

The Road to Dispossession

A Case Study - The Outpost of Adei Ad



February 2013

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CONTENTS

PRINCIPAL FINDINGS	7
INTRODUCTION	11
METHODOLOGY	13
CHAPTER 1: LEGAL BACKGROUND	15
THE DUTIES OF THE OCCUPYING POWER	15
International humanitarian law – the laws of occupation	15
International human rights law in a territory subject to belligerent occupation	17
Israeli administrative and constitutional law	20
THE DUTY TO ACT AS AN ADMINISTRATOR OF THE OCCUPIED TERRITORY	23
BACKGROUND TO THE ESTABLISHMENT OF THE OUTPOSTS	24
Land law in the West Bank	24
The phenomenon of outposts	27
CHAPTER 2: THE FAILURE OF LAW ENFORCEMENT IN THE WEST BANK	31
CHAPTER 3: THE ESTABLISHMENT OF ADEI AD	36
OUTPOSTS AND SETTLEMENTS IN THE AREA	36
THE FOUNDING OF THE OUTPOST	39



AID FROM GOVERNMENT AGENCIES TO ESTABLISH ADEI AD	44
ADEI AD'S EXPANSION OVER THE YEARS	56
Agricultural invasion	57
Building roads	65
Neglect of public land for the private use of the residents of the outpost	66
ACTIONS TO EVACUATE STRUCTURES IN ADEI AD OVER THE YEARS	69
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CHAPTER 4: THE FAILURE OF LAW ENFORCEMENT AGAINST ILLEGAL CONSTRUCTION AND LAND TAKEOVERS	74
NON-ENFORCEMENT OF DEMOLITION AND STOP WORK ORDERS IN ADEI AD	76
NON-ENFORCEMENT OF EVACUATION ORDERS AGAINST AGRICULTURAL INVASIONS	81
REFRAINING FROM ISSUING A DEMARCATION ORDER FOR THE AREA OF THE OUTPOST	87
NON-ENFORCEMENT IN THE FIELD OF PLANNING AND BUILDING: RESULTS	88
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CHAPTER 5: FAILURE OF LAW ENFORCEMENT UPON ISRAELI CITIZENS WHO COMMIT CRIMINAL OFFENSES AGAINST PALESTINIANS	90
CRIMINAL OFFENSES AGAINST PALESTINIANS IN THE AREA OF ADEI AD	93
(NON) FILING OF COMPLAINTS TO THE POLICE	95
INVESTIGATIONS OF OFFENSES AND THEIR RESULTS	98
INVESTIGATION FAILURE - SELECTED EXAMPLES	101
NON-ENFORCEMENT AGAINST CRIMINAL OFFENSES: RESULTS	117

CHAPTER 6: THE RAMIFICATIONS OF THE OUTPOST AND OF THE ENFORCEMENT FAILURES ON THE RESIDENTS OF THE VILLAGES	119
TURMUSAYA	126
AL-MUGHAYER	130
JALUD	136
QARYUT	141
SUMMARY	144
RESPONSES	151
APPENDICES	160



LIST OF AERIAL PHOTOS APPEARING IN THE REPORT

Photo No. 1: The Shilo area – general overview

Photo No. 2: Houses standing on privately-owned Palestinian land, and the circumference path of the Adei Ad outpost, which traps additional private land inside it

Photo No. 3: Adei Ad in 1999

Photo No. 4: Adei Ad in 2002

Photo No. 5: Adei Ad in 2003

Photo No. 6: Adei Ad in 2010

Photo No. 7: Privately owned Palestinian land near Adei Ad cultivated by Israeli citizens

Photo No. 8: Roads built in the area of Adei Ad, 1998-1999

Photo No. 9: Roads built in the area of Adei Ad, 1998-2010

Photo No. 10: Access to agricultural land of the villages Turmusaya, Al-Mughayer, Jalud and Qaryut, February 2012

Photo No. 11: The place of the occurrence of offenses committed by Israeli civilians against Palestinians in the area of the Adei Ad outpost by year

Photo No. 12: Access to agricultural land – Turmusaya and al-Mughayer

Photo No. 13: Access to agricultural land – Jalud and Qaryut

PRINCIPAL FINDINGS

Some 100 outposts illegal Jewish settlement points have been built to date in the West Bank. In this report, the outpost of Adei Ad serves as a case study explaining how the foundation and establishment of an outpost leads the farmers in the nearby villages to lose their ability to work their land. The observation of a single outpost helps understand the general phenomenon and the use of the outposts as a means to take over Palestinian land.

In the fall of 1998, a handful of Israeli civilians invaded Hilltop 799 next to the villages of Turmusaya, al-Mughayer, Jalud and Qaryut, and founded an outpost that would later be called Adei Ad. Even though it was founded illegally and without government permission, government bodies and ministries helped establish Adei Ad in different ways, and some of them continue to support it today. Especially noteworthy is the involvement of the Settlement Division of the World Zionist Organization – a body responsible on behalf of the government for the founding and establishment of Israeli settlements. The division's activity is under the responsibility of the Prime Minister's Office and is fully funded by the state budget.

This report reveals that the land allocation the Settlement Division received from the Supervisor of Governmental and Abandoned Property is not legally valid, and that the Settlement Division has no status at all in the land it allocated and continues to allocate to Adei Ad.

In the 14 years of Adei Ad's existence Israeli civilians have committed and continue to commit dozens of offenses – criminal and administrative – on the grounds of the outpost and on the land surrounding it. The agencies responsible for law enforcement in the West Bank fail to perform this function adequately.

The enforcement failure is shared by the IDF, which is responsible through the Civil Administration for enforcement against the administrative offenses that include illegal construction and invasions of agricultural land; and the Samaria & Judea (SJ) District Police, which is responsible for enforcement against criminal offenses including violence, property offenses and the takeover of land. The SJ District Police is obligated to act to prevent crimes, locate offenders and complete investigations so that they lead to serving indictments against suspects.

The foundation of the outpost with its houses, public structures, paths and gardens involved essentially criminal acts: establishing a settlement in the West Bank without the permission of the political echelon, without delineating the jurisdiction of the settlement by an order

issued by the Commanding Officer of the Command, and without a detailed plan by virtue of which building permits can be issued, and consequently, without building permits having been issued for any of the structures in the outpost.

There are 57 structures in Adei Ad - Thirteen of them are on unregistered private Palestinian land and the rest on public (state) land; all were built without building permits. The outpost is currently home to 26 families; since it was founded, the area within the circumference road around the outpost has grown by a factor of almost 30. Other areas around the outpost which were previously cultivated by Palestinian farmers have been taken over by Israelis who planted vineyards and other crops in them. To facilitate access to and from the outpost, roads were built around it. From the time it was founded in 1998 until 2011, **the Civil Administration issued 81 demolition orders against structures and work on its grounds. The vast majority of the orders were not enforced**, and the outpost is intact. The Head of the Civil Administration also signed an order to evacuate an agricultural invasion of a privately owned Palestinian plot, but the order was never implemented. The owners of the plot petitioned the High Court of Justice with Yesh Din's help against the non-enforcement of the order. No evacuation orders were issued against other agricultural invasions.

Besides the administrative offenses on the grounds of the outpost, criminal offenses have been committed against Palestinians and their property around the outpost since it was founded. These offenses are met with the defective law enforcement that is typical of law enforcement on Israelis in the West Bank at large. In the preparation of this report, Yesh Din documented **96 specific incidents of criminal offenses** that occurred near Adei Ad on the land of the villages of Jalud, Qaryut, Turmusaya and al-Mughayer, from 1998 to July 2012: 21 offenses of violence (gunfire, battery, stone throwing and threats), 47 property offenses (theft, arson, property vandalism, vandalism of agricultural crops and fruit trees, theft of agricultural crops, etc.) and 28 offenses of taking over land (fencing, cultivating, erecting a structure, a caravan or a greenhouse, paving a road on the grounds of a plot, evicting Palestinians or preventing their access to their plots and trespassing). Of those, Yesh Din monitored the investigation of 58 incidents that occurred since 2005 and for which complaints were made to the police, usually to the Binyamin Police Station in the SJ District. In 49 files the investigation and prosecution bodies finished processing, **92 percent of the files were closed because the investigators failed in their investigations:**¹ 41 files were closed on grounds that indicate a failure of the investigation: "offender unknown" and "insufficient evidence;" three files were closed on the apparently unjustified grounds, in the

1 Of the investigation files whose processing ended and whose results are known to Yesh Din.

opinion of Yesh Din's legal team, of "absence of criminal culpability," and Yesh Din appealed against their closure.

The figures indicate that the existence of the outpost creates illegal administrative and criminal activity which is not met with an adequate enforcement response by the agencies responsible for law enforcement in the West Bank. Instead of taking the necessary actions to stop the criminal activity while using all of the options provided by the law, the state authorities refrain from using all the tools at their disposal and fail to provide Palestinian residents with adequate protection of their body and property.

Even though the outpost is an illegal point of settlement, and the construction and presence within which are violations of the law, the State of Israel nonetheless ensures their safety through the army. The protection provided by the IDF includes guarding the boundaries of the outpost's built area and creating a buffer zone meant to prevent friction between its residents and their neighbors. The establishment of Adei Ad led the IDF to define extensive areas as no entry zones for Palestinians, and to allow Palestinians into other agricultural areas only with IDF permission and advance coordination. Other areas have become inaccessible to Palestinians following events of violence, harassment and threats by Israeli civilians, who have intimidated the Palestinian farmers. Consequently many farmers are unable to cultivate their land, or can do so only partially and discontinuously.

The failures of the law enforcement agencies failed investigations, negligence, impotence and deliberate disregard enable the outpost to steadily take over land and increase the area of its control through criminal activity.

The restriction of access to agricultural lands and the frequent harassment has far-reaching economic consequences for the four villages, whose economies were based almost exclusively on agriculture. The loss of their ability to support themselves from agriculture has forced many of the residents of the villages to seek alternative sources of livelihood. The few who still rely on agriculture for their livelihood report tremendous financial losses because of the full or partial restriction of access to their land, their fear of accessing and cultivating it or the vandalizing of their crops by Israelis. Money invested in tilling the land and cultivating the crops has gone down the drain as have future profits from selling the produce.

The land in question is unregistered private land; if it is not cultivated for several continuous years it can be declared public land. Therefore, stopping cultivation can lead to the loss of property rights to the land, and so the land might pass into the hands of the state or the



invaders. An examination of the sequence of events in the area since Adei Ad was founded raises the suspicion that, as far as some of the Israeli civilians in the area are concerned, that is the intended outcome.

This report presents the connection between the failure of the agencies responsible for law enforcement and the protection of Palestinians and their property, and the dispossession of Palestinians from their land, by drawing a continuum that begins with the absence of effective law enforcement upon Israeli civilians, both on the criminal and the administrative levels, and ends with the inability of the Palestinian land owners to work their land and live off its fruit.

INTRODUCTION

This report examines the establishment of the outpost of Adei Ad in 1998 on a hilltop near the settlement of Shilo and its influence on the four nearby Palestinian villages: Jalud, al-Mughayer, Turmusaya and Qaryut. The report's findings indicate a direct connection between the existence of the outpost and offenses committed by Israeli citizens in its surroundings against Palestinians and their property, and between the full or partial loss of access of the residents of the Palestinian villages to their land. The loss of land or restriction of access to it inflict severe economic and social damage on the residents of the four villages, whose main livelihood has for generations come from farming the land.

We selected the outpost of Adei Ad as a case study that illustrates how the existence of an outpost leads Palestinian farmers in the adjacent villages to lose the ability to cultivate their land. The observation of a single outpost to learn about a general phenomenon helps understand how the outposts have enabled the settlers to take over Palestinian land.

Various aspects of Israel's failure to enforce the law in the occupied Palestinian territories (OPT) according to its obligations have been discussed extensively in reports published by official bodies and human rights organizations, including Yesh Din. Dispossession of Palestinians from their land for the benefit of the settlement enterprise in the OPT has also been at the center of many publications. This report seeks to shed light on an additional aspect of the phenomenon and show the Gordian knot between those two areas, while drawing a continuum that begins with the absence of effective law enforcement upon Israeli citizens – both on the criminal and the administrative levels – and ends with Palestinian land owners losing the ability to work their land and live off its fruit.

Crimes by Israeli citizens against Palestinians are commonly called "ideological crimes," an allusion to the ideological motives and political objectives at their basis. Most of the dozens of crimes mentioned in this report occurred on agricultural land under unregistered Palestinian ownership, on which the settlers set their sights. Their probable goal is to keep the Palestinian farmers away from their land as part of a process whose ultimate goal is to take over the land and expand the area under the outpost's control. The general picture described in the report indicates that for the criminals, the desired outcome is intimidation and the creation of a credible threat that will cause the Palestinians to stay away from the land and stop cultivating it, whether because of their own fears or at the initiative of the IDF.



Obstructing access or permitting only partial access to land allows others to take control or even claim ownership of the land by falsely defining it as "neglected" and "abandoned" land.

The very establishment of the outpost, and continued occupancy of the outpost and of its buildings, are crimes that the residents of Adei Ad have committed and continue to commit. However, Yesh Din does not know the identity of the perpetrators of the other crimes mentioned in the report, nor whether they are in fact residents of the outpost of Adei Ad. All Yesh Din can say is that these were crimes committed in the area near the outpost by people identified by their victims as Israelis, and that these crimes usually result in the expansion of the outpost's area of influence and control and the area in which the entry of Palestinian farmers is effectively denied.

The Samaria and Judea (SJ) District of the Israel Police is responsible for law enforcement, including investigation of crimes. Yesh Din figures show that 84 percent of the files managed by the SJ Police District were closed due to the investigators' failure in their investigations: mostly because the police failed to find the criminals or collect sufficient evidence for their prosecution.²

The absence of adequate enforcement with the goal of preventing and investigating crimes and prosecuting criminals makes a mockery of the rule of law and is tantamount to granting the criminals a license to continue their crimes. By this failure, Israel is betraying its duty to enforce the law in the West Bank and provide protection for the protected persons and their property.

The area to which the report refers did not undergo a process of registration of land rights.³ Therefore there can be claims of loss of rights in cases in which the use of the land stopped for years. Yesh Din believes that the cessation of the use of land—as a result of prevention of access or intimidation, or even fear of it—does not justify a derogation of ownership rights. Therefore, throughout the report we will refer to the land in question as land the rights to which are still maintained by their owners, as they were before the outpost was built.

² **Law Enforcement upon Israeli Civilians in the West Bank**, Yesh Din Monitoring Data, Yesh Din, March 2012.

³ See Chapter 1, pp. 24-27 of this report, concerning land law in the West Bank.

METHODOLOGY

The data in this report is based on investigations by Yesh Din volunteers and the organization's monitoring of investigation files managed by the SJ Police District about events in the area of Adei Ad. In order to prepare this report, Yesh Din volunteers and field researchers met Palestinian land owners from the four villages of Jalud, al-Mughayer, Turmusaya and Qaryut. The researchers filled out questionnaires prepared especially for the purpose of documenting crimes committed on the farmers' land between the years 1998 and 2004, and the consequences of those crimes on the farmers' ability to access their land. Each crime was documented by a separate questionnaire and then all the data was collected in a special database.⁴ We also collected reports of incidents that occurred on the villages' land near the outpost, which had been documented by Yesh Din in its ongoing work since its foundation in 2005 and through July 2012. In all of these incidents the complainants had submitted complaints to the police and Yesh Din's legal team had followed the processing of the complaint and monitored the results of the investigation. Consequently, the information we have about these events and their investigations is more extensive and detailed. Therefore, the data about the investigation of crimes and its results refer only to the incidents monitored by Yesh Din (from 2005 and onward).

In addition, Yesh Din volunteers and field researchers met farmers, landowners and officials in each of the four villages and interviewed them about the changes that occurred in the villages since Adei Ad was erected. The interviews were held in order to receive a broader picture of the effect of the outpost on the villages and the lives of their residents, with a focus on restrictions on access to land and monetary and other damages they caused.

A large part of the information in the report is based on aerial photographs of the outpost and its environs⁵ and on a Geographic Information System (GIS) that combines contents from different information layers. The layers of information that served to produce the report were based on analysis of the aerial photos, which enables the production of data such as the number of structures in the area of the outpost, roads paved around it, the size of the outpost etc. Other information layers were produced by the database collected from the

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- 4 The information about crimes that occurred before Yesh Din was founded is based on the victims' memories and the information they have: some of the farmers keep organized records and documentation of events that occurred on their land. In many cases no complaint was made to the police and in cases where one was, usually Yesh Din is unable to trace the whereabouts of the police investigation file and even the plaintiff does not know the results of the complaint he made.
 - 5 Aerial photos from the years 1999-2011. Despite Yesh Din's efforts, we were unable to locate an aerial photo of the area from 1998.



aforementioned questionnaires and interviews. Additional data was produced from official information layers received from the Civil Administration as a result of a request to receive information under the Freedom of Information Act.

Additional information was received from the Civil Administration in response to other requests under the Freedom of Information Act: information about agreements between the Supervisor of Governmental and Abandoned Property and the Settlement Division in the World Zionist Organization (WZO) as well as partial information about orders the Civil Administration issued in the Adei Ad area. As of the time of writing, the full information requested about the orders had not been received.⁶

Requests for information under the Freedom of Information Act were also sent to the IDF Spokesperson and the WZO Settlement Division. The IDF Spokesperson provided limited information about the closure of areas and restriction of Palestinian access in the area of the outpost. The Settlement Division provided only partial information, and following its refusal to provide the full information requested, Yesh Din submitted a petition under the Freedom of Information Act.⁷

6 This despite the fact that the initial request was made an entire year before the end of writing this report, and despite repeated promises that the information would be provided. The first request was made in a letter by Roni Peli, Yesh Din's information coordinator, to the Public Inquiries Officer in the Civil Administration on October 19, 2012.

7 See box on pp. 48-49 of this report.

CHAPTER 1

LEGAL BACKGROUND

THE DUTIES OF THE OCCUPYING POWER

The territory of the West Bank, which is under belligerent occupation, is governed by a complicated tapestry of laws, which obligate the occupying power as well. These laws include international humanitarian law, and within it the laws of occupation, international human rights law and the principles of the Israeli administrative and constitutional system.

INTERNATIONAL HUMANITARIAN LAW - THE LAWS OF OCCUPATION

When the West Bank was occupied in 1967, the laws of belligerent occupation, anchored in a series of international conventions, were applied to the territory: the 1907 Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land and its annexes (hereinafter, Hague Regulations), which delineate the basic principles of the occupant-occupied relationship and the limits of the occupying power's powers in the occupied territory. The convention reflects customary international law, and therefore is part of the rules governing IDF's conduct in the occupied territories and obligates the State authorities;⁸ the Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949) (hereinafter: Fourth Geneva Convention or Geneva Convention IV); the customary provisions of the 1977 protocols additional to the Geneva Conventions of 1949; and the general principles of international law.⁹

Regulation 43 of the Hague Regulations is considered to be the fundamental rule of the laws of occupation, a quasi-constitution that sets the general framework for the operation of the occupying power and the relationship between the person and the government of the occupied territory. The Article grants the occupying power governmental authorities and powers and sets forth the main considerations by which they may be exercised: the good of the local population in the occupied territory and the principle of preserving existing law.

8 HCJ 5439/09, **Ahmad Abd al-Kader et al. v Military Appeals Committee according to Appeals Committees Order**, ruling from 2012, Section 11.

9 HCJ 3969/06, **Head of Deir Samet Village Council Mohamed Abd Mahmoud al-Haroub et al. v Commander of IDF forces in the West Bank et al.**, ruling from 2009, Section 10.

The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.¹⁰

Legal commentary has added to this fundamental rule of the laws of occupation, which specifically states the duty of the occupying power to see to the welfare of the occupied population, the pole of maintaining the security interests of the occupying power.¹¹ These two poles, the good of the occupied and the security of the occupant, are what drive the laws of occupation and create the fabric of considerations the occupying power is required to consider as it uses governmental powers and administers the occupied territory.

Protection of the occupied population in the occupied territory and the duty to enforce the law

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

Prohibitions are imposed on the occupying power in order to prevent the violation of the rights of the protected persons by the occupant or on its behalf. Along with these restrictions there are also active duties imposed on the occupying power, which are intended to guarantee the protection of the civilians and their ability to exercise their rights. These restrictions and duties have also been recognized in the case law of Israel's Supreme Court:

As part of the internalization of humanitarian law it should be stressed that the duty of the military commander is not limited to the army's avoidance of harming the lives and honor of the local residents ("the negative duty"). His duty is also "positive." He must protect the lives and honor of the local residents.¹²

The demand established by Regulation 43 to ensure "order and safety" contains the duty of the occupying power to enforce the law, both in the sense of preventing crime and in the

10 Regulation 43 of the Regulations Annexed to the Hague Convention respecting the Laws and Customs of War on Land (1907).

