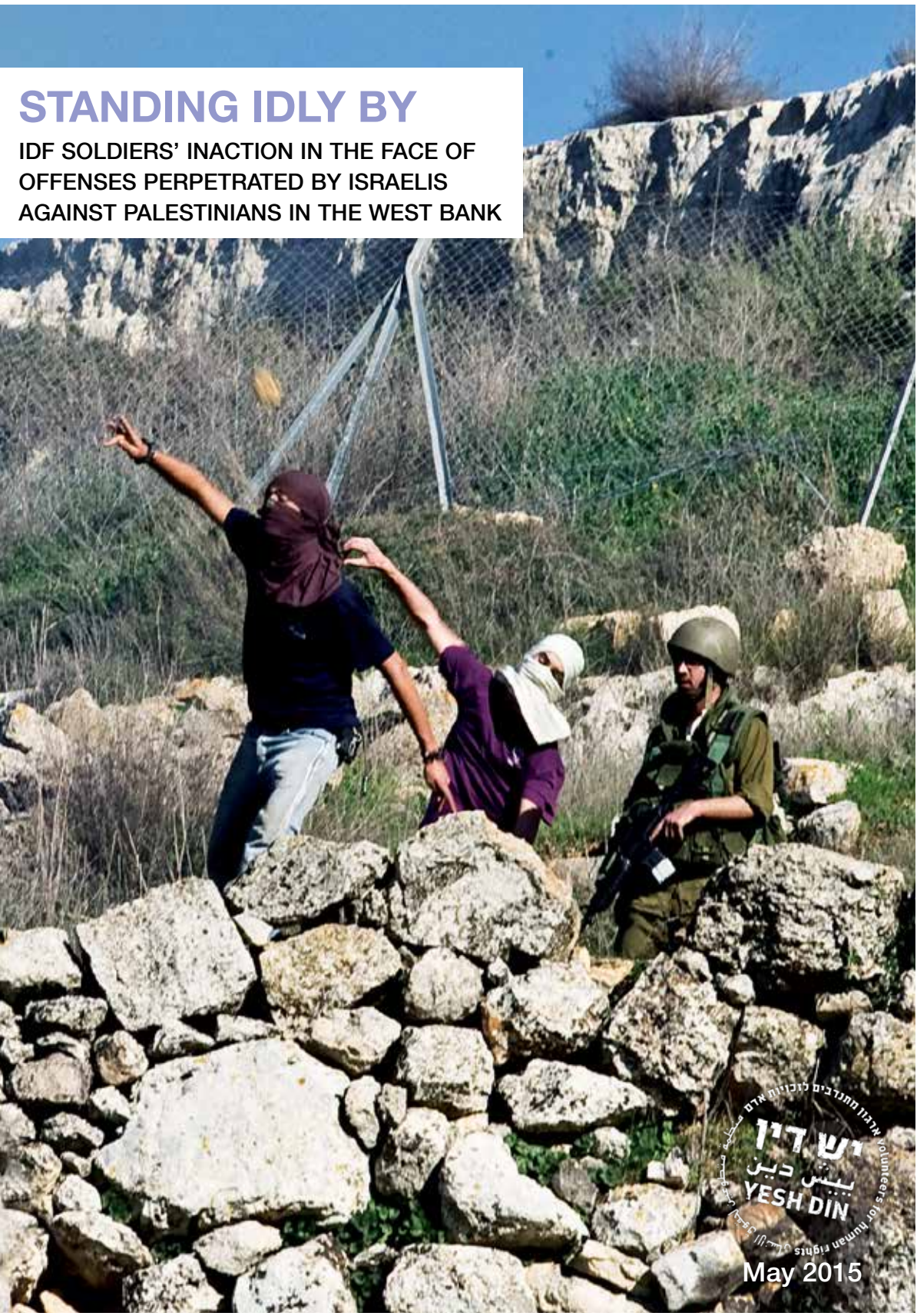
STANDING IDLY BY

IDF SOLDIERS' INACTION IN THE FACE OF OFFENSES PERPETRATED BY ISRAELIS AGAINST PALESTINIANS IN THE WEST BANK



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YESH DIN
Volunteers for Human Rights
מתנדבים לזכויות אדם
متطوعون لحقوق الإنسان

May 2015

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Yesh Din wishes to thank Atty. Eitay Mack for his assistance.

Yesh Din activities in 2014-2015 were made possible thanks to the support of the European Union, and the governments of Great Britain and Norway, the Catholic Agency for Overseas Development (CAFOD) (UK), EPER – HEKS Swiss Interchurch Aid, the Human Rights/IHL Secretariat, Irish Aid, the Moriah Fund, the Norwegian Refugee Council, the Open Society Foundation, Oxfam-Novib, the United Nations Development Program and individual donors in Israel and abroad.

This document was produced with the financial assistance of the European Union. The contents of this document are the sole responsibility of Yesh Din and can under no circumstances be regarded as reflecting the position of the European Union.

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SYNOPSIS

This report address Israeli soldiers' practice of standing idly by in the face of crimes committed by Israeli civilians against Palestinians and their property in the Occupied Palestinian Territories (OPT), a practice that is almost as old as the occupation itself.

The term "standing idly by" refers to incidents in which IDF soldiers witness attacks on Palestinians or their property and do nothing to prevent or stop them, or to detain and arrest the offenders immediately thereafter. In other words, the soldiers refrain from exercising their powers to detain and arrest the individuals involved in the incident, secure the scene in order to enable the police to investigate and collect evidence and, at a later stage, provide testimony about the incident to the police.

The military's duties and powers as acting temporary sovereign in the OPT, as the agency in charge of enforcing the law and maintaining public order, are anchored in the provisions of international law, repeated judgments issued by the Supreme Court of Israel, and in military orders. Yet, from the early days of the occupation, when it comes to Israeli offenders, the IDF's "command ethos" has been geared toward evading this responsibility, which was defined by the Supreme Court as one of the major, fundamental obligations of a military commander in an occupied territory, and shifting it to the Israel Police. The military's refusal to uphold its obligations allows the practice of standing idly by to proliferate, and expresses yet another aspect of the policy of tolerance toward illegal activity by Israeli civilians, and the illegality of the settlements in the West Bank. Despite government reports warning about the lack of coordination between the military and the police, the two agencies have yet to establish a framework for coordination that would guarantee an appropriate level of law enforcement in the West Bank.

Soldiers' practice of standing idly by has been documented for decades by both government agencies and human rights organizations, which have warned about its serious implications. Yet despite this, the military has thus far refrained from drafting operating procedures and standing orders that clearly and comprehensively set out the sequence of actions soldiers must perform during violent incidents involving Israeli citizens. The military also refrains from following the Procedure for the Enforcement of Law and Order in the Judea and Samaria Area and in the Gaza Strip Area, issued by the Attorney General in 1998, which instructs the military and the police on their particular responsibilities in violent incidents involving Israeli citizens. The military itself, through the IDF Spokesperson, told Yesh Din

that existing military protocols on handling violent incidents involving Israeli citizens need to be "updated, revised and re-examined."

Testimonies given by dozens of officers and soldiers in command positions to Israeli NGO Breaking the Silence, referring to the issue of standing idly by, indicate that the military provides sub-standard training, that soldiers do not understand that they have a duty to protect the Palestinian population, that they are not aware of their powers as enforcers of law and order – as defined in military orders, the Attorney General's procedure or military protocols, and they do not know what they may or may not do during violent incidents involving Israeli citizens. The testimonies also point to a deeply flawed interface between the military and the police.

Standing idly by in the face of violence is one aspect of the policy of tolerance toward criminal activity by Israeli citizens, which applies, in addition, to illegal construction in settlements, criminal seizure of private Palestinian land, and violation of labor and environmental protection laws. These practices render the concept of rule of law meaningless in the West Bank, and adversely affect the rights of its Palestinian residents, who are meant to benefit from the status of protected persons under international law. The tolerance shown for these types of crime repeatedly illustrates how the settlements are hotbeds of human rights violations in many different ways.

INTRODUCTION

> Every Israeli soldier carries with him, in his backpack, the rules of customary international public law concerning the laws of war and the fundamental principles of Israeli administrative law" (Justice Aharon Barak, HCJ 393/82 **Jam'iyat Iskan al-Mu'allimin v. Commander of IDF Forces in Judea and Samaria**, December 28, 1983, para. 33)

The French military leader and theoretician Napoleon Bonaparte, who ruled France from 1799 to 1814 (and for one hundred additional days in 1815), coined the phrase "a field marshal's baton is tucked into every soldier's knapsack," which expresses the responsibility vested in every soldier.

Almost 200 years later, an important and influential Israeli judge and theoretician, Aharon Barak, later the President of the Supreme Court, substituted the provisions of international law for the marshal's baton. Barak, in a formative ruling of the Supreme Court from 1983, referring to the limitations of the military commander's authority in the occupied territory of the West Bank and the Gaza Strip 16 years after they were occupied, offered an optimistic, almost utopian notion, according to which Israeli army soldiers are conversant with the provisions of international law and uphold them.

However, unfortunately, this report demonstrates that Justice Barak's understanding of the reality of the occupation was, and still is, utopian and completely cut off from what actually happens in the Occupied Palestinian Territories (OPT). This report, which focuses on the widespread occurrence of soldiers standing idly by in the face of violence perpetrated by Israeli citizens in the OPT, clarifies that IDF soldiers are not trained to take appropriate action before, during and after incidents in which Israeli citizens attack Palestinians or their property for ideological reasons or unleash violence for its own sake. Furthermore, according to dozens of testimonies and reports by both government agencies and human rights organizations, IDF soldiers are completely unaware of their roles and obligations as enforcers of law and order under the rules of international law regarding the military's duties as acting sovereign in the occupied territory.

Violence by Israeli citizens against Palestinians is a common occurrence in the OPT, dating almost as far back as the occupation itself. The same is true for soldiers' practice of standing idly by. The term "standing idly by" refers to incidents in which soldiers witness attacks on Palestinians and their property and do nothing to prevent them. In other words,

the soldiers refrain from exercising their powers to detain and arrest the individuals involved in the incident, secure the scene to enable the police to investigate and collect evidence and, at a later stage, provide testimony about the incident.

This report reviews the military's duties and powers as acting sovereign in the occupied territory according to the provisions of international law. These duties and powers include upholding law and order, as defined in military orders referring to the OPT (currently the West Bank, in the past also the Gaza Strip), including through policing tasks. The report shows that the practice of standing idly by, which has existed for more than thirty years, has been extensively documented both by official government agencies and human rights organizations.

The report then reviews the various types of training, instruction and army operating procedures which are based, in part, on a procedure drafted by the Attorney General as early as 1998 regarding law enforcement upon Israeli citizens. These materials were provided to Yesh Din by the IDF and Border Police spokespersons in response to detailed applications made under the Freedom of Information Act. The report looks at how the training, instruction and operating procedures are understood and implemented by officers and soldiers holding command positions based on 77 detailed testimonies given to Breaking the Silence, in which soldiers and officers responded to a series of questions regarding the practice of standing idly by. It is worth pointing out that the military procedures are incomplete and, even according to the military itself, require updating, revision and re-examination. Military training regarding law enforcement upon Israeli citizens consists of stand-alone sessions that are given only to a handful of commanders, in which no written materials are handed out.

The 77 testimonies reveal the wide and disturbing gap between the military's obligation to uphold law and order in the West Bank and how soldiers understand their role and powers. The soldiers refrain from any significant law enforcement activity against violent Israeli citizens. Based on the testimonies, the report points out the military's ongoing and cumulative failure to train and prepare soldiers, to clarify the military's obligations according to international law and judgments issued by the Supreme Court of Israel, and its failure to draft operating procedures and orders that clarify the soldiers' role during violent incidents involving Israeli citizens, including detention and arrest powers, the weapons soldiers may employ against violent Israeli citizens, securing the scene, testifying, investigating incidents and cooperating with the Israel Police. The report stresses the urgent need to formulate clear and comprehensive standing orders in accordance with the rulings of the Supreme Court and the guidelines issued by the Attorney General.

This report, like previous reports by Yesh Din, as well as government reports including ones issued by the State Comptroller, point to the military's consistent attempts to abdicate its duty – its main and fundamental duty, according to the Supreme Court – to uphold law and order in the West Bank as it relates to violence committed by Israeli citizens, and its attempts to pass the responsibility to the Israel Police, despite it being the military's and despite the poor, negligent performance of the police in this matter.

The report stresses that the "command ethos" that has prevailed in almost all ranks of the military since the inception of the settlement enterprise favors the interests of the settlements over fulfilling the military's obligations as the agency responsible for upholding law and order. Other government and law enforcement agencies also follow an approach that favors the settlements' interest over the rule of law. The effect has been increasingly endemic governmental chaos in the West Bank, characterized by tolerance of illegal activity on the part of settlers, and the illegality of the settlements themselves, to the point where the state is at risk of losing control over areas that are prone to disaster in the West Bank.

Tolerance of criminal activity by settlers and settlements, and specifically of violent incidents initiated by settlers, often with the aim of forcing Palestinians out of their lands as a preliminary step to seizing them, comes, of course, at the expense of the rights of the Palestinians. This policy of tolerance is an example of the extent to which the concepts of rule of law, equality before the law and the duty to enforce the law without prejudice, have been rendered meaningless under the Israeli occupation in the West Bank.

CHAPTER 1:

THE DUTY TO PROTECT CIVILIANS IN THE OCCUPIED TERRITORY

According to international humanitarian law, the duty to protect civilians in an occupied territory – in this case the Palestinian residents of the West Bank (and, in the past, of the Gaza Strip as well) – is a fundamental and primary obligation imposed on the occupying power and its army, which is the temporary sovereign in the occupied territory.

ARTICLE 43 OF THE HAGUE REGULATIONS: THE DUTY OF THE OCCUPYING FORCE TO MAINTAIN LAW AND ORDER

The fundamental rule in the laws of occupation that anchors the duty to protect civilians is Article 43 of the Annex to the Hague Convention respecting the Laws and Customs of War on Land of 1907. This Regulation has a quasi-constitutional character and as such, it dominates the laws of occupation and sets out the basic principles on the limits of the occupier's powers and the principles governing the relationship between ruler and civilian in the occupied territory.

This Regulation obliges the military commander of the occupying power, the temporary sovereign of the occupied territory, to "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." The Regulation thus sets out the three purposes of the laws of occupation:

- The need to care for the local population,
- The need to see to the military needs of the occupying army,
- The duty to respect the rights of the 'legal sovereign' in the area.[1]

1 Orna Ben-Naftali and Yuval Shani, **International Law between War and Peace** (Ramot Publishing, Tel Aviv University, 2006) (Hebrew), pp. 179-180 (Hereinafter Ben-Naftali and Shani, **International Law**). See also, **The Road to Dispossession: A Case Study – The Outpost of Adei Ad** (Yesh Din, February 2013), pp. 15-16 (Hereinafter: **Road to Dispossession**).

Many Supreme Court judgments which interpreted Article 43 of the Hague Regulations reduced its aims to a balance between the first two purposes alone, in a way that over the years, enabled Israel to erode the rights of the previous sovereign and put facts on the ground throughout the occupied territory, above all the settlements. The Supreme Court focused its interpretation of the regulation on the law enforcement aspect as early as in 1981, ruling that: "There is no doubt that the main role of the sovereign in an occupied area is to maintain law and order, and it must do so even when the local population does not make a complaint."[2]

A formative ruling by Supreme Court Justice Aharon Barak (Jam'iyat Iskan, 1983) expanded on previous court interpretations of that regulation. This often-cited ruling has since guided dozens of others. It set out a rule whereby the regulation balances two main axes (the "magnetic poles," a term borrowed from an article by Prof. Yoram Dinstein).[3] "One – ensuring the legitimate security interests of the occupier in a territory which is under belligerent occupation; the other – safeguarding the needs of the civilian population in a territory under belligerent occupation." Barak also ruled: "The considerations of the military commander are ensuring his security interests in the Area on one hand and safeguarding the interests of the civilian population in the Area on the other. Both are directed toward the Area. The military commander may not weigh the national, economic and social interests of his own country, insofar as they do not affect his security interest in the Area or the interest of the local population."[4]

Twenty years later, in 2004, the Supreme Court expanded on the military's duties with respect to the civilian population:

> Within the latter the Area Commander is responsible not only for maintaining the inhabitants' order and security but also for protecting their rights, particularly the constitutional human rights conferred to them. The concern

2 HCJ 175/81 **Mustafa Anabi al-Natsheh et al v. the Minister of Defense et al.**, judgment issued May 19, 1981, IsrSC 35(3) 361, 363 (independent English translation available on the HaMoked: Center for the Defence of the Individual (HaMoked) website http://www.hamoked.org/files/2013/1158760_eng.pdf).

3 Yoram Dinstein "The Legislative Authority in the Held Territories," **Iyunei Mishpat**, 2 (5732-33) 505, 509.

4 HCJ 393/82 **Jam'iyat Iskan al-Mu'allimin v. Commander of the IDF Forces in Judea and Samaria**, judgment issued 28 December, 1983, paras. 12-13, 17-25 (independent English translation availabe on the HaMoked website http://www.hamoked.org/items/160_eng.pdf); Ben-Naftali and Shani, **International Law**, 179-180. See also Expert Opinion (Dr. Guy Harpaz, Prof. Yuval Shani, Eyal Benvenisti, Dr. Amichai Coehn, Dr. Yael Ronen, Prof. Barak Medinah and Prof. Orna Ben-Naftali) in HCJ 2164/09 **Yesh Din – Volunteers for Human Rights v. IDF Commander in the West Bank et al.**, January 2011.

for human rights lies at the heart of the humanitarian considerations which the commander must consider.[5]

The Supreme Court also regarded Article 43 as establishing a complex of normative arrangements guaranteeing continued public order and safety, including the proper functioning of all government branches, whose responsibility it is to serve the needs of the protected persons (in this case, the Palestinian), in all areas of life including security and private property.[6] Furthermore, the Court recognized the Hague Regulations as customary international law that is also binding on Israel.[7]

The Supreme Court's formative judgment emphasized the need to adopt a dynamic approach in keeping with the temporal dimension of a prolonged state of occupation, or "long-term military occupation" in which the changing civilian "needs of the local population receive extra validity." This need arises because the provisions of the Hague Regulations were "formulated against the background of short-term military occupation" which did not provide answers to many of the questions that come up in daily life under prolonged occupation.[8]

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5 HCJ 10356/02 and 10497/02, **Yoav Hass et al. v. The IDF Commander in the West Bank et al.**, para. 8, judgment issued March 4, 2004 (independent English translation availabe on the HaMoked website http://www.hamoked.org/items/8240_eng.pdf).

6 Article 43 is available in full on the ICRC website http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=3741EAB8E36E9274C12563CD00516894. For the Supreme Court's interpretation of Article 43 of the Hague Regulations , see HCJ 393/82 **Jam'iyat Iskan al-Mu'allimin v. Commander of the IDF Forces in Judea and Samaria**, judgment issued December 28, 1983, paras. 17-25 (independent English translation availabe on the HaMoked website http://www.hamoked.org/items/160_eng.pdf). See also HCJ 1661/05 **Hof Azza Local Council v. Israeli Knesset**, judgment issued June 9, 2005, paras. 7-12.

7 See for example, HCJ 10356/02 and 10497/02, **Yoav Hass et al. v. the IDF Commander in the West Bank et al.**, judgment issued March 4, 2004, para. 8 (independent English translation available on the HaMoked website http://www.hamoked.org/items/8240_eng.pdf).

8 Ibid., para. 22; for more on the Supreme Court's interpretation of Article 43 of the Hague Regulations, see **Unprecedented: A Legal Analysis of the Report to Examine the Status of Building in the Judea and Samaria Area [the West Bank] ("The Levy Committee") – International and Administrative Aspects**, Yesh Din and the Emile Zola Chair for Human Rights, the Haim Striks School of Law, the College of Management Academic Studies, January 2014, pp. 13-15 and Appendix A (appears only in Hebrew version, pp. 54-98); (see there further rulings by the Supreme Court, HCJ 337/71, **Al-Jam'iya al-Masihiya lil-Aradi al-Muqadasa (The Christian Holy Places Society) v. Minister of Defense**, from 1972 (labor dispute, application of Jordanian law); HCJ 256/72, **Jerusalem District Electric Company Ltd. v. Minister of Defense**, from 1972 (electricity supply by the Israel Electric Company to Hebron); HCJ 302/72 **Abu Hilu v. Government of Israel et al**. from 1973 (removal of Bedouin tribes from their land in the Rafah Approach); HCJ 69/81 **Basel Abu 'Eita v. Commander of the Judea and Samaria Area** from 1983 (taxation on goods and services in the West Bank); HCJ 9961/03 **HaMoked: Center for the Defence of the Individual et al. v. Government of Israel et al**. from 2011 (revocation of closure of the area between the separation wall and the Green Line); HCJ 548/04 **Amana**

The Court also asserted that its examination and assessment of the sources for the powers the military commander has in the occupied territory and how these powers are exercised are rooted in the rules of customary international law and Israeli administrative law, in other words, the rulings of the High Court of Justice (HCJ). The Court added, in a somewhat optimistic tone, that these rules accompany every Israeli soldier: "In this respect it could be said that every Israeli soldier carries with him, in his backpack, the rules of customary international public law concerning the laws of war and the fundamental principles of Israeli administrative law."[9]

In 2002, The State Attorney's Office informed the Supreme Court, on behalf of the military, that "the IDF sees itself as bound by the rules of humanitarian law, not only because these rules are binding under international law, but also because they are required by morality itself, and even due to utilitarian reasons."[10] The Supreme Court continued with its interpretation of Regulation 43 and, in 2004, established "general the principles that should guide" the military and the police in their efforts to guarantee public order and safety as required by Article 43 of the Hague Regulations. According to these principles, the occupying power must enforce the law both in terms of crime prevention and in terms of enforcement after the fact, through investigation and prosecution.[11]

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v. IDF Commander in the Judea and Samaria Area (evacuation orders against outposts); HCJ 7957/04 **Mara'abe v. the Prime Minister of Israel et al**. from 2005 (residents of villages in the Alfei Menasheh enclave regarding the legality of the separation wall); HCJ 1661/05 **Hof Azza Local Council et al. v. Israeli Knesset et al**. from 2005 (legality of the disengagement plan); HCJ 3103/06 **Shlomo Valero v. State of Israel** (request to consider land purchased in Hebron prior to the establishment of the State of Israel as having been seized by Israel following the occupation); HCJ 3969/06 **Head of Deir Samit Village Council Muhammad 'Abed Mahmoud al-Harub v. Commander of IDF Forces in the West Bank et al**. from 2009 (ban on Palestinian pedestrian and vehicular traffic on a road); HCJ 2150/07 **Ali Hussein Mahmoud Abu Safiyeh, Beit Sira Village Council Head et al.v. Minister of Defense et al**. (closure of Road 443 for Palestinian traffic); HCJ 281/11 **Head of Beit Iksa Local Council et al v. Minister of Defense** from 2011 (seizure of West Bank land for the purpose of building a railroad).

9 HCJ 393/82 **Jam'iyat Iskan al-Mu'allimin v. Commander of the IDF Forces in Judea and Samaria**, judgment issued on December 28, 1983, para. 33; see also paras. 17-25 (independent English translation availabe on the HaMoked website http://www.hamoked.org/items/160_eng.pdf).

10 HCJ 2936/02, 2941/02 **Physicians for Human Rights et al. v. the Commander of the IDF Forces in the West Bank et al.**, judgment issued April 8, 2002 (official English translation available on the Judicial Authority Website http://elyon1.court.gov.il/files_eng/02/360/029/L02/02029360.l02.htm). In September 2014, the MAG Corps posted its own interpretation for Article 43 on its website, whereby "The OC Central Command, acting as the Commander of the IDF in Judea and Samaria, is responsible for upholding public order and safety in the Area (http://www.mag.idf.il/163-6843-he/Patzar.aspx?pos=23 in Hebrew).

