deputy Attorney General (Special Functions) Shai Nitzan, not to prosecute suspects in illegal construction and trespassing in the Ulpana neighborhood in the settlement of Beit El. The investigation file was initially closed on grounds of "lack of public interest." It was closed a second time after reopening thanks to a Yesh Din appeal, on grounds of "insufficient evidence." Following the petition, the High Court of Justice issued an order nisi instructing the state to explain why it should not charge Yoel Tzur, Director General of the Beit El Development Company, with these offenses. The State's response indicated that the main reason for the decision not to prosecute Tzur was the protracted time that had elapsed since the commission of the offense, which weakened the prosecution's chances of success as well as the public's interest in the case. The State further claimed that the

148 Letter from Adv. Adi Menahem, Assistant Attorney General, to Adv. Shlomy Zachary, Yesh Din Legal Team, May 29, 2014.

149 HCJ 8088/14 **Najah Mubarak Musa Farhat et al. v. Attorney General et al.** The petition is pending.

evacuation of the Ulpana neighborhood also weakened the public's interest and that Tzur may be entitled to argue abuse of process, as the construction was publically funded.

This impotence can be traced back to the message that is sent down from the political echelon. In fact, in recent years there has been a change in the state's approach to illegal construction, as formulated by the government with full cooperation from its legal advisors, and represented by the State Attorney's High Court of Justice Department in High Court hearings. The State now seeks to give retroactive approval to public and private structures that were built illegally. Instead of administrative law enforcement (by issuing and enforcing cease-and-desist orders and demolishing illegal structures) and criminal enforcement (by investigating and prosecuting those responsible for illegal planning and construction), the state attempts to find ways to retroactively approve the infractions. This policy has grave implications on the state's ability to deter against illegal construction in the West Bank, and clearly undermines the rule of law in the area.

Recommendations (I)

The process of regulating powers regarding criminal enforcement against planning and construction offenses in the West Bank must be completed. Intervention by the political echelon (Defense Minister, Public Security Minister and Justice Minister) seems to be required in order to determine whether this issue falls under the jurisdiction of the police or the Civil Administration Enforcement Unit (as recommended by the State Comptroller in his July 2013 report on the issue).

2. Public officials who took part in planning and construction offenses must be investigated and prosecuted.

3. Retroactive approval of illegal construction must cease.

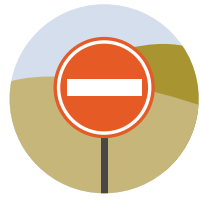
CHAPTER 5:

ADMINISTRATIVE ORDERS INSTEAD OF LAW ENFORCEMENT VIS-À-VIS ISRAELIS WHO HARM PALESTINIANS AND THEIR PROPERTY

The officials charged with law enforcement in the West Bank often use administrative orders in order to address illegal activity by Israeli civilians. Under the law in the West Bank, the military commander may issue administrative orders restricting personal liberties even in the absence of criminal proceedings. These orders are issued under the Order regarding Security Provisions, which has statutory status in the West Bank.[150]

The orders are issued and signed by the GOC Central Command who serves as sovereign in the West Bank, for the most part, following a recommendation from the ISA or the SJ District Police. Security forces generally use two types of orders: closure orders which apply to an area or specific locality and prevent access to it, and individual administrative orders issued against and applied to a specific person. Law enforcement officials use these orders as a preventative measure due to the systemic failure to enforce the law in the area. However, individual orders also bear the markings of punitive measures imposed without due criminal process.

150 The Order regarding Security Provisions serves as a criminal codex that includes all the major orders issued under security legislation with respect to security-criminal matters, primarily the **Order regarding Security Provisions (Judea and Samaria) (No. 378) 1970**, which was amended more than 110 times over the years, as well as some twenty additional orders.



AREA CLOSURES THROUGH CLOSED-MILITARY-ZONE ORDERS

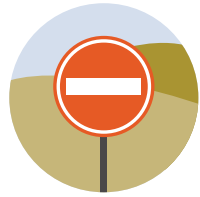
One of the measures commonly used in the West Bank area are closure orders (known as "closed military zone orders"). The source for the power to issue such orders is found in Section 318 of the Order regarding Security Provisions [Incorporated Version] (Judea and Samaria) (No. 1651) 2009. The Order gives the military commander (GOC Central Command) power to declare a certain area or locality as a closed zone, prohibiting entry into it in general or to specific groups. In practice, the commanders of the Judea and Samaria Divisions, their seconds-in-command and the Regional Brigade commanders in the area have the power to order the closure of an area.[151]

In a meeting between Yesh Din and senior officials at the SJ District Police, including District Commander, Deputy Commissioner (at the time) Kobi Cohen, the police officials claimed that the closure orders "bring calm to friction zones" and are therefore in frequent use. Police officials said that the orders make it possible to remove all parties - Palestinians and Israelis – from areas where disputes are taking place, preventing physical injury and damage to property.[152] Because the power to issue the orders is in the hands of the GOC Central Command, the army and the police work in cooperation and the police often makes a recommendation to the military commander to close areas it identifies as friction zones or lightning rods for criminal activity.

Other vast areas are under permanent closure orders completely prohibiting Palestinians' entry, or allowing it only under special permission granted by the army upon request (usually twice a year for cultivating land during the olive harvest and the plowing season).

151 "Main Highlights – Area Closures," sent by Captain Aviva Lewis, Security Division – Terrorism and Crime Department, Legal Advisor – Judea & Samaria, to Adv. Michal Pomerantz of the Association for Civil Rights in Israel, August 8, 2010.

152 Meeting with Deputy Commissioner Kobi Cohen (at the time), SJ District Police Commander, and other senior district officials, held on August 25, 2013.



These orders are in effect near settlements and illegal outposts and the army claims they are a security necessity meant to protect both populations – Israelis and Palestinians.

In practice, frequent use of closure orders denies Palestinians access to their land, prevents them from cultivating it, and caters to Israeli offenders by distancing Palestinians from their land.

ADMINISTRATIVE ORDERS AGAINST ISRAELI CIVILIANS

Another measure used by law enforcement officials is individual administrative orders that allow restricting the movement of a specific individual and his or her ability to access or remain in a certain area or locality. Administrative orders are issued and signed by the GOC Central Command under the recommendation of the ISA. The ISA presents the relevant investigation files to the GOC, along with a recommendation, and he signs the requested orders. According to the IDF Spokesperson, the orders are signed subject to the GOC's discretion.[153] The orders are issued without trial, mostly based on classified information,

153 Telephone conversations between Roni Pelli, former Yesh Din Information Coordinator, and Major Adv. Zohar Halevy, Head of Public Liaison Office, IDF Spokesperson's Office, on January 24, 2013 and March 4, 2013. These statements were confirmed by Adv. Shlomi Abramson, Justice Ministry representative, during a session of the Knesset Constitution, Law and Justice Committee on February 2, 2014. Transcript no. 127 (Hebrew).

and the individuals against whom they are issued are not given a fair chance to face the allegations against them.[154] While the GOC's decision to issue a restraining or special supervision order may be appealed to the military justice system's appeals committee,[155] these proceedings too relies on classified information which is not disclosed to the suspect.

Law enforcement officials claim that administrative orders are not used for punitive purposes but rather for prevention and deterrence, and that the orders are meant to address future actions.[156] They maintain that administrative orders are used because while the intelligence information gathered by the ISA's Jewish Department and the evidence obtained by the police allow them to point to individuals who are involved in incidents of assault, harassment and property damage targeting Palestinians, they cannot substantiate indictment and prosecution. For example, in an interview shortly before the end of his term as Samaria Regional Police Commander, Assistant Commissioner Kobi Shabtai said it was difficult to turn intelligence information into evidence. Adv. Shlomi Abramson from the Ministry of Justice and Sarit Shemer, Deputy LA-JS, made similar statements during a session on administrative orders held by the Knesset Law, Constitution and Justice Committee in February of 2014.[157] However, the widespread use of administrative orders raises concern that they often serve as a substitute for the proper criminal process of collecting evidence

154 The Association for Civil Rights in Israel, **The State of Human Rights in Israel and the OPT – Situation Report 2011** (December 2011), pp. 13-14.