11 HCJ 393/82 **Jam'iyat Iskan al-Mu'allimin v Commander of IDF Forces in Judea and Samaria**, ruling from 1983.

12 HCJ 4764/04 **Physicians for Human Rights v IDF Commander in Gaza**. PD 58(5), 385, pp. 393-394.

sense of retroactive enforcement through investigation, prosecution and even restoring the previous status in cases of illegal construction and land seizure.¹³

The duty to protect the property of the protected population

Humanitarian law also imposes on the occupying power the positive duty to protect the property of the protected persons against third parties and to take actions to ensure their ability to enjoy their property and exercise their other basic rights. Regulation 46 of the Hague Regulations states that the occupying power is obligated to protect the private property of the protected population: "Family honor and rights, the lives of persons, and private property [...] must be respected."

Geneva Convention IV contains a parallel provision that obligates the occupying power to protect the property of the protected population and forbids destruction of private and public property, except in cases of vital military need.¹⁴

The right to property is therefore anchored in customary humanitarian law and the authorities are obligated accordingly to ensure it is upheld and to prevent its violation as well as protecting it from being violated by others. The magnitude of this duty increases when it comes to a weak population that does not have the tools and means to protect itself with its own powers.¹⁵

INTERNATIONAL HUMAN RIGHTS LAW IN A TERRITORY SUBJECT TO BELLIGERENT OCCUPATION

International human rights law includes the UN's International Covenant on Civil and Political Rights (1966) and the UN's International Covenant on Economic, Social and Cultural Rights (1966) – both of which Israel signed and ratified in 1991. Over the years Israel has expressed its position to various domestic and international parties its position that this legal field applies only inside its borders and only in times of peace, as opposed to the occupied territories and times of armed conflict.

13 HCJ 9593/04, **Murad v IDF Commander in Judea and Samaria**, ruling from 2006, Section 33, p. 25.

14 Geneva Convention IV, Article 53.

15 HCJ 8887/06, **Yusef Musa Abd al-Razek al-Nabut et al. v Minister of Defense et al.**, ruling from 2011, Section 16.

Israel's position is inconsistent with the object and purpose of human rights covenants.¹⁶ Nor does the international legal community accept Israel's position, opining that human rights law applies to the territories under Israel's occupation.¹⁷ Even Israel's Supreme Court has established in some of its rulings that there is a presumption of the application of these covenants and that the basic rights of an individual or group must be ensured even in times of war.¹⁸ In the decision about the barring of Palestinian traffic on Highway 443 in the West Bank, the High Court of Justice ruled:

The main norms that apply to a territory under belligerent occupation are the Regulations respecting the Laws and Customs of War on Land from 1907, annexed to the Fourth Hague Convention of 1907 (...), which reflect customary international law (...). Along with that, the rules of international law that apply to an international armed conflict are also anchored in the Geneva Convention (...), whose customary provisions became part of Israeli law; and the customary provisions of the Protocol I additional to the Geneva Conventions (...) have also become part of Israeli law, even though Israel is not a party to it. Furthermore, where there is a lacuna in the aforesaid laws of armed

16 "Object and purpose" is a paramount interpretive principle of international law. See Vienna Convention on the Law of Treaties of 1969 ("Treaty of Treaties,") Article 31.

17 The UN bodies that enforce human rights treaties reiterate this position in their reports. The International Court of Justice in The Hague has also ruled that human rights law is not suspended at times of combat but rather applies in full force within existing limitations. The ICJ's opinion on the separation fence, which examined the application of the covenants in the West Bank and Israel's obligations in light of its international undertakings, found that Israel, as the only sovereign party in the area, is obligated to protect the human rights of its Palestinian residents.

See ICJ reports: "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory." Advisory Opinion of 9 July 2004, *ICJ Reports* (2004), p. 136, at pp. 177-181; "Legality of the Threat or Use of Nuclear Weapons," Advisory Opinion of 8 July 1996, *ICJ Reports* (1996), p. 226, at p. 240.

As for the ICJ, the Israeli Supreme Court ruled that it is the supreme judiciary body of international law, and therefore the full deserved weight must be given to its interpretation of that law and its provisions. This position is supported by a series of decisions by the European Court, which established the test of "effective control" as decisive as to the geographical boundaries of the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Among those decisions are for example: *Loizidou v. Turkey* (Preliminary Objections), Decision of 23 February 1995, Paragraph 62; *Behrami v. France, Saramati v. France, Germany and Norway* (Application Nos. 71412/01 and 78166/01 (unreported), 2 May 2007). To these must be added the decisions of the British House of Lords, which ruled that the international human rights laws that obligate the UK apply also to occupied territories under its control and the control of its soldiers, such as Iraq: Eur. Ct. HR. No. 55721/07, *Al-Skeini and Others v. the United Kingdom*, 7 July 2011 (available at www.publicinterestlawyers.co.uk); Eur. Ct. HR No. 27021/08, *Al-Jedda v. the United Kingdom*, 7 July 2011 (Available at <http://www.unhcr.org>).

18 HCJ 7957/04 **Zahran Younes Muhammad Mara'abe et al. v Prime Minister of Israel**, decision from 2005, Section 56.

*conflict, it can be completed from "human rights law" [...].*¹⁹

In the decision on the Deir Samet petition about the ban on Palestinian traffic on the Beit Awa-Dura road, the following was established:

*[...] the powers of the military commander derive from the rules of public international law that apply to belligerent occupation. These laws are enshrined, mainly, in the Fourth Hague Convention [...] and the regulations annexed to it, whose provisions have the status of customary international law; the Geneva Convention IV [...], whose customary provisions constitute a part of the law of the State of Israel, and to the interpretation of whose various provisions this Court has already referred before in its rulings [...]; and the Protocol I additional to the Geneva Conventions, [...] to which Israel is not a party [...]. Sometimes, humanitarian provisions can be completed out of human rights law.*²⁰

And further in the same ruling:

*As for the human rights of the local population, there is no contest that the military commander must respect, protect and allow the exercise of a range of human rights given to the local residents, subject to vital security needs (see for example Article 27 of the Geneva Convention IV; Regulation 46 of the Hague Conventions. See also the principles that guide our judgment based on the International Covenant on Civil and Political Rights, 1968. Henceforth: the Covenant on Civil and Political Rights).*²¹

The duty of the government to protect the Palestinians' basic fundamental rights and the interdictions against harming them in any territory where Israel has effective control, and particularly in Area C of the West Bank, where Israel has exclusive control, therefore also derive from international human rights law.

19 HCJ 2150/07 **Ali Hussein Mahmoud Abu Safiya v Minister of Defense**. Decision from 2009, section 16. Our emphasis.

20 HCJ 3969/06 **Head of Village of Deir Samet, Mohammed Abd Mahmoud al-Haroub et al. v Commander of IDF Forces in the West Bank et al.** Decision from 2009, Section 10.

21 Ibid., Section 17.

ISRAELI ADMINISTRATIVE AND CONSTITUTIONAL LAW

Along with the international systems of law, the constitutional and administrative principles of Israel, including its basic laws, also apply to the occupying power in the West Bank. Basic Law: Human Dignity and Liberty may not be part of the laws of the West Bank, but the constitutional and administrative principles of Israel obligate all of the governmental authorities in Israel, even when they act outside of the State's sovereign boundaries (including the West Bank). The obligation of the State and its authorities to consider both the rules of international law and the principles of Israeli administrative law in their actions has been expressed in a number of Supreme Court rulings:

"An Israeli official in the area carries with him to his office the obligation to act according to the additional standards that derive from the fact of his being an Israeli authority, wherever he may be acting. Thereby an additional and cumulative obligation is imposed on the official, because the obligation to act by the norms of Israeli administrative law does not absolve him from the duty to also uphold the laws of war. He cannot rely on the norms of Israeli administrative law in order to avoid fulfilling a duty or respecting an interdiction that applies to him according to what is acceptable under the laws of war. But from the point of view of this court, the official has not usually performed his duty if he fulfilled only what is required by the norms of international law, because as an Israeli authority there is more that is required from him, which is that he act even in the areas under military government according to the rules that lay out proper and fair modes of administration."²²

And elsewhere:

"Along with the rules of international law that apply to this matter, the basic principles of Israeli administrative law also apply, such as the rules of natural justice. Therefore, every Israeli soldier carries in his knapsack both the rules of international law and the basic rules of Israeli administrative law that are relevant to the matter."²³

The court saw fit to directly apply Basic Law: Human Dignity and Liberty to the relations between the governmental authorities in the occupied territory and its Israeli residents, but refrained from making a binding decision as to the application of the basic law to the

²² HCJ 69/81 **Bassel Abu Ayta v Commander of the Judea and Samaria area et al.** 37(2) PD 197, 226-227 (1983).

²³ HCJ 7015/02 **Kifah Mohamed Ahmad Ajouri et al. v Commander of IDF Forces in the West Bank et al.** Tak-El 2002(3), 1021, 1025 (2002).

governmental relations with the Palestinian residents. Meanwhile, in many of its decisions the Supreme Court recognized that in cases of violation of constitutional rights of Palestinians, the violation must be examined by the standards set forth in Israeli law as to constitutional violation.²⁴ At the center of this report is the violation of some of the rights recognized in the court's case law such as freedom of property, freedom of movement and freedom of occupation.

The right to property

The right to property is perceived as a basic right that contains within it the ability to exercise other rights, such as the right to pursue an occupation, housing rights etc. Because of its centrality, the right to property is anchored in all three normative systems reviewed above, which impose on the occupying power the obligation to respect and protect the private and public property of the protected population in the territory subject to occupation. The obligation to ensure the right to property imposes on the State both the negative duty to avoid violating the property rights of the protected persons and the positive duty to actively ensure their ability to exercise that right and enjoy their property.

The obligation international humanitarian law imposes on the military party in the area to protect the property of the protected persons in the occupied territory has been expressed in Supreme Court rulings, which have ruled among other things:

*[The right to property] is also recognized as a protected constitutional basic right. It is recognized as such by virtue of constitutional law in Israel based on Section 3 of Basic Law: Human Dignity and Liberty. It is also protected from harm by international law. Violation of property rights, including the individual's land rights, is forbidden by the laws of war of international law, unless it is necessary for the purpose of warfare.*²⁵

24 For example: HCJ 3969/06 **Head of Village of Deir Samet, Mohammed Abd Mahmoud al-Haroub et al. v Commander of IDF Forces in the West Bank et al.**, decision from 2009; HCJ 2056/04 **Beit Sourik Village Council v the Government of Israel et al.**, decision from 2004; HCJ 1882/08 **Abd al-Rahman Shueib Naser et al. v Government of Israel et al.**, decision from 2010; HCJ 5439/09 **Ahmad Abd al-Qader et al. v Military Appeals Committee under Order of Appeals Committees**, decision from 2012.

25 HCJ 7862/04 **Abu Daher v Commander of IDF Forces in Judea and Samaria**, PDI 59(5) 2005 368, pp. 376-377. (Emphasis added).

The right to freedom of movement

The Supreme Court has often stressed the importance of freedom of movement, including the freedom of movement of protected persons wishing to reach their lands and forced to confront miscellaneous obstructions – some legal, most not. The Covenant on Civil and Political Rights from 1966 anchors the right of freedom of movement in Article 12, which establishes that every person has the right to liberty of movement in their country.²⁶

Freedom of movement has been recognized by the Supreme Court "both as a basic right in its own right, and as a right derived from the right to freedom, and some even opine it is a right derived from human dignity."²⁷ The importance of the right of freedom of movement inheres not only in its very realization but also because of its necessity for the individual's development and for the realization of additional rights such as the right to work, health, education and other rights. The right to freedom of movement has two dimensions. On the one hand it is a "negative" right that orders the State not to restrict freedom of movement, except for the exceptions cited in the article; on the other hand it is a "positive" right, which requires the authorities to take every measure to guarantee freedom of movement and protect it from harm either by the State or by private parties.

The Supreme Court further ruled that in the case of movement in a private space, special weight must be given to freedom of movement and the restrictions imposed on it must be reduced to a minimum.²⁸

The right to work

The International Covenant on Economic, Social and Cultural Rights (1966) establishes in Article 6 that everyone has the right to gain their living by freely chosen or accepted work. The article adds that parties must take appropriate steps to safeguard this right.

26 "Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." International Covenant on Civil and Political Rights (1966), Article 12.

27 HCJ 9593/04 **Murad v IDF Commander in Judea and Samaria**, ruling from 2006, Section 25, p. 12.

28 Ibid.

THE DUTY TO ACT AS AN ADMINISTRATOR OF THE OCCUPIED TERRITORY

At the basis of the laws of occupation, which regard occupation as part of a necessary evil that might result from armed conflict, is the concept of the temporality of the occupation. This forbids the occupying power from making long-term changes in the occupied territory, unless they are done for the benefit of the local population.

The "Constitution of Occupation" (Regulation 43 of the Hague Regulations) and other regulations concerning the powers of the occupant in regard to public property state that the occupying power is given administrative power over public property in the occupied territory and has the duty to manage it. An occupying government may use public property and even its fruits to uphold its duties under the laws of occupation, which are to ensure the public order and safety of the occupied population, while maintaining its own interests, but it is not permitted to destroy that property, transfer its ownership to others or consume it.

Article 23 of the Hague Regulations forbids the occupant from using property found in the occupied territory, unless it is used for vital military needs. Article 55 of the Hague Regulations establishes that the occupying state functions as a trustee of the occupied territory, which it holds only as a deposit and temporarily:

The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.²⁹

The customary rule that evolved from the articles of the various conventions is that public property should be administered according to the rules of trusteeship. The activities of the occupying government regarding public property must be consistent with the rules of usufruct, the property must not be damaged and long-term changes are forbidden. The occupying power may use that property solely for the good of the residents of the occupied territory or for its own military needs, but use of public property for the good of the occupying power and its non-military needs is forbidden.

29 Regulation 55 of the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land (1907).

BACKGROUND TO THE ESTABLISHMENT OF THE OUTPOSTS

LAND LAW IN THE WEST BANK

The historic upheavals experienced by the West Bank have left their mark on the complicated system of laws that applies to that area today. That system is comprised partly of the law that applied to the area in 1967 when Israeli military forces entered the West Bank. This includes three layers: the Ottoman layer, the British Mandatory layer and the Jordanian layer; and of legal sources that were added to it and include military security legislation, the rules of international law concerning belligerent occupation and Israeli administrative law that applies to the State and military authorities that operate in the area. The Israeli administration left the previous law intact, subject to cancellations and adjustments made since 1967 by a series of military orders and legislative amendments.³⁰ Thus, even though Ottoman rule in Palestine ended almost 100 years ago, in certain areas of law in the OPT and especially in land law, it is still alive and well.³¹

The Ottoman Land Code

The Ottoman Land Code from 1858 defines five kinds of land³² distinguished by geographical expanse, intended use and ownership.³³ The two kinds of land relevant to this report are *mewat* and *miri*.

Mewat land ("dead land") is unsettled and uncultivated land owned by the State. Ottoman law defined *mewat* land as located 2.5 km or more from the last houses of the village, or a place where you cannot hear a shout from the last houses of the village.³⁴

Miri land ("government land") extends from *mewat* lands to the last houses of the village and forms a sort of 2.5 km wide ring surrounding the old core of the village, as well as more

30 The military legislation generated tremendous changes, as a result of the duration of the occupation and the political philosophies of Israeli governments and their attitude towards the relationship between the territories and Israel, and their status.

31 Eyal Benbenisti and Eyal Zamir, "'Jewish Land' in Judea, Samaria, the Gaza Strip and East Jerusalem." Jerusalem: The Jerusalem Institute for Israel Studies, 1993.

32 *Mulk* land – an individual's completely private property; *miri* land – state property belonging to the State treasury; religious trust land; publicly owned land; *mewat* land – dead land.

33 **Selected legislation of Land Law in Judea and Samaria**, edited by the legal advisor to the Judea and Samaria area, the Civil Administration of Judea and Samaria, 2009.

34 Ottoman Land Code (1858), Articles 3, 103.

distant fertile and cultivated land. This is agricultural land which is located in wide and fertile areas near the community and is the property of the Sultan. In exchange for a tax paid to the Sultan for the land's crops, the farmers could receive possession of the land, including the right to bequeath it and sell it. In most parts of the West Bank (except for the southern part), the distances between the historic core of one village to the next do not exceed 5 km, so that the miri lands of one village border on the miri lands of the neighboring one. The result is that in most of the mountaintop area there is no mewat land. The condition for possessing miri land was continuous and constant cultivation of the land.³⁵

Private land

During the British Mandate, and later under Jordanian rule as well, the authorities conducted a wide campaign to register the ownership of land whose ownership had not been registered under Ottoman rule. Shortly after it occupied the West Bank in 1967, Israel suspended the land registration process by military order,³⁶ which established that land in the occupied territories would not undergo a land registration procedure. By the time of the suspension, only 30 percent of West Bank land had been registered in the land registry,³⁷ which means that most of the land cultivated by Palestinians in the West Bank is not registered in their name. The kinds of private land relevant to this report are the following:³⁸

Registered private land: land that is registered under the names of Palestinians in the land registry bureau in the occupied territories;

Unregistered private land: private land occupied and cultivated by Palestinians, but whose ownership is not registered.³⁹

35 Ottoman Land Code (1858), Article 3; **The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C**, Bimkom, June 2008, pp. 23-24.

36 "Order concerning Land and Water Settlement (Judea and Samaria) (No. 291), " (1968), No. 291. In: **Selected Legislation of Land Law in Judea and Samaria**, edited by the legal advisor to the Judea and Samaria area, the Civil Administration of Judea and Samaria, 2009.

37 Talia Sasson, **Opinion concerning Unauthorized Outposts**, Jerusalem, February 2005 (hereinafter, Sasson Report), p. 61. Adv. Sasson was the head of the Special Tasks Division at the State Attorney's Office.

38 Other land that is classified as private land: absentee land administered by the Supervisor of Governmental and Abandoned Property, land in the possession of the Supervisor of Governmental and Abandoned Property by virtue of barter contracts, and private land of Palestinians that was seized for military purposes.

39 Sasson Report, pp. 13-14.

Public land (also known as state land)

land that is government property, which was registered under the name of Jordan or one of its agencies during the period of Jordanian rule of the West Bank, as well as land declared as public land during the time of Israeli rule of the West Bank, and land that was administered by the Jordanian Custodian of Enemy Property (such as land that had been purchased by Jews before 1948).⁴⁰

Land that was declared as public land: when Israel suspended land registration procedures in the territories, about 70 percent of the land of the West Bank remained unregistered in the land registry. The declaration of land as public land⁴¹ was made possible by giving a strict interpretation to the Ottoman Land Code in order to find land and build Israeli settlements on it in the West Bank.⁴² According to this interpretation, land of which the sovereign is permitted to take possession is the following: miri land that has not been cultivated for at least three years in a row and became makhlul (vacant); miri land that has been cultivated for less than 10 years in a row (period of limitation), and of which therefore the farmer has not yet acquired ownership; and land which by its distance from the closest village is considered mewat.⁴³ In other words, only continuous cultivation of the land in the past and present gives Palestinians the right of land ownership.⁴⁴ In the years 1967-1979, 687,000 dunams of the West Bank were declared public land by virtue of an order concerning government property.⁴⁵ Between the years 1979-1992 Israel declared another 908,000 dunams as public land.⁴⁶ During those years, Israel increased the amount of public land in the West Bank to 1.6 million dunams, which is almost 30 percent of the West Bank.

40 Ibid.

41 The declaration of public land to build settlements began following the Alon Moreh petition, following which Israel was forced to find a substitute for the system that was used until then of building settlements on land seized for military purposes.

42 Sasson Report, p. 14.

43 **Land Grab: Israel's Settlement Policy in the West Bank**, B'Tselem, May 2002, p. 46.

44 Palestinians whose land was declared state land were allowed to submit their objection to a military appeals committee, but most of those appeals were rejected. Furthermore, many Palestinians did not know about the intention of declaring their land state land and therefore missed the deadline to submit an appeal.

45 "Order concerning Government Property (Judea and Samaria) (No. 59), " 1967. In **Selected Legislation of Land Law in Judea and Samaria**, edited by the Legal Advisor to the Judea and Samaria Area, the Civil Administration of Judea and Samaria, 2009. The order authorizes the Supervisor of Governmental Property to take possession and administer at his discretion property belonging to an enemy state.