11 HCJ 9593/04 **Murar v. IDF Commander in Judea and Samaria**, judgment issued June 26, 2006, par. 33, p.25 (official English translation available on the Judicial Authority website http://elyon1.court.gov.il/files_eng/04/930/095/n21/04095930.n21.pdf), HCJ 4764/04 **Physicians for Human Rights et al. v. IDF Commander in Gaza**, dated May 30, 2004, par. 10 (official English translation available on the Judicial Authority website http://elyon1.court.gov.il/

ARTICLE 4 OF THE FOURTH GENEVA CONVENTION: PROTECTED PERSONS

The duty to protect civilians in the occupied territory is also anchored in the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949, known as the Fourth Geneva Convention. This Convention significantly expands the protections afforded to civilians residing in an occupied territory, to whom it refers as "protected persons" and strives to strike a more appropriate balance between the military needs of the occupying power and the humanitarian interests of the local population in view of the traumatic experiences of World War II.

The central article in the Geneva Convention, which deals with arrangements regarding "protected persons" is Article 4, which asserts that "Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."[12]

In addition, Article 27 of the Convention establishes the principle of humane treatment and asserts that Protected persons are entitled, "in all circumstances, to respect for their persons, their honor…They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof." Article 32 adds a prohibition against "taking any measure of such a character as to cause the physical suffering or extermination of protected persons."[13]

The Convention and its Additional Protocols – Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), both dated June 8, 1977 – were ratified by a decisive majority of world nations and their provisions are therefore recognized as customary law which is binding on Israel. Nevertheless, the Supreme Court noted that even though Israel is party to the

Files_ENG/04/640/047/A03/04047640.a03.pdf).

12 The full text of the Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949 is available on the ICRC website https://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=78EB50EAD6EE7AA1C12563CD0051B9D4.

13 Ibid., for the ICRC commentary on this Article, see https://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleUNID=78EB50EAD6EE7AA1C12563CD0051B9D4.

Convention, its provisions have not been incorporated into its domestic law. Despite this, the Convention's "customary provisions constitute part of the law of the State of Israel…" and "Israel honors the humanitarian provisions of that convention." The Court added that "We are aware that the Advisory Opinion of the International Court of Justice (regarding the question of the legality of the construction of the separation wall, E.H.) determined that The Fourth Geneva Convention applies in the Judea and Samaria area, and that its application is not conditional upon the willingness of the State of Israel to uphold its provisions," but that the Court was not required to take a position on the matter given that "the government of Israel accepts that the humanitarian aspects of The Fourth Geneva Convention apply in the area."[14]

The Supreme Court also recognized that Article 27 of the Geneva Convention is "The basic injunction of international humanitarian law applicable in times of combat," and even defined the military commander's obligations in accordance with it: [E]verything must be done in order to protect the lives and dignity of the local inhabitants.

> The duty of the military commander, according to this basic rule, is twofold. First, he must refrain from operations that attack the local inhabitants. This duty is his 'negative' obligation. Second, he must carry out acts required to ensure that the local inhabitants are not harmed.[15]

In interpreting this provision, the Court noted that the settlers residing in the occupied territory are not considered protected persons, but asserted that "in all matters related to the need to safeguard the security of the area and the security of the population in it, the powers of the commander of the area apply to all people present in the area at any given time. This finding is inevitable given the clear, well-known duty of the commander of the area to maintain security in the area and his responsibility for upholding public safety therein."[16]

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14 HCJ 7957/04 **Zaharan Yunis Muhammad Mara'abe et al. v. The Prime Minister of Israel et al.**, judgment issued September 15, 2005, para. 14 (official English translation available on the Judicial Authority website http://elyon1.court.gov.il/files_eng/04/570/079/A14/04079570.a14.htm); see also, Ben-Naftali and Shani, **International Law**, pp. 130-133; see also 393/82 **Jam'iyat Iskan al-Mu'allimin v. Commander of the IDF Forces in Judea and Samaria**, judgment, HCJ 769/02 **The Public Committee against Torture in Israel v. The Government of Israel**, judgment issued December 14, 2006, par. 20 (official English translation available on the Judicial Authority website http://elyon1.court.gov.il/files_eng/02/690/007/A34/02007690.a34.htm).

15 HCJ 4764/04 **Physicians for Human Rights et al. v. IDF Commander in Gaza**, dated May 30, 2004, par. 11 (official English translation available on the Judicial Authority website http://elyon1.court.gov.il/Files_ENG/04/640/047/A03/04047640.a03.pdf).

16 HCJ 2612/94 **Ibrahim Sha'er v. IDF Commander in the Judea and Samaria Area**, IsrSC 48(3), 675, 679; see also,

INTERNATIONAL HUMAN RIGHTS LAW: THE RIGHT TO SECURITY OF PERSON

In addition to the rules of international humanitarian law which directly address Israel's duties as the occupying power, the rules of international human rights law lay out the "equal and inalienable rights of all members of the human family."[17]

International human rights law includes, inter alia, the 1948 Universal Declaration of Human Rights; the UN International Covenant on Civil and Political Rights (1966) and the UN International Convention on Economic Social and Cultural Rights (1966). Israel signed these conventions and ratified them in 1991. Article 3 of the Universal Declaration of Human Rights, 1948 and Article 9 of the International Covenant on Civil and Political Rights, 1966 state that everyone is entitled to "security of person."

Israel has stated its position, in both domestic and international forums, that this area of law applies only within the borders of the state and only in times of peace, as opposed to the occupied territories and times of armed conflict. This positon is incongruent with the object and purpose of human rights treaties,[18] and has been rejected by the international legal community, which holds the view that human rights law does apply in the territories Israel occupies.[19] In some of its rulings, the HCJ determined that these conventions could

HCJ 1661/05 **Hof Azza Local Council v. Israeli Knesset**, judgment issued June 9, 2005; HCJ 3680/05, **Tene Local Council v. Prime Minister Ariel Sharon et al.**, judgment issued February 1, 2006; HCJ 2577/04 **Taha al-Hawaja v. Prime Minister et al.** judgment issued July 19, 2007; see also HCJ 281/11 **Head of Beit Iksa Local Council v. Minister of Defense**, judgment issued September 6, 2011, para. 26 (independent English translation available on the HaMoked website http://www.hamoked.org/files/2012/115140_eng.pdf).

17 The Universal Declaration of Human Rights, Preamble, http://www.un.org/en/documents/udhr/.

18 "Object and purpose" is a prime interpretative principle in international law. See: Vienna Convention on the Law of Treaties, art. 31, http://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf.

19 UN bodies overseeing the enforcement of human rights treaties repeat this position in their reports. The International Court of Justice (ICJ) in the Hague has also ruled that human rights law is not suspended during times of war, but applies in full, within the confines of existing circumstances. In its advisory opinion regarding the separation wall, the ICJ examined the applicability of the conventions in the West Bank and Israel's international obligations, and found that given that Israel is the sole acting sovereign in the area, it is obligated to uphold the human rights of the Palestinian residents. See: "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory," http://www.icj-cij.org/docket/index.php?p1=3&p2=4&case=131&p3=4, Advisory Opinion of 9 July, 2004 ICJ Reports (2004), p. 136, at pp. 177-181; "Legality of the Threat of Use of Nuclear Weapons," Advisory Opinion of 8 July 1996, ICJ reports (1996), p. 226, at pp. 240. We note that the Supreme Court of Israel ruled that the ICJ is the supreme judicial authority on international law, see HCJ 7957/04 **Zaharan Yunis Muhammad Mara'abe et al. v. the Prime Minister of Israel et al.**, judgment issued September 15, 2005, para. 56 (official English translation available on the Judicial Authority website http://elyon1.court.gov.il/files_eng/04/570/079/A14/04079570.a14.htm).

be presumed to apply and that both individual and collective fundamental rights remain in effect in time of war as well.[20] In a ruling on the ban imposed on Palestinian travel on Road 443, in the West Bank, the HCJ ruled:

> The principal norms that apply to a territory under belligerent occupation are the Regulations Respecting the Laws and Customs of War on Land of 1907, appended to the Fourth Hague Convention of 1907 […] which reflect customary international law […]. […]. At the same time, the provisions of international law that apply to international armed conflict are also anchored in the Geneva Convention (IV) […] the customary provisions of which became part of the legal system of the State of Israel; and in the Protocol Additional to the Geneva Conventions […] (Protocol I) […]; although Israel is not a party to the First Protocol, its customary provisions have also become part of Israel's legal system. In addition, wherever a lacuna exists in the aforesaid laws of armed conflict, it may be filled by provisions of international human rights law.[21]

In the judgment issued in the Deir Samit affair, a case that revolved around a ban on Palestinian traffic on the Beit 'Awwa-Dura road, the Court reiterated its position that the powers of the military commander in the occupied territory emanate from the rules of international law and that "it is possible, at times, to supplement the humanitarian provisions from international human rights law:"

> As for the human rights of the local population, there is no dispute that the military commander must respect, protect and facilitate the realization of the spectrum of human rights vested in the local residents, subject to imperative security necessities (see for example, Article 27 of the Fourth Geneva Convention; Regulation 46 of the Hague Regulations; see also the principles guiding our judgments according to the International Convention on Civil and Political Rights.[22]

20 HCJ 7957/04, judgment, para. 56.

21 HCJ 2150/07 **Abu Safiyeh, Beit Sira Village Council Head et al. v. Minister of Defense et al.**, judgment issued December 29, 2009, para. 16 (official English translation available on the Judicial Authority website http://elyon1.court.gov.il/files_eng/07/500/021/m19/07021500.m19.htm).

22 HCJ 3969/06 **Head of Deir Samit Village Council Muhammad 'Abed Mahmoud al-Harub v. Commander of IDF Forces in the West Bank et al.**, judgment issued October 22, 2009, para. 10, 17 (independent English translation available on the HaMoked website http://www.hamoked.org/files/2011/1294_eng.pdf).

CHAPTER 2:

POLICING AND LAW AND ENFORCEMENT POWERS GRANTED TO THE ARMY

In addition to the military's responsibilities as the occupying power under the rules of international law and HCJ judgments, the law applicable in the West Bank, which includes both military law and all the powers of the Jordanian government which ruled the West Bank before the occupation, clearly lays out the policing and law and order enforcement powers vested in the military and its personnel.

Three days into the 1967 War, immediately after the conquest of the West Bank and even before the war ended, the Commander of IDF forces in the West Bank issued a proclamation regarding administration and judicial arrangements which transferred to him all the powers of the Jordanian government "in order to enable the existence of sound government, security and public order."[23] The Defence (Emergency) Regulations, 1945, which were in force in the West Bank at the time of Jordanian rule, allowed any member of the government's forces to arrest anyone who violated, or was reasonably suspected of violating, these regulations.[24]

Later, the Military Order regarding Security Provisions in the West Bank expanded the policing powers granted to the soldiers and defined them as including powers to detain, arrest and search the personal effects of a suspect if the soldier has "a reasonable basis to suspect that a person has committed […] or is about to commit an offense that is liable to endanger the well-being or security of a person, public safety, or the security of the Area."[25] The military order defined the crimes soldiers were expected to prevent, including manslaughter; assault; assault on a soldier; deliberate damage to property;

23 **Proclamation No. 2** - Proclamation Regarding Regulation of Administration and Law, June 7, 1967, signed by Maj. Gen. Haim Herzog, IDF Commander in the West Bank (independent English translation available on the No Legal Frontiers website http://nolegalfrontiers.org/military-orders/mil03?lang=en).

24 Government's forces, or as in the original British Mandate version of the law, His Majesty's Forces, refers to any "sea, land or air forces, […] and includes any part of such Forces." Full text: http://nolegalfrontiers.org/military-orders/mil02?lang=en.

25 Order regarding Security Provisions [Incorporated Version] (Judea and Samaria) (No. 1651) 2009, signed by Colonel Sharon Afek, LA-JS, secs. 21-28 (independent English translation availabe on the No Legal Frontiers website http://nolegalfrontiers.org/en/military-orders/il01). This Order consolidates all valid security orders in the West Bank.

action detrimental to public order, which is defined as "anyone who commits an act that harms or may harm public order or safety;" threats and insults.[26]

At present, the military's position is that "soldiers operating in the Judea and Samaria Area have broad powers to carry out their missions, including in terms of law enforcement… Hence, IDF soldiers are instructed to use their powers generally, and particularly in situations that require them to respond immediately, whether because of their specific mission or because of their presence in a certain area, to enforce the law in Judea and Samaria with regard to any incident that they encounter and which they can influence. This includes incidents of violence on the part of extremist groups, terrorism, "price tag" incidents and other nationalist-motivated crimes.[27] The position of the MAG Corps is that "the military's orders and operating procedures establish a duty on the part of IDF forces to take all necessary measures to prevent or stop any sort of crime."[28]

Two months after the occupation of the West Bank, the military's policing and law enforcement powers were delegated to the police as well, including the Border Police, by military order that granted "every officer and commanding officer of the Israel Police force operating in the Area" all law enforcement powers vested in soldiers and placed them "under the command of the commander of IDF forces in the Area."[29]

As clarified later in the report, other than the official, legal decree that every soldier is vested with law enforcement powers, military commanders do not properly prepare soldiers for policing and law enforcement missions vis-à-vis Israeli civilians – settlers and others – and try to pass the responsibility on to the Israel Police. This is the case despite the military's clear advantage over the police in the West Bank: It has more personnel, more and a greater variety of weapons, wider deployment in the area and better response and access capabilities. The military is also trained to act as a police force when it comes to suppressing public disturbances and protests by Palestinians. In that capacity, the military uses crowd control weapons and live ammunition, even if the protest is not violent.[30] Furthermore, the

26 Ibid., secs 210, 211, 236, 247, 249 and 250.

27 See Affidavit of Lieut. Col. Kfir, Operations Officer at Judea and Samaria Division, dated January 19, 2015, enclosed in Notice and Response on behalf of the Defendant to the Jerusalem Magistrates Court, Israel, in the claim filed by Fadel Hamad Mahmoud Amour, CC 61685-06-13.

28 Letter from Military Advocate for Operational Matters with the Military Advocate General (MAG) Corps, Lieut. Col. Adoram Riegler, to Atty. Emily Schaeffer Omer-Man of Michael Sfard Law Office, February 14, 2015.

29 Order regarding Police Forces Operating in Cooperation with the IDF (the West Bank Area) (No. 52), July 14, 1967, signed by Maj. Gen. Uzi Narkis, OC Central Command and IDF Commander in the West Bank.

30 See B'Tselem report, **Show of Force: Israeli Military Conduct in Weekly Demonstrations in a-Nabi Saleh**,

fact that the SJ (Samaria Judea) District Police is subordinate to the Military Commander of the West Bank, coupled with security conditions in the West Bank, create dependency on the military in many police operations, especially ones in areas close to Palestinian towns and villages, where the police require a military escort which sometimes does not arrive in a timely fashion and sometimes does not arrive at all.[31]

Furthermore, the military's senior command understood, from the very early days of the settlement enterprise, that the government prefers to reach understandings with settlement leaders and cooperate with them rather than enforce law and order in the OPT. Therefore, they refrained from giving orders to enforce the law on settlers, including with respect to the military's own orders. Senior officers who did try to enforce the law on settlers, for example OC Central Command Amram Mitzna (1987-1989) or the head of the Civil Administration, Brig. Gen. Ilan Paz (2003-2005), were marked as enemies of the settlers and settlement leaders lobbied for their dismissal. Paz said, "I didn't do what they expected me to do. Everything turned personal. I was marked by the settlers as someone who was leading a policy directed against them. They told me throughout the entire time: You aren't playing by the rules. You're going to get it."[32]

Military and police leaders have never managed to establish efficient cooperation and a proper division of labor between them in terms of law enforcement. This situation persisted even after, in 1998, the Attorney General published a detailed procedure that attempted to spell out the division of labor between the military and the police with respect to law enforcement vis-à-vis Israeli civilians (the AG procedure).[33] In 1991, before the AG

(September 2011), http://www.btselem.org/publications/fulltext/201109_show_of_force, **Crowd Control: Israel's Use of Crowd Control Weapons in the West Bank** (December 2012), http://www.btselem.org/publications/summaries/201212_crowd_control.

31 Despite the fact that the ratio of officers per capita in the SJ District Police is higher than the ratio inside Israel. According to the Israel Police website, the SJ District Police has 1,175 officers. The population of the West Bank comprised 356,500 settlers (per the Israel Central Bureau of Statistics, at the end of 2013) and 2.79 million Palestinians (as per the Palestinian Central Bureau of Statistics, as of July 2014, throughout the entire West Bank, including Area A, which is under Palestinian security control). I.e., the ratio in the West Bank is 2.7 officers per 1,000 residents. In 2010, the ratio in Israel was 2.2 officers per 1,000 residents. See, Tani Goldstein, "International Comparison: Israel Leaves its Citizens Defenseless," **Ynet**, December 18, 2010 (Hebrew); Gilad Natan, "Police Roles and Human Resources – Comparative Review," Knesset Research and Information Department, March 21, 2007.

32 Idith Zertal, Akiva Eldar, **Lords of the Land: The War Over Israel's Settlements in the Occupied Territories 1967-2007**, (originally published in Hebrew by Dvir Publishing House, 2004, translated into English and published by Nation Books New York, 2007) (hereinafter: Zertal & Eldar) pp. 375-376, 410, 413 (Hebrew version). See reference to Mitzna in Zertal & Eldar, pp. 149, 389-391, 396 (Hebrew version). Paz spoke to Amos Harel, "Left just in time," **Haaretz**, August 16, 2005 (Hebrew).

33 Attorney General, **Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and**

procedure was published, then-Police Commissioner Yaacov Turner accused the army of disrupting police operations. In November 1993, then-Police Minister Moshe Shahal expressed his opinion before the Knesset Constitution, Law and Justice Committee that the police were present in the West Bank merely as a "signpost" and that "it is not possible to enforce the law" with the human resources available to the police.[34] In 2013, 15 years after the publication of the AG procedure, the State Comptroller found "deficiencies in the coordination between IDF forces and the police, which may compromise law enforcement in the Judea and Samaria Area."[35] Recently, an interrogation officer with the SJ District Police told Yesh Din staff members that army forces do not understand their role as enforcers of law and order. He said that "the lower ranks, from private to company commander, see themselves as defenders of the settlers." According to the officer, soldiers do not consider public disturbances by Israeli civilians as criminal incidents and lack any motivation to stop such incidents.[36]

In the twenty years since the SJ District Police was established in 1994, it has gained notoriety for its chronic failure in all areas of operation, including investigations marked by negligence on the part of investigators and failure to perform the most basic investigative procedures when it comes to crime by Israeli civilians.[37] The District's limited resources, its relatively small force, the poor quality of its investigations and the fact that it directs its efforts and resources toward security offenses by Palestinians deprive the SJ District Police of the ability to efficiently and consistently enforce the law on Israeli civilians who harm Palestinians.

On paper, and when it comes to making declarations, the military is prepared for dealing with violence on the part of civilians and its forces are directed and briefed on how to act in such incidents, in a manner that should forestall the occurrence of soldiers standing idly by. The mission of the Central Command, which is in charge of the West Bank, as detailed in the command operational concept for routine security, includes enforcing law and order

Samaria Area and in the Gaza Strip Area, Introduction and General, August 17, 1998 (Hebrew).

34 **Report of the Commission of Inquiry into the Massacre at the Tomb of the Patriarchs in Hebron**, 1994, Jerusalem (the Shamgar Commission), pp. 185, 191, (Hebrew), (hereinafter: the **Shamgar Report**).

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

36 Conversation with an SJ District Police officer, September 18, 2011, quoted in **Road to Dispossession**, p. 91.

37 See Yesh Din data sheets: **Police investigations of vandalization of Palestinian trees in the West Bank, monitoring data**, 2005-2013 (October 2013); **Law Enforcement on Israeli Civilians in the West Bank, 2005-2013** (July 2013); Yesh Din reports: **Road to Dispossession**, pp. 90-118; **A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank** (June 2006) and **Mock Enforcement – The Failure to Enforce the Law on Israeli Civilians in the West Bank** (May 2015), (hereinafter: **Semblance of Law** and **Mock Enforcement**).

and securing normal civil life. The standard operating procedure for the IDF's Judea and Samaria Division, which addresses the conduct required of a force that arrives at the scene of an incident, whether terrorist or criminal, states, inter alia, that the force must separate and arrest those involved; it must secure the scene and any secondary scenes; and it must not move or touch any objects.[38] The military also maintains that in order to prevent their troops from standing idly by and doing nothing, they are given readers, lectures and workshops in which incidents are analyzed. According to the IDF Spokesperson, "These lectures begin at the early first stages of training, continue when forces arrive at a new operational area and end with periodic updates while the forces are stationed in the area."[39]

However, a closer look reveals that the training and instruction the military claims to give its soldiers on handling violent incidents involving Israeli civilians is limited. Training is usually offered in single, stand-alone sessions, where the message conveyed is that the police is responsible for law enforcement. Whatever training the soldier do receive on law enforcement is not backed in clear, comprehensive standing orders that set out the sequence of actions they are required to take in such incidents.

The military also refrains from incorporating the practice of standing idly by in the face of violent incidents as a punishable offense that requires disciplinary or criminal action in the Military Justice Law, even if only as part of soldiers' duty to enforce the law in their capacity as public servants. Such duty includes protecting victims and their property in real time by putting an end to the offense and detaining and arresting suspected offenders. The army's official code of ethics also fails to address situations in which soldiers or officers do nothing in the face of a violent incident.[40]

According to the Military Advocate for Operational Matters with the Military Advocate General (MAG) Corps, Lieut. Col. Adoram Riegler, soldiers who stand idly by and do not prevent crimes against Palestinians or their property may be charged under a number of offenses included in the Military Justice Law or in the Penal Code, including failure to prevent a crime, failure to uphold binding military orders, unbecoming conduct and even

38 State Comptroller, **Report 63B**, July 17, 2013, p. 138 (Hebrew). See also OC Central Command background page on the IDF Spokesperson website, which notes that the Central Command "enforces law and order in its region," http://dover.idf.il/IDF/units/pikudim/08/default.htm (Hebrew).

39 Letter from Military Advocate for Operational Matters with the MAG Corps, Lieut. Col. Adoram Riegler to Atty. Emily Schaeffer Omer-Man of Yesh Din's Legal Team, February 14, 2015.

40 IDF Code of Ethics, available at: http://www.idfblog.com/about-the-idf/idf-code-of-ethics/.

aiding the primary offender. But Riegler also admits that not a single soldier has been prosecuted for these offenses to date.[41]

It is also worth noting that willful failure by a public servant to perform a duty imposed on him or her by law is considered a criminal offense under Israel's Penal Code, punishable by three years' imprisonment. However, convictions under this section are rare.[42]

41 Letter from Military Advocate for Operational Matters with the MAG Corps, Lieut. Col. Adoram Riegler to Atty. Emily Schaeffer Omer-Man of Yesh Din's Legal Team, February 14, 2015.

42 Penal Code, 1977, sec. 285 regarding failure to perform official duty: "A public servant who willfully avoids fulfilling a duty imposed upon him by law shall be sentenced to three years' imprisonment, unless fulfilment of the duty involves danger exceeding that which a person with ordinary physical force and stamina can withstand." See Tel Aviv Jaffa District Court case C 40216/00 **State of Israel v. Yizhak Cohen et al.**, judgment issued February 17, 2002. In this case, a police officer was convicted under the section for having failed to report to his superiors about after-parties held in Tel Aviv night clubs, despite knowing that these parties involved narcotics. In another case, 009705/00 **State of Israel v. Kalif Shlomo et al.**, the Tel Aviv District Court convicted a police officer of accepting bribes and failing to perform his duties and sentenced him to a fine of NIS 1,000 or 60 days' incarceration in lieu, judgment issued November 14, 2002.