155 An order issued under the Order regarding Security Provisions may be appealed before a committee appointed by the president of the Military Court of Appeals. If the committee finds cause to intervene in the military commander's decision, it may revoke, shorten or change the conditions of the order. The committee may also suspend execution of the order pending its decision. **Order regarding Security Provisions [Incorporated Version] (Judea and Samaria) (No. 1651) 2009**, Secs. 296 (c-j), 297 (e-n), 298.

156 Statements made by Sarit Shemer Deputy LA-JS and Adv. Shlomi Abramson from the State Attorney's Office during a Knesset Constitution, Law and Justice Committee session on February 2, 2014. Transcript no. 127 (Hebrew).

157 Yehoshua Breiner, "Price tag activists operate as a true terrorist organization," **Walla!**, September 27, 2013 (Hebrew), Knesset Constitution, Law and Justice Committee session on February 2, 2014. Transcript no. 127 (Hebrew).

and prosecuting suspects.[158] In other words, the failure of law enforcement officials in the area - mainly the police which is entrusted with upholding criminal law in the West Bank - to collect enough evidence for indictment and prosecution, leads law enforcement agencies to resort to administrative orders which remove from the area elements they consider to be problematic or dangerous.

From 2005 to 2012, the GOC Central Command signed **149** administrative orders against Jewish citizens of Israel. This figure includes three types of orders:[159]

Revocation of Judea and Samaria Area entry permit: Pursuant to the Order Regarding Closed Zones (Judea and Samaria) (No. 34) 1967[160] and the General Entry Permit (No. 5) (Israeli Residents and Foreign Nationals) (Judea and Samaria) 1970.[161] This type of order revokes the general entry permit allowing Israelis to enter the West Bank with respect to the individual against whom it is issued, and effectively allows to remove individuals from the OPT for the time stipulated in the order.

Restraining Order: Pursuant to Section 296 of the Order regarding Security Provisions [Incorporated Version] (Judea and Samaria) (No. 1651) 2009.[162] This type of order gives the military commander the power to restrict an individual's entry into the areas specified in the order and for the period of time stipulated therein. The order also grants the power to require a person to inform a named individual or authority of his movements, prohibit said person from possessing or using objects listed in the order and restrict his employment

158 Statements made by Sarit Shemer, Deputy LA-JS, and Adv. Shlomi Abramson from the State Attorney's Office during a Knesset Constitution, Law and Justice Committee session on February 2, 2014. Transcript no. 127 (Hebrew).

159 Figures received from IDF Spokesperson in response to an application made by Yesh Din under the Freedom of Information Act on November 19, 2012.

160 **Order Regarding Closed Zones (Judea and Samaria) (No. 34, 1967)**.

161 **General Entry Permit (No. 5) (Israeli Residents and Foreign Nationals) (Judea and Samaria) 1970**.

162 **Order regarding Security Provisions [Incorporated Version] (Judea and Samaria) (No. 1651) 2009**, Sec. 296.

or business activity, communication with other people and actions with respect to the dissemination of information or opinions. So, for example, in 2005, such restraining orders were issued against eight Israeli civilians who were removed from a "specific area" for the duration of the olive harvest only.[163]

Special supervision and assigned residence orders: Under Section 297 of the Order regarding Security Provisions [Incorporated Version] (Judea and Samaria) (No. 1651) 2009,[164] a person who is under special supervision is subject to limitations ordered by the military commander. The military commander may order a person to do some or all of the following: reside in a specific place in the area, remain in the confines of his community or area unless given written permission from the military commander to leave, notify the military commander of his place of residence at any given time, report at any time and at any place ordered by the military commander and remain under house arrest. Most of the orders that have been issued include removal from the entire OPT with the exception of one settlement listed in the order.

163 Response to Freedom of Information Application dated November 19, 2012.

164 **Order regarding Security Provisions [Incorporated Version] (Judea and Samaria) (No. 1651) 2009**, Sec. 297.

Administrative orders against Israelis issued by the GOC Central Command from 2005 to 2012, broken down by year and type of order[165]

Year	Entry permit revocation	Restriction order	Special supervision order	Total
2005	1	8	2	11
2006	8	21	26	55
2007	2	-	1	3
2008	4	5	8	17
2009	2	-	3	5
2010	1	-	4	5
2011	8	3	7	18
2012	13	5	17	35
Total	**39**	**42**	**68**	**149**

The use of administrative orders is the subject of a public debate during which scathing criticism is voiced against West Bank law enforcement officials for using such a severe and undemocratic measure against Israeli citizens. On the other hand, enforcement officials claim that there are real obstacles to obtaining evidence that can substantiate indictments against the individuals who are the objects of these orders, and that the orders are essential for maintaining public order in the area. In recent years, law enforcement agencies have used administrative order to address so-called Price Tag attacks.

165 Letter from Major Zohar Halevy, Head of Public Liaison Office, IDF Spokesperson's Office, October 8, 2013, in response to Yesh Din's Freedom of Information Application for figures on administrative restraining orders against Israeli civilians in the West Bank.

In early January 2012, after orders were issued against 12 right-wing Israeli activists for their alleged involvement in masterminding Jewish terrorism,[166] the Knesset Constitution, Law and Justice Committee held a session on law enforcement in the OPT. During the session, Cmdr. Haim Rahamim, SJ District Police Investigations and Intelligence Officer, spoke about the small number of indictments served against Israeli civilians for ideologically motivated crime:

> *We have to remember that we find it very difficult to address this type of criminal behavior. It is very difficult even if only for the fact that we cannot get to the incidents in real time. Incidents occur at night, we have no scenes to collect evidence from, or, unfortunately, this is a population where it is very difficult to investigate – people do not identify themselves, do not provide identification, are not willing to participate in any investigative process.*[167]

The State Attorney's representative, Shlomi Abramson, said in the discussion that the State Attorney's Office would obviously rather serve criminal indictments, but when there is not enough evidence to support criminal prosecution, administrative evidence may be used, and as long as the law permits resorting to administrative measures, "the establishment has a right to use them."[168]

Similar comments were made by Counsel and Legislation Supervisor at the Ministry of Justice, Adv. Keren Dahari-Ben Noon:

> *…The assumption is that there is violence against security forces and against Palestinians that has to be dealt with. These are actions that pose a threat to human*

166 Yehoshua Breiner, "12 right wing activists removed from West Bank overnight," **Walla!**, January 5, 2012 (Hebrew).

167 Knesset Constitution, Law and Justice Committee session, January 5, 2012. Transcript no. 523, p. 29 (Hebrew).

168 **Ibid**., p. 44

life and undermine the rule of law. There is no doubt that a proper enforcement response is in order […]. The evidentiary difficulties in prosecution have been mentioned here […]. There are tools both in Israeli law and in security legislation – criminal as well as administrative tools – and all the tools are used integrally […]. The context for the administrative orders is that there is a threat to the security of the area, to public order and there is administrative evidence on this and there is judicial review over the administrative decision to execute these orders.[169]

One of the difficulties cited by law enforcement officials is collecting intelligence information. A story about Price Tag activity on Hamakor, a television news magazine, presented the claim that most of the intelligence information received by the ISA's Jewish department allows it to identify who is involved in Price Tag activity, but is not sufficient for prosecution. One of the major sources for quality intelligence information is informants, but in recent years, the ISA has had difficulty recruiting informants among Price Tag activists.[170]

The difficulty in conducting investigations and obtaining evidence so often talked about by law enforcement officials is also connected to the fact that even when suspects are apprehended, they remain silent during the interrogation and refuse to cooperate with the investigators. According to former Samaria Regional Police Commander, Assistant Commissioner Kobi Shabtai: "These guys are briefed before every interrogation. Almost all of them invoke the right to remain silent and use every loophole to avoid answering questions during the interrogation."[171]

169 **Ibid**., pp. 34-36.