46 In addition to 700,000 dunams of mewat land that was classified as state land under Jordanian rule.

The declarations were made mostly on the mountain ridge, which Israel designated for Jewish settlements.⁴⁷

THE PHENOMENON OF OUTPOSTS

From the perspective of international humanitarian law, the establishment of Jewish settlements in the OPT is prohibited and is a violation of many rules in the laws of occupation, primarily Article 49 of the Fourth Geneva Convention that prohibits an occupying power from transferring its civilian population to the occupied territory, whether by expulsion or by force or willfully, with the State's support and encouragement.⁴⁸

Another prohibition derives from the duty of trusteeship, which forbids the occupying power from exploiting the territories under its control for its own needs, except for military needs (with certain restrictions).⁴⁹ Therefore, when it comes to land use, restrictions are imposed on the occupying power with the purpose of maintaining the principle of the temporality of the occupation. It is also forbidden to confiscate private land to serve the needs of the occupying state, except for temporary occupation for military needs; and the occupying state also occupies publicly owned land (state land) solely as a trustee, and is not allowed to change its character. Long-term changes of the occupied territory are allowed only inasmuch as they are meant to serve the good of the local population or inasmuch as they fulfill a clear military need.⁵⁰

47 **The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C**, Bimkom, June 2008, pp. 24. Land to which the rights are not clear is called survey land. The Supervisor of Governmental and Abandoned Property makes a survey of such land to clarify its status, by checking aerial photos from previous years, reconnaissance on the ground and publication of the intention to declare the land as "state land." In 1997 the examination was anchored in a survey land procedure whose purpose was to create an adequate legal framework to examine the status of land that has not undergone registration procedures or declaration of state land, and allow possession of such land and its use as government property (State Comptroller, **Annual Report 56a**, 2005, pp. 206-207).

48 Geneva Convention IV, Article 49.

49 This also makes a lot of sense, because otherwise the occupying power would be encouraged to prolong its occupation beyond the necessary time, which is a minimal and temporary time, or even worse – it would encourage countries to initiate wars and occupy territories for purposes that are not military-defensive. See HCJ 393/82 **Jam'iyyat Iskan al-Mu'allimin v Commander of IDF Forces in Judea and Samaria**. Decision from 1983, Section 13.

50 The term "long-term changes" is controversial, but even those who support the idea that certain changes are permissible set clear limits on their extent and depth, and agree that the main condition for their legality is that they are intended for the good of the protected persons in the occupied territory (for the good of the local population). See HCJ 393/82 **Jam'iyyat Iskan al-Mu'allimin v Commander of IDF Forces in Judea and Samaria**. Decision from 1983, Section 13.

Israel contends with this interdiction by interpreting it as an interdiction on forceful transfer, and claims that its citizens moved to the settlements of their free will and therefore it is not a violation of the law. But throughout the long years of occupation Israel's governments have initiated, approved, planned and funded the construction of settlements in the West Bank and even created a system of benefits and economic incentives to encourage Israeli civilians to move to them.⁵¹ According to the Israeli Central Bureau of Statistics there are presently 120 settlements in the West Bank housing 311,100 Israeli citizens.⁵² The interpretation of international humanitarian law adopted by Israel allows the construction of authorized settlements (as opposed to the establishment of unauthorized outposts) on public land.⁵³

The phenomenon of outposts, which is a direct continuation of the settlement enterprise in the territories, began in 1996 following the government decision that the establishment of a new settlement would require the approval of the entire government. The approval of the Defense Minister was also required at different stages of planning.⁵⁴ Outposts, on the other hand, could be built without the formal support of the Israeli government; rather, they were built with the involvement and assistance of various public authorities and state bodies.

In the opinion written by Attorney Talia Sasson at the request of then Prime Minister Ariel Sharon, she defined an "unauthorized outpost" as a settlement for which one or more of the following conditions are not fulfilled: 1. The decision to establish it has to be made by the competent political echelon (government resolution); 2. The nature of the land rights: a 1979 government resolution provides that Israeli settlements will be built on state land; 3. A settlement will be built only according to a plan with legal planning status, which is to

51 For further information on this subject, see for example: **By Hook and by Crook: Israeli Settlement Policy in the West Bank**, B'Tselem, July 2010; **National Priority Areas and Settlements**, Peace Now, 2009 (updated in 2011).

52 Central Bureau of Statistics, Localities and Population by District, Sub-District and Type of Locality (1). **Statistical Abstract of Israel 2011** (www.cbs.gov.il).

53 Until 1979, the government would seize private land and allocate it for the construction of settlements, arguing that it was motivated by a military need. The Alon Moreh petition (HCJ 390/79 **Dweikat et al. v Government of Israel et al.**, PD 34(1) 1), was a turning point following which the government had to stop building settlements by virtue of military requisition orders. In the Alon Moreh petition the settlers claimed that the establishment of Alon Moreh was not a temporary land requisition derived from a military need but the establishment of a permanent settlement driven by ideological-religious motives. The army also claimed there was no military need to build the settlement. Consequently, the court ordered the settlement evacuated and the land returned to its owners.

54 Government decision from August 2, 1996, No. 150. See Sasson Report, pp. 65-66.

say that a settlement in the territories will be built only according to a detailed plan,⁵⁵ on the basis of which a building permit can be obtained; 4. The jurisdiction⁵⁶ of the settlement will be established by order of the area commander.⁵⁷

Sasson explained that "unauthorized" – the term she chose to use in the report – means "illegal." Therefore, in the absence of one or more of the four conditions cited above, the outpost is illegal according to Israeli law.⁵⁸

The exact number of outposts is unknown, partly because of the lack of agreement as to the parameters that define an outpost (such as number of residents, the existence of a permanent presence, the existence of infrastructures and buildings, etc.). According to the Defense Ministry there are 88 outposts, whereas the Sasson Report published in 2005 listed 105 outposts. According to the estimate by Peace Now, which maintains a monitoring project of the settlements and outposts, there are currently 99 outposts in the West Bank with 4,000 residents.⁵⁹

According to the figures Peace Now received from the Civil Administration, 80 of the outposts in the West Bank were built in part or in whole on private Palestinian land.⁶⁰ Sasson addressed the issue of establishing outposts on private Palestinian land, saying the following:

The construction of outposts on private Palestinian land is absolutely forbidden. In certain circumstances it can be a criminal offense. But primarily it is a severe violation of an individual's property rights. We should mention that the right to property has been established in Israel as a basic right, in the Basic Law: Human Dignity and Liberty, and was determined by Israel's Supreme Court to be a super-legal constitutional right. The Supreme Court has already ruled that it is the duty of the area commander to protect the basic rights of the Palestinian residents of Judea and Samaria. This means he must, among other things, protect their property rights. Building a settlement on private Palestinian land is an intolerable violation of the right to property and it is the

55 Legal construction in a rural area of the OPT is contingent on the existence of a detailed plan that establishes detailed land zoning and detailed planning for construction. Obtaining a building permit is the condition for beginning to build legally.

56 The borders of the municipal area of a local authority.

57 Sasson Report, pp. 20-21.

58 Ibid.

59 Peace Now website: <http://peacenow.org.il/settlements>.

60 Ibid.



duty of the area commander to prevent it. **The construction of an outpost on private Palestinian land cannot be legalized, not even retroactively. These outposts must be evacuated, the sooner the better.**⁶¹

The Supreme Court too, in a decision from 2006 about the outpost of Amona, ruled that the construction of the outpost's buildings on privately-owned Palestinian land is illegal both because of the direct violation of the land owners' property rights but also because of the violation of planning and building laws:

*The behavior of the occupants of the buildings in Amona began and continued with illegal acts. The seizure of private land and building on it without building permits amount to a direct violation of the rights of the property owners on the one hand, and at the same time is an act that contradicts the principles of the planning and building laws, on the other. The illegal acts were magnified by continued acts of violation of stop work orders issued against the occupants at different stages of the events. These violations increased when, after issuing many extensions, the competent committee issued demolition orders against the buildings and enabled their occupants to carry out the demolition themselves, but they did not heed them.*⁶²

61 Sasson Report, 22 (emphasis in the original).

62 HCJ 1019/06 **Mateh Binyamin Regional Council et al. v Acting Prime Minister et al**, decision from 2006, Section 12.

CHAPTER 2

THE FAILURE OF LAW ENFORCEMENT IN THE WEST BANK

Israel is the occupying power of the West Bank territory and as such is obligated to enforce the law in the area. Law enforcement is the responsibility of the Commanding Officer of the Central Command, who steps in the shoes of the sovereign as the effective ruler of the territory. The responsibility international law imposes on the IDF as an occupying power is not limited to the duty to avoid harming the protected population and its property but also includes the duty to ensure its safety and protect it and its property from the harm of third parties.⁶³

The occupying power, as the party responsible for maintaining order and security in the area, is temporarily given the powers that allow it to uphold that duty for the duration of the occupation. The mission of protecting the civilians under its control is imposed on the IDF through law enforcement. To that end it holds the enforcement powers which were held by the Jordanian government and the Jordanian police before the Israeli occupation. While the duty to enforce the law is primarily imposed on the IDF as the occupying power and sovereign of the occupied territory, the IDF is allowed to delegate its authority to other parties, as it has in fact done; in any case, the responsibility is placed on the shoulders of the Military Commander.

Right after the West Bank was occupied in 1967, the IDF authorized the Israel Police to act to enforce the law in the West Bank through a military order: "Order concerning Police Forces Operating with the IDF (the West Bank) (No. 52) 1967."⁶⁴ In the past there were two police units operating in the West Bank: the Judea sub-district, which was answerable to the Southern District, and the Samaria sub-district, which was answerable to the Northern District. In 1994 those units became regions and were united under the SJ District (Samaria and Judea).⁶⁵

The question of law enforcement in the occupied territories began to draw public interest in the early 1980s. As settlement in the territories expanded, along with the increase of

63 See Chapter 1, pp. 15-23 of this report.

64 The Order concerning Security Provisions was amended many times and in 1970 was legislated as a separate order rather than an appendix to a proclamation: Order concerning Security Provisions (Judea and Samaria) (No. 378), 1970.

65 Israel Police website (www.police.gov.il) Judea and Samaria district > About the district).

violence by Palestinians against Israeli civilians and security forces, there was a rise in cases of Israeli crime against Palestinians, including cases of assault and even killing of Palestinians by Israeli civilians. From 1980 to 1984 there was a significant increase in violent attacks by settlers against Palestinians and the number of attacks doubled every two years.⁶⁶

Due to the proliferation of incidents and the feeling that the law was not being enforced upon the criminals, a group of law lecturers sent a letter to the Attorney General, protesting the way the police was handling the investigation of events in which settlers had broken the law and committed crimes against Palestinians. The letter expressed concern that the law enforcement authorities were discriminating between criminals and victims based on their national identity.

*When suspicion arises that a crime has been committed, the governmental authorities must investigate the incident, act to identify the criminals and prosecute them, with complete indifference to their identity, nationality or the personal motives that move them to act [...] We are concerned of discrimination between one crime and another and one criminal and another. This suspicion requires thorough examination.*⁶⁷

The letter led to the establishment of a committee headed by Deputy Attorney General Yehudit Karp. The Karp Report was submitted in May 1982 and focused on police investigations of crimes by Israeli civilians against Palestinians and their property. The report found that only a minority of the investigations were productive and indicated a high percentage of investigations whose defective administration led to the closure of the investigation files. The report further indicated that the outcomes of the investigations are influenced by the "ambivalent way" they are administered.

*This ambivalence does not result only from the natural complexity of the situation, nor only from the fact that the suspects in the aforesaid complaint files are not perceived by the police as criminals in the usual sense, but it seems to result also, and mainly, from external intervention by military government officials, in the form of giving instructions as to the very opening of an investigation and matters concerning it, such as release from remand.*⁶⁸

66 Akiva Eldar and Idit Zartal, **Lords of the Land: the Settlers and the State of Israel 1967-2004**, Kinneret Zmora-Bitan Dvir, 2004, p. 483.

67 Yehudit Karp (Chair), **The Investigation of Suspicions against Israelis in Judea and Samaria – Report of Follow-Up Team**. Ministry of Justice, 1982, p. 2. Ms. Karp is a member of Yesh Din's public council.

68 Ibid., p. 28.

The report found that repairing the defects found by the committee would require radical changes in the concept of the rule of law in its broadest and deepest sense.⁶⁹ Despite the harshness of its findings and recommendations about law enforcement on Israelis in the West Bank, however, the report was not implemented and in the following years there was no significant improvement in the state of law enforcement.

In 1994, 12 years after the Karp Report, the official commission of inquiry established following the massacre by Baruch Goldstein in the Cave of the Patriarchs, headed by retired Supreme Court President Meir Shamgar, submitted a report summarizing its findings. The Shamgar Report described, among other things, the failure of the law enforcement agencies to implement the recommendations of the Karp committee, and recommended a series of reforms in the area of law enforcement in the West Bank, primarily concentrating the responsibility for investigation procedures and the authority to carry them out in the hands of the Israel Police. The commission also recommended allocating sufficient personnel to meet the police's needs, establishing coordination procedures between the army and the police to escort the police on their missions and transfer information between the two bodies, introducing arrangements to facilitate investigative actions by the police, and deploying police forces instead of the army in cases of disturbances by Jews. The report also recommended opening police stations in central Jewish settlements in the West Bank.⁷⁰ Following the recommendations of the Shamgar Report, coordinated procedures were established to enforce the law on Israelis in the West Bank⁷¹ and the SJ District was created in the Israel Police.⁷²

The next time an official body took a thorough look at the issue of law enforcement in the occupied territories was in 2004, when Prime Minister Ariel Sharon appointed Attorney Talia Sasson to examine the issue of unauthorized outposts. In the report she submitted to the Prime Minister in the winter of 2005, Sasson devoted an entire chapter to the question of law enforcement in all aspects relevant to the phenomenon of the illegal outposts.⁷³

69 Ibid., p. 33.

70 Meir Shamgar (Chair), **Commission of Inquiry into the Massacre at the Cave of the Patriarchs in Hebron**, Jerusalem, 1997 ("The Shamgar Report").

71 See: "Monitoring and Coordination Procedure between the Israeli Police and the Office of the State Attorney regarding Investigations and Charges against Israelis in the Judea and Samaria and Gaza Strip areas," published in **Hatzofeh**, May 13, 1998.

72 **A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank**, Yesh Din, June 2006, p. 25.

73 Sasson Report, Chapter 10.

Sasson found that as opposed to law enforcement in Israel, law enforcement concerning the outposts in the occupied territories is largely controlled by the political echelon, which conveys a message of non-enforcement, not only by avoiding the punishment of the criminals, but also by state authorities violating the law themselves.

It appears therefore that breaking the law has become institutionalized and institutional. We are not dealing with a criminal or a group of criminals acting against the law. The picture that emerges is of blatant law breaking by certain state authorities, public authorities, regional councils in Judea and Samaria and settlers, all while presenting the semblance of an orderly institutional system acting legally.⁷⁴

The main difficulty Sasson indicated is the double message conveyed by the Israeli governments to all operational levels, according to which the settlement acts in the unauthorized outposts, although illegal, are "Zionist acts." The double message, says Sasson, seeps into the IDF, to its soldiers and commanders, the Israel Police and its officers, the settler community and the Israeli public at large.⁷⁵

Like its predecessors, the report written by Sasson also included a series of reforms and recommendations to improve law enforcement in the West Bank. Even though some of the recommendations included in the Sasson Report were implemented, the feebleness of law enforcement on Israeli civilians in the occupied territories in general remained as it was, especially in the case of the outposts. An investigation officer from the SJ District of the Israel Police told Yesh Din that he estimated that every year no more than three files concerning ideological offenses by Israelis against Palestinians (which the police call "Israeli disturbance files") develop into indictments.⁷⁶ Yesh Din's monitoring data also indicate a low rate of indictments – less than nine percent of the monitored investigation files developed into indictments, whereas 84 percent of the files were closed because of a failure of the investigators in their investigations.⁷⁷

The Israel Police recently published national figures that show the rate of indictments submitted throughout Israel is 10 percent of all investigation files opened.⁷⁸ Our position is

74 Ibid., p. 44 (emphasis in the original).

75 Ibid., p. 45.

76 A conversation with an officer from the SJ District Police, September 19, 2011. The officer's name is on file with Yesh Din.

77 **Law Enforcement upon Israeli Civilians in the West Bank: Yesh Din Monitoring Data**, Yesh Din, March 2012.

78 Yaron Doron, "A drop in the number of solved police files," **Yedioth Achronoth**, February 8, 2012.

that there is no room for comparison between the low national rate of investigations that yield indictments, and the low rate of indictments produced by the investigations monitored by Yesh Din. The figure concerning investigation files monitored by Yesh Din involves ideological crimes, in which there is a high percentage of serious crimes. Ideological crime within the borders of Israel is perceived as particularly serious, and therefore the law enforcement agencies devote special resources and efforts to it. We can assume that the national rate of indictments for ideologically motivated crimes is much higher than the general rate of indictments, and therefore there is likely to be a significant disparity between the rate of indictments of ideological crimes in the SJ District compared to the rest of the districts in Israel.

Yesh Din's monitoring

Yesh Din has been conducting its project on law enforcement on Israeli civilians since it was founded in 2005. The project consists of monitoring the processing of investigation files by the SJ Police District, in order to examine to what extent Israel is fulfilling its obligation to protect the residents of the occupied territories and their property. In June 2006 Yesh Din published the report "A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank,"⁷⁹ which focused on the initial stages of processing crimes by Israeli civilians against Palestinians in the West Bank. The report revealed a high level of failure in the investigation of crimes by Israeli civilians against Palestinians and systemic defects in the management of investigations in the SJ Police District. The report included recommendations to the police and the IDF, whose implementation could contribute to strengthening the rule of law in the West Bank. The report "Too Little, Too Late,"⁸⁰ which was published in May 2008 and examined how the State Attorney's Office supervises police investigations in the West Bank, revealed a similar picture to the previous report as to the high level of investigation failures. Current figures published in March 2012,⁸¹ based on a broader sample of investigation files, indicate there has been no substantial change in the quality of investigations.

79 **A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank**, Yesh Din, June 2006.

80 **Too Little, Too Late: the State Attorney's Supervision of Police Investigations into Israeli Civilians' Offenses against Palestinians**, Yesh Din, May 2008.

81 **Law Enforcement upon Israeli Civilians in the West Bank: Yesh Din Monitoring Data**, Yesh Din, March 2012.

CHAPTER 3

THE ESTABLISHMENT OF ADEI AD

OUTPOSTS AND SETTLEMENTS IN THE AREA

Adei Ad belongs to a sequence of settlements called "Shilo and its satellites" – a cluster of illegal outposts built east of the settlement of Shilo and the outpost of Shvut Rachel. The settlement of Shilo was founded in 1978 without the approval of government institutions and received official status a year later. Thirteen years later, at the end of 1991, the outpost of Shvut Rachel was built on a hill east of Shilo. Recently, following a petition to the High Court of Justice by Peace Now, the State decided to settle its status.⁸²

Between the years 1997-2003, five outposts were built east of Shvut Rachel:⁸³ Ahiya (which was at first called Shvut Rachel D) in 1997; Adei Ad (Hilltop F) in 1998; Esh Kodesh (Hilltop H) in 2000; Habayit Haadom (Yishuv Hadaat Farm) in 2002; and Kida (Adei Ad North) in 2003.⁸⁴ The area which Shilo and its outposts command is between Highway 60 and Highway 80 and covers 14,500 dunams, most of which is private land owned by the residents of the Palestinian village of Jalud.⁸⁵ Additional Palestinian villages located nearby and affected by the appearance of the outposts in the area are Qaryut, Turmusaya and al-Mughayer. (See aerial photo no. 1, p. 37)

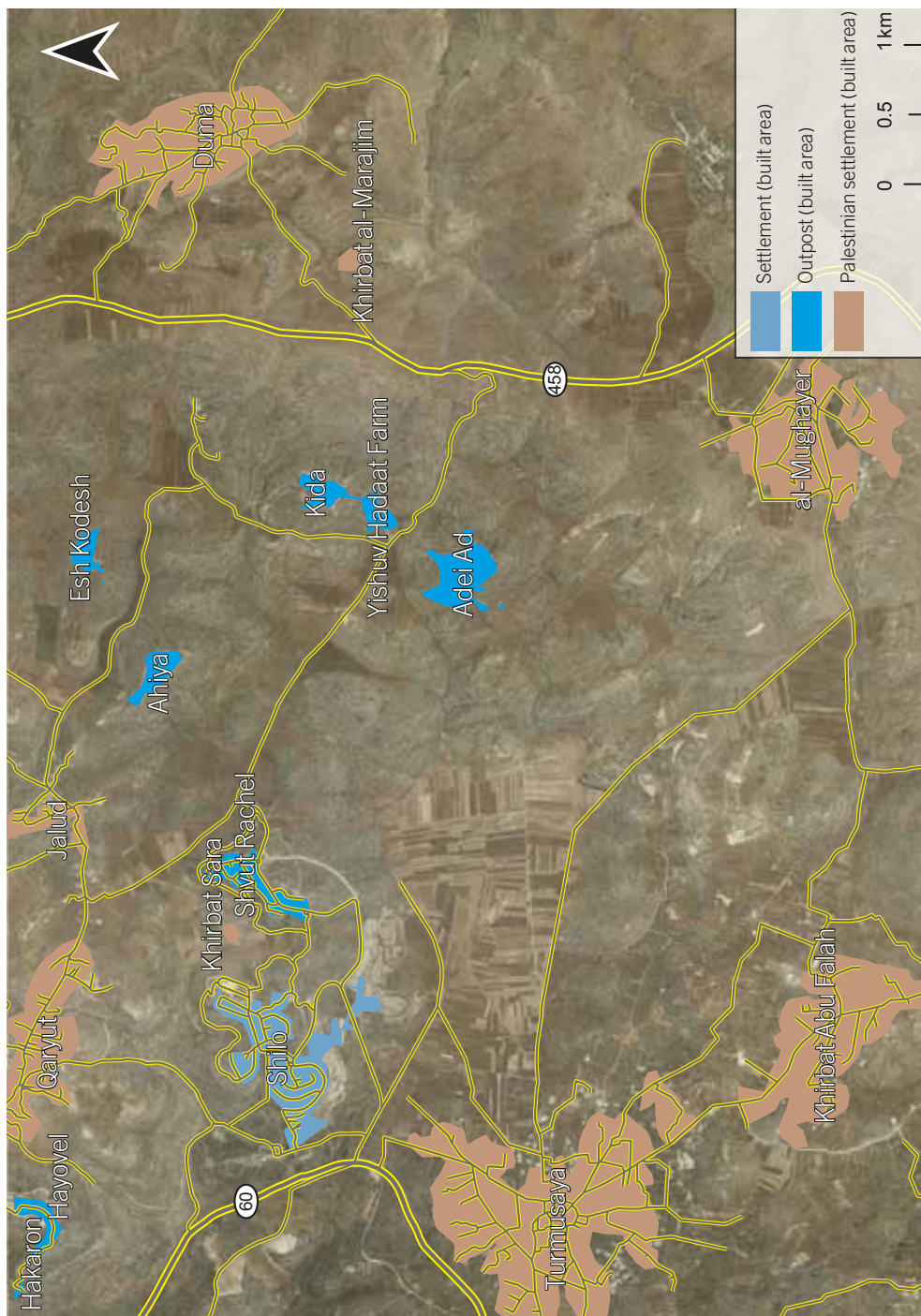
The sprawl of Israeli settlement eastwards is meant to connect the Jordan Valley with the settlements of Shilo and Shvut Rachel by way of their adjacent outposts such as Adei Ad and Ahiya and complete the settlement contiguity of Israeli presence across the West Bank from the Green Line in the west to the Jordan Valley in the east. Like other outposts established throughout the West Bank, these are "connecting" outposts: their job is to create Jewish continuity and connect isolated settlements with settlement blocs, in order

82 HCJ 1813/11 **Shaal Educational Enterprises, Peace Now et al. v Defense Minister et al.** Decision from 2011.

83 Table of full list of outposts and information about them, **Peace Now website** (www.peacenow.org.il).

84 In addition, in 2009 the outpost of Alei Ayin was established, housing a young couple (about 18) and three bachelors. The outpost was evacuated in 2011 and since then has been rebuilt. From the website **Mekomonet Shomron uVinyamin** (<http://shopil.co.il>).