CHAPTER 3:

THE MILITARY'S FAILURE TO ADDRESS CRIMINAL ACTIVITY BY ISRAELI CIVILIANS AND THE ENTRENCHMENT OF STANDING IDLY BY

Israeli soldiers' practice of standing idly by during violent incidents in which Israeli civilians attack Palestinians or their property is a manifestation of one aspect of Israel's complacency with respect to the entire settlement enterprise, from its very outset, as part of which all Israeli law enforcement agencies show tolerance for and turn a blind eye to the various types of offenses perpetrated by Israeli civilians throughout the West Bank.[43]

As previously stated, the practice of standing idly by has existed since the very beginning of the settlement enterprise and is documented in dozens of publications on violence by Israeli civilians against Palestinians issued by official Israeli institutions, Israeli and international human rights organizations and by the UN, including the Security Council.[44] Institutional tolerance for settler criminal activity goes back to 1968, the early days of the Jewish settlement in Hebron, in a pattern that has influenced the approach taken by all law enforcement authorities over five decades of occupation. On May 1969, just 13 months after the establishment of the settlement inside Hebron, this pattern of tolerance was reflected in a government resolution "that all possible influence will be exerted upon

43 See Yesh Din reports: **Semblance of Law, Too Little Too Late: Supervision by the Office of the State Attorney over the investigation of offenses committed by Israeli civilians against Palestinians in the Occupied Territories** (July 2008); **Tailwind: Non-enforcement of judicial orders, foot dragging and the retroactive legalization of illegal construction in the occupied Palestinian territories** (October 2011), **Road to Dispossession; The Lawless Zone The Transfer of Policing and Security Powers to the Civilian Security Coordinators in the Settlements and Outposts** (June 2014), **Mock Enforcement** (May 2015), Yesh Din data sheets: **Law Enforcement on Israeli Civilians in the West Bank, 2005-2013** (July 2013); **Police investigations of vandalization of Palestinian trees in the West Bank, monitoring data**, 2005-2013 (October 2013). See also, B'Tselem reports: **Standing Idly By: Non-enforcement of the Law on Setters, Hebron 26-28 July, 2002** (August 2002); **The Ofra Settlement – An Unauthorized Outpost** (December 2008); **Foul Play Neglect of Wastewater Treatment in the West Bank** (June 2009), pp. 7-18; **By Hook and by Crook Israeli Settlement Policy in the West Bank**, (July 2010) pp. 30-33; **Dispossession and Exploitation Israel's Policy in the Jordan Valley and Northern Dead Sea**, (May 2011) pp. 37-38.

44 United Nations Security Council, Resolution 471, S/RES/471 (1980), 5 June 1980; United Nations Security Council Resolution 904 (1994) Adopted by the Security Council at its 3351st meeting, on 18 March 1994; See also: Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, Human Rights Council, United Nations, A/hrc/22/63, 7/2/13, p. 12-13; See also Position Paper submitted to the above fact finding mission, November 6, 2012, pp. 4-6.

the settlers to uphold order in Hebron in accordance with the commands of the military government."[45]

Ever since then, the Hebron settlement set the tone for the turbulent relationship between the settlers and the Palestinian residents of the city. It is where the military's pattern of response crystalized: the military refuses to enforce its powers as a law enforcement agency as far as Israeli civilians are concerned, allows the settlers to establish facts on the ground, stands idly by when Palestinian residents of Hebron try to resist settler violence and intervenes only to protect settlers from the potential threat of violence. In this the army acts as the settlers' agent, helping to drive Palestinian residents away from their properties, homes and businesses.[46]

Since the establishment of the Hebron settlement and throughout the years, violence by Israeli civilians against Palestinians has won rabbinic approval and the support of prominent settler leaders. During the first and second intifadas, the violence escalated to the point of organized pogroms against Palestinians, which also included harassment of soldiers. Settlers went so far as taking the law into their own hands and issuing their own open-fire regulations, without military approval.[47] In March 2013, the Israel Police established a Nationalistic Crime Unit in the SJ District Police, tasked with "Jewish nationalistic crime against Palestinians and other minorities."[48]

The military is aware of the widespread occurrence of soldiers standing idly by. According to the Military Advocate for Operational Matters, Lieut.-Col. Adoram Rigler, "Unfortunately, despite the many efforts invested in this matter, there are still incidents of 'standing idly by.'" [49] But through the years, as expounded below, military leaders have consistently evaded

45 See, **Shamgar Report**, p. 177, referring to a government resolution passed on May 4, 1969, following an incident at the Tomb of the Patriarchs on April 23, 1969. The Jewish settlement of Hebron was established on April 11, 1968 at the Park Hotel in the city. On May 21, 1968, the settlers were transferred to the Hebron military government building. See Kiryat Arba Local Council website http://www.kiryat4.org.il/?CategoryID=402 (Hebrew).

46 Zertal & Eldar, pp. 38-39 (Hebrew version); see also B'Tselem report: **Ghost Town Israel's Separation Policy and Forced Eviction of Palestinians from the Center of Hebron** (May 2007), pp. 9-12: http://www.btselem.org/sites/default/files/publication/200705_hebron_eng.pdf.

47 Zertal & Eldar, pp. 144, 151-153, 36-372, 501, 517-518 (Hebrew version). See also, B'Tselem report: **Law Enforcement vis-a-vis Israeli Civilians in the Occupied Territories**, (March 1994) http://www.btselem.org/publications/summaries/199403_law_enforcement.

48 See Affidavit of Superintendent Erez Amoyal, Head of Questioning, Nationalist Crime Unit, December 8, 2014, enclosed in Notice and Response on behalf of the Defendant to the Jerusalem Magistrates Court, Israel, in the claim filed by Fadel Hamad Mahmoud Amour, CC 61685-06-13. For more, see **Mock Enforcement**, p. 26.

49 Letter from Military Advocate for Operational Matters with the MAG Corps, Lieut. Col. Adoram Riegler to Atty. Emily

their fundamental and central responsibility as the institution responsible for administering the occupied territory and maintaining law and order, as repeatedly established in Supreme Court decisions, and attempted to shift this responsibility onto the police.

THE PRACTICE OF SOLDIERS' STANDING IDLY BY TAKES ROOT

1982: The Karp Report – Standing idly by is documented for the first time

Official government bodies began documenting soldiers' practice of standing idly by in the face of violent incidents initiated by Israeli civilians in the early 1980s.

In April 1981, a monitoring committee was established to investigate suspicions against Israelis in Judea and Samaria, headed by Deputy Attorney General Yehudit Karp, following an undertaking made by the State to the Supreme Court to enforce law and order against violent settlers living in Beit Hadassah in Hebron.[50] Through his military secretary, then-Prime Minister Menachem Begin ordered the Coordinator of Government Activities in the Territories (COGAT) and the Commander of Judea and Samaria Area to "take aggressive action to prevent disturbances of public order and breaches of law" and to cooperate with the monitoring committee.[51]

One year later, the committee presented its report to the attorney general (the Karp Report). The report reviewed the serial failure in police operations, including the investigation of suspicions against violent settlers (which it called a "vicious circle"), and documented an event in which soldiers from Battalion 202 of the Paratroop Brigade witnessed an incident in which a pair of settlers from Kiryat Arba "willfully caused damage." The soldiers "did not stop the pair, did not arrest them for their actions and did not take down their information." The same report also stated that according soldiers' testimonies, the "confrontations were more between the army and the Jews from Kiryat Arba than between the army and Arabs."[52]

Schaeffer Omer-Man of Yesh Din's Legal Team, February 14, 2015.

50 HCJ 175/81 **Mustafa Anabi al-Natsheh et al v. the Minister of Defense et al.**, judgment issued 19 May, 1981, IsrSC 35(3) 361, 363 (independent English translation available on the HaMoked website: http://www.hamoked.org/files/2013/1158760_eng.pdf). Yehudit Karp is a member of Yesh Din's public council. In the judgment, the Court criticized police failures in an incident that took place in Beit Hadassah in Hebron, where settlers put a large hole through the ceiling of a Palestinian upholstery shop. See Zertal & Eldar, p. 485 (Hebrew version).

51 **Shamgar Report**, pp. 169-170.

52 Letter from Deputy Attorney General Yehudit Karp to the Attorney General regarding Report of Monitoring Team for the

The report of the monitoring committee included documentation of dozens of violent incidents involving settlers. It also emphasized that the approach taken by law enforcement authorities on this issue was declarative, without efforts toward consistent, thorough law enforcement action. The report pointed out that the Military Commander of the West Bank presented to the High Court of Justice the guidelines he had given the "Commanders' Forum" in April 1981, according to which "anyone who violates the law, Jew or Arab, will be dealt with in accordance with the law." The High Court was also told that instructions had been issued on this matter according to "orders issued by the Minister of Defense personally" and that the head of the High Court department in the State Attorney's Office had contacted all the authorities and stressed their duty to "make absolutely certain" that the State's undertakings regarding the enforcement of law and order "be completely upheld."[53] These instructions and undertakings were not incorporated into standing orders issued to the soldiers or mandatory operating procedures.

The report of the monitoring committee noted that despite these explicit undertakings, the actions of "officials inside the military government" completely contradicted their spirit. These officials intervened in police investigations of violent settlers in Hebron, pressed for the release of settlers suspected of violence and even promised to repair the damage caused by those settlers. The head of the Judea and Samaria Brigade even issued an order in March 1982 conferring authority to handle incidents in which shots fired by settlers struck Palestinians on the "military government" rather than the police. This order was rescinded due to intervention by the attorney general.[54]

The monitoring committee itself declined to make any recommendation regarding the issue of soldiers standing idly by and confined itself to recommending a "re-evaluation of the regulations governing possession of IDF issued firearms by civilians and their implications" and "establishing a clear line between the military and the settlers on the question of responsibility for the security of the area."[55] Atty. Karp informed the Shamgar Commission, which investigated the massacre of Muslim worshippers at the Tomb of the Patriarchs in

Investigation of Suspicions against Israelis in Judea and Samaria dated May 23, 1982, pp. 24-25 (hereinafter: **Karp Letter**) . The report itself was published only in 1984. See also Zertal & Eldar, pp. 486-488 (Hebrew version).

53 HCJ 175/81 **Mustafa Anabi al-Natsheh et al v. the Minister of Defense et al.**, judgment issued April 29, 1981, in which it was noted that the HCJ Department Director at the State Attorney's Office, Dorit Beinisch, told the Court that "Measures have been taken to ensure law and order are upheld and the complaints made by the [Palestinian residents of Hebron, E.H.] against those holding the Beit Hadassah building will be addressed urgently and efficiently." See also **Karp Letter**, p. 2.

54 Ibid., pp. 28-29.

55 Ibid., p. 30.

February 1994,[56] that its recommendations were never seriously addressed and that its report "has been left on the shelf."[57]

The Shamgar Commission pointed out that following the monitoring committee's report, then-Attorney General Yitzhak Zamir did in fact approach Defense Minister Moshe Arens on May 16, 1983, and warned him of "a further deterioration" in maintaining law and order in the West Bank and proposed that "a declaration be issued" that law would be enforced "aggressively only by the official bodies responsible for doing so." However, the attorney general also declined to address the issue of soldiers standing idly by.[58] Then-MAG, Brig.-Gen. Dov Shefi agreed with the monitoring committee's "disheartening description" of the state of rule of law, but he too did not see fit to address the soldiers' practice of standing idly by, confining himself to an undertaking "to do everything possible to assist the competent officials [the Police, E.H.] to remedy the situation."[59]

In February 1984, seven months after the recommendation made by Attorney General Zamir, the government did in fact issue a declaration on the enforcement of law and order in the OPT, reiterating that this was the responsibility of "the IDF command, with the support of the Israel Police and the other security agencies operating pursuant to military legislation issued by IDF commanders." This declaration also refrained from directly addressing the issue of soldiers standing idly by.[60]

1988-1993: The First Intifada – The military places the responsibility for the enforcement of law and order on the police

Even the waves of settler attacks on Palestinians during the first intifada, frequently while soldiers stood idly by, did not induce the army to draft orders and mandatory operating procedures to help counter this practice, although senior military commanders did warn about the gravity of the situation. In March 1988, for example, four months after the beginning of the first intifada, the head of the international law branch in the MAG Corps, speaking on behalf of the MAG, cautioned that there was "a surge of illegal activity by

56 An official commission of inquiry chaired by former Supreme Court President Meir Shamgar. The commission was appointed following the massacre committed by Baruch Goldstein at the Tomb of the Patriarchs in Hebron on February 25, 1994. Goldstein murdered 29 Palestinian worshippers and injured 125 more. The commission's report was handed to the government in June 1994.

57 **Shamgar Report**, p. 173.

58 Ibid., p. 174-176.

59 Ibid., p. 176.

60 Ibid., sec. B of the Policy Statement approved by the government on February 5, 1984, pp. 177-178.

Israeli citizens against local residents as part of Israelis' 'vigilante' activity,'' and pointed out "the urgent need to act with determination to impose law and order on all residents of the Territories, including Israelis." The head of the international law department, like others before him, also failed to mention the soldiers' duty to exercise their powers to prevent this illegal activity.[61]

It was only in May 1989, six months after the first intifada broke out, that the monitoring committee headed by Atty. Karp first discussed the issue of soldiers standing idly by or, as the committee put it, "the issue of the capacity to cope with the new phenomenon of organized public disturbances by Israelis in Judea and Samaria, in circumstances in which the police does not fulfil the role of maintaining order and the body actually responsible for maintaining order is the military." At the end of the meeting, the committee stressed the importance of formulating procedures that would impose on the army, "given the absence of any other agency, some of the primary tasks of the police (such as arrest, initial documentation and collecting witnesses' names)." In a letter from Atty. Karp to the attorney general in 1989, she wrote that then-OC Central Command Amram Mitzna, who had met with the committee, pledged that "the army would take responsibility for executing primary police activities (arrest, initial statements, witness lists) regarding criminal actions perpetrated by Israelis in the presence of soldiers."[62]

OC Central Command Mitzna's pledge was not incorporated into binding orders or mandatory operating procedures. Atty. Karp expressed her concern that Maj.-Gen. Mitzna's pledge would not be fulfilled "because these are orders which by their very nature might arouse reservations among the soldiers who would have to carry them out" and because of Maj.-Gen. Mitzna's expected departure from his posting as OC Central Command. As feared, two months later, in July 1989, the head of the international law branch, Col. David Yahav, said, on behalf of the MAG, that the military objected to having its soldiers be made responsible for primary police activities out of concern that this may "embroil the IDF and its soldiers in highly controversial political matters and draw the security forces into the center of the political arena."[63] With this statement, the MAG Corps openly declared its preference for the default position whereby the military declines to fulfill its basic responsibility to enforce law and order with regard to Israeli citizens. In practice, this policy means that the military condones settler criminal activity and favors the interests of the settlement enterprise.

61 Ibid., the letter is from March 20, 1988.

62 Ibid., pp. 180-181.

63 Ibid., p. 184, Col. Yahav's letter is from July 26, 1989.

In keeping with this policy, as the Shamgar Commission discovered, in August 1989 the Central Command issued standing orders concerning "Coordination of Activities between the IDF and the Israel Police regarding Enforcement of Public Order in Judea and Samaria," which was meant to prevent, or at least reduce, soldiers' practice of standing idly by. However, the document was not widely circulated or familiar to all personnel stationed in the West Bank and it quickly fell out of use. According to the orders included in the document, soldiers arriving for active duty were to be instructed by the police. The document also included instructions to the soldiers on how to preserve a crime scene, detain and arrest suspects and seize objects until the arrival of police. Then-Attorney-General Michael Ben Yair told the Prime Minister, the Justice Minister and the Minister of Police that there were problems in the implementation of the procedure due to "insufficient communication between the operational and investigative personnel." The Shamgar Commission attributed these problems to the inexperience and lack of expertise of the soldiers responsible for the initial response to an incident prior to the arrival of the police, including their ability to "make the connection between the person arrested and the cause of his arrest."[64]

The foot-dragging with respect to law enforcement on violent settlers, coupled with the failure to address soldiers' practice of standing idly by was not the sole purview of senior Central Command officers, but afflicted all other ranks in the General Staff. It was only in January 1992, as the first intifada was waning, that the head of the international law branch in the MAG Corps, Col. Ahaz Ben-Ari, requested that the Central Command's standing orders be issued as a General Staff order. Almost two years later, in November 1993, the MAG presented a revised version of the order, entitled "Procedure for the Enforcement of Law and Order with respect to Israelis in the Areas" for approval by the head of the IDF operations division and stressed the urgent need for said approval "given incidents in Judea, Samaria and in Gaza involving Israelis."[65] That same month, Attorney General Michael Ben Yair warned the Prime Minister, the Minister of Defense, the Minister of Police and the Minister of Justice, about a serious deterioration in "the situation in the Territories" as a result of settler violence. Ben Yair stressed that "IDF forces must be briefed on how to provide a primary response to incidents, document them, preserve the scene for crime scene investigation, detain or arrest suspects and quickly deliver them to the police."[66] At the same time, the LA-JS, Col. Moshe Rosenberg, presented the MAG with a detailed list of suspected violent offenses committed by settlers which were documented by the military

64 Ibid., pp. 198-199. The letter of Attorney General Michael Ben Yair is from November 21, 1993. Michael Ben Yair is a member of Yesh Din's public council.

65 Ibid., pp. 185, 188-191.

66 Ibid., p. 190.

"such as shooting at Arab residents." However, there was no mention of any response to these violent incidents by the army.[67]

Eventually, in December 1993, the General Staff issued a temporary procedure, for a limited duration of three months, regarding the "Enforcement of Law and Order with regard to Israelis in Judea, Samaria and the Gaza Strip." The procedure specifies operational rules "for the soldier in whose presence an illegal act of violence by an Israeli against person or property is taking place or is about to take place." The procedure stressed, inter alia, that "a soldier will not use his weapon against an Israeli."[68] According to the testimony given to the Shamgar Commission by the Commander of the Judea Regional Brigade, Col. Meir Kalifi, the procedure "was not passed down to the soldiers in the field because it was complex, cumbersome and difficult to implement."[69]

1994: The Tomb of the Patriarchs Massacre – The military favors the settlers' interests

The Shamgar Commission to investigate the massacre at the Tomb of the Patriarchs in Hebron divided settler violence, or the "illegal activities of the Jewish residents," into three categories: "protests involving public disturbances, including blocking traffic arteries; wanton unarmed violence and attacks against Arabs (such as smashing windows and overturning vending stalls); random shootings and attacks using firearms." The committee concluded that the more severe the incident, the smaller the number of settlers who take part in it.[70]

The testimonies of officers and soldiers before the Shamgar Commission highlighted how vague the General Staff temporary procedure on law enforcement against Israelis in the OPT had been, and how obscurely and inconsistently it had been interpreted by the most senior command in the West Bank. According to these testimonies, the "command ethos" that emanated from the most senior command again favored the protection of the settlers

67 Ibid., p. 192. Col. Rosenberg noted in his letter of November 11, 1993 that "there are operations log reports regarding serious acts such as shooting at Arab residents, with respect to which no criminal file had been opened."

68 Ibid., Chapter 6, Open Fire Regulations, p. 206. See also Zertal & Eldar, p. 503 (Hebrew version). B'Tselem's report, **Law Enforcement vis-a-vis Israeli Civilians in the Occupied Territories**, quotes an interview Carmela Menasheh conducted with the commander of an elite unit in the Hebron sector on January 7, 1994, http://www.btselem.org/publications/summaries/199403_law_enforcement. The commander said that soldiers were not permitted to use tear gas against Jewish rioters.

69 **Shamgar Report**, p. 208.

70 Ibid., p. 197.

over the fulfilment of the military's basic duty to enforce law and order, even when the settlers commit violent crimes as serious as the massacre at the Tomb of the Patriarchs. These testimonies focused more on scenarios of confrontations between Israeli civilians and soldiers and less on violent confrontations between Israeli civilians and Palestinians.

A captain in the IDF reserves and the Deputy Commander of the Judea and Samaria District of the Border Police testified before the committee that the Commander of the Judea and Samaria Division, Shaul Mofaz, told them that even in cases where soldiers witnessed a massacre perpetrated by a settler, they were not allowed to use "intifada weapons against the settler," meaning live ammunition or crowd control weapons. According to these testimonies, Mofaz instructed soldiers not to shoot at settlers even if the settlers shoot at the soldiers. He went so far as saying, "As far as I'm concerned, you can hide until his magazine runs out." Responding to another question by one of the officers, OC Central Command Nehemia Tamari confirmed that in the case of a massacre, soldiers could "shoot at the feet" [of the perpetrator]. The previous Division Commander, Brig. Gen. Moshe Ya'alon, told the committee that "no one imagined … certainly no soldier, that a Jew would cause any harm, even to soldiers, to an Israeli soldier. Therefore, in cases of public disturbances, it was absolutely forbidden to open fire."

The Commander of the Judea Brigade, Col. Meir Kalifi, testified that "it is absolutely forbidden to fire" at settlers and that they must be stopped by other means. The Commander of a Border Police company in Hebron testified before the Shamgar Commission that Kalifi issued an order that "Under no circumstances is it allowed to shoot at a settler or a Jew from Hebron who commits a deliberate shooting […] He must be subdued using other means. For example, find cover and wait until he empties his magazine." The operations officer in the same Border Police company added that the brigade commander forbade using firearms or crowd control weapons against a settler "even if the settler threatens my life or the life of an Arab located nearby." The commander of an armored corps company that was guarding the Tomb of the Patriarchs during the massacre perpetrated by Baruch Goldstein testified that the brigade commander prohibited shooting at settlers "in situations of public disturbances." Kalifi explained the contradiction between the order he issued and the one issued by the OC Central Command, saying that he did not want to even imagine "what would happen if a soldier shot a settler, how the settlers here would react, and how the entire population of the country would."[71]

71 Ibid., pp. 206-207.

Corresponding to these testimonies, the Shamgar Commission found that the Judea Brigade went only so far as to issue a document entitled "Preparing for Disturbances by Jews, Operational Guidelines and Special Highlights from the Division Commander" in September 1993. The document stated that crowd control weapons should not be used against settlers and emphasized that "no use shall be made of firearms of any sort" to disperse rioting settlers. Accordingly, in an incident report on a case in which soldiers stood by while Israeli citizens shot directly at Palestinian stone-throwers in Hebron, Shaul Mofaz, the Commander of the Judea and Samaria Division, noted that the soldiers should have "approached the shooter from behind, ordered him to desist and disarmed him."[72]

In their testimony before the Shamgar Commission, Mofaz and Kalifi distanced themselves from the testimony linking them to contradictory orders. Mofaz explained his order prohibiting soldiers from shooting at settlers by saying "Jews are not the enemy," but added that if a soldier becomes aware of a dangerous crime, murder or massacre, "he is obliged to intervene and use every means at his disposal, including his firearm, to prevent it." Kalifi argued that the temporary General Staff procedure was not passed on to the troops because "it was complicated, cumbersome and difficult to implement" and because he wanted to limit soldiers' discretion. "I am worried about even raising the possibility of shooting at a Jew to the edges of his [the soldier's, translator note] consciousness or actions. Therefore, as I said before, I issued a sweeping order not to shoot at Jews."[73]

Chief of Staff, Lieut. Col. Ehud Barak, testified before the committee that "to the best of my memory, no soldier or other member of the security forces saw an Israeli shoot and kill a local." Barak also maintained that the temporary General Staff procedure did not in any manner address the open-fire regulations or life-threatening situations. According to Barak, "The principles for how to handle life-threatening situations are anchored in the law and in common sense and are laid out in the 'Green Book'", (a pocket book issued to every soldier serving in the OPT, which includes the open-fire regulations). Because of criticism by the committee and in the midst of its deliberations, the military issued a clarification through the media that "if a soldier sees an Israeli executing a deliberate shooting, or putting the lives of others in substantial and imminent danger whilst his own life is not threatened, the soldier must use every means reasonable in the circumstances of the incident, including his firearm, if there is no other practical way to put an immediate end to the crime."[74] This

72 Ibid., p. 205.

73 Ibid.

74 Ibid., pp. 208-211.

clarification was not incorporated into standing orders issued to soldiers or mandatory operating procedure.