170 From a report by Roi Sharon on Hamakor, **Channel 10**, broadcast on May 1, 2013 (Hebrew).

171 Yehoshua Breiner, "Price tag activists operate as a true terrorist organization," **Walla!**, September 27, 2013 (Hebrew).

Part of this "briefing" referred to by Shabtai is a pamphlet about police and ISA investigations entitled "Know Your Rights,"[172] which was drafted by far Right activist Noam Federman in 2003. The pamphlet explains how to deal with a summons for an interrogation, an order to report to the police, arrest and especially police and ISA interrogations. It lists the ruses used by police and ISA investigators to extract confessions or make interrogees tie themselves to a crime. The focus of the pamphlet is a sweeping recommendation to remain silent during interrogation and refuse to cooperate with the investigators. The pamphlet was enormously successful and most interrogees and suspects are well versed in it and follow its recommendations. Exposing the tricks used by investigators has dealt a fatal blow to their ability to maneuver suspects into confessing or incriminating themselves. Besides this pamphlet, organizations and private lawyers also provide legal aid and legal counsel to the interrogees and they too mostly advise them to remain silent and refuse to cooperate with the investigators.

The resulting effect is that most suspects in incidents involving harm to Palestinians or their property enter the interrogation rooms equipped with knowledge and instructions not to engage with the investigators at all. Former SJ District Police Commander Deputy Commissioner Amos Yaakov said in an interview (while in office):

> *These guys come as prepared as you can get, with explanations and instructions about how to talk in the interrogation. You have children, 14, 15 year-olds, even a kid who was 12 and nine months old, sitting in an interrogation, with tricks thrown at them, and for days, they don't say a word, not a peep. There's nothing you can do against the right to remain silent in cases like these.*[173]

172 Noam Federman, **Know Your Rights** (2003), http://albergino.xoom.it/rights.html (Hebrew).

173 Yehoshua Briener "Police have Mosque arsonist's DNA – but cannot charge," **Walla!**, October 7, 2012 (Hebrew).

Suspects do have a legal right to remain silent during their interrogation and to refuse to divulge information that might incriminate them or be used against them. However, it is reasonable to expect that more than ten years after the pamphlet was published and the investigators' methods were exposed, the police would find new ways to get suspects to cooperate without resorting to undemocratic and draconian measures such as administrative orders. Using these measures for punishment is patently incongruent with the values and principles underlying the criminal process.

West Bank law enforcement officials are convinced that violent incidents in the area have abated thanks to the use of administrative orders. They also claim that the orders have an important deterring effect, impacting ideological offenders' willingness to take part in criminal activity. Ilan Malka, Central Command Headquarters Chief, argues that the orders are an effective tool with results.[174] Deputy Commissioner Amos Yaakov believes that the removal of 41 individuals in 2012 dealt them a "fatal blow" and that the people against whom such orders are issued know that they are being watched even after the order expires and that they are not "free to do as they please." The orders, says Yaakov, limit those who are known to the police as "being involved in this activity."[175]

To compare, from 2010 to 2012, **58** administrative orders were issued against Israeli civilians. According to police figures, during the same time (2010-2012), the police prosecution unit filed **49** indictments in offenses the police refers to as "Israeli Public Disturbances."[176] This figure does not include indictments for similar offenses served by the State Attorney's Office,[177] but even if the State Attorney's Office filed the same or even double the number of

174 Knesset Constitution, Law and Justice Committee, February 2, 2014. Transcript no. 127 (Hebrew).

175 Yehoshua Breiner "Police have Mosque arsonist's DNA – but cannot charge," **Walla!**, October 7, 2012 (Hebrew).

176 Letters from Chief Inspector Adv. Avishag Zaken Weisenberg, Freedom of Information Officer, Public Complaints Unit, Israel Police, in response to Freedom of Information Applications dated December 20, 2010 and February 24, 2013. The police figures may include indictments against Israelis for assaulting security forces.

177 The figures provided by the Israel Police include only indictments served by the SJ District Police Prosecution Unit,

indictments during the same time, the figures still point to widespread use of administrative orders compared to the usual criminal process of prosecuting offenders.

Yesh Din's position is that using administrative orders is unacceptable and inconsistent with the rule of law in a democracy, as this is a measure that is designed to bypass the checks and balances of the criminal process, on which democracy is founded.

The criminal process sets a standard of proof for investigation and prosecution authorities, who are required to convince the courts of a person's guilt. Investigation authorities are required to gather sufficient evidence, while prosecution authorities are required to decide that there is, indeed, enough evidence for an indictment. This evidence is ultimately examined by a court of law which has competency to decide on a person's guilt and hand out a sentence. The defendant in a criminal proceeding has the right to know of what he or she stands accused of and to mount a defense against the allegations. None of this exists when an administrative order is used against a person considered by law enforcement officials as "being involved in this activity," which means that these officials, primarily the military commander who signs the orders, have almost unchecked authority to use such a powerful measure.

Therefore, use of administrative orders must cease. Instead, the quality of SJ District Police investigations must be improved, and the structural issues impeding thorough investigations into offenses committed by Israeli civilians against Palestinians and their property must be corrected. The State of Israel must enforce the law while safeguarding the rights of both Palestinians and Israelis.

though indictments are also served by the State Attorney's Office. The response of the Police Freedom of Information Officer implies that the police does not have figures on the total number of indictments served as a result of investigations conducted by the district into offenses committed by Israeli civilians against Palestinians.

Recommendations (J)

A situation in which law enforcement agencies issue administrative orders against criminal elements as a substitute for due process cannot be tolerated. Investigating authorities must spare no effort to collect enough evidence against suspects to indict and prosecute them.

CONCLUSION

Since 2005, Yesh Din has been monitoring investigations conducted by the Israel Police SJ (Judea and Samaria) District following complaints from Palestinian crime victims regarding violence, damage to property, land seizure and other offenses committed against them by Israeli civilians. The common link among the offenses investigated in these files is the fact that they were perpetrated for ideological reasons. These offenses have a clear strategic goal – frightening victims away from their lands and taking over the lands in order to expand the areas controlled by settlements and outposts.[178] One of the factors that makes this dispossession possible is the impotence of law enforcement agencies in the West Bank.

Yesh Din figures, based on a sample of more than a thousand investigation files, reveal a low indictment rate (7.4%), and accordingly, a particularly high incidence of investigation files that are closed due to a failed investigation by the police (about 85.3%) – mostly because the police failed to find offenders or collect enough evidence to prosecute them.

In this report we examined issues afflicting law enforcement in the West Bank in order to understand why investigations fail. To prepare the report, we reviewed investigation files that were conducted and closed by the investigators of the SJ District Police. The purpose of this review was to examine the investigative measures that were taken in order to assess the quality of the investigations and outline the major failures and deficiencies in them. Analysis of the research materials revealed failures and deficiencies across all the stages of the investigation, beginning with the inspection of the crime scene and the collection of evidence there, continuing with the collection of statements and the identification, location and interrogation of suspects, and ending with the analysis of the evidence and the decision whether it can substantiate an indictment. The main conclusion drawn from the analysis of investigation files is that the principal reason for the investigative failure is inaction on the part of the police. As indicated by the figures presented above, **failure to perform basic investigation measures is an omission which sometimes amounts to criminal negligence**.