85 Most of the agricultural land of the village of Jalud was stolen from its owners in the last 15 years as a result of building the outposts. See Chapter 6 of this report.



Aerial Photo No. 1: The Shilo area – general overview



Photo No. 1: Adei Ad outpost, November 6, 2012. Photo: Oren Ziv

to prevent future evacuation. Even though each of these outposts is home to only a few dozens of families, the outposts can completely control the land or the road around it.⁸⁶

Along with the process of spreading eastward, another process began of seizing land and building additional outposts in the area. In 1992 the settlement of Rechelim was built on the land of the village of al-Sawiya, at a point located between the settlements of Eli and Kfar Tapuach. In 1998 the outposts of Nof Harim and Hayovel were built between the settlements of Eli and Shilo. The outpost of Givat Harel was erected in 1998 northwest of Shilo, on the western side of the bypass road in an area that until that time contained only the settlement of Maale Levona, and in 1999 the outpost of Palgei Mayim was established north of Eli.⁸⁷ The purpose of this chain of outposts is to create a large bloc of land under Jewish control with the intention of connecting it in the future to Shvut Rachel and its nearby outposts.⁸⁸

Adi Mintz, who was the secretary-general of the Yesha Council between the years 2002-2004, told the Haaretz newspaper upon his retirement that throughout the years the political echelon thought it was advisable and possible to create settlement continuums. He said the outposts were not the initiative of the fringe group called the "hilltop youth," but the product of careful planning to seize strategic points, which was coordinated with the political echelon.⁸⁹ (See aerial photo no. 2, p. 38)

THE FOUNDING OF THE OUTPOST

The outpost of Adei Ad was founded in September 1998,⁹⁰ on an isolated hilltop rising 799 m above sea level, 2.5 km east of Shvut Rachel and some 5 km southeast of Shilo. The source of the name Adei Ad, which means "forever," is in Psalms 132: "This is my resting place forever; here I will reside, for I have desired it."

86 Nadav Shragai, "Ha'aretz report, the outpost plan: One outpost and then another – this is how you create a Jewish 'settlement continuum' in the West Bank," **Haaretz**, September 6, 2004.

87 Table of full list of outposts and information about them, **Peace Now website** (www.peacenow.org.il).

88 Nadav Shragai, "Ha'aretz report, the outpost plan: one outpost and then another – this is how you create a Jewish 'settlement continuum' in the West Bank," **Haaretz**, September 6, 2004.

89 Ibid.

90 In February 2009, nine years after it was established, Adei Ad was registered as a cooperative association. On the website of the Registrar of Cooperative Associations it is registered as an active association under the name "Adei Ad – Cooperative Association for Communal Settlement Ltd."

In the fall of 1998, before the signing of the Wye River Agreement, Ariel Sharon served as Foreign Minister in Benjamin Netanyahu's government. Sharon called on the settlers to seize every hilltop they could in the West Bank, because "whatever you grab will be ours. What you don't grab will not be ours."⁹¹ His call was heeded by a few young men, among others, from the agricultural religious yeshiva Sdot Amir.⁹² They settled on Hilltop F (E.P. 799), which later came to be called Adei Ad. Boaz Melet, who became known as the founder of the outpost and was even described as "leader of land redemption moves in the Shilo area,"⁹³ told a reporter from the newspaper Hatzofeh about the first days of the outpost:

*We lowered our profile about the hill until, with the help of Ze'ev Hever (Zambish), one of the leaders of Yesha, we founded a yeshiva here. In the first month only the bachelors stayed to live here in an empty bus we brought for that purpose, and those of us who are married took turns guarding at night. A month later we brought a caravan up to the hill and I moved into it with my wife and children.*⁹⁴

Akram Na'san, a resident of al-Mughayer, at that time noticed settlers for the first time on one of the plots under his responsibility:

*The first time I saw [them], they had placed [in the plot] iron rods, tins and working tools. Two days later they put an old bus there which they used to live in. I passed by with a tractor. I asked them what they were doing there, I told them I wanted to cross to the other side of the plot and they didn't let me and ordered me to go back where I came from.*⁹⁵

In the following months, the single caravan that housed Boaz and Sgula Melet and their children was joined by additional caravans that housed the first residents of the outpost: the Ben Shlomo family and the families of Moshe Tamir, Shachar Zeligler and Mordi Harel.⁹⁶

91 "An outstretched hand, to grab?" Editorial article, **Haaretz**, November 17, 1998.

92 Sdot Amir is an agricultural yeshiva in the outpost of Shvut Rachel, named after the late Amir Melet, the brother of Boaz Melet, who was killed during his military service.

93 Hagai Huberman, "Nice neighbors," **Hatzofeh**, November 2006 (<http://hazofe.co.il>).

94 Dvir Shafran, "Like a shepherd tending his flock," **Hatzofeh Hashavua**, September 28, 2001.

95 From the responses of Akram Kamel Abdallah Na'san, resident of al-Mughayer, on Yesh Din Form No. 1.

96 Nadav Shragai, "Adei Ad talking about a wonderful future," **Haaretz**, October 17, 1991, p. A3.



Aerial Photo No. 2: Houses standing on privately-owned Palestinian land, and the circumference path of the outpost of Adei Ad, which traps additional private land inside it



Photos No. 2-3: Water tanks at and near Adei Ad outpost, November 6, 2012.
 Photo: Oren Ziv

By July 1999, less than a year after it was founded, about 10 caravans were placed in the outpost. Five more caravans brought to the site in July 1999 were evacuated by the army.⁹⁷

In accordance with the views of Adei Ad founder Boaz Melet, who viewed farming as a means to create an emotional attachment between the individual and the land and to take over land, the outpost had an agricultural orientation from the outset. With the help of students from the agricultural yeshiva Sdot Amir, Melet began cultivating many fields in the area⁹⁸ in order to take hold of them. In an article he published in 2006 Melet explained how the yeshiva works: first, protection of land the government declared as public land, as representatives of the WZO Settlement Division, which is in charge of such land on behalf of the State; second, identifying land that has not yet been declared public land and that is not under "Arab" ownership, and planting olive trees on it in order to "redeem" it; third, the yeshiva bought a flock of sheep and its students raised it on public land that was not suitable for agriculture, which is plentiful in the area. Melet went on to explain that the flock is of extreme national importance, because its grazing makes it possible to claim legal ownership of wide swathes of land.⁹⁹ According to Melet, the Jewish people owns the rights to the Land of Israel and must take back its lands that were abandoned by working the land:

When a person opens his window in the morning, who does he see before him in the fields? The Arab from the next village. Also, on our way to work and to school we see our "cousins" working land that is not theirs. The Jews, by contrast, work in high-tech.¹⁰⁰

According to Melet's approach, building new settlements in the West Bank, even if it is done without permits and in violation of the law, is a Zionist act of building the Land:

If it were possible in principle to receive building permits in Judea and Samaria and build new settlements and a certain person built without a permit, he should have his house demolished like in other parts of our country. But when the government does not give any permits in Judea and Samaria for Jewish construction, when it becomes anti-

97 In response to the evacuation, the secretary of the settlement of Shvut Rachel told a Yedioth Achronoth correspondent that the Shvut Rachel office did not know in advance that the caravans were being brought to the outpost: "People ordered a truck on their own initiative, without coordinating it with us. That is a shame because we were in the middle of a process of receiving permits, to bring in the caravans in an organized way." Zvi Singer and Itamar Eichner, "The Barak government's first evacuation: the outpost of Shvut Rachel," *Yedioth Achronoth*, July 26, 1999, p. 14.

98 Writ of appeal 35/08, **Eretz Zeit Shemen Muvchar Ltd. and Boaz Melet v Head of Civil Administration**.

99 Boaz Melet, "Sdei Amir," *The Jewish Press*, January 11, 2006 (www.jewishpress.com).

100 Ibid.

Zionist and implements the White Paper policy, then building becomes very legitimate, no less than the construction of the "Tower and Stockade" settlements, because the Jewish regime in Israel has no more right to prevent Jews from settling there than the British.¹⁰¹

As of June 2011, the overall area of Adei Ad was 465,321 m². 120,842 m² of that (26 percent) is private, unregistered land belonging to residents of the villages of Jalud and Turmusaya, and the rest is public land.¹⁰² The outpost contains 57 buildings; 44 of them are on public land and 13 are on private Palestinian land.

Adei Ad was included in the opinion written by Talia Sasson about the unauthorized outposts and adopted by the Israeli government,¹⁰³ as well as in the comprehensive database collected by a Defense Ministry team headed by Brig. Gen. Baruch Spiegel (hereinafter, Spiegel Database).¹⁰⁴ They both determined that Adei Ad was built on private Palestinian land and on public land¹⁰⁵ without a government decision to establish it and without a legal planning status (which is to say without a detailed and valid outline plan that allows construction for housing).

AID FROM GOVERNMENT AGENCIES TO ESTABLISH ADEI AD

Government and public agencies helped establish the illegal outposts by funding them and carrying out infrastructure works such as building and paving access roads to the outposts, hooking up and providing electricity and water, building public buildings and providing funding and services to the outposts. Sasson stated in her report that the authorities and government ministries indeed have certain powers concerning Jewish settlement in the

101 Boaz Melet, "Stop being defensive," **Arutz Sheva**, October 21, 2008.

102 The data refers to the area within the outpost's circumference road (not including agricultural land outside of it). The information is based on aerial photos of the outpost and information from the Civil Administration about privately-owned and state land in the area.

103 Sasson Report, pp. 20-21.

104 Spiegel Database, p. 192, available online at Peace Now website (www.peacenow.org.il); in October 2006, Ha'aretz exposed the fact of the existence of the Spiegel Database, the most comprehensive database Israel had prepared about the settlements. The database was created by Brig. Gen. Baruch Spiegel, who served at the time as Special Assistant to Defense Minister Shaul Mofaz. The work on the report was confidential and the information in it was based on data from the Civil Administration and other government agencies. The report was published in full in January 2008 (Amos Harel, "Defense Ministry refuses to release data about construction in the territories," **Haaretz**, January 7, 2008; Uri Blau, "We came, we saw, we conquered," **Haaretz Magazine**, January 30, 2009).

105 For a clarification of the terms private land and public land (also called state land), see capter 1, pp. 25-27 of this report.

West Bank; however, in the case of the illegal outposts that were built without government approval and in violation of the law, they exceeded their powers and used them illegally.¹⁰⁶

Proclamations by settler representatives over the years reveal a complex relationship between the settlers and the State. On the one hand, the State denounced the establishment of the outposts, defined them as illegal activity and at times even acted to rein in the settlers; on the other hand, the State funded the establishment of the outposts, connected them to infrastructures and provides their residents with protection and other services. In an interview by Haim Yavin with Boaz Melet as part of the series "Land of the Settlers," broadcast on Channel 2 in 2005, Melet said:

Senior military commanders told us: "You should know that this is a strategic point, it is very important, we want there to be a continuum of Jewish settlement here to cut across Samaria from west to east, from Elkana, Kiryat Netafim, Barkan, Ariel, Tapuach, Eli, Shilo, Shvut Rachel, we need those strips." Why does the army want them? Because the army knows that it does not trust the Arabs. So we got a prodding: "Guys, it is really important to do this. Officially we can't tell you we're doing it, so you do it and we'll help."

Government officials, of course I don't want to say [who], but they came and said "guys, you settle on the land and we'll take care of you, we'll get you a generator, electricity, your needs, roads. As soon as we came up here government institutions paved an asphalt [road] to here. Asphalt costs hundreds of thousands, right? Well we didn't pay for it. I know I didn't have that kind of money in my pocket, that's for sure. It was the State that paved the asphalt road, but it paved it on days when the Civil Administration inspectors couldn't see they were laying asphalt."

That is the game the State plays with itself. Its right hand says "run along, do it," while its left hand comes after it with reports and stop work orders and so on. So we understood how the system works and agreed to cooperate with it even though in the end they put all the blame on us as if it were the settlers who created this reality.¹⁰⁷

Even though Adei Ad was created illegally and without government permission, bodies acting on its behalf – authorities and government ministries – took part in its funding and

106 Sasson Report, p. 25.

107 "Episode 1," **Land of the Settlers**. Producer: Haim Yavin. First broadcasted on Israeli Channel 2 in 2005.



helped build it, and some of them still continue to provide it with ongoing services. We will bring several examples of the ways the authorities helped the outpost.

Land allocation

Adei Ad is located partly on privately-owned Palestinian land and partly on public land. The Sasson Report established that the land was allocated by the Settlement Division, based on a planning authorization agreement until January 2005.¹⁰⁸

The Settlement Division operates as part of the World Zionist Organization, and acts on behalf of the Israeli government to establish and support Israeli settlements, including in the West Bank. The Division's entire budget is funded by the State of Israel.¹⁰⁹ Following a government resolution from June 2011, the Division moved from the responsibility of the Ministry of Agriculture to the Prime Minister's Office.¹¹⁰

The Supervisor of Governmental and Abandoned Property in Judea and Samaria (henceforth Supervisor) allocated the land to the Settlement Division, which in turn designated it to the residents of the outpost.¹¹¹

108 Sasson Report; Spiegel Database, available online at Peace Now website (www.peacenow.org.il).

109 The World Zionist Organization Settlement Division's website (www.hityashvut.org.il) about the Division). In June 2011 the government decided to transfer the Settlement Division from the Ministry of Agriculture to the Prime Minister's Office.

110 Government Resolution 3336 from June 19, 2011, the 32nd Government Headed by Benjamin Netanyahu: Transferring Area of Activity from Ministry of Agriculture and Rural Development to the Prime Minister's Office – the Settlement Division.

111 The main statutory basis for the management of state land in the West Bank is the Order concerning Government Property (Judea and Samaria) (No. 59), 1967. This order defines as government property (among other) property which, on or after June 7, 1967, was found to belong, to be registered in the name of or granted to one of the following: "An enemy state, a corporation in which an enemy state holds any right, whether directly or indirectly, whether with or without control; or property in which one of these was a partner." In November 1979 the Begin government adopted a resolution to expand the settlements in the occupied territories. This policy led to the creation of contractual associations between the Supervisor of Governmental and Abandoned Property in Judea and Samaria and the settling bodies. These associations regulated the transfer of land rights from the Supervisor to settling bodies responsible for developing the settlements. In practice, the rights to much of the state-owned land in the West Bank were transferred to the WZO. See State Comptroller, **Annual Report 56a**, 2005, pp. 215-216.

THE FINDINGS OF THE SASSON REPORT ABOUT THE INVOLVEMENT OF THE SETTLEMENT DIVISION IN ESTABLISHING OUTPOSTS

The Sasson Report strongly criticized the Settlement Division's involvement in establishing outposts, and found that since the middle 1990s the Division had exceeded its authority and acted to establish numerous outposts on its own initiative. The Division operates on the government's behalf and with its funding, and its authority is confined to implementing decisions made by the political echelon. Accordingly, it is permitted to act only to establish settlements decided upon by the government.

The report found that as a settling body, the Settlement Division received a land allocation from the Supervisor of Governmental and Abandoned Property in the Civil Administration. That allocation was subject to an agreement between that Division and the Supervisor, but the Settlement Division acted contrary to the agreement on several levels: it allocated land to others by secondary allocation, without the approval of the Supervisor; it allocated land to others even though in some cases it had received the land only for planning purposes; and it failed to act to settle the status of the settlers on the land with the Supervisor.

The Division also established outposts without valid building plans, thereby violating the Planning and Building Law that applies to the occupied territories. Some of those outposts exceed the allocated boundaries and were built partly on land that is not public – so that part of the settlement is within the allocated area while the other part is on private or survey land.¹¹²

Yesh Din applied to the Settlement Division under the Freedom of Information Act, to receive information about the land the Division received from the Supervisor of Governmental and Abandoned Property for allocation, and about land the division allocated: the parties to whom land had been allocated, the purposes of the allocations and their terms. Surprisingly, the response from Yeshayahu Nun, Director of the Economics Department of the Settlement Division and Director of Freedom of Information in the Division, began with the following words: "First of all, I do not understand why you call the outpost of Adei Ad an unauthorized outpost." This indicates that the Division (funded by public funds and acting under the Prime

112 Sasson Report, pp. 118-123.

Minister's Office) does not consider Adei Ad to be an illegal outpost, and even saw fit to make a similar comment in another letter.¹¹³

To the point of the matter, the Division said that "the whole area of the outpost is part of a valid contract between the WZO and the Director of Abandoned and Government Property in Judea and Samaria." The contract was said to have been made between the parties for a period of 49 years and will end in 2033.¹¹⁴ The Division added that the WZO did not allocate rights for residential construction in the outpost of Adei Ad.¹¹⁵ At Yesh Din's request, the Division attached a map marking the agricultural plots it allocated near Adei Ad (for the residents or the association) for agricultural farming. It also provided the periods of the contracts the Division signed with the parties to which the land was allocated. The division declined to provide any other information.

PETITION UNDER FREEDOM OF INFORMATION ACT – YESH DIN v SETTLEMENT DIVISION

Following the Division's refusal to provide the full requested information, Yesh Din filed a petition under the Freedom of Information Act against the Settlement Division.¹¹⁶ In its response to the petition the Settlement Division argued that the petition should be rejected in limine because the administrative court was not competent to hear the petition.¹¹⁷ The court rejected those claims and ordered the Settlement Division to submit a preliminary response to the petition by June 12, 2012. Following the decision, on June 17, 2012 the Settlement Division submitted a request to the Supreme Court for permission to appeal the decision of the Court of Administrative Affairs. The Division argued that it is not a public

113 Letters from Mr. Yeshayahu Nun, Settlement Division - World Zionist Organization, January 11, 2012, March 13, 2012 (received in response to letters from Attorney Shlomy Zachary concerning a request under the Freedom of Information Act sent on November 15, 2011, February 1, 2012 and March 6, 2012). See appendices on pp. 160-164.

114 Letter from Mr. Yeshayahu Nun, Settlement Division - World Zionist Organization, January 11, 2012, (received in response to a letter from Attorney Shlomy Zachary concerning a request under the Freedom of Information Act sent on November 15, 2011). See appendix on pp. 160-162.