The recommendations of the Shamgar Commission regarding law enforcement made no reference to the matter of soldiers standing idly by even though the committee heard testimony about the contradictions in the orders and mandatory procedures elucidating the soldiers' duty and powers to enforce law and order. As a result, its recommendations focused on tighter "coordination between the military and the police."[75] In June 1994, the government decided to accept the committee's recommendations in full,[76] which led to the establishment of the SJ District Police in September 1994.[77]

1994-2014: Human rights organizations caution against the practice of standing idly by

Israeli human rights organizations were the first to caution against the practice of soldiers standing idly by in the face of violent incidents perpetrated by Israeli civilians in the OPT. Since 1994, these organizations have meticulously documented dozens of incidents in which soldiers stood idly by, which repeatedly demonstrated that the military puts the interests of the settlement enterprise before its own fundamental duty to enforce law and order.

A 1994 B'Tselem report reviewed dozens of incidents involving attacks against Palestinians by Israeli citizens, including violent acts exceeding the bounds of self-defense. These acts included the use of firearms, actions initiated by individual settlers or organized by groups of settlers and "security committees" in the settlements, rioting and damage to Palestinian property, provocative entry into Palestinian villages and violent seizure of Palestinian land, including the uprooting of trees. The report quoted the testimony of soldiers who had stood by and done nothing in the face of these criminal acts. For example, reserve soldiers told Israel daily newspaper Ma'ariv they did not arrest settlers who broke into the villages of Kharbata and Ras Karkar, smashed windows, vandalized cars and wounded one of the villagers. One reservist wrote to then-Education Minister Amnon Rubinstein about an incident in Hebron in which a group of settlers rioted in the casbah and overturned vegetable stalls while another settler slashed the tires of another car and broke a window, yet he and another soldier failed to arrest them. The report included testimony that shed light on

75 Ibid. chapter on enforcing the commission's recommendations, p. 250.

76 Government Resolution No. 3445, June 26, 1994.

77 For more on the SJ District Police, see, www.police.gov.il/contentPage.aspx?pid=23&mid=6 (Hebrew).

how widespread soldiers' inaction was throughout the OPT, from cities like Hebron and Ramallah, to villages including Ein Yabrud, Burqah and al-'Eizariyah and neighborhoods such as Dahiyat al-Bareed in East Jerusalem and as far as Deir al-Balah in the Gaza Strip (more than ten years before the Israeli withdrawal from Gaza.)

The B'Tselem report included a quote from an internal opinion prepared by the Association for Civil Rights in Israel (ACRI) regarding an incident in Deir al-Balah in which it maintained that the abandonment of Palestinian residents and their property to acts of vengeance by Israeli civilians over an eight-day period constituted deliberate disregard amounting to criminal negligence. B'Tselem concluded that "The army's attitude toward these manifestations of violence fluctuates between 'voluntary non-intervention' and active forms of cooperation."[78] The organization recommended the army take measures against soldiers who stand idly by and fail to intervene in cases of violence on the part of Israeli civilians.[79]

Additional reports by B'Tselem from 2000 to 2002 again documented many cases of failure on the part of soldiers and police officers to intervene in the face of violent attacks by Israeli civilians in various parts of the West Bank (including Jenin, Turah a-Sharqiyah, a-Dhahiriyah, a-Sawiyah, Hebron, Sinjil, a-Lubban a-Sharqiyah, a-Sawiya, Tulkarm, Izbat Shufah and Burin, Tuqu, Einabus and Yasuf); most of these attacks occurred during the olive harvest season. A soldier who gave testimony to B'Tselem field researches said he felt "they (the security forces) they didn't want to confront the settlers, and wanted to let them vent their anger." The reports quoted a statement made by the head of the operations branch in the General Staff, Maj. Gen. Giora Eiland who, during a press conference, expressed understanding for the violent incidents perpetrated by the settlers: "They [the settlers] allow the army to take care of the situation. But this could change, since these people might get very angry about this situation, or they may become agitated, and that is sometimes one of the dangers that I tried to imply when I said that even if every day is similar to the next, there is an accumulation of results or influences that could ultimately cause problems with them that we have not yet been forced to deal with." In June 2013, B'Tselem's video department published video footage of masked Israeli civilians setting fire to a tool shed in the village of 'Asirah al-Qibliyah, 200 meters away from a staffed military position overlooking the site of the arson.[80]

78 B'Tselem, **Law Enforcement vis-a-vis Israeli Civilians in the Occupied Territories**, pp. 35-61, ACRI report quoted on p. 49.

79 Ibid., pp. 124-125.

80 B'Tselem reports, **Illusions of Restraint: Human Rights Violations During the Events in the Occupied Territories, 29 September – 2 December 2000**, http://www.btselem.org/download/200012_illusions_of_restraint.pdf, pp. 34-

Ta'ayush and Rabbis for Human Rights provide assistance to Palestinian farmers in the South Hebron Hills and the villages of Samaria, helping them cultivate farmland, located in proximity to settlements and outposts. In the past few years, activists with these organizations have filmed many instances in which soldiers and police officers stood idly by in the face of violent attacks by Israeli civilians, including by settlement security coordinators, who receive directions from the military and carry military-issued firearms. Attacks by these security coordinators included stone-throwing, beatings of Palestinian farmers and of the activists themselves, attempts to vandalize items belonging to the farmers and prevent them from cultivating the land and attempts to damage the activists' cameras. In all these incidents, the soldiers failed to arrest the offenders and generally confined themselves to attempts to separate the settlers and the farmers and activists.[81]

Yesh Din has been documenting soldiers' practice of standing idly by in various parts of the West Bank since it was established in 2005. Since 2008, the organization has filed 30 complaints with the Military Police Criminal Investigation Division (MPCID) and the MAG Corps' Prosecution for Operational Matters regarding this practice. As of February 2015, the MAG Corps had decided not to open investigations into 13 of these complaints. MPCID

38; **Free Rein: Vigilante Settlers and Israel's Non-Enforcement of the Law**, (October 2001), http://www.btselem.org/download/200211_olive_harvest_eng.pdf, pp 5-19; **Foreseen but not Prevented: Israeli Law Enforcement Authorities Handling of Settler Attacks on Olive Harvesters** (November 2002), http://www.btselem.org/download/200211_olive_harvest_eng.pdf, pp. 13-18; **Standing Idly By: Non-enforcement of the Law on Setters, Hebron 26-28 July, 2002** (August 2002), http://www.btselem.org/download/200208_standing_idly_by_eng.pdf. Video footage: Settlers torch tool-shed in 'Asirah al-Qibliyah, 200 meters from army post, June 20, 2013, (http://www.btselem.org/press_releases/20130620_settlers_torch_storage_house_in_asirah_al_qibliyah).

81 For cases of soldiers' standing by during violent attacks by settlers from the settlements of Meitar, Mitzpe Yair, Teko'a and the outposts of Eshtamoa and Esh Kodesh on September 20, November 16, October 11 and 14, February 8, January 11 and December 17 of 2014 see:
http://youtu.be/rv5SDPSfBkw
http://youtu.be/any-sn1J_PY
http://youtu.be/EH2-Sm3RpNc?list=UUUl1N6N5X489cjPcQ-ua1cA
http://youtu.be/9sm892JMfRQ?list=UUUl1N6N5X489cjPcQ-ua1cA
http://youtu.be/oQjlprTdNjI?list=UUUl1N6N5X489cjPcQ-ua1cA
http://youtu.be/fG8IXovzdMM?list=UUUl1N6N5X489cjPcQ-ua1cA
http://youtu.be/6QomFJKHNzo
See also report by Rabbis for Human Rights regarding an attempted assault by the security coordinator of the settlement of Nokdim on Palestinian farmers who were cultivating their land with the military's approval, while soldiers stood idly by, December 22, 2014. See also, Gili Cohen "Videos show settlers attacking activists, as Israeli soldiers stand by," **Haaretz English website**, February 8, 2014; Amira Hass, "Otherwise occupied / Israel says beaten activists should blame themselves," http://www.haaretz.com/misc/iphone-article/.premium-1.634193, December 29, 2014. See also **The Lawless Zone: The Transfer of Policing and Security Powers to the Civilian Security Coordinators in the Settlements and Outposts**, http://www.yesh-din.org/userfiles/file/Yesh Din_The Lawless Zone_Web_EN (1).pdf (June 2014).

investigations were opened into the remaining 17. According to updates from the MAG Corps, only three of these cases are still under investigation and no decision has been made to date whether to bring charges against any of the soldiers. So far, no soldier has faced criminal or disciplinary charges in any of the cases.[82] The MAG Corps informed Yesh Din of its decision not to launch investigations so long after the incidents took place, making it impossible to file appeals, approach witnesses or access evidence.[83] A senior officer in the SJ District Police told Yesh Din staff members that in his opinion, soldiers simply do not know that they have the power to arrest settlers who commit acts of violence.[84]

ATTEMPTS TO ADDRESS THE PRACTICE OF STANDING IDLY BY

1998: The Attorney General's Procedure for the Enforcement of Law and Order – The first attempt to reduce the practice of standing idly by

In August 1998, more than four years after the publication of the Shamgar Commission conclusions, 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 (the AG Procedure). This procedure, which was based on the interim findings of the Shamgar Commission, aimed "to find a solution for the ongoing situation of under-enforcement of the law against Israeli residents of Judea and Samaria," and its main purpose was to "shift the weight of law enforcement activity in the West Bank and Gaza to the police […] in a manner that most closely resembles police operations everywhere inside Israel." On the face of it, even though the procedure makes no mention

82 The process of opening a criminal investigation against an IDF soldier suspected of offenses involving Palestinians differs from the usual civilian process. An investigation is not automatically opened following every complaint received by the law enforcement authorities in the IDF. Investigations into offenses allegedly committed during a military operation are opened only after an initial inquiry, which is usually based on an operational debriefing conducted by the unit involved in the incident. The MAG Corps decides whether or not to launch a military police investigation based on this initial inquiry. **Examination and Investigation in Israel of Complaints and Claims of Violations of Laws of Warfare pursuant to the Rules of International Law, The Public Commission to Examine the Maritime Incident of 31 May 2010, Second Report, the Turkel Commission**, February 2013, pp. 331-332. Col. Adoram Riegler to Atty. Emily Schaeffer Omer-Man of Yesh Din's Legal Team, February 14, 2015.

83 Letter from Atty. Emily Schaeffer Omer-Man of Yesh Din's Legal Team to the MAG, Maj. Gen. Dani Efroni and the Chief Military Prosecutor Col. Ehud Ben Eliezer, regarding complaints in cases of IDF soldiers' standing idly by, November 4, 2014.

84 Yesh Din, **Semblance of Law**, pp. 53-74. The conversation with the investigator is documented in Yesh Din Case 1072/05.

of soldiers' practice of standing idly by, it stipulated instructions to the military which, if followed, would have significantly reduced its occurrence.[85]

The AG Procedure revised and classified the types illegal acts committed by Israeli civilians and others in the OPT: "Violent acts entailing risk of causing bodily harm through stone-throwing, setting fire to property, use of stabbing weapons, or use of a firearm whether legally or illegally possessed;" "violent actions in residential areas, primarily rioting, smashing windows, breaking solar panels, vandalizing cars, overthrowing vending stalls, etc.;" "public disturbances, protests, demonstrations at and blocking of roads, burning tires, setting up roadblocks or other obstacles on traffic arteries or violating closed military zone orders, activity often characterized by coordination among several law-breaking individuals or groups and their deployment in several areas and sites simultaneously;" "violations of restrictive and preventative orders issued by the military or the courts against specific offenders prohibiting them from entering a town or village or confining them to their communities, etc."

This procedure, too, which takes an apologetic tone right from the outset, stating that "it does not derive from any presumption regarding the Israeli population living in these areas," does not directly address the issue of soldiers standing idly by in the face of settler violence and focuses on "shifting the weight of law enforcement activity in Judea, Samaria and Gaza from the military to the police." In general, according to the procedure, the police is the body responsible for handling incidents of violations of law and order "from start to finish," when these occur inside settlements, while the military is responsible for "the perimeter surrounding the settlement." This, "without detracting from the powers and duties of the IDF as representing the governing authority in these areas."

According to the AG Procedure, in all incidents in which the military arrives at the scene first, which is the majority of cases, the military is responsible for enforcing law and order the arrival of the police. Until such time, the procedure requires the military to activate its stand-by units, if the regional brigade commander so orders according to a decision made jointly with the regional police commander, "in order to assist the Israel Police with law enforcement." Military units are required to cordon off and secure the area and remove the rioters. They are charged with collecting evidence and with investigating, documenting

85 **Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area**, Introduction and General, August 17, 1998 (Hebrew). Nadav Shragai and Gideon Alon, "In meeting with Yesha Council Rubinstein refuses to cancel law enforcement procedures in the West Bank," **Haaretz**, May 5, 1998 (Hebrew).

and preserving 'all components' of the crime scene," as well as making arrests and escorting suspects. Under the AG Procedure, where the police is absent, the military is responsible for securing and guarding the scene, "in order to prevent evidence found on the scene from being destroyed, tampered with or removed." Furthermore, it emphasizes that the procedure does not "detract from the military's obligation to take all necessary measures to treat the injured or prevent attacks that may cause bodily harm or damage to property or to arrest suspects who may try to escape." The procedure also requires the army to brief officers and soldiers who are on active duty in the OPT, whether as part of regular military service or on reserve duty, subject to the orders of the military's operations branch, emphasizing that the provisions of the AG Procedure take precedence over those of the operations branch.[86] According to the procedure, the briefings are meant to address different ways of using force, including use of tear gas and other weapons such as restraining violent rioters; how to file complaints and give statements to the police; and how to act when escorting detainees to the police station, and when using force in order to restrain and search detainees and prevent them from fleeing."

Military units are required to provide refreshers on the AG Procedure "several times a year," and to prepare a written summary every time military forces handle law enforcement according to the procedure, whether in the form of a military inquiry or in another form. "The key lessons of the incident will be discussed and the summary of these discussions will be circulated to the troops on a weekly basis, following a joint discussion by representatives of the military, the Israel Police, the Civil Administration and others." According to the procedure, the regional brigade commander is responsible for conducting briefings and giving refreshers on the provisions of the procedure.[87]

By placing most of the responsibility for dealing with criminal incidents on the police, the procedure ignores the limited police deployment and presence in the West Bank and its ongoing failure in investigating incidents of violence involving settlers.

The publication of the procedure did nothing to change the "command ethos" of continued tolerance toward illegal settler activity. According to a newspaper report, almost two years after the AG Procedure was issued, Commander of the Hebron Regional Brigade, Col.

86 Inasmuch as the provisions of the procedure herein contradict the procedure of the General Staff Operations Division, as stated, the procedure herein shall be followed," **Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area**, Introduction and General, August 17, 1998 (Hebrew), sec. 9b.

87 Ibid., pp. 1-3, 6, 8-9, 11-13.

Noam Tibon (who later served as Commander of the Judea and Samaria Division from 2007 to 2009) boasted to Hebron settlers that he, himself, "closed dozens of files" the police had opened against them "for no real reason." Tibon went so far as to criticize the "unfair" treatment of the Jewish residents by the police.[88]

2005-2012: The outpost report and the State Comptroller's examination – no change

The expert opinion prepared by Atty. Talya Sasson regarding illegal outposts in 2005 (the Sasson Report), which was submitted to Prime Minister Ariel Sharon seven years after the publication of the AG Procedure, included a reference to what was termed "ineffective" law enforcement performed by soldiers. According to Sasson, "Law enforcement on settlers is not perceived as an integral part of the IDF's role. There are a number of reasons for this, but the end result is that soldiers, and their commanders as well, often do everything in their power to remove the police officer's hat, which they believe was artificially placed on their heads." Sasson added that a senior officer she spoke to said, "By the nature of things, we first deal with terrorism, and only then (if at all), with illegal activity by settlers," and that the command ethos is that "the settlers are putting Zionism into action, and so they should not be looked at through a legal prism."[89]

At the same time, in terms of official statements, the government and the military continued to argue that they are taking action to enforce the law in the West Bank. In December 2008, Defense Minister Ehud Barak, spoke to the government about the actions his office had taken in terms of law enforcement in the West Bank following public disturbances and rioting by settlers. According to Barak, the military had implemented "A tough policy against law breakers, which includes precise documentation of the offense and detaining rioters until the arrival of the Israel Police, and as the subject was "so important to the law enforcement system," the minister would make sure he receives weekly updates on the subject, and his deputy, Matan Vilani would hold "periodic consultation on the issue in order to monitor institutional and infrastructure advancements toward strengthening the law enforcement regime."[90]

88 Avihai Becker, "Noam's way," **Haaretz**, May 5, 2000 (Hebrew), quoted in Zertal & Eldar, pp. 435-436 (Hebrew version).

89 **(Interim) Opinion Concerning Unauthorized Outposts**, submitted to Prime Minister Ariel Sharon by Atty. Talya Sasson (Hebrew), pp. 259-261.

90 Statement by the Ministry of Defense Media Advisor with respect to statements made by Defense Minister Ehud Barak in the weekly cabinet meeting on December 14, 2008, regarding law enforcement in the Judea and Samaria Area, December 14, 2008.

However, in an investigation into law enforcement in the West Bank conducted by the State Comptroller in 2011 and 2012, 18 years after the government adopted the recommendations of the Shamgar Commission and 14 years after the publication of the AG Procedure, the comptroller found that the "command ethos" in the military was still geared toward evading the incorporation of the Shamgar Commission recommendations and the AG Procedure into standing orders and binding operating procedures. The comptroller quoted the Operations Branch Officer of the Judea and Samaria Division, who had told the comptroller's investigative team that: "The Routine Security Orders make no express reference to law enforcement […] there is no deep awareness of the law enforcement issue."

According to the State Comptroller's report, in 2011, the head of the Civil Administration, Brig. Gen. Moti Almoz, wrote the COGAT, Maj. Gen. Eitan Dangot and the head of the General Staff's Operations Division, Brig. Gen. Yaakov Barak, that while the IDF was in charge of rule of law in the West Bank, "we are very far from fulfilling our role." A year later, the LA-JS told GOC Central Command Avi Mizrahi and COGAT that "the final outcome" of the attempts to enforce the law in the West Bank is "far from satisfactory."[91]

The State Comptroller found that there is no mention of law enforcement in the tasks Central Command forces perform while on active duty tours in the West Bank, and that the training these forces undergo prior to active duty do not include a comprehensive structured program on the various aspects of law enforcement. According to the comptroller's report, the 2011 annual activity reports prepared by the divisional headquarters along with the regional brigades and Border Police units operating in the West Bank made no reference whatsoever to the issue of law enforcement and "no lessons were drawn from related incidents." The State Comptroller also found deficiencies in the training soldiers receive with respect to preserving the scene, though the importance of this issue was noted both in the Shamgar Commission conclusions and the AG Procedure.[92]

The military announced only recently that it was looking into using crowd control weapons against Israeli citizens following an incident that took place in 2011, in which Israelis broke into the military base where the Efrayim Brigade headquarters is located. The change of approach did not result from attacks on Palestinians or their property, but only from the Israeli attack on the brigade commander and vandalization of military property. As far as Yesh Din is aware, the military has not changed the instructions forbidding use of crowd

91 State Comptroller, **Report 63B**, July 17, 2013, p. 137-138 (Hebrew).

92 Ibid., pp. 137-139.

control weapons against violent Israelis in the West Bank, nor is it familiar with any incident in which military forces of any kind used crowd control weapons against violent Israelis in the West Bank.[93]

SLOW PROCESS OF FORMULATING OPERATING PROCEDURES FOR COUNTERING THE PRACTICE OF STANDING IDLY BY

2009: Military begins to formulate a policy – Commander Information Sheet – Standing idly by is considered conduct unbecoming a soldier

It was not until 2009 that the LA-JS published the "Commander Information Sheet – Right to Access Land in the Judea and Samaria Area." The information sheet anchored rules established in a Supreme Court ruling in a petition filed by ACRI and Rabbis for Human Rights against the military's decision to close off Palestinian farmland adjacent to dozens of Palestinian villages during the olive harvest, allegedly for the purpose of protecting Palestinian residents from systematic violent attacks by settlers (the Olive Harvest Case).[94]

The petitioners had quoted a statement made by Col. Yuval Bazak, Commander of the Samaria Regional Brigade: "There is nothing we can do against the settlers so long as the police has no teeth." The petitioners argued that security forces have an obligation to instruct personnel about their duty to act "against the assailants, not the victims." The Supreme Court reproached the State, stating that despite its pledges to protect Palestinian farmers "the position is far from satisfactory… it would appear that the facts on the ground speak for themselves and that too little has been done in order to protect the rights of the petitioners." The Court reiterated that "the protection of the security and property of the local inhabitants is one of the **most fundamental** duties imposed on the military commander in the territories" (emphasis in original).[95]

93 Anshel Pfeffer, "Dozens of rightists break into IDF base in West Bank, wound officer," **Haaretz English website**, December 13, 2011; Yoav Zeitoun, "IDF Considering Open-Fire Regulations against Jews Too," **Ynet**, December 14, 2012 (Hebrew).

94 **Commander Information Sheet – Right to Access Land in the Judea and Samaria Area**, LA-JS, MAG Corps, 2009.

95 HCJ 9593/04 **Rashed Morar, Head of Yanun Village Council et al. v. IDF Commander in Judea and Samaria**, Petition filed October 24, 2004, para. 10, Supplementary Response and Brief regarding the Right to Access Farmland on behalf of the Petitioners, filed September 7, 2005, judgment, issued June 26, 2006, paras. 32-33 (official English translation available on Judicial Authority website at http://elyon1.court.gov.il/files_eng/04/930/095/n21/04095930.n21.htm).

The information sheet was distributed in 2009, three years after the Supreme Court ruling, and 11 years after the Attorney General published the "Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area." For some reason, the information sheet was classified "reserved" which limits its distribution and accessibility. As far as Yesh Din is aware, the sheet's instructions have not been incorporated into the Soldier Standing Orders, which every soldier is expected to memorize. Still, the information sheet is the first instance in which the senior command responded to the issue of standing idly by and what it means in terms of the military's moral values, even if this response is belittling, late and limited to the issue of accessing Palestinian farmland only (leaving out issues such as violence by Hebron settlers or settler violence on the West Bank's main roads, to name but two, as noted in the AG procedure).

Section 14 in the information sheet (of a total of 15 sections) relates to enforcement, and stipulates: "When an IDF soldier witnesses the commission of an offense by an Israeli (e.g. assault on Palestinian farmers, harassment, etc.) he must take immediate action against the offender, with an emphasis on detaining the suspect, transferring the suspect to the Israel Police, confiscating the suspect's firearm where applicable, etc. A soldier may not stand idly by in such cases and must intervene, prevent the offense and ensure action against the offender. Standing idly by in the face of any type of offense constitutes unbecoming conduct which contravenes the military's orders and values."