In some cases, Yesh Din appeals the decision to close an investigation file without charges. However, in the vast majority of cases, the lengthy period of time that elapses between the commission of the offense and the closure of the file, and the still longer period of time

178 In our report **The Road to Dispossession,** which looked at the outpost of Adei-Ad as a test case, we demonstrated a clear connection between the time and place of criminal offenses and the outpost's rate of expansion (Yesh Din, **The Road to Dispossession - A Case Study: The Outpost of Adei-Ad**, 2013, p. 124).

the State Attorney's Office takes to process the appeal, make such appeals ineffective. Investigation measures such as holding lineups or questioning witnesses and suspects should be performed as close as possible to the time of the offense. When they are taken long after the fact, as part of the supplementary investigation, they lose their usefulness. For this reason, **the right of crime victims to appeal fails to address most of the flaws highlighted in this report**. As an aside, we note that even in cases that do result in indictments, the judges point out failures and deficiencies in the investigations conducted by the SJ District Police in their verdicts, and explain how these failures impacted the court's decision.[179]

In addition to the failures in the investigation process, law enforcement in the West Bank suffers from systemic issues stemming from the structures and arrangements applicable in the area. Unlike the situation inside Israel, in the West Bank, the IDF is in charge of law enforcement and has delegated some of its powers in this realm to the Israel Police. However, the division of powers between these two bodies has never been fully completed, and cooperation between them is also lacking. In the current state of affairs, the SJ District Police depends on the IDF to perform simple policing and investigation tasks and has no constant presence on the ground, which undermines its effectiveness. **Amending protocols and orders may address some aspects of these structural issues and bring some improvement in the state of law enforcement in the area, but these issues are endemic to the existence of a prolonged military regime over a civilian population, and we believe they cannot be fully resolved so long as the occupation continues.**

One of the most conspicuous structural problems is Palestinian crime victims' loss of faith in the will and the ability of the Israel Police to help them. This distrust is expressed in the decision made by many not to lodge police complaints. It is difficult to argue that this decision is unreasonable, since lodging a complaint, a time consuming and sometimes unpleasant process, will most likely achieve the same result as remaining passive and choosing not to complain, considering the 92.6% chance that the investigation will end without charges. Naturally, the fact that complaints are not lodged and the refusal to cooperate with the police impede its ability to investigate offenses, or even assess their prevalence, and weaken the rule of law in the area.

179 See. e.g. CrimC 3974-06 **State of Israel via SJ District Prosecution Branch v. Alkobi (Winograd)**, issued March 14, 2011, paras. 25-26 (Hebrew).

The bankruptcy of law enforcement in the West Bank is clearly reflected in the law enforcement agencies use of administrative orders against Israeli civilians. These orders often replace due process, which relies on proper investigations that produce sufficient evidence for indictment and prosecution. The absence of a sound law enforcement apparatus, which includes a proper investigation mechanism, effective intelligence information and increased presence in flashpoint areas, leads to the use of undemocratic tools which violate the rights of those subjected to them, and to the incorporation of these orders into the failed law enforcement system in the West Bank.

The ongoing law enforcement crisis in the West Bank raises questions regarding police motivation to investigate and solve cases of offenses committed by Israelis against Palestinians. On the one hand, there is some indication that the SJ District has been trying to improve its work and rehabilitate its reputation in recent years. In a meeting Yesh Din representatives held with District Commander Deputy Commissioner (at the time) Kobi Cohen and other senior officials,[180] we were impressed by their willingness to optimize the district's work and improve its performance. On the other hand, there is no doubt that over the years of occupation, Israel's approach to ideological crime by its citizens against Palestinians has been quite different from its approach to criminality inside Israel. Perpetrators of such ideological crimes do not fit the usual "offender profile," and their motives for committing these crimes are treated forgivingly, sometimes even empathetically. All of this sends a message to the officers serving in the SJ District Police, both junior and senior, who are entrusted with investigating these offenses. **The sense of dedication to the mission is certainly undermined when the general sentiment is that the people who perpetrate these offenses are not criminals and that no one truly wants to see them brought to justice.**

Israeli society's attitude toward what goes on in its 'back yard', which is marked by growing indifference to the fate of the Palestinian population, now 48 years under military occupation, does the rule of law in the West Bank no favors either. Public apathy enables decision makers to continue to release empty declarations, and allows those who carry out the work on the ground to continue their negligent work.

The impotence displayed by the Israeli authorities with respect to law enforcement on Israeli civilians who target Palestinians is tantamount to collaboration with these offenders and is the source of tremendous damage to the rule of law. Without punishment and

180 Meeting held on August 25, 2013 at the SJ District Police Headquarters.

deterrence, offenders know they will go unpunished and deduce that the state is allowing them, perhaps even encouraging them, to carry on uninterrupted.

Real change in law enforcement in the West Bank will only result from the recognition that this is a serious systemic issue and that the power to eradicate it lies chiefly with decision makers at the ministerial level. So long as the Israeli occupation of the West Bank continues, Israel must do everything in its power to protect the occupied population and its property, as required by Israeli and international law.

RECOMMENDATIONS

The existence of the settlements constitutes a severe and comprehensive violation of the human rights of Palestinians in the OPT.[181] Only their dismantling and the end of the occupation can resolve the issue of law enforcement upon Israeli civilians in the West Bank. However, so long as the situation continues as it is, reducing ideological crime and harm to Palestinians requires deep reform with proper resource allocation, a change in organizational culture and clear goal setting.

1. Protection of Palestinian civilians must be defined as a core mission of the IDF, as the agency in charge of law enforcement in the West Bank and as the agency with the highest visibility in the area.
2. The IDF and the Israel Police must allocate sufficient, skilled personnel for law enforcement activities, including protection, deterrence and investigation.
3. Steps must be taken to ensure that SJ District Police investigations are conducted professionally and effectively and include investigative measures such as collecting evidence at the scene of an incident, bringing suspects in for questioning, collecting statements from all persons involved, holding lineups, verifying suspect alibis and more.
4. The State Attorney's Office must institute an effective mechanism for oversight of SJ District Police investigations, setting a clear goal for improving investigation quality and outcomes.
5. Action must be taken to eradicate mistrust and concerns harbored by Palestinian crime victims toward the police, which stop them from filing complaints against offenders.

181 Yesh Din, **The impact of the settlements on Palestinian rights in the West Bank**, position paper submitted to the international fact-finding mission appointed to investigate the impact of the settlements on Palestinian rights in the OPT, including East Jerusalem (November 2012).

Steps must be taken to ensure that complaints to the police are not followed by acts of revenge either from the authorities or from the impugned individuals. Trust building with the Palestinian community, similar to that carried out with the settler public, should be considered.

6. International humanitarian law must be incorporated into IDF training at all levels. Steps must be taken to ensure that soldiers serving in the West Bank are aware of their duties with respect to protecting the occupied population and its property, including the duty to take action to prevent or stop an offense, detain suspects and secure the scene. Steps must be taken to ensure that soldiers are aware of their powers in this regard. Soldiers and commanding officers who breach their duty to protect Palestinians and Palestinian property and stand idly by must be investigated and prosecuted.
7. Permanent, trained and sufficient forces must be stationed in areas known to security forces as constant friction zones. Trained and sufficient forces must be dispatched to areas where clashes are expected to occur following specific incidents or when there is another reason to expect their occurrence.
8. The State Attorney's Office and the SJ District Police must collect and publish complete annual figures and reveal the number of indictments served by both agencies against Israeli civilians for harming Palestinians and their property. This type of crime must receive a distinct classification, allowing to isolate it from indictments served for other offenses. Figures on the incidence of convictions and the severity of the penalties imposed must also be published.
9. The duty of IDF soldiers and officers who witnessed offenses by Israeli civilians to provide statements to the Israel Police on their own initiative should be incorporated into military orders. In addition, the army must assist the Israel Police, immediately and without delay, in locating soldiers who witnessed alleged offenses.