115 Letter from Mr. Yeshayahu Nun, Settlement Division - World Zionist Organization, March 13, 2012 (received in response to letters from Attorney Shlomy Zachary concerning a request under the Freedom of Information Act sent on March 6, 2012). See appendix on pp. 163-164.

116 AA 31693-04/12 **Yesh Din v Settlement Division** (filed on April 22, 2012).

117 AA 31693-04/12 **Yesh Din v Settlement Division**, request for rejection in limine (filed on April 29, 2012).

authority, and therefore is not subject to the Freedom of Information Act.¹¹⁸ In his decision on July 8, 2012, Justice Fogelman accepted the Division's position that it is not subject to the Freedom of Information Act, but also accepted Yesh Din's position that the case should be transferred to discussion by a competent legal instance (the Jerusalem District Court, according to the decision). Justice Fogelman added in his decision that the Division is a dual-essence body and therefore the government resolution that it must operate according to the principles of the Freedom of Information Act means that it is subject to the underlying principles of the law, even if it is not subject to the law directly.¹¹⁹

Meanwhile, Yesh Din also requested from the Supervisor of Governmental and Abandoned Property at the Civil Administration details about the land allocated to the Settlement Division in the Adei Ad area (for construction and agricultural use), and a copy of the agreement by which the land was allocated. On May 13, 2012 the Civil Administration provided a copy of the **"planning authorization agreement"** signed between the Supervisor and the Settlement Division concerning 3,100,000 m² in the area of the Shilo Valley (a map was attached).¹²⁰ **The agreement stipulates that the purpose of the authorization is "planning an area for agriculture and foresting"** and that **the period of the authorization for planning is seven years – from 1998 to 2005**. Despite the starting date of the authorization for planning, the agreement was signed only in November 2002. The Civil Administration also provided an affidavit stating it was the only agreement signed between the Settlement Division and the Supervisor of Governmental and Abandoned Property concerning the Adei Ad area.¹²¹

There is seemingly a gross contradiction between the claims of the two bodies: the Settlement Division's claim that a 49-year agreement was signed between it and the Supervisor of Governmental and Abandoned Property; and the claim of the Civil Administration (under whose responsibility the Supervisor of Governmental and Abandoned Property operates)

118 Request for Permission to Appeal 3922/12 **World Zionist - Organization Settlement Division v Yesh Din Volunteers for Human Rights** (submitted May 17, 2012).

119 Request for Permission to Appeal 3922/12 **World Zionist - Organization Settlement Division v Yesh Din Volunteers for Human Rights**, decision from August 7, 2012.

120 Planning Authorization Agreement drawn up and signed in Beit El on November 24, 2002 between the Supervisor of Governmental and Abandoned Property in Judea and Samaria and the World Zionist Organization Settlement Division. See appendix on pp. 165-171.

121 Letter from Second Lt. Bar Akoka, Civil Administration Public Inquiries Officer, May 21, 2012 (received in response to letter from Attorney Michael Sfard on May 17, 2012. See appendix on p. 172).



that the only agreement between the two bodies (the Division and the Supervisor) is a seven-year planning authorization agreement, which expired at the beginning of 2005. The necessary conclusion from that contradiction is that at least one of the two bodies is not telling the truth.

An examination of the agreement between the Supervisor and the Settlement Division indicates that it is **an agreement authorizing planning only**, which states explicitly that the Division must draw up plans according to the purposes of the authorization and to submit them to the Supervisor for approval by January 12, 2005. As far as Yesh Din knows, the Supervisor never approved any plans as required by the agreement,¹²² even after it expired (January 2005), and the allocation for planning was never realized. Section 9 of the agreement¹²³ states it does not constitute authorization for the Division to take possession of the property or to act in it in any way other than planning according to the agreement, unless with the Supervisor's specific permission. Therefore it appears that from the end of the period of authorization for planning **the Supervisor's allocation of land to the Division has not been legally valid, and the Settlement Division has no legal status in relation to the land it allocated and continues to allocate in Adei Ad.**

THE STATE COMPTROLLER'S FINDINGS REGARDING THE CONDUCT OF THE SUPERVISOR OF GOVERNMENTAL AND ABANDONED PROPERTY IN JUDEA AND SAMARIA

In 2005 the State Comptroller checked the conduct of the Supervisor of Governmental and Abandoned Property. Among other things the Comptroller found that the Supervisor does not have full and accurate data as to the amount of land it allocated to the WZO, even though the amount is hundreds of thousands of dunams.

The Comptroller also found that the Supervisor's contracting with settling bodies, including the WZO, had not been regulated as required. In 1996 the government passed Government Resolution No. 150,¹²⁴ that "any new authorization for planning

122 In a geographical information layer about "settlement plans in the Jewish sector" received from the Civil Administration in February 2012 there is no marking of a plan in the Adei Ad area.

123 Which constitutes a fundamental condition whose violation is considered a material breach of the agreement.

124 Israeli Government Resolution 150 from August 1996.

and allocation of land for construction on state land in the areas will take place only after approval by the Defense Minister. The planning committee in the areas will not discuss outline plans until it receives permission from the Defense Minister, and will not validate any such plan without his permission. Subjects of overall policy on settlement, road paving and suggestions to build new settlements will be brought to discussion and decision by the government. The aforesaid will be anchored accordingly in the security legislation in the areas of Judea, Samaria and the Gaza Strip." The decision was anchored in a general's order¹²⁵ and in "Decision 150 Implementation Procedure" set forth by the Defense Minister, which set stages for the allocation of state land to settling bodies: a planning authorization agreement, in which the Supervisor grants the settling body an authorization on his behalf to prepare a plan concerning the land that is the subject of the authorization; a development authorization agreement, in which the Supervisor transfers possession of the land to the settling body for its development; and a leasing agreement, in which the Supervisor signs a leasing agreement for 49 years with a third party to which the building is given or sold, with the option of extending the agreement for an identical period.

The State Comptroller found that even though on some of the allocated land development work was performed and housing units were built and populated, the Supervisor had not signed development authorization agreements with the settling bodies, including the WZO, nor had he signed leasing agreements with the tenants of the housing units.

It was also found that for years the Supervisor had not collected usage fees from the WZO for the land allocated to it and which it had transferred to agricultural settlers. As mentioned, no leasing contract had been signed between the Supervisor and the settlers (in violation of the Decision 150 Implementation Procedure). According to the Supervisor's estimate, by November 2003 debts for usage permission fees for land allocated to the WZO had reached 10 million New Israeli Shekels (NIS).¹²⁶

125 Order concerning Planning and Building Procedures (No. 1445), 1996.

126 State Comptroller, **Annual Report 56a**, 2005, pp. 215-217.

The planning authorization agreement specifically states that the purpose of the authorization is "planning an area for agriculture and forestation." In 2002, when the agreement providing authorization for planning for those purposes was signed, residential buildings were already standing on part of the area of the agreement that not only exceeded the conditions of the authorization, but had been built illegally. Those buildings, and possibly additional buildings, continue to stand in the area to which the agreement applies, in clear violation of the purposes to which the agreement designates the area. Nonetheless, neither of the bodies, the Supervisor or the Division, acted to evacuate them. The agreement specifically states that if there is a change in the property's designation or in the plan that applies to it, which is not initiated by the Supervisor, the agreement will end immediately. This section even allows the agreement to be canceled immediately "if the planning is not approved by the Supervisor " and/or "if by the end of the planning authorization period the planning is not approved by the planning institutions for any reason."¹²⁷ Again, the agreement is not valid anyway, but these sections, which allow it to be canceled immediately, indicate the importance and the gravity its authors (namely the Supervisor) attached to fulfilling the purposes of the agreement and the planning authorization.

A map was attached to the authorization agreement that constitutes "an inseparable part of the agreement," in which the area of the planning authorization was marked. That area includes 392 dunams of private Palestinian land,¹²⁸ but the Supervisor of Governmental and Abandoned Property has no authority over private land and is not allowed to grant any body or individual authority or permission to plan on it.

Furthermore, **the Settlement Division is not allowed to allocate or contract with third parties concerning the allocation of plots of land in Adei Ad** for two main reasons: first, the Division was not given any rights to the land except for planning rights (and if there were any planning procedures they were not concluded). Therefore, the Settlement Division has no property rights it can transfer to any third parties. Secondly, the provisions of the agreement forbid the transfer or assignation of the Division's rights by virtue of the agreement – only authorization for planning – to any third party.¹²⁹ Therefore, even had the

127 A Planning Authorization Agreement drawn up and signed in Beit El on November 24, 2002 between the Supervisor of Governmental and Abandoned Property in Judea and Samaria and the WZO Settlement Division, Sections 5(b)(1), 5(b)(3) and 5(b)5.

128 The figure is based on a geographic information layer about private land in the West Bank.

129 A Planning Authorization Agreement drawn up and signed in Beit El on November 24, 2002 between the Supervisor of Governmental and Abandoned Property in Judea and Samaria and the WZO Settlement Division, Section 10 (this section constitutes a basic condition of the agreement and its breach can lead to cancellation of the agreement).

Supervisor granted any rights to the Division, the latter could not transfer them because of an explicit contractual interdiction.

Nonetheless, the information provided to us by the Settlement Division indicates that over the years it transferred rights to the land to third parties – an "association" and residents of the outpost.¹³⁰ An example of the terms on which the Division allocated land to the residents of Adei Ad can be found in a document recently submitted to the High Court of Justice. During a hearing on the petition of Palestinian farmers from the village of Turmusaya,¹³¹ the Court was presented with an allocation agreement signed in January 2011 between Adei Ad resident Assaf Azoulay, and the WZO and Adei Ad's Cooperative Association. A review of the agreement reveals the conditions of the allocation: for a single shekel the petitioner received an allocation of land for planting¹³² for a period of 21 years.¹³³

The funding of infrastructures and public buildings

In addition to allocating land, the WZO's Settlement Division also helped fund the establishment of outposts. In many outposts the Division funded the initial establishment of a temporary camp and the work of the chief architect to develop detailed outlined plans, as well as planning land reserves.¹³⁴

Another body that was involved in the funding and construction of outposts is the Ministry of Housing and Construction, which, through the Rural Construction Administration, helped build public buildings and funded infrastructures including site preparation, development,

130 Letter from Mr. Yeshayahu Nun, Settlement Division - World Zionist Organization, March 13, 2012 (received in response to a letter from Attorney Shlomy Zachary concerning a request under the Freedom of Information Act sent on March 6, 2012). Attached to the letter were a map in which allocated plots were marked and a chart denoting the plot number, contract type ("settler" or "association") and validity of the contract ("from date" and "to date"). See appendix on pp. 163-164.

131 See box on pp. 84-87 of this report.

132 A complementary statement by the petitioner as part of HCJ 2186/11 **Mahmoud al-Araj v Commander of IDF Forces in the West Bank** and in HCJ 6205/11 **Asaf Azulai v Head of Civil Administration Brig. Gen. Moti Almoz**, September 13, 2001 (Special Agreement for Land Allocation). See appendix on pp. 173-175. The size of the area allocated is not detailed in the agreement.

133 After this report was written and ready to go to print, the Settlement Division provided us, as part of the legal proceeding, with additional documents related to the land allocation in the Adei Ad area. The Division claims these documents indicate an extension of the allocation agreements by the Supervisor. Our position is that the new documents do not change the picture that emerges from the report; from certain aspects they only increase the doubts as to the legal validity of the land allocation. To view the aforesaid documents and read more of our comments on them, see Yesh Din website.

134 Sasson Report pp. 123-124.

road construction and paving, hooking up water and electricity, preparing infrastructures to connect caravans and more. The help was given to the outposts under the guise of building new neighborhoods in old settlements in order to bypass the problem of the absence of a government decision to build the outposts. Therefore it was given indirectly through the regional councils. The Housing Ministry did not contract directly with the contractors, but rather funded the contracts through the regional councils and the executing contractors. This was all done with the knowledge that the construction was being undertaken without a legal planning status, and without the Housing Ministry checking the nature of the rights to the land. The Housing Ministry also employed its architects and funded the employment of external architects in planning unauthorized outposts after they were built, knowing they were built without a decision by the government or an authorized political echelon and that some of them were built on private Palestinian land.¹³⁵

In Adei Ad the Ministry of Housing and Construction funded construction of infrastructures for NIS 1,300,000 and the building of public buildings for NIS 150,000 (a total of NIS 1,450,000).¹³⁶ The State Comptroller addressed the issue of funding by the Ministry of Housing and Construction of illegal outposts, and in Comptroller Report 54b 2003 he found that in 2003, for instance, the ministry funded the construction of public infrastructures, development of open public space and the construction of a youth club in Adei Ad at the cost of NIS 400,000.¹³⁷

The purchase of caravans

Because they can be quickly connected to infrastructures, caravans are the main tool for establishing outposts. From the perspective of the planning and building laws in Israel and the West Bank, a caravan is a structure like any other and requires a legal building permit. In 2003 the Ministry of Housing and Construction bought 400 caravans and transferred them to the regional councils in the West Bank, without establishing criteria for their distribution and without signing agreements with the regional councils or with those who received them regarding payment for them.¹³⁸

According to the Sasson Report, the Ministry of Housing and Construction funded the erection of five caravans in Adei Ad; the cost of each caravan is NIS 54,800 and the cost

135 Ibid., p. 30.

136 Ibid., p. 30, 153.

137 State Comptroller, **Annual Report 54b**, 2003.

138 Sasson Report, p. 32.

of the five caravans was NIS 274,500.¹³⁹ These amounts do not include the cost of their transportation, which was also funded by the Ministry of Housing and Construction, despite the existence of procedures and directives for transport of a caravan in the occupied territories which require the approval of senior officials. Additionally, placing a caravan on land without a building license and other permits is against the law.¹⁴⁰

The supply of electricity

Connection to the electric grid of the Israel Electric Corporation (IEC) requires a permit from the Electricity Staff Officer at the Civil Administration. Outposts that are not connected directly to the IEC's grid receive an electricity supply by "pulling" electricity from a nearby connected settlement, without the knowledge and supervision of the IEC or by using generators. According to the findings of the Sasson Report published in 2005, Adei Ad made no request to connect to the electric grid. We cannot know whether such a request has been made since 2005 but we assume that today Adei Ad receives electricity from the Mateh Binyamin Regional Council through the Mateh Binyamin Development Company.¹⁴¹

Water supply

Connection to the Mekorot water system requires a permit from the Water Staff Officer at the Civil Administration. Over the years Mekorot has refused to connect unauthorized outposts to the water system. In order to bypass its refusal and ensure the water supply, a system was installed in the outpost by "pulling" water from a nearby legal settlement. This

¹³⁹ Ibid., p. 164.

¹⁴⁰ In April 2003 the "transporting Structures in Judea and Samaria Procedure" went into effect, stipulating that anyone wishing to bring a caravan into the territories must submit an application along with a permit from the local council in which the caravan is to be placed. The application is to be submitted by the engineer of the local authority to the Civil Administration Infrastructure Department, to ensure that the administration only consider applications that have valid detailed plans that allow the issuance of a legal building permit for the caravan. After examination by the Civil Administration the application is transferred to the Head of the Civil Administration and from him to the Head of the Infrastructure Branch in the Office of the Coordinator of Government Activities in the Territories. After his approval the application goes to the Defense Minister's Assistant on Settlements and from him to the Defense Minister's military secretary, who is authorized to approve the transport. Furthermore, the security forces on the ground are supposed to stop and check the licenses of the caravans transported through the occupied territories. Another directive by the Defense Minister from the end of July 2004 stipulates the transport of a caravan in the occupied territories on the approval of the Defense Minister and an IDF escort to the destination. See: Sasson Report, pp. 224-226.

¹⁴¹ The Mateh Binyamin Development Company website presents a call management system for failures the company handles and a list of the settlements that receive service from it, which includes Adei Ad (as well as other outposts). The site also presents a list of calls due to failures in Adei Ad that were handled by the Development Company.

process is undertaken in cooperation with the legal settlement's local council, which is the formal consumer of the water.

Sasson presumes that Adei Ad receives its water from Shvut Rachel. In a critical article from 2004 about the head of the Civil Administration at the time, it was alleged that the water supply to Adei Ad comes from Shvut Rachel, whose water supply in turn comes from Shilo.¹⁴² We do not have current information about how water is supplied to the outpost today but on a tour of the area on November 6, 2012 we noted in the outpost's built area and near it water tanks with the word "Binyamin" written on them. (See Photos no. 2-3, p. 42)

ADEI AD'S EXPANSION OVER THE YEARS

Adei Ad is currently home to 26 families¹⁴³ that maintain a communal religious lifestyle and work in agriculture and construction. The outpost has a synagogue, a ritual bath (mikveh) for women, a community center and an after school care center. Adei Ad belongs to the Mateh Binyamin Regional Council and its residents receive most of their municipal services from the settlement of Shilo, which is 3.5 km away as the crow flies. In 2011 the outpost had 57 structures.

Over the years of its existence Adei Ad expanded, taking over large expanses of land in the area. The method (typical of outposts) sets out to take possession and expand to the largest possible area, and includes two elements: refraining from building a fence around the settlement and positioning the houses at large distances from each other.¹⁴⁴ Haaretz reporter Nadav Shragai, who visited Adei Ad about a year after it was founded, described his impression of the large spaces between the houses: "Housing density here is probably one of the lowest in the world. There are a few dozen meters between the home of the Harel family and the home of the Melet family, as well as between the Melet's caravan and the Tamirs' caravan, and between the Tamirs' and the Zeligers'."¹⁴⁵ According to the website of the Amana settlement movement, "the residents of Adei Ad enjoy plots of land of two

142 Sasson Report, pp. 214-215, appendix; Hagai Huberman, "Pitzi heaps great obstacles," **B'Sheva**, January 8, 2004.

143 The Central Bureau of Statistics (or any other official party) does not publish data about the number of residents who live in the illegal outposts. The figure is taken from the film "The East Shilo Settlements" produced by the Amana movement and published on September 4, 2012 (www.Youtube.com).

144 "Adei Ad Forever," **Amana Newsletter**, Issue No. 20 (www.amana.co.il).

145 Nadav Shragai, "Adei Ad talking about a wonderful future," **Haaretz**, October 17, 1991, p. A3.

dunams per family."¹⁴⁶ In a film distributed by Amana in September 2012 it said that the living space is 21.5 m² per person on average.¹⁴⁷

The rapid growth of the outpost's area bears no direct relation to the pace of growth of the population that lives in it or to its needs. For instance, between 2002 and 2003 the outpost expanded by 322,348 m² but added only nine structures. The following series of photographs shows the outpost's expansion over the years of its existence:¹⁴⁸ (See aerial photos no. 3-6, pp. 59-62)

AGRICULTURAL INVASION

The expansion of Adei Ad is reflected not only by the settled area of the outpost but also by the land that surrounds it. One of the methods that serve to increase the area under the outpost's control is invasion of surrounding land and its takeover by agricultural cultivation. In many cases the land in question is privately-owned by Palestinians and much of it was cultivated until Adei Ad was built and in the first years of its existence. Agricultural cultivation of the land enables the seizure and occupation of large areas. The direct result of the agricultural invasions is to harm an important and sometimes exclusive source of livelihood of the residents of the villages next to the outpost.¹⁴⁹

In the article "There is (organic) bread, and there is Torah," published in the newspaper *Besheva*, Hagit Rothenberg wrote about Adei Ad:

A brief tour of the hill of Adei Ad and a look at the spectacular view from it to the Jordan Valley [...] also indicates the tremendous area the yeshiva has annexed. Many hundreds of dunams at the foot of the hill are used to grow wheat, olive groves and more. Boaz [Melet] says redeeming the land is one of the goals of the yeshiva.

In response to claims that they are taking over Arab land, he answers: "There is land that the State has not managed to declare because of bureaucratic problems. There

146 Amana website (www.amana.co.il, "Amana settlements">"Adei Ad").

147 The video "The East Shilo Settlements," produced by the Amana movement and published on September 4, 2012 (www.YouTube.com).

148 It is impossible to obtain official figures about the number of residents in the outposts. The figures presented herein are based on whatever publications are available in the press and on websites. However, the number of structures attests to the population's growth rate and needs.

149 See Chapter 6, pp. 119-143 of this report.

are sources who tell us which land that is. It is land that does not actually belong to the Arabs and we, by way of physical action on the ground, transfer it to Jewish ownership. Now it is all in the process of registration." He refuses with a smile to specify the exact area of the agricultural fields, but on a drive through you can see their cultivated plots for many kilometers.¹⁵⁰

We can learn about the importance Boaz Melet attaches to seizing land from his comments about the first days of the yeshiva Sdot Amir: "We slowly began cultivating the land, which if we hadn't done so would have been grabbed by the Palestinians, and little by little we added another dunam, another goat."¹⁵¹

Yesh Din has documentation of 28 events of agricultural takeover, including fencing plots, preventing access or expelling Palestinian farmers from their land and cultivating plots (plowing, planting etc.) while trespassing without the knowledge or agreement of the owners.