In this context, it is important to note that the Military Justice Law does not clearly and fully define what constitutes unbecoming conduct, misconduct or dishonorable conduct. This is a catchall offense and it is one of the lighter offenses under the Military Criminal Code. As the Supreme Court put it: "The offense of unbecoming conduct […] constitutes an open fabric with flexible boundaries, which can encompass various types of behavior, it is most conspicuously characterized as a behavioral-institutional lapse that is unbecoming to a person in view of his senior rank in the IDF." In other words, an offense that essentially compromises the military's image. Convictions for unbecoming conduct in breach of the Military Justice Law are not entered in the offending soldier's criminal record and carry no future consequences.[96] It was only in 2015, six years after the Commander Information

96 Military Justice Law (Amendment No. 3) 1964, sec. 130 regarding unbecoming conduct, contains the following definition: "A soldier with the rank of sergeant and up who exhibited conduct that is unbecoming of his rank or status in the military – shall be sentenced to a term of one year in prison." Section 129, Dishonorable Conduct in the Military Justice Law (Amendment No. 3) 1964 stipulates: "A soldier who exhibits dishonorable conduct shall be sentenced to a term of one year in prison;" See paragraphs 56, 59, 60 in the judgment of Supreme Court Justice Ayala Procaccia in HCJ 7195/08 **Ashraf Abu Rahme v. Brig. Gen. Avichai Mandelblit, Military Advocate General et al.**, dated July 1, 2009 (official English translation available on Supreme Court website at http://elyon1.court.gov.il/files_eng/08/950/071/

Sheet was issued, that the MAG Corps' Legal Services for Operational Matters updated its position and made it possible to charge soldiers who did nothing to stop the commission of criminal offenses under the Criminal Justice Law and the Penal Code. Charges may include failure to prevent a crime, failure to uphold binding military orders, unbecoming conduct, and even aiding and abetting the primary offender.[97]

The 2009 document includes "concluding notes," according to which following the guidelines presented in the document was not a matter of discretion but rather "the IDF's duty pursuant to the explicit ruling of the Supreme Court. Commanders should take the lead in addressing the issue, while sending the right message down the ranks, coupled with full cooperation with the SJ District Police."[98]

Around the time the information sheet was distributed, the MAG Corps launched the Standing Idly By Task Force. The assistant to the Investigation and Intelligence Unit Chief Officer at the Samaria Region of the SJ District Police contacted the task force in 2009 in relation to a complaint made by Yesh Din regarding an incident in which settlers had plowed land belonging to a Palestinian farmer near the settlement of Kedumim, while the farmer himself was denied access to the land, allegedly by IDF soldiers. According to the documents in the investigation file (which was closed on grounds of offender unknown), the Standing Idly By Task Force never responded to the SJ District's request for help locating the soldiers who had denied access to the land, nor did the MAG Corps provide any response to Yesh Din's inquiries as to the actions taken, if any, by the task force, or anyone else at the MAG Corps to locate the soldiers.[99] Yesh Din has no information as to whether the MAG Corps Standing Idly By Task Force is still active and if so what its responsibilities and powers are.

The attack on the Commander of the Efrayim Brigade and the brigade base in December 2011 demonstrates just how little inroads the provisions of the information sheet had made in the military, even among the most senior command, so much so, that officers and

r09/08071950.r09.htm).

97 Letter from Military Advocate for Operational Matters with the MAG Corps, Lieut. Col. Adoram Riegler to Atty. Emily Schaeffer Omer-Man of Yesh Din's Legal Team, February 14, 2015.

98 **Commander Information Sheet – Right to Access Land in the Judea and Samaria Area**, LA-JS, 2009.

99 Letter from Atty. Superintendent Gil Deshe, Assistant Investigation and Intelligence Officer, Samaria Region, SJ District, Israel Police to MAG Corps, Sanding Idly By Task Force, regarding complaints made by a Palestinian from Kafr Qadum, March 31, 2009. Letter from Atty. Ido Tamari of Yesh Din's legal team to Lieut. Col. Sigal Mishol Shehori, Military Advocate for Operational Matters regarding Police File No. 55636/10 at the Samaria Region, SJ District, Israel Police, September 13, 2010.

soldiers stood helpless even as they themselves were the target of an organized attack. In that incident, dozens of right wing activists attacked Brigade Commander Col. Ran Cohen's jeep, threw a rock at his head, vandalized military vehicles on the brigade base and blocked a major road nearby. None of the assailants were apprehended by soldiers. When IDF Spokesperson, Brig. Gen. Yoav Mordechai, was asked by the IBA's military affairs reporter Carmela Menasheh how the brigade commander would have reacted if a Palestinian had thrown the rock, he said: "Carmela, I don't suppose you would have expected the brigade commander to fire at a Jew standing in front of him. I'm sure that's not what you meant."[100]

2014: Procedure is updated, revised and re-examined

In 2014, the IDF Spokesperson said in response to a Freedom of Information application filed by Yesh Din that, the Central Command has a procedure for "Law Enforcement on Israelis," but that the procedure was being "updated, revised and re-examined, including with respect to complex incidents which involve responding to several threats simultaneously, as well as developing incidents." The spokesperson provided Yesh Din with the "main points" of the existing procedure, which is valid from July 1, 2014 to July 1, 2016, and was drafted only after Yesh Din asked if there was in fact a military procedure on law enforcement vis-à-vis Israeli civilians, and if so, whether it was defined as part of the standing orders and as a command order applicable to all soldiers serving in the Central Command. The spokesperson did not say when the revision process would be completed.[101] According to LA-JS, Col. Doron Ben Barak, the procedure has been incorporated into the standing orders.[102]

100 Anshel Pfeffer, "Dozens of rightists break into IDF base in West Bank, wound officer," **Haaretz English website**, December 13, 2011. The discussion between Carmela Menashe and Brig. Gen. Yoav Mordechai was quoted in the Friends of George blog post, "Flowers for the IDF," December 13, 2011, available here: http://www.hahem.co.il/friendsofgeorge/?p=2683 (Hebrew)

101 Letter from Public Liaison Department, Public Communications Branch, IDF Spokesperson's Office to Noa Cohen, Yesh Din data coordinator, December 25, 2014 in response to her letter regarding instructions, protocols and training on illegal activity by Israeli citizens directed at Palestinians in the West Bank, submitted under the Freedom of Information Act, May 11, 2014. The IDF Spokesperson's response was provided after a lengthy breach of the Freedom of Information Act and after Yesh Din stated that it would take legal action should the requested information not be provided. Letter from Atty. Ishay Shneydor (on behalf of Yesh Din) to Major Zohar Halevy, Head of Public Liaison Department, IDF Spokesperson's Office cautioning legal action, May 11, 2014. Letter from Noa Cohen, Yesh Din data coordinator to Major Zohar Halevy, Head of Public Liaison Department, IDF Spokesperson's Office, January 14, 2015. Letter from Public Liaison Department, Public Communications Branch, IDF Spokesperson's Office to Noa Cohen, Yesh Din data coordinator, May 12, 2015.

102 Lecture on international law given by LA-JS at an ACRI course on international humanitarian law, January 11, 2015.

The procedure that is in place at the time of writing requires every regional brigade commander to debrief units operating in his sector on how to handle law enforcement on Israelis "according to the principles enumerated in these orders, adjusting the focus to the nature and needs of the sectors, such as locales that are flashpoints for tension, local arrangements and sector history." Like the AG Procedure, this procedure's declared purpose is also to spell out the division of labor between the military, the ISA, the Israel Police, the Border Police and the Civil Administration, define areas of cooperation and establish principles for handling incidents "with the object of improving and streamlining law enforcement in these areas and bringing it as close as possible to law enforcement operations inside Israel."[103]

The procedure duplicates a full section of the 1998 AG Procedure relating to incidents in which the IDF is the first agency to respond.[104] The procedure specifies the crowd control weapons that may be used, including water cannons and tear gas, and that such weapons are permitted for use when no police force is present, and only under "explicit orders from the brigade commander or someone acting on his behalf for this purpose." The procedure goes on to specify soldiers' detention and arrest powers, stipulating that: "Whenever a police officer or soldier witnesses an Israeli causing injury to person or property, and in all cases in which an explicit order to that effect was given by the unit commander, the suspect must be detained or arrested." The procedure further permits use of "reasonable force" against an offender who refuses to "comply with the arresting party's" orders, and recommends using traditional handcuffs over plastic ones and "only on the suspect's hands." The procedure also refers to a possible police investigation of the incident, stipulating that all persons detained or arrested should be isolated and not allowed to communicate with one another and with others in order to prevent suspects from coordinating their stories, concealing evidence or tampering with evidence, to the extent possible.[105] The IDF Spokesperson did not respond to Yesh Din's question regarding the number of complaints IDF soldiers filed

103 Letter from Public Liaison Department, Public communications Branch, IDF Spokesperson's Office to Noa Cohen, Yesh Din data coordinator, December 25, 2014. The IDF Spokesperson did not respond to Yesh Din's request for details to which standing orders this debriefing relates. Letter from Noa Cohen, Yesh Din data coordinator, to Major Zohar Halevy, Head of Public Liaison Department, IDF Spokesperson's Office, January 14, 2015

104 **Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area**, Introduction and General, August 17, 1998 (Hebrew), sec. 11.

105 Procedure on Law Enforcement on Israelis, sec. a. The procedure was included in the letter from Public Liaison Department, Public Communications Branch, IDF Spokesperson's Office, to Noa Cohen, Yesh Din data coordinator, December 25, 2014. Letter from Noa Cohen, Yesh Din data coordinator, to Major Zohar Halevy, Head of Public Liaison Department, IDF Spokesperson's Office, January 14, 2015.

regarding incidents of assault, damage to property and other offenses by Israelis against Palestinians in the West Bank.[106]

According to this procedure, Israelis who harm person or property must always be detained and arrested. However, in a hearing of a case in which a settler from the outpost of Mitzpe Yair had destroyed a camera used by a B'Tselem researcher and threatened to kill a left-wing activist with a sickle, the Jerusalem District Attorney's Office told the Jerusalem Magistrates Court that the military's response, which allegedly prevented the altercation by "separating the parties," was reasonable and proportionate. The soldiers did not detain or arrest the violent settler.[107]

Though the procedure presumably regulates and establishes the division of labor, as well as the cooperation, between the military and other law enforcement agencies, the Israel Police, which is responsible for training Border Police units that operate in the West Bank under the military's command, said, also in response to a Yesh Din Freedom of Information application, that the Border Police does not have a procedure for law enforcement on Israelis. "In terms of responding to incidents involving harm to Palestinians by Israelis, the Israel Police has no population-specific orders or protocols for handling offenders." The Chief Officer of the Public Complaints Unit of the Israel Police National Comptroller, Atty. Chief Inspector Yvonne Bendel added: "We treat Palestinians like we treat anyone else. We respond professionally, as the case requires. Our duty is to protect all, Israelis and Palestinians alike."[108]

Military education and training regarding offenses by Israelis

The IDF Spokesperson provided Yesh Din with a lesson plan distributed by the Central Command, this too, only after Yesh Din contacted the IDF Spokesperson. The lesson plan is used for training on "handling public disturbances by Israelis and ideologically motivated violence by Israelis in the Judea and Samaria Area sector." According to the spokesperson, all Central Command units going into active duty in the West Bank undergo this training prior to going into the field. The training is provided orally, with no written handouts. The

106 Letter from Noa Cohen, Yesh Din date coordinator, regarding instructions, protocols and training on illegal activity by Israeli citizens directed at Palestinians in the West Bank, submitted under the Freedom of Information Act, May 11, 2014.

107 Statement of Defense, Expedited Procedure, on behalf of Defendant 2, the State of Israel, in CC 36621-05-14 **Naser Muhammad Ahamd Nawagha v. Moshe Ben Abu**, Jerusalem Magistrates Court, filed by Atty. Moshe Viliger of the Jerusalem District Attorney's Office, civil, September 16, 2014, para. 22.

108 Letter from Atty. Chief Inspector Yvonne Bendel, Public Complaints Unit, approved by Freedom of Information Officer, Israel Police National Headquarters to Noa Cohen, Yesh Din data coordinator, October 6, 2014.

spokesperson added that the relevant brigade commander trains all commanders, from company and squad commanders to battalion commanders "along the lines of the lesson plan." The lower-ranking commanders hold discussions with their subordinates who are going into active duty in the West Bank, again along the lines of the lesson plan. The IDF Spokesperson did not note when the IDF began training soldiers using this lesson plan, and refused to specify the number of soldiers and officers who were given this stand-alone lesson due "information security reasons."[109]

The lesson plan presumes that "the Judea and Samaria region is marked by frequent public disturbances, as well as flashpoints for conflict between law enforcement personnel (soldiers and police officers) and settlers." At the same time, the lesson reduces the military's responsibility for law and order and places the responsibility for handling incidents that are not defined as hostile terrorist activity and in which Israeli offenders are involved on the shoulders of the police. According to the lesson plan, the military is responsible for providing an "external security envelope for police activity." As noted, and contrary to the military's interpretation as evinced by this lesson plan, the Attorney General drew a distinction between incidents in which the military is first to respond, which make up most of the incidents, and ones where the police is first to respond, and stated that the military must assign personnel to provide stand-by assistance and backup to the police, including for arrests and for escorting detainees.

The lesson plan expands and updates the types of offenses committed by Israelis, compared to those listed in the AG Procedure and the Shamgar Report. It includes "price tag" incidents, which it defines as "injury to person or property aimed at our forces, or at Palestinians, for ideological reasons," and other incidents defined as "violent altercations involving Jews," such as "physical conflict regarding land invasion or cultivation," "vandalization of orchards, particularly olive trees," and "violence and harassment against Palestinians by Jewish settlers in response to terror attacks / settlement evacuation etc.."

The lesson plan goes on to emphasize that IDF soldiers have the authority to detain and arrest "Israelis as well, if necessary" and notes that during a "Jewish nationalistic / Israeli public disturbance" incident, soldiers may use their self defense skills, such as Krav Maga, crowd control weapons, tear gas, and if necessary, the suspect apprehension procedure up to firing in the air. Use of the suspect apprehension procedure requires approval from

109 Letter from Public Liaison Department, Public communications Branch, IDF Spokesperson's Office to Noa Cohen, Yesh Din data coordinator, December 25, 2014. Letter from Public Liaison Department, Public Communications Branch, IDF Spokesperson's Office to Noa Cohen, Yesh Din data coordinator, May 12, 2015.

the brigade commander. The lesson plan states that soldiers must visually document altercations using "still and video cameras," that they must preserve the scene of the incident and the evidence there until the arrival of the police and that they must report any incident in which they identify an Israeli breaking the law to the police, as well as assist the police, including by giving statements and testifying in court.[110]

The explanations the lesson plan provides about the importance of "actively" responding to public disturbances are largely utilitarian. Public disturbances and harm to one of the populations, Jewish or Palestinian, may ignite the area, launching a chain of actions and reactions that would destabilize the entire sector." According to the lesson plan, such a disruption in public order constitutes "mission failure," as the military is responsible for "maintaining public order vis-à-vis both Jews and Palestinians." The lesson plan also states that "public disturbances tend to snowball into a series of incidents which take up our forces' time and resources, increasing IDF forces' workload and may be detrimental to other missions as well as soldiers' welfare." The moral aspect boils down to the military's responsibility and "moral obligation" to safeguard the security "of both Palestinian and Jewish residents and make sure innocents are not harmed and that no one takes the law into their own hands."[111] The lesson plan contains no mention of the military's obligation to maintain order and enforce the law according to international law and Supreme Court judgments.

The lesson plans addresses the issue of standing idly by and puts it at the forefront of issues to be addressed when it comes to incidents involving Jews: "There will be no standing idly by – as the mission must be completed, given the task, and regional destabilization must be prevented, as well as for moral, ethical and legal reasons. The military must intervene in each and every incident in order to end violence and prevent injury to person or property" (emphasis in original).[112]

In view of this, Lieut. Col. Kfir Cohen, the Judea and Samaria Division Operations Officer, stated in an affidavit submitted to the Jerusalem Magistrates Court in January of 2015,

110 **Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area**, Introduction and General, August 17, 1998 (Hebrew), sec. 8b and 8c and 11a. Section 6(5) in the lesson plan on handling public disturbances and ideological crime by Israelis in the Judea and Samaria Area, as enclosed in the letter from the Public Liaison Department, Public communications Branch, IDF Spokesperson's Office to Noa Cohen, Yesh Din data coordinator, December 25, 2014.

111 Section 4 in the lesson plan on handling public disturbances and ideological crime by Israelis in the Judea and Samaria Area, as enclosed in the letter supra note 110.

112 Ibid., sec. 6(1).

that over the past two years, "different directives and orders on law enforcement vis-à-vis perpetrators of ideologically motivated crime have been issued, clarified and reiterated. Specific directives on handling crime committed by Israelis have been issued, training has been provided and field visits and situation assessments have been made with respect to this issue, including the protection of agricultural areas, throughout the year, and particularly during the olive harvest." According to Cohen's affidavit, "soldiers are clearly informed in every relevant debriefing **that standing idly by** in the face of crime, no matter who commits it, **is prohibited**." He added that "the brigade commander himself supervises and even gives **'mental preparedness' lessons** to soldiers who arrive for active duty in the Judea Regional Brigade. **Soldiers are frequently reminded that maintaining law and order forms part of the IDF's mission in the area**, and that they must step in in every incident involving harm to Palestinians, or Israelis, and their property, **striving to engage immediately**, in order to subdue the offender, until the police arrives" (emphasis in original).[113]

The military lesson plan is not given to Border Police officers serving in the West Bank under the military's command. Chief Inspector Yvonne Bendel, Chief Officer of the Public Complaints Unit of the Israel Police National Comptroller, said that the Border Police has no lesson plans on international law and that its training base did not have specific courses on "issues related to officers' and commanding officers' duties and powers in cases of assault, vandalism or any other offense by Israelis against Palestinians."[114]

According to the IDF Spokesperson, there is also a MAG Corps lesson plan on "handling public disturbances by Israelis and ideologically motivated violence by Israelis in the Judea and Samaria Area sector." This lesson plan is used in courses given in the military officer training facility to officers and NCOs working in the Coordination and Liaison units, the IDF Spokesperson's Unit, the Intelligence Corps, combat interrogators, naval officers as well as in courses offered by the Tactical Command College and the General Staff.

The spokesperson noted that most of the information contained in this lesson plan is "provided **orally** (emphasis in original), since the MAG Corps strives to produce clear presentations in terms of training. As such, the presentations are light on verbiage and are

113 Affidavit of Lieut. Col. Kfir Cohen, the Judea and Samaria Division Operations Officer, dated January, 19, 2015, enclosed in Notice and Response on behalf of the Defendant to the Jerusalem Magistrates Court, Israel, in the claim filed by Fadel Hamad Mahmoud Amour, CC 61685-06-13.

114 Letter from Atty. Chief Inspector Yvonne Bendel, Public Complaints Unit, approved by Freedom of Information Officer, Israel Police National Headquarters to Noa Cohen data coordinator, Yesh Din, October 6, 2014.

characterized by headings and main concepts." The spokesperson did not provide Yesh Din with the lesson plan alleging that the presentations "include information classified as secret and above."[115]

According to the IDF Spokesperson, the ironclad rules conveyed in the lesson are that the "military administration" has overall responsibility for law enforcement and public order and safety in the West Bank and that the police is normally responsible for handling Israeli offenders in the area. The prohibition on standing idly by is the next ironclad rule: "When an IDF soldier witnesses a scene wherein an Israeli citizen breaks law and order in the Judea and Samaria Area (including attacking Palestinians or damaging their property), he must take immediate action to end the commission of the offense." Elsewhere, it is emphasized that the soldiers' duties include preventing the offenders from fleeing, preserving the scene of the incident until the police arrives and assisting the police in the investigation of the incident, including by providing a full, detailed statement.

This lesson plan does refer to the law of occupation – "belligerent occupation and the rules of conduct in the Judea and Samaria Area," but neglects to mention that the military has an obligation to protect Palestinian residents of the West Bank who are "protected persons" under these very laws. The lesson plan, not surprisingly, ignores the fact that the settlements are unlawful under these laws, but does mention the duty to "protect the welfare and security of residents living in the area" and the prohibition on putting the civilian population in danger, following HCJ judgments prohibiting the use of Palestinians as human shield under the "neighbor procedure."[116]

Contrary to the lesson plan and the IDF Spokesperson's contention that it is given to all units operating in the West Bank, in 2014, the Jerusalem District Attorney's Office told the Magistrates Court that "inquiries with the IDF and Israel Police officials indicate that neither the IDF nor the Israel Police have protocols specific to the arrest of Israelis suspected of terrorism or violence against Palestinians."[117]

115 Letter from Public Liaison Department, Public Communications Branch, IDF Spokesperson's Office to Noa Cohen, Yesh Din data coordinator, December 25, 2014. In its response to the report, the IDF Spokesperson stated that "all Officer Academy cadets are examined on the contents of a reader on legal issues, which has more than 20 pages, and includes references to the law of belligerent occupation and the appropriate treatment of the population residing in an area held under belligerent occupation. Moreover, the prohibition on standing idly by is specified in this reader in no uncertain terms" (emphasis in original). Response of the Public Liaison Department, Public Communications Branch, IDF Spokesperson's Office to Yesh Din's report Standing Idly By, May 15, 2015.

116 Ibid.

117 CC 23879-03-13 **Mahmoud Awad v. State of Israel**, Jerusalem Magistrates Court, Notice on behalf of Defendant,

2015: Soldiers are not prosecuted for standing idly by

The MAG Corps' response to complaints filed by Israeli human rights organizations B'Tselem and Yesh Din with respect to incidents in which soldiers stood idly by is slow an ineffective. Between September 2000, the beginning of the second intifada, and December 2011, B'Tselem made 57 complaints to the MAG Corps in cases in which security forces were suspected of failing to prevent violence against Palestinians and vandalism of Palestinian property. The MAG Corps told B'Tselem that investigations were opened in only four cases, and in two of them, they were closed without any action taken against the implicated soldiers. A criminal investigation was opened in one case only. Many other cases are still being processed by the MAG Corps – five years after the incidents occurred, and long after the soldiers were discharged from the military and therefore likely no longer fall under the jurisdiction of the military courts-martial.[118] Yesh Din has filed 30 complaints with the MAG Corps regarding cases in which soldiers stood idly by since 2008. Not a single case has led to criminal or disciplinary proceedings against the soldiers.[119]

The military's responses with respect to disciplinary or criminal action against soldiers who stood idly by are contradictory. In a meeting with representatives from human rights organizations ahead of the 2014 olive harvest, LA-JS Col. Doron Ben Barak said that in 2013 one soldier was disciplined for standing idly by following video footage Yesh Din provided to the MAG Corps. This is the first and only case Yesh Din is aware of in which action was taken against a soldier for standing idly by, albeit disciplinary rather than criminal. According to Ben Barak, the army has "organizational culture issues" when it comes to addressing the phenomenon of soldiers' standing idly by.[120]

Col. Adoram Rigler told Yesh Din in February 2015 that "Thus far, no indictments have been served against soldiers suspected of 'standing idly by.' However, in several cases command action was taken against the individuals involved, and units were given refreshers and

filed by Atty. Uri Sirota, Jerusalem District Attorney's Office – Civil, October 2014. In the notice, the Jerusalem District Attorney's Office also said that in the Hebron Region of the SJ District Police alone, which is monitored by the Jerusalem District Attorney's Office, 666 incidents of public disturbance caused by Israelis were recorded between 2007 and 2011 (these are not complaints filed by security forces and are not attributed to left wing or foreign activists). See also Amira Hass, "Judge orders IDF to reveal protocol for arresting Jews who attack Palestinians," **Haaretz English website**, September 12, 2014.

118 Gili Cohen, "IDF probing 15 cases of soldiers ignoring settler attacks on Palestinians," **Haaretz English website**, May 22, 2012.