CONSOLIDATED RECOMMENDATIONS MADE IN THIS REPORT

A. Collection of Evidence

1. Efforts to bolster law enforcement in the area should include the introduction of protocols and arrangements that would allow routine police patrols in the area with the object of increasing police presence - a common practice in high-crime areas. This is particularly important in known friction zones where a standing unit should be stationed.

2. Steps must be taken to ensure the ability of police officers to arrive at the scene in real time, or as close to the time of the incident as possible.

3. Binding protocols for collecting evidence at the scene should be instituted (if none such exist). Police officers must have the means and knowledge required for collecting evidence, documenting the scene and carrying out forensic and other tests.

B. Collection of Statements

1. Statements must be collected from eyewitnesses – soldiers and civilians – where these might shed light on the incident or the identity of the offenders and help with the investigation of the offense.

In this regard – cooperation between the police and the IDF with respect to locating soldiers who witnessed a criminal offense should be improved.

3. Witnesses who refuse to assist in the investigation, particularly those in public office, must be held accountable.

C. Suspect Interrogation

1. Suspects must be called in for questioning, as close as possible to the time of the offense. Suspect interrogation must be viewed as a necessary, fundamental investigative tool and investigators must therefore make sure that suspects are located and questioned.

2. When a suspect denies connection to the allegations, he or she must be required to supply an alibi for the time of the offense. Alibis given by suspects must be verified or disproved.

3. Protocols related to police investigators' power to bring an uncooperative suspect or witness in for questioning must be updated.

D. Location and Identification of Suspects

1. In cases in which there is a specific suspect, and a witness who believes he or she would be able to make an identification, every effort should be made to hold a live lineup. Photo lineups should be a last resort choice only.

2. Identification by looking at police offender photo albums should be carried out only in cases in which there is no specific suspect. In every case in which there is a suspect – a lineup must be held.

3. Lineups and identification of suspects in police albums should be conducted as close as possible to the time of the offense. Consideration should be given to the fact that lineups rely on the recollection of the person making the identification and that the ability to make the identification declines with time.

4. The police photo database should be updated periodically and photos used in lineups and albums must be clear and current.

E. Closure of Investigation Files without any Investigative Steps or Basic Investigative Steps

1. Investigators must receive clarifications and refresh training on their duty to investigate, as stipulated in the Criminal Procedure Law and the Police Ordinance, and recognized in case law.

2. Officers and prosecutors authorized to close investigation files must receive clarifications and refresh training on the Police Ordinance provisions relating to causes for closing investigation files, with a focus on “absence of criminal culpability” and “offender unknown.”

F. Reluctance to Lodge Police Complaints due to Mistrust in Israeli Law Enforcement Authorities

1. The authorities must take action to dispel the fear expressed by many Palestinians over the years that lodging a police complaint might result in the cancelation of Israeli entry permits or reduce the chances of receiving such permits in future. The Israel Police and the IDF must clarify unequivocally that no sanctions are taken against Palestinians who file police or MPCID complaints. If there is any truth to these fears, such practice is extremely grievous. It undermines the basic tenets of law enforcement and the authorities must desist from it.

2. Steps must be taken to increase the accessibility of police stations to Palestinian crime victims and to make the process of filing complaints as seamless as possible, including shorter wait times for police escort to the station and at the station itself, availability of Arabic speaking investigators etc.

3. Steps must be taken to ensure police investigators treat complainants and witnesses with respect. This includes determined action in cases of complaints regarding abuse or difficulties experienced by complainants when filing a complaint or giving statements to the police.

G. Standing Idly By and Dependency on Cooperation from IDF Soldiers

1. Steps must be taken to incorporate into IDF soldier training the orders, protocols and guidelines regarding soldiers' duty to take immediate action to prevent or stop the commission of an offense, and their duties and powers to detain and arrest suspects if necessary. Where such orders, protocols and guidelines are deficient, prompt action must be taken to supplement them. Cases in which soldiers breach such orders and protocols, stand idly by or assist in the commission of offenses must be dealt with harshly and the soldiers must be held accountable.

2. Steps must be taken to ensure soldiers and Border Police officers comply with their duty to secure the scene of an incident and detain suspects until the arrival of the SJ District Police. The cooperation and coordination between the IDF forces and the Israel Police acting in the area should be improved, and IDF soldiers should be trained accordingly.

3. Steps must be taken to ensure closer cooperation between the police and the army with respect to information and testimonies regarding criminal incidents investigated by the police and witnessed by soldiers, or in which IDF soldiers played a part. The army must respond to police requests and supply information about units operating in the area as part of its overall responsibility for law enforcement in the West Bank. As a rule, IDF soldiers should be instructed to report to the police immediately when they witness the commission of an offense, eliminating the need for special efforts to locate them by the police.

H. Dependency on Legal Advisor – Judea & Samaria Reports

1. The investigation of a criminal offense must not be suspended pending clarification of land ownership issues and receipt of the LA-JS Land Division report. The criminal investigation must proceed parallel to the land ownership clarification process.

2. Cooperation between police investigators and the LA-JS Land Division must be regulated, including the institution of a reasonable timetable for making the required inquiries and providing a report to the police.

I. Addressing Criminal Aspect of Illegal Construction

1. The process of regulating powers regarding criminal enforcement against planning and construction offenses in the West Bank must be completed. Intervention by government level officials (Defense Minister, Public Security Minister and Justice Minister) seems to be required in order to determine whether this issue falls under the jurisdiction of the police or the Civil Administration Enforcement Unit (as recommended by the State Comptroller in his July 2013 report on the issue).

2. Public officials who take part in planning and construction offenses must be investigated and prosecuted.

3. Retroactive approval of illegal construction must cease.

J. Administrative Orders against Israelis who Harm Palestinians and their Property

A situation in which law enforcement agencies issue administrative orders against criminal elements as a substitute for due process cannot be tolerated. Investigating authorities must spare no effort to collect enough evidence against suspects to indict and prosecute them.

RESPONSES

The Response of the Legal Counseling and Legislation Department in the Ministry of Justice [on behalf of the Israel Police and the IDF]

State of Israel
Ministry of Justice

The Legal Counseling and Legislation Department (International Law)

Date: Tevet 1, 5775
December 23, 2014
No.: 1115

To:
Mrs. Noa Cohen
Information Coordinator
"Yesh Din" Organization

Dear Madam,

Re: **Response to "Yesh Din" Organization's Draft Report Entitled "Circumventing the Law"**

Your application for our reply to the draft report in question was received by our office and following is our response:

Methodology

The report is based on inaccurate data and unrepresentative cases, which appears to have been selected in a tendentious way that distorts the existing enforcement reality both in terms of its assessment of the treatment provided by the legal system and the actions taken by the law enforcement authorities.

Publishing a report, which includes an inaccurate description of cases, sometimes without providing identifying details and without enabling the relevant authorities to examine the specific incidents cited therein, prevents the authorities from examining the allegations raised in the draft report in a substantive manner.

Allegations against the Law Enforcement Authorities

The Israeli Police

Human resources in the Judea and Samaria District - In contrast to the figures given in the report, there are currently approximately 1,100 experienced and professional policemen/women serving in the Judea and Samaria District Police Force.