The testimonies we collected indicate that in some cases the infiltrators take advantage of the absence of the Palestinian farmers from the plots, who are denied access (due to prohibitions and restrictions imposed by the IDF, or due to fear of running into Israeli civilians). The infiltrators invade planted and cultivated fields – sometimes stealing the crops while they're at it;¹⁵² in other cases the invaders plant new crops in the seized plot, usually grapevines. Some of the invasions include incidents of vandalizing the crops in the plot and attempts to intimidate the farmers and keep them away from their land and its cultivation. (See aerial photo no. 7 p. 63)

An example of how the agricultural invasions are conducted can be found in the story of Mahmoud Hizmeh Mohamed al-Araj, who owns a number of neighboring plots of land he inherited from his father. The plots are 4 km from the center of the village of Turmusaya. He says that until 1998 he farmed the plots every year according to the seed cycle. When Adei Ad was built, Israeli citizens started to occasionally take over the land and plow it, and also used violence and intimidation against him to prevent him from reaching his land, he believes.¹⁵³

150 Hagit Rothenberg, "There is (organic) bread, and there is Torah," **Besheva**, Issue No. 77 (www.inn.co.il/Besheva).

151 Dvir Shafran, "Like a shepherd tending his flock," **Hatzofeh Hashavua**, September 28, 2001, pp. 6-9.

152 See example in box on pp. 116-117 of this report.

153 Yesh Din Case No. 2446/11.

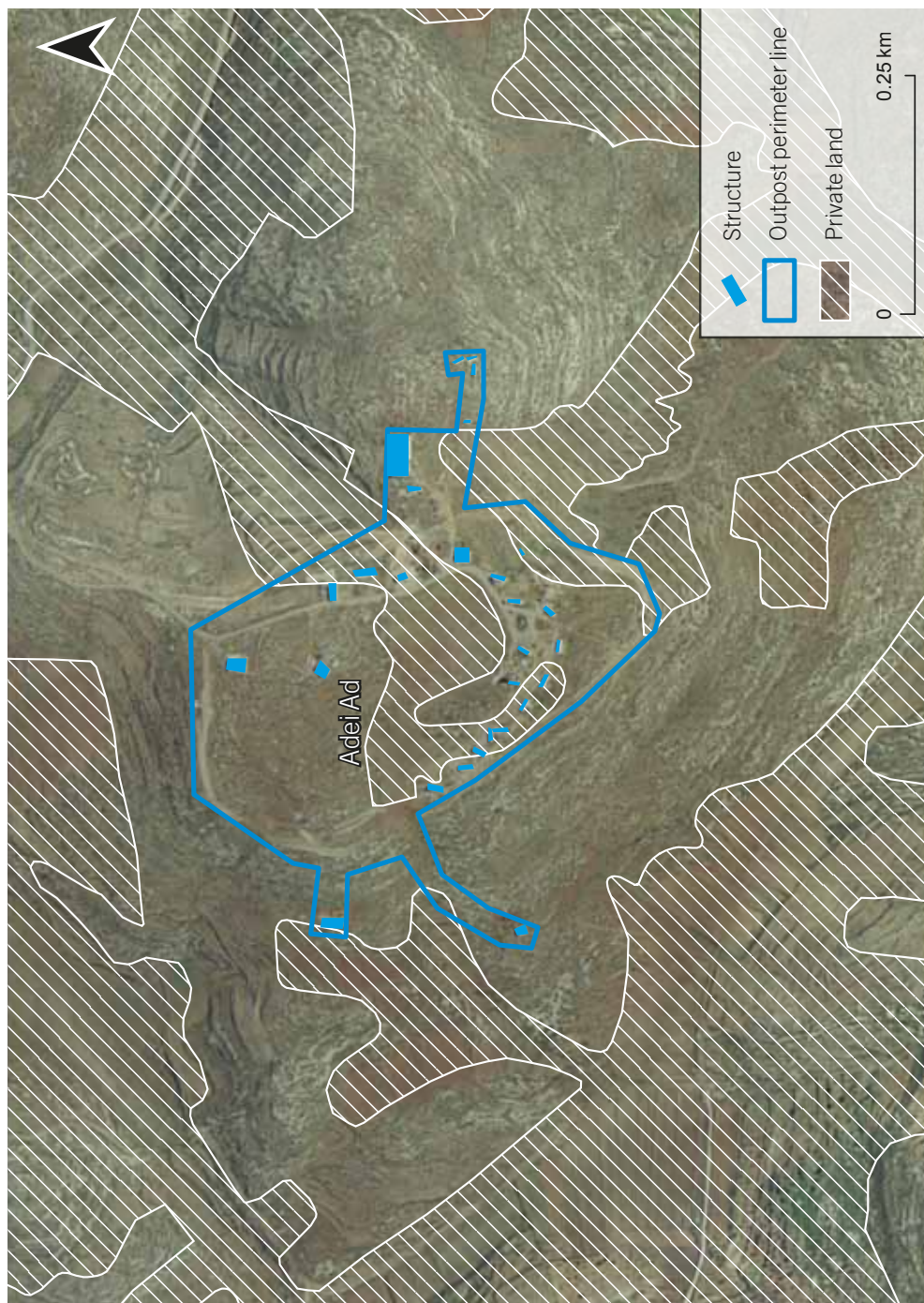


Aerial Photo No. 3: Adei Ad in 1999:

The size of the area on which the outpost is built: 15,554 m²,¹⁵⁴ number of structures: 6; Residents: five families.¹⁵⁵

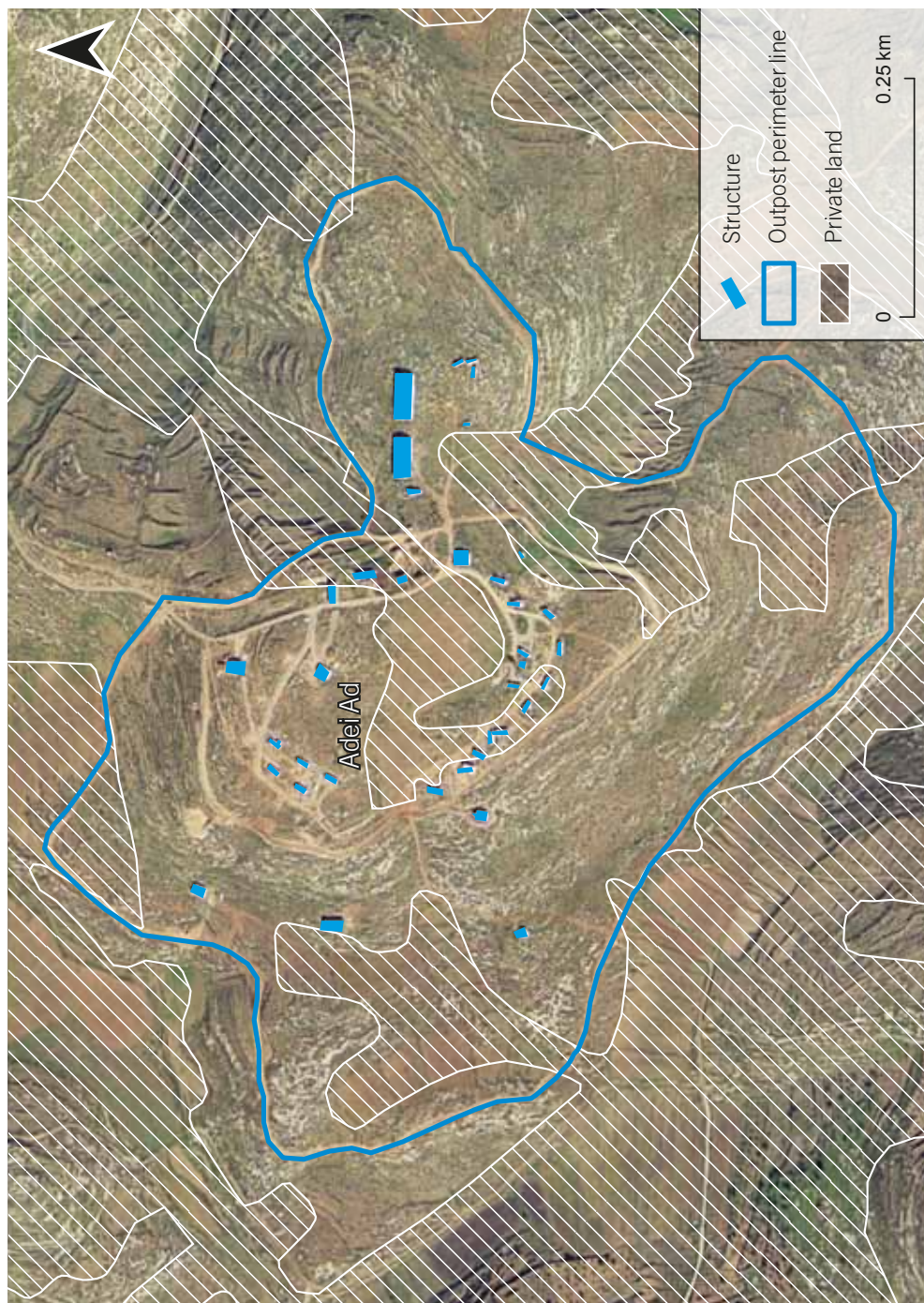
¹⁵⁴ The figure is based on measurements by a GIS system.

¹⁵⁵ Nadav Shragai, "Adei Ad talking about a wonderful future," *Haaretz*, October 17, 1991, p. A3.



Aerial Photo No. 4: Adei Ad in 2002:

Size of area within the circumference road: 140,902 m²; number of structures: 28;
number of residents unknown



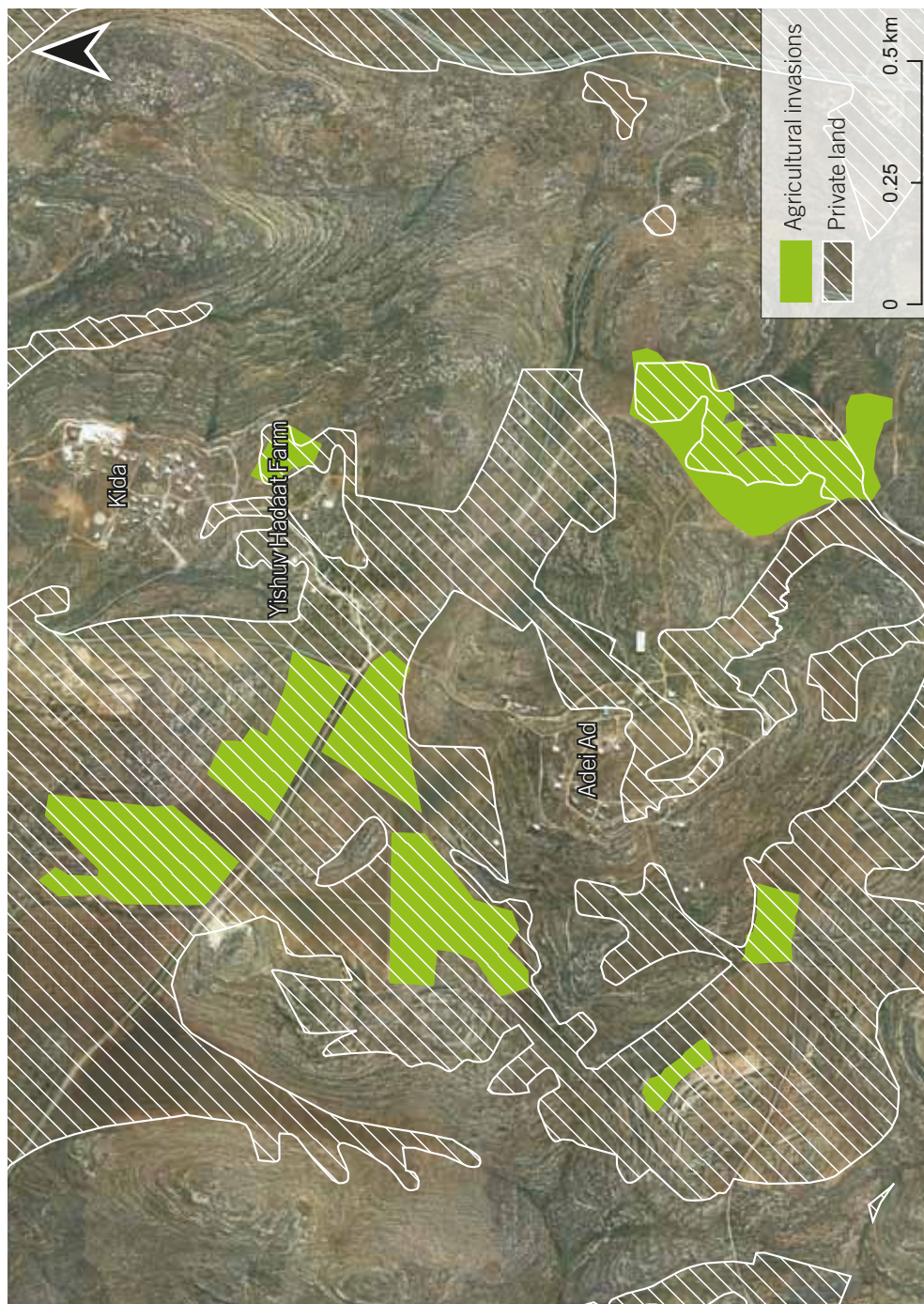
Aerial Photo No. 5: Adei Ad in 2003:

Size of area within the circumference road: 463,250 m²; number of structures: 37;
number of residents unknown



Aerial Photo No. 6: Adei Ad in 2010:

Size of area within the circumference road: 465,321 m²; number of structures: 52;
 number of residents: 26 families



Aerial Photo No. 7: Privately owned Palestinian land near Adei Ad cultivated by Israeli citizens



Photo No. 4: A plot owned by Mahmoud Mohamed Mohsen al-Araj, after Israeli citizens invaded it and planted vines on it, May 17, 2011. Photo: Yesh Din

Another example of an agricultural invasion can be found in the following incident: Jamil Abdallah Masud Na'san, is a resident of the village of al-Mughayer, who owns agricultural land 2 km from the village and 300 m from Adei Ad. On February 24, 2010 his nephew informed him that he saw a tractor plowing the plot where Jamil had planted olive trees in the early 1990s. Jamil immediately reported to the Palestinian DCO (District Coordination Office), which passed the report to the Israeli DCO. Jamil and his cousin came to the land with an officer from the Israeli DCO, and saw a tractor stuck in the middle of it and two Israeli civilians in a blue vehicle approaching the stuck tractor. The invaders managed to fix the tractor and escape before the police came, and the police investigation following Jamil's complaint ended with closure of the file with no indictment served.¹⁵⁶

BUILDING ROADS

From 1998 when the outpost was built to 2010, a large number of paths and roads were built around Adei Ad, and their routes indicate they were meant to serve the needs of the residents of the outpost and connect it to the surrounding settlements and outposts. The routes of these roads go through the private land of the residents of Jalud, Turmusaya and al-Mughayer and land that is part of the villages' natural blocs.

Some of the roads were built on land declared public land and confiscated for the purpose of paving roads by the State authorities; other paths and roads were built on privately-owned Palestinian land and on public land illegally and independently by Israeli citizens, sometimes using threats and violence. Road building requires obtaining licenses, even if they are built on public land.

The new roads, meant to improve the settlers' quality of life, travel between the area's outposts and access to the new areas they cultivate, dissects the area. In many cases the roads define a new area of control where the frequent presence of Israeli citizens and proliferation of violent incidents intimidate the Palestinian land owners from approaching land located on the other side of the road near the outpost. (See aerial photos no. 8-9, pp. 67-68)

156 Yesh Din Case No. 2030/10.

NEGLECT OF PUBLIC LAND FOR THE PRIVATE USE OF THE RESIDENTS OF THE OUTPOST

The original designation of public land (also called state land) is to serve for public needs, as determined by the competent authorities, and primarily for the needs of the local population. But in Areas C Israel created a policy that links land ownership to the national identity of those permitted to use it. According to this policy, Palestinians are allowed to use private Palestinian land, whereas any land that is not private Palestinian land is designated only for the use of Israelis. This policy was created following the ruling in the Alon Moreh affair that established that private Palestinian land is for Palestinian use, and that the Israeli administration is permitted to take possession of it only for clear military needs. Even though this was not stated in the verdict, Israel chose to interpret it and shape a policy by which any land that is not private Palestinian land is designated only for the use of Israelis. In this way the possibility of development on public lands was blocked to Palestinians. The Israeli planning rights organization Bimkom, found there are very few exceptions to the policy of allocating public land to Israelis only.¹⁵⁷ Plia Albek¹⁵⁸ herself wrote:

*The use of government property, and primarily state land, does not have to be for the use of the local public but to the contrary, for the use of the State that occupies the territory [...] The state land was designated to be transferred to Jewish settlements since the Mandate.*¹⁵⁹

Besides land the State allocated to Israeli citizens only, usually through the Settlement Division,¹⁶⁰ Israeli citizens illegally seized additional land in the Adei Ad area, which had been declared as public land but had not been allocated, and they are presently using it as if it were their own. For example, on the morning of January 19, 2009, Abd al-Rahman Abu Alia, a resident of the village of al-Mughayer, was informed that a tractor and a GMC vehicle had been seen descending from the direction of Adei Ad to a plot of land near the Alon Highway

157 **The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C**, Bimkom, June 2008, p. 27.

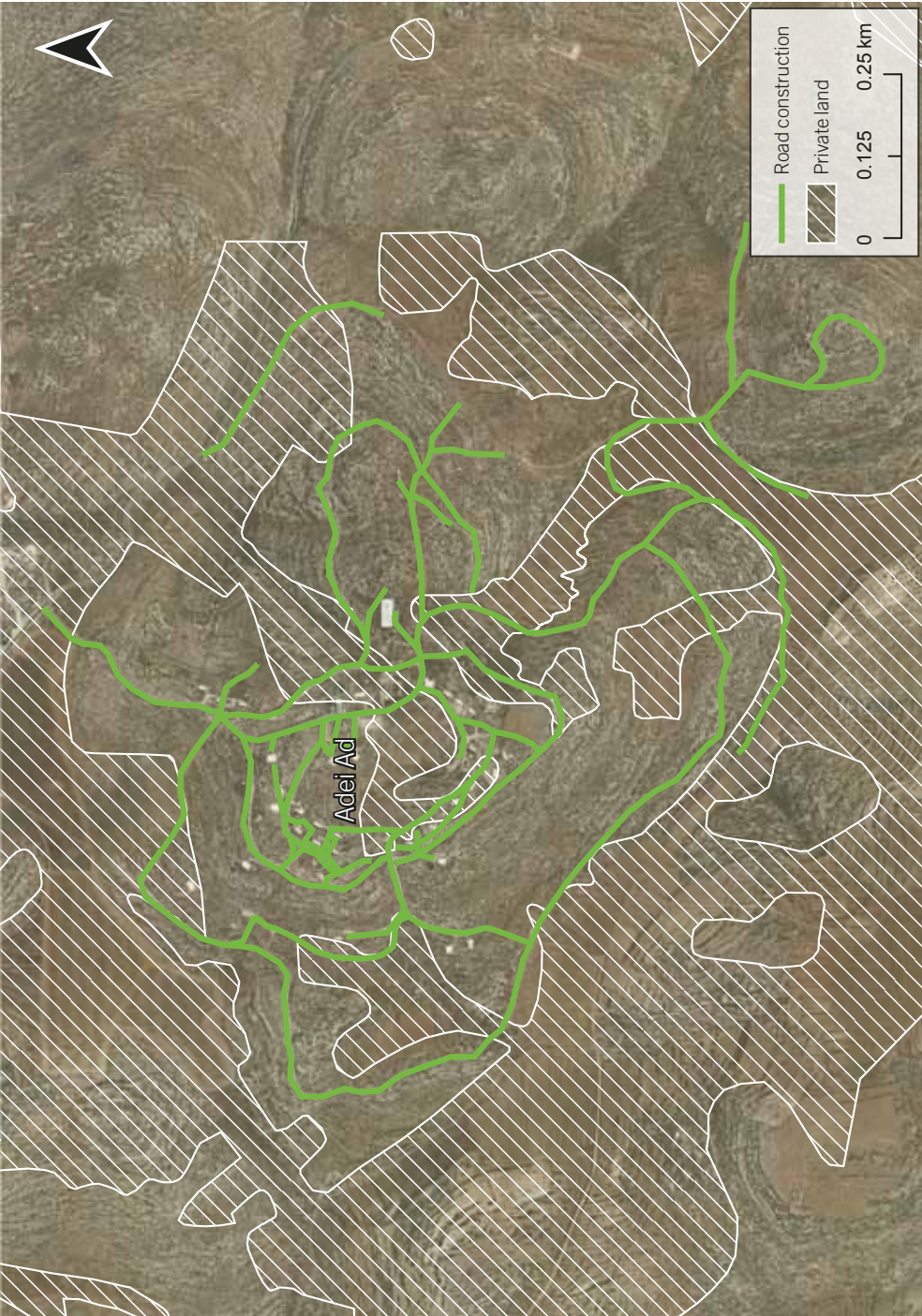
158 Plia Albek headed the Civilian Department of the State Prosecutor's Office for 24 years (1977-1992) and is remembered as the person who developed Israel's legal policy concerning land in the occupied territories.