119 Letter from Military Advocate for Operational Matters with the MAG Corps, Lieut. Col. Adoram Riegler to Atty.

120 Minutes of meeting with LA-JS in preparation for the 2014 olive harvest, September 30, 2014. Minutes taken by Atty. Roni Pelli of Yesh Din's legal team.

instructions."[121] The IDF Spokesperson said he could not provide any figures on disciplinary or criminal action against soldiers who had stood idly by. According to the spokesperson, collecting data on this issue would require the MAG Corps to individually go through every case it handled over the past seven years which would "significantly impair the MAG Corps' ability to perform its routine tasks properly."[122]

121 Letter from Military Advocate for Operational Matters with the MAG Corps, Lieut. Col. Adoram Riegler to Atty. Emily Schaeffer Omer-Man of Yesh Din's Legal Team, February 14, 2015.

122 Letter from Public Liaison Department, see supra note 115.

CHAPTER 4:

SOLDIER TESTIMONIES ABOUT STANDING IDLY BY

Yesh Din examined what training officers and soldiers in command positions receive on what is required of them during and after a violent incident involving Israeli citizens and how they perceive what is required of them, based on 77 testimonies collected by Breaking the Silence in which the issue of standing idly by came up. The testimonies were collected before this report was prepared. Sixty five of the testimonies included a questionnaire put together by Yesh Din, in which soldiers and officers were asked to give open answers, in their own words, to the following questions:

- Whether they received training on the duties of an occupying army vis-à-vis the civilian population of an occupied territory, including familiarity with the term "protected persons";
- Whether they received training and instruction during which scenarios of violent incidents involving settlers or other Israeli citizens were discussed;
- Whether they were familiar with or received training on a standard operating procedure or standing orders regarding violent incidents involving settlers or other Israeli citizens, wherein their powers are defined, including arrest and detention powers, use of crowd control weapons or possible permission to use live fire in order to prevent or stop life threatening activity against Palestinians or against the soldiers themselves;
- Whether they had received training on documenting and performing inquiries into violent incidents involving settlers or other Israeli citizens, including detaining suspects and securing the scene until the police arrives and carrying out internal inquiries within the unit regarding the soldiers' performance;

The 65 testimonies based on the Yesh Din questionnaire were collected between July 2013 and September 2014. These testimonies and those collected by Breaking the Silence earlier cover various periods of military service, beginning in 1998, when the AG Procedure was issued and ending in 2014. Testimonies were given by soldiers and officers who had served in different positions in several combat infantry brigades (Paratroopers, Givati, Golani, Nahal and Kfir), the Armored Corps and by soldiers and officers serving in both command and staff positions (the Civil Administration and operations officers

and sergeants) in various parts of the West Bank. Most of the testimonies relate to the witnesses' compulsory military service and any additional service they might have done. The testimonies were collected after this service was completed. Some testimonies relate to soldiers' reserve duty tours in the West Bank. The excerpts below are taken from the full testimonies, as collected by Breaking the Silence researchers, in the soldiers' own words, with minimal breaks in the flow.

These varied testimonies show how ill-informed soldiers and officers serving in the West Bank are on the main points of the AG Procedure, whose instructions are meant to trump any military procedure, or the incomplete Central Command procedure, which, according to the IDF Spokesperson is being "updated, revised and re-examined," as well as the stand-alone lesson plan given by the MAG Corps. The testimonies also show that the "command ethos" inside the military repudiates the fact that routine policing and law enforcement tasks are some of the main tasks a military that has been holding a territory under occupation for almost five decades is obligated to perform. The testimonies lead to the conclusion that the military takes the law into its own hands, disregards Supreme Court judgments and avoids implementing the AG Procedure on law enforcement on Israeli offenders in the West Bank.

LACK OF FAMILIARITY WITH THE PROVISIONS OF INTERNATIONAL LAW

All of the testimonies illustrate a void in the education and training soldiers and officers receive on the main, core obligations of a military that is charged with administering occupied territories, whether given on base, during basic training or more advanced courses such as squad commander courses or officer courses, as well as other briefings and training sessions. These courses and sessions fail to highlight the military's obligations under international humanitarian law, and as defined by the Supreme Court, to uphold law and order and protect the local, Palestinian population, the population whose members are considered "protected persons." While the IDF Spokesperson says regional brigade commanders in the West Bank brief their soldiers on the main points of the Central Command's procedure on law enforcement on Israelis, the testimonies demonstrate an alarming lack of internalization of these main points, which in turn, raises concern regarding the poor quality of the training provided.

It is important to note in this context, that the "Cadet Preparation for Officer Academy Entrance Exams," a 195-page booklet issued for prospective officers by the Chief Education Corps Officer, which contains descriptions of the geography and history of the State of Israel and the West Bank (or Judea and Samaria, as the booklet refers to it), entirely fails

to mention what the occupation of the West Bank means. Instead, in the chapter on the 1967 War, the booklet vaguely states that "treatment of these territories gradually became a bone of contention within Israeli society."[123]

None of the officers who, according to the IDF Spokesperson, would have received the MAG Corps training on the laws of occupation during the various officers' courses, or the soldiers, who would have been briefed by their commanders on the main points of the AG Procedure, were familiar with the term "protected persons" and what it means, even according to these courses and training sessions, namely that the soldiers had a duty to see to the welfare and safety of the residents living in the West Bank. According to a variety of testimonies, it appears that the soldiers understood that "any Arab who lives there is a suspect. That's what they drilled into us. They didn't say it. It was the spirit of things... We were there to protect Jews. That's it."[124]

Moreover, many soldiers were told that their main mission was to protect the settlers, and most of them refer to settlers by the Hebrew term "mityashvim" which has a more positive connotation than the more common term "mitnahalim," and is official IDF terminology, in an attempt to downplay the colonialist aspects of the settlement enterprise. And so, soldiers understand maintaining public order as a direct outcome of the need to protect the settlement enterprise, and the vast majority of the soldiers and officers who gave testimonies to Breaking the Silence understood law enforcement to be the sole purview of the police, or at least the Border Police, not their own. This perception is inconsistent with the soldiers' powers, as determined in military orders, Supreme Court judgments and the AG Procedure.

When a soldier in the Nahal Brigade, who was tasked with securing the Jewish settlement in Hebron, was asked who he and the soldiers serving with him were meant to guard and protect, he said:

> It was clear that we were protecting the settlers. It was part of the goals of this company, to guard the Jewish community in Hebron. The only factor that gets talked about with respect to the Palestinian side, is to maintain order. That's actually the reason why we sometimes protect the Palestinians.[125]

123 Uri Misgav, "Officer training reader has no place for Palestinians," **Haaretz**, March 26, 2014 (Hebrew). See also **Cadet Preparation for Officer Academy Entrance Exams** (Chief Education Officer Publishing, 2013).

124 Testimony of a soldier with the rank of Staff Sergeant, Battalion 13, Golani Brigade, June 2013.

125 Testimony of a soldier in the Nahal Brigade, November 2013.

DEFICIENT EDUCATION AND TRAINING AHEAD OF ACTIVE DUTY IN THE WEST BANK

Not one of the 77 soldiers and officers who gave testimony to Breaking the Silence said that he was familiar with or ever received training on either the Central Command's or the Attorney General's "Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the OPT," despite the IDF Spokesperson's contention that all soldiers serving in the West Bank are briefed on the procedure's main points, and despite the Attorney General's instruction to give frequent refresher sessions and guidance on the procedure. These testimonies, and others presented further below, highlight the gap between the training soldiers receive on their role during public disturbances and other violent incidents involving Israelis, and the extent to which they internalize what is expected of them, and the weakness of the education and training the military provides on the soldiers' role as law enforcers vis-à-vis violent Israeli citizens.

A Captain in the Shimshon Battalion of the infantry Kfir Brigade attested to the deficient training soldiers receive on addressing violence by Israeli citizens – public disturbances, in military parlance:

> A soldier gets taught how to fight in basic training. He gets taught to charge. He gets taught to fight. The only point in time in which he gets taught how to handle civilians is in the pre-combat training week, just before you go out to the field, or drills before active duty, or something like that. The next time he comes across it is in the ethical prep before joining the battalion, but only at the end. How much does he put into this? Four, five, six days out of his training? It's a problem, because in the end, he performs tasks the police should perform. His task isn't a military task. To prevent a demonstration is not a military task. No matter how you look at it. There's no way around it.[126]

The same officer spoke in detail about how the ethical preparation focuses on the technical aspects and how poorly it prepares soldiers for scenarios of violent incidents involving settlers or other Israeli citizens:

> Ethical preparation is before you go out to the field and it has three parts. The first part is when commanders come and talk about the population, the different factions, the main figures – both in the Arab population and,

126 Testimony of an officer with the rank of Captain, Shimshon Battalion, Kfir Brigade, September 2011.

for example, the Jewish population in Hebron. They even brought in actors from [another] company who staged some stupid scenarios – now you're at a checkpoint. This is a Palestinian and this is his pregnant wife. They want to get across, and you're not allowed to let them pass, and they're giving you a hard time. What do you do? And then they actually act it out, and stuff. It's only for commanders. In the next stage, they give detailed lessons, including presentations and reading materials. The lessons are about sector familiarity, and familiarity with all the stories from the past, all the juicy stories, and ethical pointers, for missions that is. For example in Nablus, you're more likely to do a lot of reconnaissance in the city and less in the casbah, so you're told what the ethical issues are and what the fuckups have been. The third phase of the ethical preparation is, in any briefing you give, whether for a patrol or a stand-by squad, you have a goal, a mission and all that, and one of the things you have to deal with is the ethical aspect of the mission.

Was this training specifically about dispersing Palestinian demonstrations, or were other things that might come up discussed?

A: They're talking about 95%. Five percent was about demonstrations by Jews that are spilling over [to us, E.H.] now too and that also have to be stopped. It's hard. The army doesn't really give you tools. It tells you that something like that might happen. I'll give you an example. I remember before we came to Hebron, they told us there was a deputy company commander from Golani who got beaten up by settlers, and nobody helped him. Now what are you supposed to do? Shoot at a Jew?

Do they say: 'Don't worry the [police] Special Patrol Unit will come'?

Something like that. Something like 'this is the responsibility of the border police. You're allowed to hold them for questioning.'Now, twenty people are throwing a grenade at you – and you're supposed to hold them for questioning? What? It's like they're telling you you have no way of dealing with it. I think that in certain situations, like, A., I think it's good because the army shouldn't have to deal with it. The army shouldn't have to deal with situations of Palestinians either, like neither this nor that. Both this and that, we shouldn't deal with either situation. That's what I think.[127]

127 Ibid.

A soldier in the patrol company of the Nahal Brigade's Orev Battalion (the battalion that also serves as the Nahal's anti-tank missile unit) spoke about the simplistic mission statement given to his unit. He said that during the training sessions the "mission statement is keeping things calm and what not, for all residents in the sector, which obviously includes the settlers, but also the Palestinians."[128]

Another soldier was asked if the platoon had been prepped for dealing with settlers, settler violence or public disturbances initiated by Israelis, similarly to training sessions they underwent regarding public disturbances by Palestinians:

> There's constant contact with settlers in that area, because it's where the settlement of Yitzhar is, and Tapuah and Har Bracha and Itamar and (the outpost of) Gva'ot Olam are. All they tell us is 'settlers – you're pretty much not allowed to do anything to them.' You're not the police. You don't have the privileges the police has, and you can't arrest a settler. No two ways about it. It was the olive harvest. It's a time when there's constant contact, and they were there as reinforcements for the company that was in Yitzhar. What we had to do most of the time was to guard Arab olive harvesters from the settlers. That was the definition. They have two weeks when they're allowed to harvest. And during those two weeks, the whole post is on its feet, to make sure the settlers don't disturb the Arabs' harvesting and that Arabs don't try to get into the settlements. A lot of the groves are inside the settlements, so you actually have to guard five Palestinians in the heart of the settlement, so they can harvest and no one disturbs them.
>
> **If a Palestinian throws rocks at you, or at an Israeli or a settler – can you arrest him?**
>
> Obviously. You have to arrest him.
>
> **And what if a settler throws rocks at a Palestinian?**
>
> I don't think you can arrest him. You can ask him to stop… They explicitly told us to protect Palestinians from the settlers. You're not the police. You don't have the privileges the police has, and you can't arrest a settler.

128 Testimony of a soldier with the rank of Staff Sergeant, Orev Battalion, Nahal Brigade, August 2014.

Did they say it like that?

Yes. No two ways about it.

A settler throws rocks at a Palestinian, the Palestinian returns by throwing rocks at the settler. What do you do? Did they discuss this scenario with you?

No. Never.[129]

A soldier who guarded the Jewish settlement in Hebron added that in briefings, soldiers were told that when Jews harm Palestinians or their property, they have to call the police.

What are you supposed to do when Jews harm Palestinians or their property?

What we're supposed to do is call the police. They told us in advance that there is no ability and no right under the law. You can't handcuff a settler who defaces property belonging to a Palestinian. You can't handcuff him if you're the soldier. You call the police. The police handles it, if it arrives and handles it. A Jew throws rocks – the soldiers will call the police. The soldiers won't point their guns at him. They will not arrest him. They won't do anything to him. The police likely won't either, except for telling him off. They told us this in briefings before going on patrol. They reminded us we weren't allowed to.

Who gave these briefings?

In patrols it's either the platoon commander or the sergeant. They'd always give this briefing in patrols. In arrests it was always the company commander, and sometimes the battalion commander. It was clear that that's what we do. It was clear that there was no other way to deal with them, that it was not allowed to deal with them any other way. We wouldn't do anything except call the police. Sometimes there was no point and we wouldn't call the police because the police wouldn't come, and even if it did, it wouldn't have done anything.

129 Testimony of a soldier with the rank of Staff Sergeant, Battalion 50, Nahal Brigade, January 2014.

If you see a settler in front of you, running with a knife toward a Palestinian, what weapons are you allowed to use?

Good question. I don't know. Definitely not shooting him.[130]

CONTRADICTING, VAGUE INSTRUCTIONS ON THE POWERS AND OBLIGATIONS SOLDIERS HAVE IN VIOLENT INCIDENTS INVOLVING ISRAELI CITIZENS

In all the testimonies, soldiers and officers noted that they were not familiar with any procedure, neither from the Central Command, nor the Attorney General, about their powers and obligations with respect to Israelis who cause public disturbances or a procedure that explicitly delineates their powers in such cases, including detention and arrest powers, use of crowd control weapons or gunfire in life threatening situations. In addition, these testimonies clearly show that the ironclad rules included in the MAG Corps' lesson, including the prohibition on standing idly by, inasmuch as these lessons were in fact given to officers serving in the West Bank, had not been internalized or assimilated into their routine operations.

The instructions the officers refer to are often disjointed and mutually exclusive. They often do not address all possible scenarios for violent incidents involving Israeli citizens (incidents which soldiers have been dealing with for decades, and are listed in the AG Procedure), and do not include a structured progression of actions, including detaining and arresting violent Israeli citizens and cordoning off the scene, which presupposes effective and real-time coordination with the Israel Police. The testimonies also clearly indicate that neither soldiers nor officers are familiar with main points of the Central Command's procedure for "Law Enforcement on Israelis," or the watered down version of the AG Procedure, which refers to the weapons soldiers may use and includes detailed instructions on their powers to detain and arrest suspects.

The fact that the standing orders, which are meant to be available and accessible to each and every soldier, do not contain an explicit and exhaustive definition ostensibly leaves the soldiers room for discretion. The trouble is that the message they receive over the course of their many other missions is that their main role is to protect the settlements and the settlers from Palestinian residents of the West Bank, who are automatically perceived as

130 Testimony of a soldier with the rank of Staff Sergeant, November 2013.

suspects, simply because they are Palestinians. And so, by default, soldiers avoid fulfilling their duties and using their powers as enforcers of law and order against violent Israelis. This approach is the opposite of what the soldiers perceive as the immediate course of action required of them in cases of violence, or public disturbances in the military's parlance, by Palestinians, including the permitted weapons, from crowd control weapons for dispersing protests to using live ammunition and the powers they have to detain and arrest Palestinian suspects, even if these require the use of force.

Moreover, soldiers testified that the military's "command ethos" gives the message that settler crime should be tolerated rather than addressed. A reserve Armored Corps soldier who served in the South Hebron Hills and witnessed an incident in which settlers cut down Palestinian olive trees near the settlement of Carmel testified:

> There is something called "price tag." There was one incident in which they said the night before already that there was going to be "price tag" action. They knew. The next morning you find an entire olive grove cut down, 65 trees were cut down. Cutting a tree takes about half an hour. It's not as simple as it looks. Cutting down one tree costs about 5,000 shekels. You need engineering equipment, special saws. Trees collapse. You cut them in stages. Cutting down 60 trees takes something like eight hours of work and three saws.
>
> There were a lot of people there, a lot of equipment, a lot of noise. There had to be a water supply. It's not a simple operation. I can't believe that the army with all its observation posts over the grove, which is right by the main road, didn't see something like this going on. The observations are effective to the point that you identify every car that stops for a minute on any route. There is no way that 60 trees got cut down and they didn't see it. No way.
>
> They brought the tracker out to see where the footprints had come from. The tracker looked a little to the right, a little to the left. Trackers can tell you by one footprint where they came from, where they went, where they stopped and where they are right now. He looks, and says "I don't know where they came from." It's not complicated. It was right across from the settlement, Carmel. I saw the tracks the cars and tractors made myself. So he tells me: "I prefer not to know."

> So they took this up with the deputy battalion commander, and he said "What do you want? To fight with the entire sector here? There's nothing I can do. It's at brigade level."[131]

An artillery lieutenant testified:

> … It was clear to me that I am allowed (to arrest settlers), and clear that no one had my back. In theory, I can, but the system tells me not to.
>
> **Was there a situation where you can clearly say an arrest should have been made?**
>
> Yes. In a-Nabi Samwil. I remember there were more than a few incidents, at the checkpoints, it sometimes happened.
>
> **For example…**
>
> I don't remember why, but there were several times, it's hard to remember, but there were two or three incidents where I said that if they'd been Arabs they'd have been arrested long ago.
>
> **So what do you do? Do you call the police? What do you actually do?**
>
> Nothing. Nothing. Nothing. Just nothing.[132]

A soldier in a command position with the Nahal Brigade said:

> IDF instructions, we don't have the power, as IDF soldiers, we don't have the power to handle the Jewish population. We can't do anything to them. We can't do anything. We can't touch them. I think we can arrest, but physical pressure, arrest, handcuff, I don't think you're allowed to. It's only the Border Police. I think the orders are to protect them.
>
> **What are your instructions in case you are attacked by settlers?**

131 Testimony of a reserve soldier with the rank of Sergeant First Class, Battalion 455, Armored Crops, June 2013.

132 Testimony of an officer with the rank of Lieutenant, Artillery Corps, June 2013.

I know you can't do anything.

These are the instructions you got? A settler is attacking that car you're in right now.

I think you do nothing.

Nothing?

Nothing.[133]

A soldier in a command position in the Lavi Battalion of the Kfir Brigade, who served in the southern West Bank, including providing security escorts for school children from a-Tuwani on their way to and from school, due to violence from settlers from the nearby outpost of Havat Ma'on, testified:

There was always this thing where if the settlers just wanted to, suddenly a certain area was considered theirs. At Havat Ma'on, they were the best at it. They would suddenly take some trail and say: "They can't go through here. It's my territory." Trails that they (the Palestinians) use to walk to school. I don't know why… "Can't go through here. It's my territory"…

And what do you say?

"They can go." We're supposed to escort the Arabs, so they can get across, but the settlers are throwing stones at them, and you're not going to stand there like: "Here, throw them at me. I'm right here." So you say: "Please, please don't throw stones," like some idiot… [a soldier] got mad that they were throwing stones at the children. He told them: "Stop throwing stones." He didn't let them through. They got into a shoving match. They came down at him with rocks. He lost consciousness. They got him with a rock right here in the jaw.

And did anything happen to the settlers who beat him up?

What? What happened? They hit. We don't hit settlers.

133 Testimony of a soldier with the rank of Staff Sergeant, Battalion 32, Nahal Brigade, October 2013.

> **Did the police come?**
>
> What police? Do you know what it takes to get the police to come?[134]

A staff sergeant with a patrol company who was asked about the instructions on arresting settlers who invade private Palestinian farmland and cause a disturbance said:

> Everyone knew no one would arrest a settler. If you don't see an officer doing it, then for sure you won't do it yourself. There was this general message that they shouldn't be there. Am I going to tell you that anyone really tried to enforce it? No.
>
> **Did they give you any tools for enforcing it?**
>
> I remember that like little kids running to cry to their daddy, the more junior commanders, the squad commanders, the sergeants, would immediately try to get the unit commander to come up with a solution. Every once in a while he'd come and yell at them (the settlers), but nothing more than that.[135]

When soldiers and officers were asked what instructions they had regarding their powers to detain or arrest violent Israelis, their responses reflected a range of possibilities, some of which demonstrated contradictions between what they were told and what is actually done, or that the instructions they received were deliberately vague.

A lieutenant said: "I don't even know what to say, what I have or don't have officially. I don't know what I would have done." Other soldiers said: "We don't do anything to settlers. We don't touch them. Don't hit them… The battalion commander, on the way to [the outpost of Havat Ma'on) says to him (the company commander): "No matter what, you don't touch the settlers. The settlers aren't your job." Or, "you sort of try to separate, but you can't touch

134 Testimony of a soldier with the rank of Staff Sergeant, Lavie Battalion, Kfir Brigade, March 2014. See also testimony of a reserve soldier with the rank of Sergeant First Class who served in the same area in 2013, according to which the settlers "always drive on the road like maniacs. They don't even care that there are children there. I can't say there was a case where someone ran over a kid, but you yell to the kids to run to the edge and just let the crazy settler's car drive there maniacally and leave us all in a cloud of dust and rocks," www.shovrimshtika.org/testimonies/database/61058. For more on violence by settlers from Havat Ma'on, see Amira Hass and Haaretz Correspondent, "IDF calls off escort of Palestinian schoolchildren in Hebron," **Haaretz English website**, October 18, 2005.

135 Testimony of a soldier with the rank of Staff Sergeant, Patrol Company, Armored Corps, October 2013.

a Jew," or "maybe they didn't tell you this straight up, but you understand that you can't be violent, or tough with a settler Jew the way you are with Palestinians." Another soldier said: "You have to separate. It's hard to say that there's an exact definition of what you are supposed to do. It's pretty much – improvise, separate, stop the problem and the minute it stops, call the police. The police usually comes and does nothing." Another soldier added: "I didn't see a written document, but I was told soldiers can't arrest, only the police can arrest Israeli citizens." Another soldier said: "They never told us exactly what to do."[136]

A soldier in a command position in the Nahal Brigade was asked what the instructions were with respect to settler attacks on soldiers.

> I know you can't do anything.
>
> **These are the instructions you got? A settler is attacking that car you're in right now.**
>
> I think you do nothing.
>
> **You do nothing?**
>
> Nothing.[137]

Another soldier said:

> As far as we're concerned, we can't get into it. It's not part of our mission. There's something absurd about this, because the violence is ultimately the same violence, but at the end of the day, we're the army. I remember that it was very much out in the open, even with the junior command, like, it wasn't, even the officers said it very clearly and openly: For us, Jews are Israelis.[138]

136 Testimony of an officer with the rank of Captain, Nahal Brigade, February 2014; testimony of a soldier with the rank of Staff Sergeant, Lavi Battalion, Kfir Brigade, November 2007; testimony of an officer with the rank of Captain, Battalion 50, Nahal Brigade, June 2013; testimony of a soldier with the rank of Sergeant, Battalion 50, Nahal Brigade, September 2010; testimony of a soldier with the rank of Staff Sergeant, Battalion 50, Nahal Brigade, June 2005; testimony of a soldier with the rank of Staff Sergeant, Battalion 50, Nahal Brigade, October 2014; testimony of a soldier with the rank of Staff Sergeant, Nahal Brigade, February 2007.