The Nationalistic Crimes Unit - This unit, which was set up in March 2013, currently has approximately 60 officers and policemen/women, is almost fully manned and the process of filling the remaining positions is now in its final stages. It also has a support team of approximately 20 auxiliary policemen/women. The unit was created in order to perform, in cooperation with other Police divisions and districts, the Israeli Security Agency (ISA), the IDF and the Ministry of Justice, an instrumental role in preventing and investigating nationalistic crimes which have a connection to the Judea and Samaria District. The unit is

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responsible for coordinating the policing of nationalistic crimes, including investigations, the gathering of evidence and intelligence and operational activity relating to such crimes.

The unit invests great efforts and uses all the tools at its disposal in order to bring the perpetrators of nationalistically motivated crimes to justice. The investigation of cases is transferred to the prosecutions unit or to the District Attorney's Office and indictments are served in cases in which there is sufficient evidence. It is important to note that a large number of investigations conducted by the unit are accompanied by the relevant District Attorney's Office.

Contrary to what is stated in the report, since the unit was established and as a result of its activities, there has been a significant reduction in the volume of nationalistically motivated crimes committed in the Judea and Samaria District and in the severity of the incidents occurring, in conjunction with a significant increase in the unit's output. According to Police data, compared to 2013, in 2014 there was a 38% reduction in the number of nationalistic crimes committed, an increase of 21% in the number of cases handled by the unit, an increase of 76% in the number of detainees and an increase of 64% in the number of indictments filed. There was also a 100% increase in the number of detainees remanded in custody until the end of the proceedings or "pending another decision".

Data regarding the grounds for closing cases - Since the dispersal shown in the report does not indicate which cases it is referring to, the relevant authorities are unable to respond. Moreover, the report states that 11 of the cases being monitored by the organization, had been lost and had never been investigated. This data is unknown to the relevant authorities within the Police and no enquiry has been received from the organization with regard to the cases in question.

Allegations of insufficient activity in friction zones - The Police, in cooperation with the IDF and the ISA, are taking decisive actions in friction-prone areas with the aim of effectively enforcing the law and preventing damage to persons and property. Within this framework, ongoing intelligence cooperation also exists in order to eradicate attacks against Palestinians and the security forces. It should be noted, that within the framework of the work undertaken by the Nationalistic Crimes Unit, the Police have taken a number of operational steps in order to increase enforcement and deterrence in friction zones, some of which have even led to indictments.

It should also be pointed out that enforcement activities are carried out on a daily basis in friction zones, including patrols, detentions, arrests and searches against those suspected of involvement in nationalistically motivated criminal activity. During the last year, community police centers were set up in the localities of Yitzhar, Bat Ayin, Tekoa and Drom Har Hevron, which are located in friction zones.

Several months ago a task force was established to deal with public order offences committed by Israelis and nationalistic crime and its teams have already carried out tens of open and undercover operations within the friction zones in order to prevent disturbances before they occur.

Allegations regarding the absence of visits to crime scenes and failures in collecting evidence - Contrary to the allegations made in the report, in the majority of the cases, when there is a suspicion that a nationalistically motivated crime has been committed, an investigator, crime scene investigator and detective are dispatched to the scene. This also occurs with minor offences, and even in cases in which had they occurred in Israeli territory, no such visit would be made (for example, the cutting down of a single tree). However, it should be taken into account that sometimes an objective difficulty exists in visiting the crime scene, when it is located in Area A or B, and coordination and a military escort are required and also that sometimes access to the crime scene is not possible due to Palestinian rioting or a security risk.

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The Legal Counseling and Legislation Department (International Law)

At the initiative of the Judea and Samaria District Police Force, training is provided to soldiers on safeguarding crime scenes and physical evidence. The training is given to commanders by investigations officers from the Judea and Samaria District Force within the framework of an training conducted in preparation for operational employment. Training is also given to Border Police forces operating in the Judea and Samaria District, including on the subject of photography and this shall also continue in 2015. In addition, in collaboration with the Palestinian Authority, a number of joint seminars have been held in recent years on the subject of safeguarding the crime scene and the handling of physical evidence.

We do not see it relevant to respond to the claim that a reduction in investigators' salaries is having a detrimental impact on crime scene visits, and the fact is that investigators are continuing to visit crime scenes in accordance with the Israel Police' standard operating procedures.

Allegations regarding the closing of cases - The closing of investigations occurs following an examination of the evidence and in accordance with the law and relevant procedures. It should be noted that in contrast to other districts in which every investigative officer holding the rank of Chief Inspector has the authority to close a case, the decision to close a case of a crime committed out of nationalistic motive may only be taken by the Head of the Prosecutions Unit or the District Attorney's Office. An investigations officer holding the rank of Chief Superintendent has the authority to close the case, only in relation to an "unknown perpetrator" ground.

Allegations regarding the non-investigation of incidents in which no complaint was filed - In accordance with standing guidelines in the Judea and Samaria Police District, whenever the commission of a criminal offence is suspected, including where the victim of the crime cannot be found or refuses to file a complaint, an investigation will be opened based on the action report of the patrol which visited the crime scene. Efforts shall subsequently be made to take a statement from the victim of the crime. However, an effective investigation cannot be conducted where information about the apparent commission of a crime is obtained through a media publication, and when law enforcement authorities have no statement from the complainant or an eye witness account that can lay an evidentiary infrastructure and where there are no documents to prove the commission of the offence.

Allegations regarding the refusal to treat illegal construction as a criminal activity - The Judea and Samaria Police District, like other Israeli Police units, does not investigate violations of the planning and building laws. In the West bank, like in Israel, this issue is dealt with by the planning and building special committees which operate alongside the local and regional councils that were established under the security legislation. With regard to those areas lying beyond the local authorities' jurisdiction, the administrative authority to enforce the planning and building laws is vested in the Civil Administration's Central Supervision Unit. However, this unit does not act as a criminal enforcement body.

In 2013 the Ministers of Defense, Justice and the Interior decided to establish a unit which would enforce the planning and building laws through criminal sanctions in those areas lying beyond local and regional council boundaries. The unit would also have the authority to prosecute elected officials employed by those councils. It is similar to a unit which has been operating since 2005 within the borders of the State of Israel under the auspices of the Real Estate Law Enforcement Department of the Ministry of Justice. According to the Ministers' decision, the unit in question is to be directly subordinate to the Civil Administration and will operate alongside its central supervision unit, which continues enforcing the law at the administrative level.

It should be noted that the preparatory work for establishing this unit has reached an advanced stage and its completion depends, *inter alia*, on the budget and in particular on the allocation of the human resources required for its operation, from its employees and supervisors,

through to the setting up of a prosecuting body which shall be responsible for filing indictments, and the provision of the judicial resources needed in order to try the offenders.

When judicial orders are issued within the framework of petitions to the High Court of Justice (HCJ) on the issues of building law infringements, and those orders are violated, the Judea and Samaria District Police will open a criminal investigation for the offence of "breach of a legal order", but not for a violation of the planning and building laws.

It should be emphasized, that the Judea and Samaria District Police Force is both receptive and attentive to the "Yesh Din" Organization's representatives and endeavors to reply to their enquiries as soon as possible, while simultaneously dealing with numerous enquiries from other bodies and organizations.

The Israel Defense Force (IDF)

Allegations of "turning a blind eye" to violations of the law by Israelis and not preserving the "crime scene" - The IDF's standing orders and regulations impose an obligation on IDF forces to take all actions necessary in order to prevent or halt the commission of an offence, including an instruction to detain or arrest suspects and take various measures to secure the crime scene until the arrival of the Police, which is entrusted with investigating the incident.