159 Plia Albek "What is state land? State land in Judea, Samaria and the Gaza Strip," **Halishka** (newsletter of the Israel Bar Association, Jerusalem District Committee), Issue No. 46, January 1999, pp. 9-11. In: **The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C**, Bimkom, June 2008, p. 27.

160 There is a doubt as to the legal validity of the land allocations carried out by the Settlement Division in the Adei Ad area. See pp. 46-53 of this report.



Aerial Photo No. 8: Roads built in the area of Adei Ad, 1998-1999



Aerial Photo No. 9: Roads built in the area of Adei Ad, 1998-2010

and close to the village of al-Mughayer. Later a number of Israeli civilians were seen beginning to pave a road on state land in an area that belongs to the natural bloc of village land.

In many cases the Palestinian farmers are not even aware that a particular area has been declared by Israel as public land, and that was true in the case of this area, which the residents of al-Mughayer have seen as part of their village's land since time immemorial. According to Abu Alia, when he approached and tried to find out what the Israeli civilians were doing there, one of them pulled out a rifle, cocked it and aimed it at him and the other people who were with him, including his three sons:

*There were four settlers there, a digger, a tractor and a private car. One of the settlers had a long rifle. When we approached he pulled out his rifle, cocked it and aimed it at us. He told us (in Arabic) to stop. We asked him what he was doing on our land and he said he was sent by the government, and that we could go file a complaint if we wanted to...*¹⁶¹

On March 17, 2009 the police investigation file was closed on grounds of "absence of criminal culpability," without the suspects being investigated for carrying out work without a permit. An appeal submitted by Yesh Din following the closure of the investigation file without exhausting the investigation was rejected on the argument that since the land in question was state land rather than private land, only administrative inspection and enforcement procedures had been launched.¹⁶²

ACTIONS TO EVACUATE STRUCTURES IN ADEI AD OVER THE YEARS

Shvut Rachel F¹⁶³ is an illegal outpost and its future is pending in court. The government will firmly oppose any unilateral and illegal measures and views the installation of caravans as a digression from the normative rules of the game between the government and its citizens¹⁶⁴ (statement of Prime Minister Ehud Barak's office after the eviction of five caravans from Adei Ad, July 1999).

161 Yesh Din Case No. 1704/09.

162 Letter from Attorney Etti Kahane, Director of Appeals Department in State Prosecutor's Office, to Attorney Michael Sfard, February 7, 2011, Yesh Din Case No. 1704/09.

163 One of the temporary names of the Adei Ad outpost in its early days was Shvut Rachel F.

164 Zvi Singer and Itamar Eichner, "The Barak government's first evacuation: the Shvut Rachel outpost," *Yedioth Achronoth*, July 26, 1999, p. 14.

Over the years the State made several attempts in Adei Ad to evacuate individual structures that serve for housing or storage.¹⁶⁵ In July 1999 the Prime Minister's Office issued the aforesaid notice, after the first evacuation in the Adei Ad outpost. The evacuation occurred on July 25, 1999, less than a year after the outpost was founded, and included the evacuation of five caravans.¹⁶⁶

In October 1999 an agreement was signed between Prime Minister Barak and the Yesha Council on the future of 42 outposts that existed at the time. According to the agreement, 10 outposts that were unmanned at the time the agreement was signed would be evacuated; two outposts would be relocated to a new site; 11 outposts would be legalized and 19 would be frozen.¹⁶⁷ The meaning of the agreement was that the outposts would be frozen in terms of the promotion of infrastructure planning procedures, but would not be evacuated.¹⁶⁸ At the time of the decision five families lived in Adei Ad next to the Sdot Amir agricultural yeshiva that operated in the outpost.¹⁶⁹ In an interview Nadav Shragai conducted with residents of the outpost a few days after the decision to add it to the list of frozen outposts, Segula Melet said:

*It is clear to me that the evacuated hilltop will be taken again in the future. After all, we must continue the redemption of Israel. Redemption occurs step by step [...] I know that Rechelim, which began as an outpost like ours, took seven years until it was approved as an official settlement. Other settlements were built in a similar process. Anyone who is impressed by the small number of people and caravans here does not understand the history of settlement. This is how a settlement begins. They will not dry us out so fast. We have a very healthy tenacity. And even when we are frozen, we have patience.*¹⁷⁰

165 There was never any attempt to evacuate all of the buildings in the outpost or to exercise all of the demolition orders so as to threaten its very existence.

166 Zvi Singer and Itamar Eichner, "The Barak government's first evacuation: the Shvut Rachel outpost," **Yedioth Achronoth**, July 26, 1999, p. 14.

167 **"The outpost agreement neither evacuation nor freeze: analysis of Barak's first outpost agreement with the settlers from October 1999,"** Peace Now, Settlement Watch, March 2008.

168 Nadav Shragai, "Only two outposts will be evacuated for good: others will be relocated or frozen," **Haaretz**, October 15, 1999, p. A2.

169 Nadav Shragai, "Adei Ad talking about a wonderful future," **Haaretz**, October 17, 1991, p. A3. The Melet family was joined by the Ben Shlomo family and the families of Moshe Tamir, Shahar Zeligler and Mordi Harel.

170 Ibid.

Like all the other outposts that were "frozen" as part of the outpost agreement, building in Adei Ad never stopped and it continued to grow.¹⁷¹

The Civil Administration issued demolition orders against structures in Adei Ad. Between the years 2005-2012 Israeli law enforcement agencies carried out 27 demolition operations of structures in its area.¹⁷² After a whole year of repeated requests to the Civil Administration to receive details about the demolition actions that were performed (i.e. which structures were demolished, when they were demolished, etc.), Yesh Din has received no answers by the time of writing of this report. We assume that at least some of the structures that were demolished are agricultural structures and other structures that were not for housing. As of June 2011 there were 57 structures in the outpost.¹⁷³

In some of the cases law enforcement authorities encountered resistance by the residents to the demolition of the illegal structures. On November 18, 2008 the security forces evacuated a container installed near Adei Ad. During the evacuation some boys threw stones at the security forces and subsequently two suspects were arrested. One of them was the soldier Menachem Bakosh, a resident of the outpost. Bakosh was arrested because of his forceful resistance to the evacuation, which included throwing stones and pushing a Border Policeman. The Adei Ad secretariat commended Bakosh's behavior: "We call on every soldier who receives such an illegal order to act this way..."¹⁷⁴

171 "The outpost agreement neither evacuation nor freeze: analysis of Barak's first outpost agreement with the settlers from October 1999," Peace Now, Settlement Watch, March 2008.

172 Letter from Second Lt. Bar Akoka, Civil Administration Public Inquiries Officer, July 25, 2012. The information was received in response to a Yesh Din request under the Freedom of Information Act to receive information about enforcement actions undertaken in the Adei Ad area.

173 Chapter 4 of this report deals extensively with law enforcement against illegal construction and agricultural takeovers in Adei Ad (see pp. 74-89).

174 Hanan Greenberg, "A soldier in uniform is suspected of throwing stones during an outpost evacuation," *Ynet*, November 30, 2008.

Bakosh was eventually convicted in a military court of a series of offenses related to his behavior during the evacuation.¹⁷⁵

In response to the authorities' action to implement the demolition orders and demolish the illegal structures, in some cases "price tag" operations were committed.¹⁷⁶ Following are several examples that were published in the press:

- On July 24, 2008, following the evacuation of a bus that served for housing in Adei Ad, "price tag" operations were committed in several places throughout the West Bank.¹⁷⁷
- On November 18, 2008, in reaction to the evacuation of a container in Adei Ad, settlers threw stones at Palestinian vehicles and tried to block roads near Yitzhar.¹⁷⁸
- On July 20, 2009, following the evacuation of a single caravan in Adei Ad, dozens of youths demonstrated near the Horon Camp to protest the evacuation.¹⁷⁹

175 Bakosh was on the way to his base when he found out about the action of the security forces from a text message sent to him from "a hub that sends messages when there are evacuations." Following the notice he turned around and went back to the scene. Together with another person Bakosh placed stones on the ground in order to block the forces' path. The two also climbed to the top of a hill near the side of the road and Bakosh threw stones at the Border Police who had gotten out of their vehicle to clear the obstacle. Bakosh was convicted of entering a closed area, attempting to assault a policeman in aggravated circumstances and insulting a public servant. At first he was sentenced to four months in jail but following an appeal by the Military Prosecution his sentence was aggravated to six months in prison. Appeal 24/09 in the Military Appeals Court, **Chief Military Prosecutor v Pvt. Menachem Bakosh**, Appeal against a Verdict by the Central Jurisdiction District Military Court given in the file, p. 1-3.

176 The term "price tag" refers mainly to attacks against Palestinians and members of the security forces in response to government actions considered to be insults to the settlement enterprise. See for instance: Alexander Yaacovson, "The price of price tag," **Haaretz**, March 28, 2011.

177 Uzi Baruch, "Clashes in Samaria in response to the evacuation in Adei Ad," **Arutz Sheva**, July 24, 2008 (<http://www.inn.co.il>).

178 Yehoshua Breiner, "Border Police evacuate building in Samaria settlement," **Walla (news flashes)**, November 18, 2008 (www.walla.co.il).

179 Orly Harari, "Report: Border Police officer batters youth protesting against evacuation," **Arutz Sheva**, July 20, 2009 (www.inn.co.il).

- On December 29, 2010, a container was evacuated in Adei Ad. The price tag operations following the evacuation included blocking intersections and setting fire to land of Asira al-Qibliya.¹⁸⁰

In these few evacuation attempts the authorities tried to realize demolition orders and remove single structures. Even though the entire outpost, including all of its buildings, is illegal, there was never any attempt to remove all of the buildings of the outpost and evict its residents.

180 **The Jewish Voice** editorial, "Mutual guarantee following evacuation in Adei Ad," December 29, 2010 (www.hakolhayehudi.co.il).

CHAPTER 4

THE FAILURE OF LAW ENFORCEMENT AGAINST ILLEGAL CONSTRUCTION AND LAND TAKEOVERS

Enforcement concerning crimes by Israeli civilians takes place in two channels: one is the criminal channel, including opening a criminal file and conducting an investigation, for which the Israel Police SJ District is responsible. Depending on the results of the investigation, the criminal channel includes developing an indictment and prosecution.¹⁸¹ The other is the administrative channel, for which the IDF is responsible through the Civil Administration, which includes the administrative treatment of offenses such as evicting invaders from land that is not their own, demolishing illegal construction, outpost evacuation, evacuating agricultural invasions and so on.

Planning powers concerning Jewish building in the West Bank are held by the Higher Planning Council, located in the Civil Administration headquarters next to Beit El, and comprised of military officers and civilian IDF employees.¹⁸² The Civil Administration manages planning in the West Bank through the Jordanian planning and building laws that applied to the area in 1967. These planning laws were changed through military decrees issued by the area commander (the Commanding Officer of the Central Command) over the years and adjusted to the reality of the Israeli occupation of the West Bank.¹⁸³

The Commanding Officer of the Command, as the area commander who stands in the shoes of the sovereign as the effective governor of the West Bank, is responsible for enforcing the law in the West Bank in all of its aspects, including the enforcement of the planning and building laws on illegal construction. As part of that overall responsibility, the area commander and all of the forces that operate by virtue of his authority – the IDF and Israel Police forces – are supposed to act to enforce the law against illegal construction in the area, including the evacuation of outposts and illegal points of settlement.

181 The criminal channel of law enforcement will be discussed in detail in the following chapter (Chapter 5) of this report.

182 Order concerning Towns, Villages and Buildings Planning Law (Judea and Samaria) (No. 418), 1971. The order provides that the power given by the Jordanian law (Towns, Villages and Buildings Planning Law, Law No. 79, 1966) to a District Town, Village and Building Planning Committee will be transferred to the Higher Planning Council. For further information, see lecture by Shmuel Groag on planning and lack of planning in the West Bank as a political tool to appropriate the space, November 2002, on Bimkom website: <http://www.bimkom.org/publicationView.asp?publicationId=36>.

183 From Shmuel Groag's lecture, *ibid*.

Inspection of illegal construction in the occupied territories is the responsibility of the IDF Civil Administration's Inspection Unit, which was originally created to inspect illegal construction by Palestinians in the West Bank. Since 1992, when the government decided to freeze Israeli construction in the West Bank, the unit has also been in charge of inspecting Israeli construction in the occupied territories. As the enforcement arm of the Civil Administration, its job is to gather information about illegal construction in the West Bank and carry out the "illegal construction procedure,"¹⁸⁴ by which a committee on behalf of the unit issues stop work and demolition orders against illegal structures, and the unit is in charge of their execution.¹⁸⁵

The inspection unit has issued thousands of demolition orders against illegal construction by Israelis throughout the West Bank by virtue of the Illegal Construction Procedure, but the vast majority of those orders remain pending for many years.¹⁸⁶ In practice, the realization of a demolition order depends on a decision by the Defense Minister, and with the exception of a handful of cases, the defense ministers refrain from ordering their realization. The State Comptroller Report from 2005 exposed defects in the way illegal construction is handled:

*The conclusions of the investigation and the act of illegal construction described therein [...] indicate the ineffectual handling by the defense system and the Civil Administration of the illegal acts in the area of construction, including invasions of state land, and in evacuating unauthorized outposts, and attest to the situation prevailing in Judea and Samaria in these areas.*¹⁸⁷

184 The Procedure for Handling Illegal Construction according to the Jordanian Planning and Building Law. The stages for confronting illegal construction according to the procedure are the following: issuing a stop work order and summoning the owner to appear before the Inspection Subcommittee (of the Higher Building Council); a hearing at the committee allowing the owner to argue against the stop work order; if the owner's arguments are rejected, the committee issues a demolition order and gives the owners a 30-day extension to submit an appeal. If the appeal is rejected or if no appeal was submitted, the Inspection Subcommittee is permitted to take action (through inspection personnel) to demolish the illegal building. According to the law, violation of the stop work or demolition order is a criminal offense punishable by a fine. From: Sasson Report, p. 17; State Comptroller, **Annual Report 56a**, 2005.

185 Sasson Report, *ibid.*, p. 217.

186 *Ibid.* p. 221.

187 State Comptroller, **Annual Report 56a**, 2005, p. 240. The report found that 77-92 percent of illegal construction by Israelis in the West Bank in the years 2000-2004, which was known to the Civil Administration, was not handled.

Furthermore, illegal construction offenses are criminal offenses in every sense of the word and ought to be handled as such. Nonetheless, criminal enforcement against these offenses has been almost completely abandoned, and to this day not a single indictment has been served because of illegal construction in the West Bank outside of the areas of the local authorities.¹⁸⁸

NON-ENFORCEMENT OF DEMOLITION AND STOP WORK ORDERS IN ADEI AD

Adei Ad was founded in 1998, when settlers invaded land next to the villages of Jalud, al-Mughayer, Turmusaya and Qaryut, some of which is classified as unregistered private Palestinian land (26 percent) and some as public land.

The entire outpost was built illegally and its very construction involved acts of a criminal nature. Adei Ad was established without the permission of the political echelon, which is required to build settlements in the West Bank.¹⁸⁹ It was established without delineating a jurisdiction for the settlement by an order issued by the Command Officer¹⁹⁰ and without a detailed plan,¹⁹¹ by virtue of which building permits can be issued – and consequently without issuing building permits for any of the structures in Adei Ad. Therefore the outpost, built without construction permits as required by law, outside of any jurisdiction and partly

188 Haim Levinson, "The Attorney General is acting to increase inspection powers over the settlements," *Haaretz*, September 20, 2012.

189 Government Resolution No. 150 from August 2, 1996 stated that any expansion of a settlement that is not adjacent to an existing settlement (which is to say hundreds of meters away as the crow flies or more) requires a cabinet decision. The decision was anchored in a general's decree: Order concerning Approval of Planning and Building Procedures (No. 1445). Adei Ad is not adjacent to Shilo, the closest settlement.

190 Legalization of an Israeli settlement in the occupied territories requires, among other things, delineating the jurisdiction of the new settlement, which determines the boundaries of the local authority's municipal responsibility. The jurisdiction of the settlement is determined by a decree issued by the Command Officer: Order concerning the Administration of Regional Councils (Judea and Samaria) (No. 783), 1979; and the Order concerning Administration of Local Councils (Judea and Samaria) (No. 892), 1981. Furthermore, there has to be a detailed outline plan by virtue of which building permits can be issued – deposit and approval of an outline plan and receiving building permits from the relevant planning authorities. See HCJ 5853/04, **Amana Gush Emunim Settlement Movement v Minister of Defense**, p. 4, Section 6, Tak-EI 2004 (3), 251.

191 The relevant law in the planning and building laws in the West Bank is the Jordanian Planning Law: Towns, Villages and Buildings Planning Law, Temporary Law No. 79, 1966. The law says that construction in a rural area of the West Bank depends on the existence of a detailed plan that establishes detailed area designations and detailed planning for construction.

on private Palestinian land, is illegal and all of the buildings in it are illegal. Accordingly, from 1998 (the year the outpost was established) to 2011, the Civil Administration issued 81 demolition orders for various structures and works in its area. The issuance of the demolition orders was preceded by the issuance of stop work orders.¹⁹²

Every demolition order listed in the chart below was preceded by a stop work order.¹⁹³ When the work did not stop and no request was made to the Inspection Subcommittee to receive a building or development license, the demolition order was issued. The orders are usually posted in the area where the illegal work is taking place and the Civil Administration inspectors document delivery of the order by photographing the order pasted to the structure or the work cited in the order or near them.

192 Yesh Din has a list of stop work orders issued from the years 2005-2011. The information was received from the Civil Administration following a request from Yesh Din according to the Freedom of Information Act, to receive data about administrative orders issued by the Civil Administration against illegal construction and invasions in the area of the outpost of Adei Ad.

193 According to the Towns, Villages and Buildings Planning Law, Law No. 79, 1966, section 38(1)1 (3). The information received from the Civil Administration also includes copies of the stop work orders.

DEMOLITION ORDERS ISSUED BY THE CIVIL ADMINISTRATION AGAINST STRUCTURES IN THE ADEI AD AREA¹⁹⁴

Year demolition order served	Number of demolition orders served	Structure/work against which the demolition order was issued
1998	1	Greenhouse
1999	13	Sheep pen, water tower, five mobile structures, five mobile structures for housing, a tin structure
2000	1	Stable
2001	6	Two caravans, housing structure, development works, preparation work to install caravans, synagogue
2002	7	Warehouse, three, beginnings of roads , two mobile structures, container for winery
2003	3	Mobile structure for housing, junked bus, wooden structure with concrete floor for housing
2004	25	Mobile guarding structure, three double mobile structures, six mobile structures, foundations for housing, four preparations for caravan installment, work (apparently development), container, chicken coop, seven mobile structures
2005	2	Mobile structure, casting surface
2006	1	Earthworks
2007	3	Agricultural land preparation, two beginnings of roads
2008	3	Three foundations for caravans
2009	11	Beginning of road, wooden shed, structure plus fence, two light construction structures, animal shed, caravan plus arbor, container, wooden shed, animal storeroom, entrance gate plus guard booth
2010	2	Earthworks, earthworks plus concrete surface
2011	3	Preparation for construction, soil theft, container
Total	81 orders	

194 Information about demolition orders issued between 1998-2005, courtesy of Peace Now. Information about demolition orders issued between the years 2005-2011. The information was received from the Civil Administration following a request from Yesh Din according to the Freedom of Information Act, to receive data about administrative orders issued by the Civil Administration against illegal construction and invasions in the area of the outpost of Adei Ad.

In response to our request to ascertain what enforcement actions were taken following the delivery of these stop work and demolition orders, the Civil Administration said that in the years 2005-2012 there were 27 demolitions of structures.¹⁹⁵ Despite our requests, the Civil Administration did not provide information specifying which structures it was referring to. However, the data given to us indicates that most of the demolition orders issued against structures in the outpost (54 orders) were not enforced at all. Clearly, the result is that the illegal outpost has been intact for 14 years with its 57 structures.