137 Testimony of a soldier with the rank of Staff Sergeant, Battalion 50, Nahal Brigade, May 2011.

138 Testimony of a soldier with the rank of Staff Sergeant, Battalion 50, Nahal Brigade, July 2013.

Another soldier who was asked if he understood that he had the authority to arrest a settler who uses violence against a Palestinian said:

> And vice versa. They constantly say it, arrest and call the police – for settlers too.
>
> **Call the police or make the arrest yourself?**
>
> No, make the arrest ourselves. Prevent the conflict, and involve the police. Let's just say we can't transport a handcuffed settler.[139]

Only one testimony, given by a captain in the Nahal's 50 Battalion, clearly mentioned the officer's own authority and the authority of any soldier under his command to arrest settlers:

> In cases where there are Jews, I understand that the squad commander will have a harder time facing a Jew who's yelling at him who we're supposed to be keeping safe, and all that…
>
> **Beyond the general sentiment, are there clear instructions, meaning a soldier on the ground…?**
>
> A soldier who sees a settler harassing an Arab who's sitting in the parking lot above the brigade square knows that A. He has to stop it; B. He has to call whoever's around. You do everything to avoid having a soldier be in that situation. There's always a squad commander, and on patrol, there's a sergeant or a platoon commander. If people break the law – I'm like the police in these cases.
>
> **What is the role of the police?**
>
> You call them when you arrest someone. There's no real police in the SJ district. They're not that great…[140]

A soldier in the Civil Administration described how common it is for soldiers to stand idly by – so much so, that even when residents of the Palestinian village of Burin in the Samaria

139 Testimony of a soldier with the rank of Staff Sergeant, Battalion 50, Nahal Brigade, April 2011.

140 Testimony of an officer with the rank of Captain, Battalion 50, Nahal Brigade, February 2014.

area were attacked by Israeli citizens who had come from the direction of the outpost of Givat Ronen, the soldiers preferred to try and catch the Palestinian rioters over confronting the Jewish rioters and trying to stop them:

> We pass it on to the brigade, and expect a unit or a patrol to show up. Often, just because there's IDF presence, (the settlers, E.H) run back to the settlement. It deters the Palestinians too, obviously. Then the reports got mixed up and it turned out there was a planned activity by the battalion that was supposed to go forward the moment there was friction between settlers and Palestinians. It started with the Palestinians saying: "There are settlers here," and then the battalion says: "Great. It's an opportunity to arrest Palestinians." Suddenly, seven vehicles, a pretty large company, goes into Burin, goes to the far end of the village, raises some hell and gets to the conflict area. The instructions the battalion commander gives in this context are to catch as many (Palestinians, E.H) as possible: "I want them. Get them out of their holes." That's the kind of talk. There's conflict. In the meantime, we get reports that the Palestinians and the settlers are throwing stones at each other.
>
> **Which happened simply as a result of the settlers coming down into the village?**
>
> Yes, and the army's happy because it managed to detain some Palestinians during a public disturbance. They come into the village, they want as many rioters as possible, so they arrest three. One is a minor. One is a Palestinian police officer. What was absurd about this report is that they knew there were settlers there. They knew how many, what they were wearing. There was even a report that they were closing in on the houses at the edge of the village, which was unusual. But nothing's done about it. Nothing. Nobody touches them. There was no police there at all.[141]

A sergeant first class on reserve duty with the Armored Corps said:

> **Let's start with why you can't use crowd control weapons to drive them away.**

141 Testimony of a soldier with the rank of Sergeant, Civil Administration, November 2013.

Because they're Jews.

And those are the instructions?

Those are the instructions.

Like that? It's written down?

No. It's not written, right, but you don't use crowd control weapons against Jews, definitely not inside a neighborhood.[142]

A reserve soldier who served in the sector where the outposts of Shilo and Eli are located testified just how ill-equipped military forces are to deal with detaining or arresting violent settlers:

They're apparently bored. They put on some ski masks, and go off on some price tag activity, so clearly the whole platoon is called in, and you get there, and you see them killing themselves laughing… Like, you call a cop. We detained them. There were four 17-18 year olds, like, minors, or not minors, minors who are almost adults, and we don't let them leave. A cop comes, he takes down their information and they go on their way. What are you taking down their information for? Go to their mom, give them a good slap across the face. You take their information down on a piece of paper because you have no authority over them. You can't arrest them. The most you can do is detain them. We detained them. One even started crying when we detained him. It was kind of pathetic, but the cops show up about two hours later, because, what can you do, the Binyamin police has one squad car for every 40 km, and that's it.

So you don't really have the option of arresting them.

I think it's theoretically possible. I know that in practice, the instructions from the brigade are not to engage… The preference is that we don't engage with them. We're not a Jewish police force. Because there's this dual legal system – you know this better than anyone, where we're responsible for the Palestinians, but the police is responsible for the Jews. So you can arrest

142 Testimony of a soldier with the rank of Sergeant First Class, Armored Battalion, August 2013.

him, let's say, and then I have no facility to hold him in if I arrest him. You're arrested – great, now what? We'll lock you up in the jeep?"[143]

A captain with the patrol company in the Armored Corps' 401 Brigade who served in the Nablus district testified about how he was expected to respond to violent attacks by settlers:

> In that area, at the time, the action was mostly to protect Arabs from Jews. The Jews there are real trouble. You have a crowd, some guys come down from Yitzhar to burn fields, or orchards, or to uproot orchards… and so the soldiers ask:"What am I supposed to do in this situation?" They told (them) "What, you don't know? You have to go down there and beat the crap out of the Israelis, the Jews."
>
> **But what if a Palestinian throws stones?**
>
> Then you come at him with everything you've got. You tear the village apart.
>
> **Do you not have the power to arrest settlers according to the military's instructions?**
>
> You can arrest them. If you get into a confrontation, you can beat them up and subdue them. You can't cock your weapon. They (the commanders) were praising a team from a paratrooper patrol company, which arrived on the scene of a similar incident, left their weapons with one of the soldiers and stepped in and beat them up. It's like they're saying 'beat up the settlers, but don't get to a point where you cock your weapon and shoot in the air.' There were cases where the settlers were rioting over there, and there's almost nothing you can do. The Border Police can, but by the time you call the Border Police the incident could have ended six times over, and they cover for each other. You see someone be aggressive toward Arabs – then they run and go into one of the houses. They go back up to Yitzhar and go into one of the houses, and that's it. There's nothing else you can do because everyone there will cover for each other.[144]

143 Testimony of a reserve soldier with the rank of Staff Sergeant, February 2006.

144 Testimony of an officer with the rank of Captain, Brigade 401, Armored Patrol Company, March 2014.

The open-fire regulations used in Hebron for incidents in which violent settlers fire at Palestinians or soldiers are also vague. A soldier testified about readiness for price tag attacks initiated by settlers in Hebron:

> The instructions were to stay vigilant – both for Arabs and Jews. No difference, to understand that Jews can also do stuff now. In short, to stay vigilant.
>
> **What were the instructions for price tag [actions] like that?**
>
> In any case, if someone grabs a gun and I don't know… goes into the casbah; if a Jew goes off the wall, you can take him down too…
>
> **Were there any open-fire regulations regarding Jews?**
>
> It wasn't open-fire regulations, but the message was that, ultimately, you can't let anything happen to anyone in Hebron. Ultimately, if someone does something wrong, you have to respond. I think our company was different. I think not everyone was like that in Hebron. It wasn't their experience, but I'm talking about my company, and those were the instructions. It was clear that you had to stop anyone who was doing something. Like, your goal is to maintain order – more than protecting the Jews – maintain order.
>
> **But did they actually tell you what to do? Did you feel like you knew if a Jew went into (the casbah) now?**
>
> It was more of a gray area.
>
> **I want to focus on that. What is a gray area?**
>
> A gray area means you don't know exactly what you're supposed to do because it isn't clear. It's always really about the situation. Mostly, it's instructions to call the patrol or get a commander, or even… You're not the one that's supposed to deal with these situations. In practice, when you deal with it, then it's to call the command center and have someone else come out.
>
> **Were you given open-fire regulations regarding Jews in cases of price tag attacks?**

No. Not at that level. Because A., firing at a Jew is a record, a criminal record, no matter what. In very, very exceptional cases, we were told: "If you feel there's danger, and you can, and a Jew is really about to shoot you, of course you'll shoot at him," but more than that? It's… very, very unusual.[145]

A soldier from the Lavi Battalion of the Kfir Brigade, whose role included providing security escorts for Palestinian children from a-Tuwani on their way to and from school, due to violence from settlers from the nearby outpost of Havat Ma'on, testified about a similar incident, in which a soldier shot in the air in response to settler violence, and was disciplined:

Some guy from the support (company)… got mad that they were throwing stones at the children. He told them: Stop throwing stones. He didn't let them through. They got into a shoving match. They came down at him with rocks, they hit him here, and he fainted. Took a rock right here in the jaw and lost consciousness. So one of the soldiers cocked his weapon right away, and shot in the air at the settlers. These two soldiers were sentenced that same day. They got shafted with 35 (days) in prison for shooting a bullet in the air. It was a really long time ago but…

…the soldier who fired the shot got 35 days in prison for shooting in the air?

The settler also said that he'd threatened him with a gun. I don't know. I wasn't there.

What about the soldier who got beaten?

He was also disciplined. Why did he hit the settler? It's like he started a fight with the settler.

So what did he get?

I can't remember. He probably got 28 [days', E.H.] detention on base or something. He was the commander.[146]

145 Testimony of a soldier with the rank of Staff Sergeant, Battalion 50, Nahal Brigade, May 2011.

146 Testimony of a soldier with the rank of Staff Sergeant, Lavi Battalion, Kfir Brigade, November 2007.

A captain in the Shimshon Battalion of the Kfir Brigade talked about the difficulties he and his soldiers had enforcing the law on violent settlers, because of the connections between the soldiers and the settlers:

> You can't contain the settlers. They come at you from everywhere. You send a unit here, they come out there. You don't have… You're in these people's communities. You buy at their grocery store. You sometimes have Shabbat dinner there. They bring you cake to the post. People who give you a lot of love, and suddenly, there's anger at the army. People we arrested – I knew one of them, one of the 12. It's a person I talked to quite a bit. Now what do you do? We had one guy in our post who lived in Havat Gilad, so it's very, very close. At the end of the day, you can't use authority against them. You can't. It's hard. This job is for the police you know, the Border Police at most, but definitely not for soldiers.[147]

Even when soldiers are attacked by settlers, they refrain from using their powers and detaining or arresting the violent assailants.

According to some of the testimonies, soldiers may not use crowd control weapons against violent settlers, even when the settlers attack military vehicles, as has been the case in the settlement of Yitzhar; nor may soldiers use those weapons against settlers who throw stones at Palestinians in a densely-populated urban area such as the Jewish settlement in Hebron. This runs counter to the AG instructions on law enforcement vis-à-vis Israeli offenders, which require use of force, including tear gas and other weapons, where necessary, against violent rioters.[148]

A staff sergeant with Nahal Brigade was asked:

> **Theoretically, in an incident like the one in Yitzhar, where army vehicles get attacked, do you have authority to use crowed control weapons, gas, rubber, against settlers?**

147 Testimony of an officer with the rank of Captain, Shimshon Battalion, Kfir Brigade, September 2011.

148 Section 12a(4) in Shadow Instructions for Handling Various Law Enforcement Incidents in the Attorney General's **Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area**, August 17, 1998 (Hebrew).

I don't think we do.[149]

A soldier in a command position in the Lavi Battalion of the Kfir Brigade testified about the solution some soldiers he referred to as "goons" came up with for settler violence against them:

> They [the army] tore down two structures in the outpost of Havat Gilad and the support company commander came down. They [the settlers] attacked him right away. I saw them punching him here, in the chest.
>
> **These are serious attacks.**
>
> Yeah, there was a whole mess. Now I remember, it was some young guys and some people from Havat Gilad trying to stop them. It was a big mess. Anyway, I saw the support company commander's command and control guy laying into the guys who'd jumped him with his weapon – he was really beating them up.[150]

A captain with the patrol company in the Armored Corps' 401 Brigade testified about how severely the senior command considers any use of firearms against violent settlers, even when it is intended only as a deterrent and does not pose a danger to anyone's life. The same officer talked about an altercation soldiers had with settlers from the Od Yosef Hai Yeshiva in Yitzhar (which was seized by the military by order of the OC Central Command in April 2014):

> What I remember is them starting to egg them on, the settlers egging on the soldiers. At some point, the settlers pull out an actual knife and slash their tires, right in front of them. The company commander turns around and aims his weapon 60 degrees towards the Samaria wilderness – clearly in the opposite direction from them – as opposite as you can get – and fires a bullet in the air. He got some serious flack from the brigade commander for that shot. It didn't get to a brigade commander court martial, but there was a brigade commander level inquiry, maybe even a division commander level, about the fact that he fired. The fact that settlers slashed your tires – that's an incident. The fact that you shot in the air at a 60-degree angle in the opposite

149 Testimony of a soldier with the rank of Staff Sergeant, Battalion 32, Nahal Brigade, October 2013.

150 Testimony of a soldier with the rank of Staff Sergeant, Lavi Battalion, Kfir Brigade, March 2014.

> direction from where the incident happened is an incident that is considered a very serious failure.[151]

INEFFICIENT INTERACTION AND COORDINATION BETWEEN THE MILITARY AND THE POLICE

Soldiers and officers complained in their testimonies about police incompetence in responding to violence and vandalism initiated by Israeli citizens. These testimonies again illustrate that the AG Procedure requiring soldiers to use their law enforcement powers until the police arrives had not been assimilated and that the top military and police commands have failed to create an effective, coordinated and constant interface for law enforcement in the West Bank.

A soldier described an incident in which settlers cut down olive trees belonging to Palestinians near the settlement of Susiya. The soldiers, he said, reported the incident to the battalion command and control center, but the Hebron Police did not arrive until the next day: "They simply didn't care. They took some information down and left. They (didn't collect testimonies from us). They had no interest."[152] A soldier who served in Hebron said that in Hebron:

> (The settlers) ignore anyone who's not a brigade commander or above. It's the Wild West. All the settlers have weapons for self-defense. It's also a dangerous place with quite a long history of incidents, so they walk around carrying weapons. But just like the Wild West, they have the Sheriff, except he doesn't count. Everyone ignores him. Everyone ignores the police. In Hebron, they (the police) themselves don't want to get into any confrontations.[153]

The soldiers' frustration with police incompetence is particularly apparent among those who guarded the Jewish settlement in Hebron and encountered recurring violence by settlers who are minors against Palestinian residents. One of the officers recounted:

151 Testimony of an officer with the rank of Captain, Brigade 401, Armored Patrol Company, March 2014. For more on the Od Yosef Hai Yeshiva, see, Yoav Zeitoun, "IDF takes over extremist Yeshiva in Yitzhar," **Ynet**, April 11, 2014 (Hebrew).

152 Testimony of a soldier with the rank of Staff Sergeant, Lavi Battalion, Kfir Brigade, November 2007.

153 Testimony of an officer with the rank of Lieutenant, Battalion 50, Nahal Brigade, June 2013.

> I'm not actually supposed to engage with the population. The civilian population, the Jewish population for sure not… If there are any problems, I call the police, but if I see something happening, I can't stop it. There's violence. I need to stop it. So you call a cop. Usually, you call a cop. A cop, what can he do? Either he arrests the kids, everyone knows everyone there anyway. The cops know them and the cops are frustrated. They know the kids. They know the parents. They know everyone. The stones, the stone throwing, it goes on, it doesn't matter, there's nothing.[154]

Another soldier who guarded the Jewish settlement in Hebron testified about his experience working with the police:

> I don't remember any really extreme case where we called the police and the police came. I remember that usually, if it wasn't serious, there was no point even calling the police and we wouldn't call, because the police wouldn't come, and even if it did, it wouldn't do anything. I don't know what they can do and what they're allowed to do in terms of the law. Except for taking testimonies from us, it never happened.[155]

A captain with the Nahal Brigade testified about police work in the northern West Bank, focusing on the slow response to confrontations between Israeli citizens and Palestinians in flashpoint areas, where incidents often end within a few minutes.

> We have to call them. It takes them time to come. If, say, it's during the olive harvest, it doesn't take as long because they're on alert and they come close. But mostly, they sit in Ariel, and run things from there. It's not really enforcement. The army is really responsible for maintaining order in the sector. It's like part of your mission statement is maintaining order. It's part of my mission statement and every soldier's in the company.
>
> **In terms of definitions, criteria, which incidents do you call the police in for and which don't you?**

154 Testimony of an officer with the rank of Captain, March 2011.

155 Testimony of a soldier with the rank of Staff Sergeant, November 2011. See also, Video: Settlers vandalize property as revenge for stone throwing – police do not detain them, December 8, 2014, www.btselem.org/hebrew/press_releases/20141208_settlers_throwing_stones_in_hebron.

An incident where Jews are involved – I call the police.

Any incident?

Yes. No matter if they arrive or not. Any incident involving Jews, I have to call the police, because I can't deal with them.

And from your experience, do they arrive?

It takes them a while, but they arrive. It takes time to get into the squad car and drive it, from whatever it's doing now, 25-30 minutes from where they were.[156]

The captain from the patrol company in the Armored Corps' 401 Brigade spoke about the slow response from the Border Police, which he sees as an extension of the police:

There were cases where the settlers were rioting over there, and there's almost nothing you can do. The Border Police can, but by the time you call the Border Police the incident could have ended six times over.[157]

An operations sergeant at the Civil Administration Hebron headquarters spoke about an incident in which trees belonging to a Palestinian were cut down, allegedly by a settler from the outpost of Havat Ma'on:

There were recurring incidents of tree cutting there – every month or two.

When, 2011?

2012. They brought in a tracker, and the tracker followed tracks to a certain house in Havat Ma'on, and the police called me in to give a statement. I told them what the tracker told me. That is, there's nobody to file a complaint against in a situation like this.

156 Testimony of an officer with the rank of Lieutenant, Nahal Brigade, February 2014.

157 Testimony of an officer with the rank of Captain, Brigade 401, Armored Patrol Company, March 2014.

The tracker is the brigade tracker?

Yes.

So, you're the army representative and you say: 'To the best of our knowledge the tracks led to Havat Ma'on.'

A certified tracker, that's his profession, told me that the tracks led to a specific house.

Have you ever been summoned to court?

No.[158]

An operations sergeant at the Coordination Administration's command and control center testified about police response in an incident in which dozens of olive trees were cut down on a Saturday.

Even when they get a report in real-time, everyone takes their sweet time. The DCO (District Coordination Office) and the police, both. There was a report about "price tag" activity in Burin. It was a few months ago now. A car was burnt and a house was almost torched. It took about an hour and a half for all the units to arrive, and it's obvious that whoever did it wasn't there anymore. And they're never going to do anything about it either. They're not going to raid (the settlement of) Har Bracha to investigate. Now, it's obvious that they had come from there, it's near Burin. If it was the other way around, they'd have raided the village, like, who did it. But they're not interested. The police says it doesn't have the means.

During the (olive) harvest, there were lots of reports like that. Either that they (the settlers) are coming from the orchards and harassing farmers or harvesters, or just stealing crops. The farmers leave sacks in the orchard. They don't take everything every time they work you know. All through that time, there's tractors and tools, and sacks of olives, so crops get stolen that way too.

158 Testimony of soldier with the rank of Sergeant, Hebron Civil Administration Headquarters, Hebron, March 2012.

So you get a report about something like this and you inform the brigade – and?

The brigade doesn't care. They tell the Palestinians to file a complaint with the police, and 80%, that's what I've heard, about 80% of these cases are closed because of lack of public interest or some such. They tell the Palestinians to file a complaint. You have to ask them a lot of times, because they don't really like it.

I'm saying if a person calls and says: right now they're cutting it down. Or does that not happen often, or at all?

You're asking what the brigade would do? They send a unit out, but it takes time, and they don't always call the police in time. The police always arrives late. No matter where. And that's it.[159]

Another soldier who served as an operations sergeant at the Binyamin Regional Brigade also testified about how police investigators do not perform basic investigative tasks. The soldier was asked if the police ever asked to look at the brigade command and control center log, where the military records all incidents in the sector and how its units responded to them. He said: "Never. Not once during my service."[160]

FAILURE TO DOCUMENT VIOLENT INCIDENTS INVOLVING ISRAELI CITIZENS

According to the testimonies, officers and soldiers were not briefed on documenting incidents and securing the scenes in order to allow the police to collect items, nor were they familiar with any orders requiring them to do so. The MAG Corps' and the Central Command's lesson plans, in contrast, do require soldiers to obtain visual documentation, secure the scene, report breaches of the law to the police and assist the police.[161]

159 Testimony of a soldier with the rank of Sergeant, Civil Administration, November 2013.

160 Testimony of a soldier with the rank of Sergeant, Binyamin Regional Brigade, December 2010.

161 Testimony of Officer Tidhar Jackson to the police, May 21, 2012, regarding an incident in which a settler from the outpost of Mitzpe Yair assaulted a B'Tselem field researcher. The testimony was enclosed with Statement of Defense, Expedited Procedure, on behalf of Defendant 2, the State of Israel, in CC 36621-05-14 **Naser Muhammad Ahamd Nawaja v. Moshe Ben Abu**, Jerusalem Magistrates Court, filed by Atty. Moshe Viliger of the Jerusalem District Attorney's Office, civil, September 16, 2014. The police investigator asked Jackson whether the force he was commanding photographed

An operations officer in the Samaria Regional Brigade, who was asked about photos, documentation or preservation of evidence for the police said:

> I don't think there were measures. There were smartphones already, but it wasn't like today, with the cameras, like today's cameras, and there wasn't, I don't remember ever having any documentation. There were some pictures here and there. It wasn't something we thought about.[162]

An officer who was a platoon commander in the Lavi Battalion of the Kfir Brigade was asked:

> **Did they talk to you about instructions, for instance, if Palestinian property or orchards are vandalized, to document the incident so there can be a police investigation? Things like that?**
>
> No, but there was talk of trying to detain. Now I remember, in Hebron specifically, they didn't tell me to detain, but I was told, there was this term 'freeze the incident', which is to put everything on hold until the (cops) arrive.[163]

A signal operator for a platoon commander who was asked about tree cutting incidents:

> **But say you get to a scene of an incident like that and see all the trees vandalized, etc. Do you have to preserve evidence so the police can investigate?**
>
> They never said one word to us about that.
>
> **Was there documentation of incidents of settler attacks?**
>
> No. We didn't have any.
>
> **Was there anybody who was responsible for having a camera in case something happened?**

the incident, and he answered: "We did not."

162 Testimony of an officer with the rank of Captain, Brigade 401, Armored Patrol Company, March 2014.

163 Testimony of an officer with the rank of Lieutenant, Nahal Brigade, February 2014.

No. Not at all. Nobody brought a camera anywhere.

What about a written protocol? Everything you're telling me now was expressed orally?

There's no written protocol on this that I've seen.[164]

164 Testimony of a soldier with the rank of Staff Sergeant, Battalion 50, Nahal Brigade, January 2014.

CONCLUSIONS AND RECOMMENDATIONS

The issue of soldiers standing idly by as Israeli citizens attack Palestinians and harm their property has been known and documented for decades. Yet despite the ample evidence, whether through direct testimony, still and video footage, or reports by both government agencies and human rights organizations, the military chooses to perpetuate a vicious circle that keeps it from actually addressing the issue. The military confines itself to declarations made by its senior command that are not backed by any real measures such as issuing clear and comprehensive standing orders that define soldiers' powers and responsibilities as enforcers of law and order and clearly set out a systematic sequence of actions for them to follow in cases in which they have to exercise these powers. The fact that the senior command avoids taking determined, persistent action on this issue points to a "command ethos" that denies this widespread practice exists, and worse, to the military's refusal to fulfil its fundamental obligations, as established repeatedly in Supreme Court judgments, and as defined in international humanitarian law.