Soldiers are given reading material, lectures and incident-analysis seminars, in accordance with their rank and responsibilities, beginning with the initial training stages, through to the arrival of the force to the operation zone and ending with periodic updates to forces on the ground. These issues are also routinely addressed in discussion summaries and orders issued by senior commanders, starting with the Commander of the Central Command. It should be noted that soldiers are obligated to report if they witnessed the commission of a crime and to give evidence once an investigation begins. In many cases complaints filed by commanders on their own initiative led to opening of an investigation.

The opinion of the Legal Advisor for the Area of Judea and Samaria (hereinafter: "the LAJS") on issues of land, trespassing and administrative steps in connection with land disputes - The contents of the report regarding restrictions of police investigations, with the emphasis on the issue of land, based on an opinion given by the LAJS, are inaccurate. The LAJS Unit has made the conduct of criminal trespass investigations a top priority and its approach to this matter has been uncompromising. The Unit provides assistance, as necessary, to those within the Judea and Samaria District Police Force charged with investigating criminal trespass and prepares opinions concerning the status of the land on which the offences were committed. However, it often transpires that the evidence basis collected is limited and insufficient for a legal opinion to be given regarding the parties' rights in the land. It should also be pointed out, that when investigation files are closed, in most cases it will be due to lack of evidence or for reason of unknown offender, regardless of the legal opinion concerning the status of the land. It should be emphasized, that the Military Commander acts to maintain public order and protect the rights of individuals in the West Bank, including with regard to all matters concerning incursions and trespassing on land.

For this purpose, a procedure has been established which is designed to facilitate a quick, administrative resolution of private land disputes, in order to prevent an escalation of the dispute and protect residents' rights, and while it does not provide a perfect solution to all land disputes in the region, use of this mechanism has proved to be effective on more than one occasion.

Use of administrative orders in order to enforce the law in the West Bank - The Commander of the Central Command uses all the tools at his disposal in order to fulfill his duty to maintain security and public order. These tools are diverse and also include criminal investigation and indictment (through the Judea and Samaria District Police Force). In those cases in which it is impossible or inappropriate to do so by criminal means, the Military Commander may use a variety of additional administrative tools which enable him to protect the lives and security of the region's residents. These tools have over many years been found

The Response of the Legal Counseling and Legislation Department in the Ministry of Justice [on behalf of the Israel Police and the IDF]

to be indispensable and to have no other reasonable replacement, even after being examined by a variety of teams and forums within Governmental Ministries and the IDF, as well as in judicial decisions.

Thus, for example, in places which constitute centers of permanent friction, the Military Commander is authorized and even obliged to use administrative methods, such as closing off an area, in accordance with the criteria laid down by the Supreme Court[1] in this context. The IDF does not treat the protection of Palestinians lightly, as implied by the report. On the contrary, the mechanisms for closing off certain areas, entry and coordinated support, together with reinforcements of IDF forces in strife- prone areas, are designed to guarantee the peace and rights of the Palestinians whether during the olive harvest season or during times of ordinary agricultural activity.

The relevant authorities utterly reject the claims made in the report regarding the orders issued by the Military Commander against civilians who are suspected of carrying out activities which endanger the security of the region. These measures are necessary in order to prevent damage to persons and property, and even loss of life. Moreover, the issue of the orders is intended to prevent the presence of elements which endanger the security of the region.

The relevant authorities also reject the claim that use of administrative orders is an arbitrary measure which serves as a pretext for not conducting effective investigations. Administrative enforcement measures are vital in order to prevent the dire consequences of criminal activities on the ground, just as criminal enforcement is essential to punish criminals within the framework of due process.

Sincerely,

Assaf Radzyner, Adv.

Cc: Adv. Hila Tene-Gilad - Here

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Operations Division
IDF Spokesperson Unit
Public Liaison Branch
Public Communications Department
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4 January 2015

Re: Addendum and Supplement to Response of Ministry of Justice

1. Below please find the competent officials' response to the claims presented in the report, with respect to the portions relevant to the IDF.

2. The report alleges that IDF forces operating in the Judea and Samaria Area commonly "stand idly by" in the face of unlawful conduct by Israeli citizens. The report also alleges that the forces fail to secure the "scene of the offense" in such incidents.

3. As noted in the report, according to military orders and procedures, **IDF forces are obligated to take any action required to prevent or stop the commission of an offense**, whatever the offense may be. As part of this obligation, soldiers are instructed to detain or arrest suspects and take various measures that would assist in securing the scene of the offense until police forces in charge of investigating the incident arrive at the scene. Soldiers are also instructed to provide the Israel Police with appropriate escort when necessary.

4. To ensure that these orders are assimilated in units operating in the Area, personnel are given reading material and lectures on the issue and participate in incident analysis workshops adapted to suit personnel rank and mission. These lectures begin at the early stages of training and continue when forces arrive at a new operational sector, with periodic refresher sessions for forces stationed in the sectors themselves. This is routinely reflected in meeting minutes and in the orders issued by senior commanders, headed by the GOC Central Command.

5. However, as illustrated in the report, due to operational constraints on the ground, such as the development of public disturbances following incidents, substantive, objective difficulties impede the actions that would assist in securing the scene. In addition, the difficulty inherent in the fact that the police (including forensics personnel) has the relevant authority, expertise and experience to document and preserve scenes, also leads to a situation in which soldiers still have difficulties taking said measures.

6. As a result of the possible gap this situation may create, soldiers operating on the ground are regularly briefed on major points, and have been for some time, and soldier training on this aspect of the mission is under constant review and re-evaluation. We note that soldiers have an obligation to provide statements if they witness the commission of an offense and once an investigation is opened. We emphasize that in many cases, investigations have been opened as a result of complaints commanders filed on their own initiative.

7. Despite the concerted efforts invested in this subject, regretfully, there are still incidents in which soldiers do "stand idly by." Military officials give their full attention to such incidents. In

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exceptional cases, MPCID investigations are opened, and disciplinary and administrative action is taken. The IDF considers this to be a serious issue and takes action to correct the situation, including along the lines of Recommendation (7) in the report with respect to IDF soldier training and improved cooperation between the Israel Police and IDF soldiers.

8. Thus, in recent years, the MAG Corps, sometimes through MPCID criminal investigations, has looked into various incidents in which concerns regarding soldiers' "standing idly by" have been raised, or incidents in which soldiers failed to comply with their duty to protect the safety of all residents of the Area. In a few of these cases, administrative action was taken against those involved, and the relevant forces received clarifications and instructions.

9. We note that contrary to what is stated in the Yesh Din report, **the State Comptroller's report did not refer** to cases in which "soldiers stood idly by... refrained from exercising their authority to prevent or stop the offenders, allowed suspects to leave... and did not use their power to detain them until the police arrived."

10. The report alleges that police investigations, with an emphasis on land issues, are impaired as a result of a dependency on the reports of the Legal Advisor for the Judea and Samaria Area. We note, at this point, that the report is inaccurate on this issue. The office of the Legal Advisor for the Judea and Samaria Area gives high priority to the investigation of cases involving criminal trespassing, and takes an uncompromising approach to this issue. The office assists SJ District Police investigation officials in the investigation of criminal trespassing and prepares reports on the status of lands on which such offenses are perpetrated, as necessary. These actions are carried out in cooperation with law enforcement agencies, including the SJ District Prosecution Unit, through constant communication designed to effectively address this type of offense.

11. However, the evidence collected during the investigation is often limited, in a manner that precludes the issuance of a legal report on the parties' land rights. Naturally, it is not possible to provide a legal opinion without a solid factual basis. We note that the vast majority of the decisions to close investigation files are the result of lack of evidence, or "offender unknown," with no connection to the legal opinion on the land status.

12. On this issue, it is important to note that the military commander takes action to enforce public order and safeguard the rights of individuals in the Judea and Samaria Area. This holds true also with respect to intrusion and trespassing.

13. For this purpose, a protocol for handling land disputes has been formulated. This protocol is aimed at a quick administrative resolution of private land disputes, in order to prevent the disputes from escalating and safeguard residents' rights. The protocol (not exclusively) provides a number of administrative tools and powers which are exercised with administrative discretion according to the particular case:

    a. In cases of intrusion on private land, action may be taken pursuant to the powers granted in the Order regarding Land (Disruptive Use of Private Land) (Judea and Samaria) (No. 1586) 2007.

    b. In cases of intrusion on state land, action may be taken to remove the intrusion pursuant to the powers granted in the Order regarding Government Property (Judea and Samaria) (No. 59) 1967.

    c. If the intrusion is new, action may be taken to remove it pursuant to the powers granted in the Order regarding Land (Removal of Intruders) (Judea and Samaria) (No. 1472) 1999.

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d. Inasmuch as the security of the Area or public safety so require, powers granted in the Order regarding Security Provisions [Incorporated Version] (Judea and Samaria) (No. 1651) 2009, may be invoked, such as declaring the disputed land a closed military zone. Additionally, an order to close the area may be qualified in a manner permitting the party entitled to possession of the land to continue working it.

14. Use of these tools has often proved effective, even if it does not provide a comprehensive solution to all land disputes in the Area. It is important to note that some of these tools are unique to the Area and are not duplicated inside Israel. These have been instituted to meet the specific characteristics of the Judea and Samaria Area.

15. The GOC Central Command uses all the tools at his disposal in the discharge of his obligation, as the military commander of the Judea and Samaria Area, to uphold public order and safety. These tools are varied, and, naturally, also include the process of investigation and criminal prosecution (via the Israel Police SJ District).

16. In cases in which standard criminal law enforcement tools cannot or should not be used, the military commander may use a variety of additional administrative tools that allow him to protect the lives and safety of residents of the area. Over the years, these tools have been found to be necessary and lacking reasonable alternatives, both in the reviews conducted by various teams and in various fora in government ministries and inside the IDF, as well as in court rulings on this issue.

17. So, for example, in locales that are constant friction zones, the military commander is authorized, and in fact, obligated, as part of his mission, to use administrative tools, such as closing an area, according to criteria stipulated by the Supreme Court.[1]

18. In cases in which a resident of the area suffers from harassment while on his land or en route to work the land, the military commander issues an order barring Israelis' access to the area, subject to protocols and guidelines drafted based on cumulative experience and court rulings. When a friction zone is located on land that is not owned by a Palestinian resident of the area, the area is closed to everyone. In cases in which the need to close a certain plot of land does not stem from harassment, but from an objective security risk (for instance, plots located in close proximity to Israeli communities), where necessary, an order barring all access to the area is issued, with a caveat allowing the plot owner to access the land with prior coordination. These solutions and tools have been formulated with great care and following individual examination, and they are used and implemented in accordance with uniform, clear rules.

19. Therefore, it is clear that the IDF does not take a light approach to protecting Palestinians, as implied by the report. On the contrary, the procedures for closing off areas and allowing coordinated and escorted entry along with IDF reinforcements in trouble spots, are meant to ensure the rights and safety of Palestinians, both during the olive harvest, and during routine agricultural activity.

20. With respect to the orders issued by the military commander against citizens who are suspected of activity that jeopardizes the security of the Area, we fully reject the allegations made in the report. These are necessary steps, which, if not taken, could result in harm to person and property, and perhaps, Heaven forbid, also loss of life. Moreover, these orders are issued in order to prevent the presence of elements that threaten the security of the Area therein.

[1] HCJ 9593/04 **Murar v. IDF Commander in Judea and Samaria** 61(1) 844.

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21. In addition, as noted by the report, the military commander is authorized to revoke Israeli citizens' permit to enter the Judea and Samaria Area, prevent them from reaching a certain locality or restrict their presence in the Area to a certain locality. This is also a legitimate administrative tool paralleling criminal proceedings, and it is not used as a substitute for investigation and prosecution so long there is sufficient evidence to do so. This tool is currently used in cases in which the evidence does not substantiate the use of criminal enforcement tools, such as cases in which the information is classified, or where there is intelligence information with respect to future intentions only. The military commander makes use of this tool with utmost care, in consultation with many officials, including in the operational, intelligence and legal fields, and only when such use is proven to be necessary for maintaining public order and safety in the Area.

22. Therefore, we obviously do not accept the position presented by the report that administrative orders should not be used. Use of administrative tools is necessary and central for the prevention of crime and threats to public order and safety in the Area, even if the prevention of the offense means that the individual who planned to commit the offense is not able to do so and will therefore not face criminal charges. Measures such as these are preferable to the alternative, whereby the individual might carry out his plan in the absence of administrative measures against him, specifically when it is doubtful that it would be possible, at some point in the future, to obtain sufficient evidence for trial.

23. To conclude our comments on this issue, we wish to clarify once again that we reject the claim that administrative orders are used as an excuse for avoiding effective investigations and that such use is arbitrary. Administrative enforcement, as noted above, is essential for preventing the serious implications of criminal activity in the Area, in the same way criminal enforcement is essential for penalizing offenders using due process.

24. In conclusion, the Military Commander of the Judea and Samaria Area, and all forces under his command in the Area, have and will continue to work tirelessly to ensure the safety and rights of all residents of the area. Many measures have been taken over the years to improve the mechanism overseeing public order and safety and the rule of the law in the Area, and additional measures will be taken in future inasmuch as such are required to further improve this mechanism.

Public Communications Department
IDF Spokesperson Unit

Criminal incidents in which Israeli civilians harm Palestinians and their property are commonplace in the West Bank. Law enforcement agencies are criminally ineffective in the face of this ideologically motivated crime: Only a fraction of the investigations opened by the police into incidents of violence, damage to property, seizure of Palestinian land and other offenses result in charges being brought against suspects. The vast majority of these investigations end after the investigators of the SJ (Samaria and Judea) District Police fail to find suspects or collect enough evidence to indict them. Most of the investigations fail due to negligence throughout the various stages of the investigation and the failure to perform basic investigative tasks such as examining the scene of the incident and collecting evidence there; collecting witness statements; identifying, locating and interrogating suspects; analyzing the evidence and making a decision whether it can support an indictment.

The failure of enforcement agencies is also affected by the unique law enforcement arrangements in effect in the West Bank. The division of powers between the IDF and the Israel Police has never been crystalized, and the cooperation between these two agencies also suffers from many failures and deficiencies. These are joined by growing mistrust on the part of Palestinian crime victims in Israeli law enforcement agencies and the latter's complicated relationship with the settlers.

Over the years, the absence of a functioning investigation mechanism has led to widespread use of administrative orders (also referred to by the general term "restraining orders") against Israeli civilians in the West Bank, often as a substitute for the proper process of investigations that produce sufficient evidence for indictment and prosecution. These orders are undemocratic, and violate the rights of the individuals against whom they are issued.

Put together, all of the above reflect the profound failure of the law enforcement apparatus in the West Bank and Israel's inability to uphold its obligations under both Israeli and international law to protect the Palestinian population living in the areas it holds under military control.

Yesh Din – Volunteers for Human Rights was established in March 2005. Since then, its volunteers and staff have worked to secure a structural and long-term improvement in the human rights situation in the occupied Palestinian territories. Yesh Din collects and disseminates reliable and updated information concerning systematic human rights abuses; applies public and legal pressure on the Israeli authorities to end these abuses; and raises public awareness of human rights violations in the occupied Palestinian territories. In order to realize its goals effectively, Yesh Din has adopted a model that is unique among Israeli human rights organizations. The organization is run by volunteers and receives daily assistance from a team of jurists, human rights experts, and strategic and media professionals.

www.yesh-din.org