The military, at all ranks and levels, prefers not to engage in tasks that involve policing and conflict with Israeli civilians, based on the view that as a military, its main task is to train and prepare its soldiers for combat. And so, the military attempts to place the responsibility for policing on the shoulders of the Israel Police. But in doing so, it ignores the provisions of international law, which require the occupying force, i.e. the military, to maintain law and order. It also ignores the continued, cumulative failure of the police to uphold law and order in the West Bank.

Yet, any regime of occupation, particularly a long-term regime of occupation with colonial aspects such as the Israeli occupation, requires the acting sovereign, namely the military, to act as a police force in order to uphold public order and safety. This is part of what military control over a civilian population means. The military cannot absolve itself of the responsibility for maintaining law and order in the occupied territory, much less of its obligation to protect Palestinians from harm by Israeli citizens. There other reasons why the police cannot replace the military in this respect. Aside from the SJ District Police's cumulative failure in the investigation of violent crime by Israeli offenders and its senior command's low motivation to take determined, consistent, uncompromising action against this type of crime, the police simply does not have the required human resources and its forces are too thinly deployed in the West Bank. In any event, law enforcement in the occupied West Bank requires joint, consistent efforts by all law enforcement agencies.

The military's policy highlights the political role it has played, since the beginning of the occupation, in advancing the settlement enterprise, despite the fact that the settlements often clash with the military's own orders and with its obligations according to Supreme Court rulings, and despite the fact that the settlements are, to borrow a phrase from senior military commanders, a source of "controversy" within Israeli society.

The lack of will, shown by all Israeli law enforcement agencies, to address crime by Israeli citizens in the West Bank was discussed in this report with respect to soldiers' practice of standing idly by in the face of violence perpetrated by Israelis. But tolerance for crime by Israeli citizens, settlers and others, has been present for decades with respect to other issues as well, such as illegal construction, criminal seizure of private Palestinian land, pollution and violation of labor laws. Some of these offenses are perpetrated with the consent, encouragement and even financial support of government ministries and institutions. All of these practices impact the rights of the Palestinian residents of the West Bank, who are protected persons under international law. This policy of tolerance toward crime serves once again to illustrate how the settlements are hotbeds for human rights violations in many different ways.

These firmly entrenched patterns of condoning illegal actions by settlers and the illegality of the settlements themselves further illustrate Israel's complete failure to create even a façade that the settlement enterprise, a violation of the provisions of international law through and through, is in fact legal, or that Israel upholds the rule of law and protects Palestinians' human rights in the West Bank, as it is required to do under international law. Time and time again, it becomes apparent that the settlement enterprise, which inherently steals Palestinian resources and continually restricts and violates Palestinians' rights, is inconsistent with the rule of law - a regime based on universal principles of equality before the law, the primacy of law, unbiased enforcement and appropriate legislation.

Properly addressing tolerance for illegal actions by settlers and for the illegality of the settlements, even if only in its manifestation in soldiers' practice of standing idly by, requires facing the substantive aspects of the illegality of the settlements and illegal activity by settlers, and the internalization of Israel's obligations as an occupying power under international law.

It may be impossible to resolve the cognitive dissonance between the substantive injustice of the settlement enterprise, rife with theft, dispossession, discrimination, and deprivation directed at Palestinian residents of the West Bank, their lands, and their private as well as collective resources, and Israel's attempt to normalize the settlements by creating the

façade that rule of law exists in the West Bank. As dedicated, intelligent and ethical as soldiers may be, they will find it very difficult to bridge the gap between the injustice they are required to protect, and their fundamental duty to defend the victims of this same injustice.

By virtue of the military's duties under international law, Supreme Court judgments, its own orders and declarations made by its top command, the military must institute procedures and issue standing orders that define the sequence of actions soldiers must follow during incidents of violence and public disturbances caused by settlers and other Israelis. But while procedures and standing orders may help the military better fulfill its duties as a law enforcement agency, they cannot resolve the conflicting missions soldiers are tasked with so long as the occupation continues.

RECOMMENDATIONS:

Therefore, as immediate intermediary measures intended to prevent further violations of the rights of Palestinian residents of the West Bank, the military must:

- Incorporate the practice of standing idly by during and after incidents of violence or public disturbances by Israeli citizens as an offense into the Military Justice Law, and impose deterring penalties on soldiers and officers who commit this offense.
- In keeping with the provisions of international humanitarian law and international criminal law, the military must incorporate into the Military Justice Law provisions that impose direct, personal criminal liability on commanders and civilian superiors for offenses committed by their subordinates, where superiors fail to take all reasonable measures to prevent the commission of said offenses, or fail to take action to prosecute offenders when they learn of the commission of said offenses after the fact.[165]
- Issue standing orders that clearly and comprehensively define soldiers' powers and obligations in incidents of violence or public disturbances by Israeli citizens in the West Bank. The standing orders should set out the sequence of actions soldiers must follow during these types of incidents and cover detention and arrest powers (including post-arrest actions), use of crowd control weapons, open-fire regulations in life-threatening situations, visual documentation of the incident, securing the scene of the incident pending completion of police examinations and cooperation with various police units including assisting in the investigation, providing statements and giving testimony in court.
- Prosecute soldiers and officers who stand idly by in the face of violent attacks and vandalism by Israeli citizens in the West Bank.
- Commanders in the various units stationed in the West Bank must brief their soldiers on the provisions contained in the standing orders regarding the practice of standing idly by, and routinely and consistently prepare their soldiers for various scenarios of violence and public disturbances by Israeli civilians, according to the military's cumulative experience.
- Military units must hold inquiries after every incident of violence or public disturbances by Israeli citizens, or incidents in which soldiers stood idly by. Such inquiries should be

165 **The Public Commission to Examine the Maritime Incident of 31 May 2010 The Turkel Commission, Second Report, Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law** (February 2013), http://www.turkel-committee.gov.il/files/newDoc3/The Turkel Report for website.pdf, Recommendation No. 2: Responsibility of Military Commanders and Civilian Superiors, pp. 366-369.

circulated among the various units in order to internalize and assimilate conclusions regarding future actions and end the vicious cycle wherein the military avoids making inquiries, drawing conclusions and briefing its units and soldiers on how to appropriately address the practice of standing idly by.

APPENDIX:

IDF SPOKESPERSON RESPONSE

Israel Defense Forces
IDF Spokesperson Unit
Public Communication Branch
Public Liaison Department
Tel: 03-5695757/1657
Fax: 03-5693971

24 Iyar 5775
14 May 2015

To
Eyal Hareuveni
Yesh Din

Re: Yesh Din Report: "Standing Idly By: Soldiers' Inaction in the Face of Offenses Perpetrated by Israelis against Palestinians in the West Bank"

General

1. The report by Yesh Din entitled "Standing Idly By: Soldiers' Inaction in the Face of Offenses Perpetrated by Israelis against Palestinians in the West Bank,"(hereinafter: **the Report**), has been brought to our attention. Following a review of the Report and the arguments raised therein, it appears that the Report is slanted and the interpretation that accompanies the factual descriptions contained therein, is biased. The Report almost entirely ignores many meaningful measures taken over the years on this issue by the IDF, including drafting and updating orders and procedures, establishing inter-organizational teams with a variety of government and military representatives in order to achieve synchronicity between the agencies involved, formulate and implement administrative measures vis-à-vis ideological offenders and further tireless action taken by the IDF in this context.

2. Moreover, many of the facts and much of the history mentioned in the Report evinces an attempt to depict a situation in which there is a consistent stable trend and even an increase in the level of ideologically motivated crime, while the military commander consistently tries to avoid addressing this issue. In truth, not only is this not the trend, but rather an opposite trend has been discernable in recent years: In recent years, administrative measures have been taken against ideologically motivated crime perpetrated by Israelis, and indictments have been served against such offenders by the Israel Police, predicated on a stern approach to such actions. In appropriate cases, administrative measures are taken against Israeli offenders, soldiers are briefed and large scale deployment operations are launched to provide protection for Palestinian residents (including for the purpose of agricultural activities).

3. In this context, the draft Report appears to deliberately ignore many processes and measures taken in the Area over the last few years in the context of ideological crime, that are known to Yesh Din, such as government resolutions on the issue, court judgments noting the efforts made by the Military Commander of the Judea and Samaria Area, and aspects of administrative and criminal enforcement on ideological crime among the Israeli community in Judea and Samaria,

as well as enforcement with respect to ideologically motivated crime within the military, and more.

4. **The authors of the Report chose to present their readers with the facts in a selective manner**, while ignoring official statements made by the IDF which clearly indicate that the responsibility for security, including the duty to maintain order in the Area, rests with the military. These statements are accompanied by significant action on the ground, as stated, beginning with drafting policy, orders and procedures, continuing with human and financial resource allocation, and ending with enforcement operations during and after incidents, directly and in cooperation with other security agencies operating in the Judea and Samaria Area.[1]

5. Given the above, the response of the MAG Corps to the arguments made in the Report on their merits is presented below:[2]

Procedures, orders and lesson plans

6. In the Report, it is argued that the "command ethos" within the IDF is directed at removing the responsibility from IDF soldiers and shifting all responsibilities to the Israel Police. **This allegation is baseless**. The authors of the Report deliberately ignore positions expressed to them directly both orally and in writing, particularly in recent years (for instance, during meetings held in preparation for the olive harvest in the Judea and Samaria Area and during debriefings held after the olive harvest[3]), which clearly state that the role of IDF soldiers includes full responsibility and authority to enforce the law with respect to any type of crime in the Area, including ideologically or otherwise motivated crime perpetrated by Israelis.

7. The claim that the IDF is avoiding drafting procedures and orders is repeated throughout the Report. **This assertion is incorrect, and in fact, it is contradicted in the Report itself.** A procedure on law enforcement on Israelis in the Judea and Samaria area, drafted and approved by the Attorney General in collaboration with the MAG Corps, has been in place since the 1990s. Through the years, the IDF has issued procedures and orders on law enforcement on Israelis pursuant to this procedure, primarily, binding orders for law enforcement on Israelis approved in recent years by the OC Central Command. These procedures are in force both at the General Staff Operations Department Level and the operational level at the OC Central Command. They are available to relevant officials in the IDF and are brought to their attention in various ways.

8. Military orders and procedures oblige IDF forces to take all necessary measures to prevent or stop an offense, whatever the type. This includes directives to detain or arrest suspects and take various measures that would help secure the scene pending the arrival of police forces charged

[1] See, for example, the recent affidavit given by the Judea and Samaria Division Operations Officer, enclosed in Notice and Response on behalf of the State to the Jerusalem Magistrates Court, Israel, in CC 61685-06-13 **Fadel Hamed Mahmoud Amour**.

[2] We note, that we have recently provided our principled response to issues raised in this report in response to another report published by Yesh Din entitled **Mock Enforcement**, which has not been published to date.

[3] Olive Harvest is the title of an actual operation run in the Judea and Samaria Area by the Central Command and the Civil Administration with the object of systemizing and conducting operative programs, in cooperation with other law enforcement agencies, intended to prevent harm to Palestinian agriculture and to Palestinian farmers and their property, at olive harvest sites and in agricultural activity throughout the Judea and Samaria Area. This operation, which is conducted year after year, has been lauded by government and foreign agencies, as well as organizations that work to promote the rights of the Palestinian population, clearly acknowledging the operation's contribution to the rule of law in the Area and the protection of the Palestinian residents.

with investigating the incident. The soldiers are also directed to assist the Israel Police by providing appropriate escort when necessary.

9. Moreover, the current law enforcement procedure in the Judea and Samaria Area, issued by the Central Command, has been revalidated in the past year. The process of assimilating this procedure and updating it as necessary, has been ongoing and positive, and it is **accompanied by information dissemination among soldiers and commanding officers** (such as the Soldier Information Sheet, issued by the OC Central Command from time to time, which focuses on law enforcement on soldiers. The information sheet was most recently distributed in March 2015). Additionally, **there is constant, ongoing communication among security agency officials in the Judea and Samaria Area** including the Ministry of Justice, the Israel Police and the Israel Security Agency. These communications are aimed at improving the response of law enforcement agencies to ideologically motivated crime by Israelis in the Judea and Samaria Area.

10. To make sure these orders are assimilated among the forces operating in the Area, these forces are given written materials and lectures on the issue, and participate in incident analysis sessions – according to rank and the type of mission the forces are tasked with. These lectures begin at the early stages of training, continue when the forces arrive at a new sector and are followed by periodic updates given to forces stationed in the sectors themselves.

11. In this context, we note that the aforementioned procedures are mentioned and cited in the lesson plans given by the MAG Corps, which were recently provided to Yesh Din in response to an application made by the organization to the IDF under the Freedom of Information Act 1998.

12. As for the attempt made by the authors of the Report to present the IDF Spokesperson's statement that IDF orders and procedures, as well as the lesson plans on law enforcement and the prohibition on standing idly by are under review for the purpose of updating, revision and re-examination as proof that the normative framework and the manner in which binding norms are assimilated are vacuous and incomplete: As stated in section 9, updating orders and procedures, as well as lesson plans given during military training (which is the main update required today) is a matter of course in every organization, and is carried out as needed. The situation is no different in the Central Command, given, among other things, the dynamics and the need to adjust responses to changing realities.

13. As for the allegation made by the authors of the Report that the lesson plan given by MAG Corps officials does not mention that the military has a duty to protect "protected persons," i.e., Palestinian residents of the Judea and Samaria Area, we note that **this contention is erroneous**. As the authors of the Report were informed in our response to the above mentioned Freedom of Information Application, most of the material included in the lesson plan is given orally, so that the presentations are effective from a training point of view. **We note that the duty to protect Palestinian residents of the Judea and Samaria Area (within the confines of the law) is discussed in the lesson itself**.

14. The contention made by the authors of the Report that the reader given to cadets in the IDF Officer Academy does not relate to the implications of the occupation in the Judea and Samaria Area, is baseless. During their training, all Officer Academy cadets are examined on the contents of a reader on legal issues, which has more than 20 pages, and includes references to the law of belligerent occupation and the appropriate treatment of the population residing in an area held under belligerent occupation. **Moreover, the prohibition on standing idly by is specified in this reader in no uncertain terms.**

15. In addition, as part of academic courses given by the MAG Corps, such as the course given in the Tactic Command Academy, which trains current and future company commanders, cadets are examined on this issue as well. So, for example, in the most recent course, there was a specific question about the prohibition on standing idly by.

Law enforcement on soldiers

16. Despite the many aforementioned efforts that are put into this issue, there still are, unfortunately, incidents of standing idly by. **These incidents are given the military's full attention, and in exceptional cases, military police investigations are opened and disciplinary and command action is taken**.

17. The authors of the Report also raise the argument that unlike "ordinary civilian procedures," a military police investigation is opened only after a preliminary inquiry that relies on the operational debriefing held by the unit involved in the incident, which forms the basis for the MAG Corps' decision as to whether or not to launch a military police investigation. **This description of the process is, at best, misleading and inaccurate.** With respect to the distinction drawn between the "ordinary civilian procedure" and the procedure for launching military police investigations into complaints implicating IDF soldiers, we note that the civilian law enforcement system also acknowledges the possibility of a preliminary inquiry process prior to a criminal investigation, which is conducted in certain cases, including ones in which complaints have been made, and in these cases, the decision whether to launch a criminal investigation is made only after this preliminary process.

18. **The record must be set straight with respect to the process itself as well**. Every complaint transferred to the MAG Corps' Legal Services for Operational Matters is reviewed on its merits, and reasonable cause to suspect an offense has been committed is required before a complaint leads to a criminal investigation. When this test is applied in practice, there are two categories of cases: If the complaint raises suspicion that an act that has no operational justification has been committed, a military police investigation is opened immediately. However, in cases in which the description included in the complaint may be consistent with legitimate use of force, such as use of force during an arrest, or injury caused by crowd control weapons used during a public disturbance, a preliminary inquiry into the circumstances of the incident will be conducted, and only thereafter, will a decision be made as to whether or not to launch a criminal investigation. This preliminary inquiry relies on raw materials such as daily logs prepared in real time, where operational incidents and debriefings are recorded, if such have been conducted. Accordingly, when an operational debriefing is held with respect to an incident, the MAG Corps asks to receive the debriefing materials in order to glean information about the facts related to the incident. In this context, we clarify that when the military unit involved has not held an operational debriefing, it will not be held with the object of serving as an enforcement tool.

19. The authors of the Report make the claim that in early 2015, the MAG Corps updated its position such that soldiers who had stood idly by could be prosecuted for offenses other than unbecoming conduct under the Military Justice Law, i.e. offenses under the Criminal Code and the Military Justice Law (for example, failure to prevent a crime, failure to uphold binding military orders or aiding in the commission of an offense). **This description is misleading**, as the legal option of charging soldiers who had "stood idly by" with these offenses **has always existed**, and at no time was there a policy to avoid criminally prosecuting soldiers for aiding and abetting or for the aforementioned offenses.

Human rights law in the Judea and Samaria Area

20. The Report refers to international human rights law, in a manner that may lead to the conclusion that Israel is bound by this body of law in the Judea and Samaria Area, and that it breaches said law in a manner that leads to omissions in the protection afforded to Palestinian residents in the Judea and Samaria Area. In this context, we reiterate that the relevant normative framework in this matter **is not human rights law** as these laws have no direct applicability in the Judea and Samaria Area, but rather the law of belligerent occupation. This legal system provides for a balance between the need to maintain public order and safety in the Area, with respect to all persons present therein, and the need to minimize interference with the normal life of the population living therein. Over the years, this system has been incorporated into various arrangements within the security legislation issued by the military commander, in a manner that fully complies with international legal requirements stipulated in the law of belligerent occupation. In practice, this legislation also implements international human rights standards with respect to law enforcement on violent crime and appropriate levels of security of person. **In any event, the IDF considers the duty to take action, within the confines of the law, to prevent bodily harm and property damage directed against protected persons to be obligatory and implements it in its routine operations.**

Recommendations made in the Report

21. Below is our response to each of the recommendations made in the Report:

    1. The first recommendation, to incorporate a specific offense of standing idly into the Military Justice Law, is unnecessary, since, as noted in the Report itself and in our response above, a variety of offenses suitable for enforcing the prohibition are already included in the Military Justice Law 1966, such as exceeding authority, negligence, unbecoming conduct, disgraceful conduct, failure to execute an order, refusal to execute an order, failure to uphold binding orders, etc.

    2. The second recommendation, related to the liability of commanders and superiors, is also based on an erroneous assumption which creates the wrong impression. A doctrine known as "commander responsibility" has long since been part of military law. This doctrine has thus far been applied in many cases of serious offenses such as negligent homicide, and is applicable in the context of other relevant cases in the Judea and Samaria Area.[4] In this context, we note that the issue of commander and superior liability is currently being examined by a governmental task force, following the recommendations of the Second Report of the Public Commission to Examine the Maritime Incident of 31 May 2010 (the Turkel Commission).

    3. The third recommendation, issuing standing orders that set out a mandatory sequence of actions is not required, as such, extremely detailed, procedures are already in effect. The implication made in the recommendation, that there are lacunas in the procedure with respect to giving evidence to the police or the courts, **is irrelevant and misleads readers** into thinking that IDF soldiers do not report to give statements to the police. Procedures may need to be updated and clarified, particularly with respect to managing

[4] In this context, a historic case heard in military court may be noted: A78/88 **First Sergeant Danino v. Chief Military Prosecutor**, Military Court Judgments, 1988, 449, in which a senior ranking soldier was convicted of aiding in an assault and unbecoming conduct for having "stood idly by", while his immediate subordinates committed an assault on Palestinian residents, by covering them in soil debris with a tractor.

the scene of an incident in collaboration with the Israel Police, however, this is a far cry from the allegation made in the Report.

4. With respect to the fourth recommendation: We are not aware of a case in which there was evidence indicating reasonable prospects for convicting a soldier who refrained from addressing a violent offense committed against Palestinian residents of the Judea and Samaria Are and the MAG Corps refrained from prosecuting a soldier or officer who had stood idly by. On this issue, we note that professional decisions regarding enforcement in general, and operational incidents in particular, are made solely according to legal criteria and the evidence available. Each case is examined on its merits, according to its circumstances, the available evidence and the nature of the acts alleged in the complaint. Accordingly, criminal investigations are opened only when there is reasonable cause to suspect that soldiers have committed a criminal offense or engaged in prohibited conduct. Indictments are served only when immediate command action (disciplinary action, removal from office, etc.) has not been deemed more appropriate in the circumstances of the matter, and where evidence that meets the standards of criminal law is available, i.e., evidence that gives rise to reasonable prospects for a conviction.

5. The fifth and sixth recommendations, to brief soldiers and hold inquiries with respect to incidents in which law enforcement by IDF soldiers was not optimal, are part of an ongoing assimilation process. As such, they need to be periodically repeated, given the high turnover of forces in the Judea and Samaria Area. As stated, there are processes in place today that are designed to put these recommendations into practice. We note that the fifth recommendation, to improve the briefing soldiers receive on the standing orders regarding "standing idly by," is entirely inconsistent with the third recommendation, to issue such orders, as if they do not exist.

22. Finally, we note once more, as we have in the past, that we attach great importance to improving the response of all agencies involved in law enforcement to ideological crime in the Judea and Samaria Area, and we do not underrate the gaps that currently exist in terms of law enforcement on ideologically motivated crime by Israelis in the Judea and Samaria Area. **This phenomenon is unacceptable and raises complex moral, educational, command and legal issues, and its eradication requires cautious, thorough consideration.**

23. **At the same time, we reject outright the allegation that the IDF eschews its responsibility as acting sovereign in the Judea and Samaria Area**. On the contrary, the IDF is a leading partner in the measures taken by the Government of Israel toward law enforcement on nationalistic crime, and takes consistent action to fulfil its obligations and responsibilities as acting sovereign in the Judea and Samaria Area. The figures and information on law enforcement vis-à-vis ideological crime in the Judea and Samaria Area also demonstrate real improvement as a result of a series of actions taken in recent years, with increasing efficiency, through collaboration between all security agencies operating in the Area.

Sincerely,

Public Liaison Department
Public Communication Branch
IDF Spokesperson

The term “standing idly by” refers to incidents in which IDF soldiers witness attacks on Palestinians or their property and do nothing to prevent them. In other words, the soldiers refrain from exercising their powers to detain and arrest the individuals involved in the incident, secure the scene to enable the police to investigate and collect evidence and, at a later stage, provide testimony about the incident to the police.

Soldiers’ practice of standing idly by in the face of violence perpetrated by Israelis has been documented for decades by both government agencies and human rights organizations, which have warned about its serious implications. Yet despite this, the military has thus far refrained from drafting operating procedures and standing orders that clearly and comprehensively set out the sequence of actions soldiers must perform during violent incidents involving Israeli citizens. The military has also refrained from following the Procedure for the Enforcement of Law and Order Regarding Israeli Offenders in the Judea and Samaria Area and in the Gaza Strip Area, issued by the Attorney General in 1998, which instructed the military and the police on their particular responsibilities in violent incidents involving Israeli citizens. The military itself says existing protocols on handling violent incidents involving Israeli citizens need to be “updated, revised and re-examined.”

This report, like previous reports by Yesh Din, points to the military’s ongoing efforts to evade its duty to enforce law and order in the West Bank with respect to violence by Israeli citizens, and exposes its attempts to shift this responsibility onto the Israel Police, despite the latter’s failure and negligence in this area.

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.

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