Over recent years, Yesh Din has appealed to the Civil Administration several times to enforce the demolition orders issued by its inspectors, evacuate the outpost of Adei Ad and allow the residents of the nearby villages free and unimpeded access to their land. All of the requests were answered in a similar formula to the one that appears in a letter from the Civil Administration officer from November 2010:

*As for your demand to take enforcement measures against the illegal construction in the outpost of Adei Ad, I stress that undertaking additional inspection measures will be subject to the discretion of the competent authorities according to their priorities and subject to all the relevant considerations.*¹⁹⁶

"Priorities"

As part of the Peace Now petition concerning illegal construction in the outposts of Hayovel and Haresha, the State was required to present its priorities for the realization of demolition orders issued against illegal construction in the West Bank. After prolonged delays and

195 Letter from Second Lt. Bar Akoka, Civil Administration Public Inquiries Officer, July 25, 2012 in response to a Yesh Din request under the Freedom of Information Act to receive information about enforcement actions undertaken in the Adei Ad area. In the first request sent in October 2011 we also asked for information about the enforcement actions taken in respect to each of the orders. The information had not been received at the time of the writing of this report (a whole year after submitting the request).

196 Letter from Sec.-Lt. Amos Wagner, Officer of Control and Public Inquiries, Office of Head of the Civil Administration, November 25, 2010, in response to requests from lawyers Shlomy Zachary and Avisar Lev; other letters with similar wording: a letter from Lt.-Col. Inbal Lidan, Officer of Tracking and Public Inquiries, Office of Head of the Civil Administration, November 30, 2009, in response to requests from Attorneys Michael Sfard and Shlomy Zachary; and letter from Sec.-Lt. Amos Wagner, Officer of Public Inquiries, Office of Head of the Civil Administration, May 31, 2011, in response to requests from Attorney Michael Sfard.

postponements (three years and 20 postponements), in October 2008 the State submitted its response to the court, detailing its priorities.¹⁹⁷

"PRIORITIES" FOR THE REALIZATION OF DEMOLITION ORDERS – AS PRESENTED BY THE STATE TO THE COURT:

- a. Demolition orders based on judicial decisions.
- b. Demolition orders concerning initial stages of construction, and circumstances in which it is important to provide a rapid response before the completion of construction and inhabitation.
- c. Demolition orders for structures on registered privately-owned Palestinian land.
- d. Demolition orders for structures on unregistered land that is not state land.
- e. Demolition orders for structures in unauthorized outposts built after March 2001.
- f. Demolition orders for structures in unauthorized outposts built before March 2001.
- g. Demolition orders for buildings outside of detailed and approved planning plans.
- h. Other structures.

The priorities are subject to future changes of circumstances inasmuch as there are any.¹⁹⁸

Even after the priorities were finally presented, significant demolition orders against homes in outposts were not enforced except in a handful of cases.

After additional years of inaction, due to the proliferations of petitions submitted to the High Court on the matter, attacking the State authorities' avoidance of enforcing orders that had been issued and evacuating outposts, and given the Attorney General's position that he could not defend this inaction before the Supreme Court justices, Prime Minister Benjamin Netanyahu attempted to develop guiding principles for the State Attorney in relation to petitions concerning the outposts. After consultation he held with ministers, jurists and military officials,¹⁹⁹ the Prime Minister announced a new policy by which structures standing

197 From the State's response to the Peace Now petition on illegal construction in the outpost of Hayovel Haresha: HCJ 9051/05, **Peace Now - Shaal Educational Enterprises v Defense Minister et al**, October 28, 2008.

198 Ibid.

199 The meeting occurred on February 28, 2011 with the participation of Prime Minister Benjamin Netanyahu, Defense Minister Ehud Barak, Ministers Benny Begin, Moshe Yaalon, Yaacov Neeman and Yitzhak Aharonovitz, as well as Atty. Gen. Yehuda Weinstein, Head of the HCJ Department in the State Attorney's Office Osnat Mandel and Coordinator of Government Activities in the territories Maj. Gen. Eitan Dangot.

on private Palestinian land would be demolished, whereas construction on public land would undergo legalization procedures by the Defense Minister's signature on outline plans and town planning schemes.²⁰⁰ In a hearing on a petition submitted by Peace Now a few days after the Prime Minister's announcement, the State representative presented this position to the High Court judges.

In June 2012 the Government of Israel approved the establishment of a "ministerial committee on settlement in Judea and Samaria." The government decision noted that "among other things, the committee will discuss and develop government policy on unregulated construction that occurred in the area," and "government policy on matters of principle that arise in petitions to the courts concerning area affairs."²⁰¹

NON-ENFORCEMENT OF EVACUATION ORDERS AGAINST AGRICULTURAL INVASIONS

One of the conclusions of the Sasson Report was that at the time of the writing of the report there was no suitable legal tool to handle invasions of an agricultural nature by Israeli civilians into Palestinian lands. Sasson noted that the difficulty stemmed from the fact that while most of the land in Israel is settled and registered in the land registry, some 70 percent of the lands in the West Bank are not registered.²⁰² Likewise, the Israel Police, responsible for law enforcement in the West Bank as well, has difficulty discharging its duties effectively under the conditions prevailing there.²⁰³

The main instrument that served to contend with the issue of agricultural invasions was a mechanism of taking the law into one's own hands for a period of 30 days, allowing the land owner to evict the invaders from his land, subject to approval by a police commander, and allowing him to use reasonable force.²⁰⁴ But that mechanism was unable to provide Palestinian land owners with real defense against invaders, and the legal protections of the

200 Complementary response deposition by the State in HCJ 7891/07, **Peace Now v Defense Minister et al.**, March 7, 2001; Barak Ravid and Haim Lavinson, "Netanyahu decided: the State will demolish outposts built on private Palestinian land," **Haaretz**, March 1, 2011.

201 Cabinet Decision No. 4772 from June 17, 2012.

202 Sasson Report, pp. 314-317.

203 As will be detailed later in this chapter.

204 According to the Order concerning Land (Eviction of Invaders), Military Order No. 1472, Judea and Samaria.

Palestinian land owners remained "only on paper, but not in reality."²⁰⁵ In fact, Sasson found, neither criminal law, civil law nor administrative law had effective protections to defend the Palestinian land owners against Israeli invaders.²⁰⁶

In light of Sasson's conclusions and following her recommendations, in 2007 the "Order concerning Land (Disruptive Use of Private Land)"²⁰⁷ was legislated, to provide the authorities with statutory instruments to deal with the protection of Palestinian property and the issue of agricultural invasions, and has since then provided the legal framework for their handling. On the basis of the order, administrative eviction orders are issued against land invasions, to allow rapid and immediate handling of agricultural invasions, as a substitute for prolonged legal proceedings. The Civil Administration's Inspection Unit is responsible for the enforcement of these orders as well, with the assistance of army and police forces, as needed.

But legal feasibility is one thing and reality is another; the few orders concerning disruptive use of private land that are actually issued and signed by the Head of the Civil Administration are not realized. Even though there is an effective legal instrument to deal with the illegal invasions, the land owners remain powerless against them, because in reality the invaders continue to occupy the lands while the State refrains from evicting them on the basis of the orders.

It was recently reported that the Head of the Civil Administration Col. Moti Almoz (who took office in November 2010) announced he was not going to continue issuing eviction orders against agricultural invasions because he lacks the legal training which he believes is necessary for decisions on such issues, and therefore they should be clarified in court.²⁰⁸ In response to Almoz's decision, the Legal Advisor for Judea and Samaria, Brigadier General Eli Bar-On, sent him a strong letter saying, "The order must continue to be used to prevent situations where the passage of time, in which the authorities desist from fulfilling their duty, leads to the establishment of facts on the ground, which will later be difficult to change." He also wrote that Almoz's refraining from exercising his powers concerning the issuance of eviction orders is "a shirking of your duties that stem from the requirements of international law and is inconsistent with the conduct expected from a reasonable

205 Sasson Report, p. 316.

206 Ibid., p. 317.

207 Order concerning Land (Disruptive Use of Private Land) (Judea and Samaria) (No. 1586), 2007.

208 Haim Levinson, "The Civil Administration avoids evicting settler invasions," *Haaretz*, March 12, 2012.

administrative authority."²⁰⁹ In a landmark decision from March 20, 2012, the High Court of Justice ruled on the issue and found that the provisions of the order realize the duty of the military commander to maintain public order and the property of the protected persons, which is "one of the most basic duties of the military commander." It also found that the Head of the Civil Administration has the authority and the responsibility to issue the order as well as the duty to do so.²¹⁰

From the time the outpost of Adei Ad was founded in 1998 until February 12, 2012, the Head of the Civil Administration issued only a single evacuation order under the "Order concerning Land (Disruptive Use of Private Land)" in the area of the outpost.²¹¹ This order was issued by the Head of the Civil Administration on September 21, 2010, following an agricultural invasion of land owned by residents of the village of Turmusaya.²¹²

209 Letter from the Brig. Gen. Eli Bar-On, Legal Advisor for Judea and Samaria, to Col. Moti Almoz, Head of the Civil Administration, February 29, 2012.

210 HCJ 5439/09, **Ahmad Abd al-Qader et al. v Military Appeals Committee according to the Appeals Committee Order**, decision from March 20, 2012. On June 21, 2012, exactly three months after the ruling on the exercise of the order to remove agricultural invasions, a committee established by Prime Minister Benjamin Netanyahu, headed by Former Vice President of the Supreme Court Justice Edmond Levy (the other members of the committee were Retired Judge Tehiya Shapira and lawyer Allen Baker, who specializes in international law), published its conclusions. The letter of appointment authorized the Levy Committee to discuss contending with illegal construction in the West Bank and to examine the existence of a due process to clarify land issues in the area. It was also authorized to discuss and make recommendations on any other issue related to the subject. Among the many subjects the committee addressed was the recommendation to cancel the Order concerning Disruptive Use of Private Land, which it went so far as to call a "draconian" order, "the existence of which a proper legal system must not tolerate even if it is explained by the need to maintain public order." This recommendation of course contradicts the Supreme Court ruling given only three months before the Levy Report was published. At the time of the writing of this report, the Levy Report had not been adopted by the Government of Israel. **Report on the Status of Construction in Judea and Samaria**, Jerusalem, June 21, 2012, pp. 1, 71-72, and p. 87 Section J; Haim Levinson, "The Levy Committee recommendations: victory of the art of cover-up and lying." **Haaretz**, July 9, 2012.

211 The information was received from the Civil Administration following a request by Yesh Din under the Freedom of Information Act to receive data about administrative orders issued by the Civil Administration against illegal construction and invasions in the area of the outpost of Adei Ad. The Order concerning Disruptive Use of Private Land went into effect in 2007.

212 See box on the next page.

YESH DIN'S PETITION ON BEHALF OF FARMERS FROM THE VILLAGE OF TURMUSAYA DEMANDING THE ENFORCEMENT OF AN EVICTION ON THE BASIS OF THE ORDER CONCERNING DISRUPTIVE LAND USE ON THE VILLAGE'S LANDS

On March 17, 2011 residents of the village of Turmusaya petitioned the High Court of Justice with the representation of Yesh Din, demanding realization of the Order concerning Disruptive Use of Land which had been issued against the settler invasion of their lands.

On July 23, 2010 Mahmoud Muhammad Mohsen al-Araj discovered that extensive infrastructure works had been carried out on a plot of land he owns, including fencing, flattening, laying an irrigation system and pitching stakes, to prepare the land for planting a vineyard. Subsequently, two days later al-Araj filed a complaint to the police for the trespassing, which was an illegal invasion of his land and which prevented him from accessing it. About a month later he discovered that the work had been completed and dozens of young vines had been planted on the land. Subsequently, al-Araj and two other residents of the village, whose land had been invaded, contacted Yesh Din asking for our help.

In light of their requests, Yesh Din contacted the Commander of IDF Forces in the West Bank and the Head of the Civil Administration, demanding they immediately clear the planting and fencing and guarantee the farmers free, unhindered access to their lands.²¹³ The request by the legal team produced the issuance of an Order concerning Disruptive Use of Private Land on September 21, 2010.²¹⁴ It quickly became clear that the authorities were satisfied with issuing and signing the order but were refraining from enforcing it.

In repeated correspondences with the authorities, Yesh Din's legal team demanded the order be enforced. We repeatedly mentioned the State's duty to ensure the safety of the residents of the village who enjoy the status of protected persons, and

213 Letter from Attorney Avisar Lev to the Commander of IDF Forces in the West Bank and the Head of the Civil Administration: Demand for the immediate eviction of plantings and fencing on my clients' private land, September 13, 2010; and letter from Attorney Avisar Lev to the Commander of IDF Forces in the West Bank and the Head of the Civil Administration: Demand for the immediate eviction of plantings and fencing on my clients' private land, reminder, October 5, 2010.

214 Notice of the issuance of the order and its signature was received on October 12, 2010 in a letter from Tamer Saeed, Deputy Advising Officer in the Land Department, Office of Legal Advisor for Judea and Samaria.

in the meantime to ensure their access to their land and the freedom of movement to which they are entitled in those areas.²¹⁵

More than seven months after the invasion of their land, when they discovered that the State authorities had done nothing to remove the invaders, the three land owners appealed to the High Court of Justice with the help of Yesh Din, requesting it order the enforcement of the Demand of Eviction based on the Order concerning Disruptive Use of Private Land.²¹⁶ (see photo no. 4, p. 64)

On May 12, 2011, the respondents provided their preliminary response, including an undertaking to enforce the order by the end of August 2011, accompanied by an affidavit signed by the Head of the Civil Administration.²¹⁷ On the morning of August 28, 2011 special police forces arrived on the land that is the subject of the petition and began to uproot the vines planted on it as part of the agricultural invasion. Simultaneously, Adei Ad resident Assaf Azoulay submitted a petition for an order nisi and an interim order. In this petition he argued that "for many years the petitioner has been growing a vineyard near the settlement of Adei Ad in the area of Shilo, in which the petitioner has invested his best energy and capital. This tremendous investment has already totaled thousands of shekels(!)" He went on to argue that the Disruptive Use Order had not been delivered to the petitioner and therefore he had not been granted his right to a hearing and right to appeal.²¹⁸

The State's position in its preliminary response to the petition was that it must be rejected in limine both because of its lack of good faith and because of the delay in its submission, as well as being rejected in substance. The State argued that the order had been posted in the area that is the subject of the petition on December 12, 2010 and a copy of it was even given to the petitioner when he was investigated at the police on January 24, 2011 on suspicion of trespassing and disruptive use

215 Letters by Attorneys Michael Sfar and Avisar Lev: Demand for the immediate eviction of plantings and fencing on my clients' private land in the village of Turmusaya, October 18, 2010, November 21, 2010 and December 19, 2010, and responses from Tamer Saeed, Deputy Advising Officer in the Land Department, Office of Legal Advisor for Judea and Samaria, November 23, 2010 and December 28, 2010.

216 HCJ 2186/11, **Mahmoud al-Araj v Commander of IDF Forces in the West Bank**.

217 HCJ 2186/11, **Mahmoud al-Araj v Commander of IDF Forces in the West Bank**, preliminary response by respondents, May 12, 2011. See appendix on pp. 177-178.

218 HCJ 205/11 **Assaf Azoulay v Head of Civil Administration Col. Moti Almoz**.

of the land. The State also argued that the petitioner had not established in his petition his rights to the land in question and that the State even had information that contradicted his claim that he had been cultivating the vineyard for many years; an examination by the DCO found that the saplings in the plot had been planted only a few months before submitting the complaint in August 2010; further, in his police investigation the petitioner stated that he had begun to live in the outpost of Adei Ad only in the middle of 2009 and had previously lived in Kiryat Arba.²¹⁹

Following the petition, a temporary order was issued to stop the evacuation of the land until a hearing on the petition,²²⁰ and the hearing of this petition was consolidated with the original petition by the Turmusaya farmers.²²¹

During a hearing on the petitions on September 12, 2011, the petitioner Azoulay claimed he had been cultivating the land for which the eviction order was issued and that that land was adjacent to another plot that had been allocated to him by the WZO. At the end of the hearing, the court demanded that Azoulay present the allocation agreement between him and the WZO concerning the piece of land adjacent to the plot that was the subject of the petition (and not concerning the plot that was the subject of the petition itself). On September 13, 2011, Azoulay submitted a copy of the agreement between him and the WZO, signed on January 23, 2011, allocating the plot to the petitioner from February 1, 2011 for 21 years (until February 2032) for the token sum of a single shekel.²²² **No other agreement or reference was presented concerning the plot that was the subject of the petition, which belongs to Palestinians.**

The court decision from September 18, 2011 stated that the petitioner "is trying to hide something, and good faith, not to say the truth, does not appear to be his best friend, even if he is driven by idealism."²²³ Despite these strong words, the court ruled that in spite of its reservations over "the petitioner's evasive attitude," he must be given a hearing, and if it subsequently becomes necessary, Azoulay should be

219 State response from August 30, 2011 as part of petition HCJ 6205/11.

220 Decision on HCJ 6205/11, August 29, 2011.

221 Decision on HCJ 2186/11 **Mahmoud al-Araj v Commander of IDF Forces in the West Bank**, and HCJ 205/11 **Assaf Azoulay v Head of Civil Administration Col. Moti Almoz**, August 31, 2011.

222 Complementary statement by petitioner as part of HCJ 2186/11 and HCJ 6205/11, September 13, 2011.

223 Decision on HCJ 2186/11 and HCJ 6205/11, September 18, 2011.

allowed to make an appeal. It also ruled that the State must update the court within three months, and that until that time the temporary order would be in force.²²⁴

After the court session the Head of the Civil Administration held hearings for Assaf Azoulay and the Turmusaya farmers. At the end of the hearings, on March 25, 2012, the Head of the Civil Administration rejected Azoulay's argument and decided to leave the demand of eviction intact.²²⁵ Following that decision Azoulay appealed to the Military Appeals Committee at Ofer camp.²²⁶ That appeal is still pending.

REFRAINING FROM ISSUING A DEMARCATION ORDER FOR THE AREA OF THE OUTPOST

In addition to refraining from enforcing the demolition orders issued against illegal structures and eviction orders for agricultural invasions, the State has also refrained from giving a sweeping political directive to issue area demarcation orders against the unauthorized outposts, including the outpost of Adei Ad. A demarcation order is issued by the Commanding Officer of the Central Command,²²⁷ and declares an area or place in which an unauthorized structure is located as a demarcated area. Entry into a demarcated structure or place is forbidden and soldiers and police officers are authorized to use force to evacuate it if necessary. This order has been the main legal instrument for dealing with the evacuation of unauthorized outposts, since December 2003.²²⁸

Completely evacuating an outpost (as opposed to evacuating specific buildings in it) can be undertaken only after an area demarcation order is issued. However, experience shows that even outposts against which demarcation orders were issued have not yet been evacuated.

224 Ibid.

225 Letter from Col. Moti Almoz, Head of the Civil Administration, to Mr. Assaf Azoulay, March 25, 2012.

226 Appeal 51/12, **Assaf Azoulay v Head of the Civil Administration for Judea and Samaria** (submitted on April 16, 2012).

227 An area demarcation order is issued by virtue of an Order concerning Unauthorized Structures (Temporary Order), No. 1539.

228 Sasson Report, p. 16.

A petition submitted by Peace Now in September 2007 against the non-realization of demarcation orders against six outposts²²⁹ is still pending.

This failure by state authorities to enforce orders that they issued themselves is a grave violation of the rule of law in the occupied territories.

NON-ENFORCEMENT IN THE FIELD OF PLANNING AND BUILDING: RESULTS

Israel is obligated to protect the private property of Palestinians in the area it occupies, including their land. This duty derives from the provisions of international humanitarian law (laws of occupation), international human rights law and the principles of administrative and constitutional law in Israel.²³⁰ The construction of outposts on private Palestinian land is a grave violation of Palestinians' property rights, and therefore the Command Officer, as commander of the area, is obligated to take active action to prevent this violation.

In a decision given in early August 2011 in a petition by Peace Now concerning the outpost of Migron, which established that the State must evacuate the outpost, High Court President Dorit Beinisch wrote that a violation of the law that violates the property rights of the protected Palestinian population is particularly grave and requires the State to act accordingly:

*The guiding principle with the deciding weight in our judicial decisions is that the State authorities must act to uphold the law and enforce it in the area, especially when the violation of the law violates the property rights of the protected residents, which as we noted, is also the State's declared position, which was brought before us many times. There is no dispute that by law a settlement must not be built on the private land of Palestinian residents, and even according to the respondents, violation of the property rights of these residents must be viewed gravely. Therefore, the State has placed this principle at the top of its priorities for law enforcement in the area.*²³¹

229 HCJ 7891/07, **Peace Now - Shaal Educational Enterprises v Defense Minister Ehud Barak et al.** The petition is the continuation of a previous petition submitted in March 2006: HCJ 3008/06, **Peace Now - Shaal Educational Enterprises v Defense Minister et al.** The six outposts are Mitzpe Lakhish, T junction - Givat Assaf, Ramat Gilad - Givat Hadeqel, Maale Rehavam, Mitzpe Yitzhar - Elevation Point 693 and Givat Haroeh - Eli 762.

230 See Chapter 1 "The duties of the occupying power," pp. 15-22 of this report.

231 HCJ 8887/06, **Yousef Abd al-Razek al-Nabut et al. v Defense Minister et al.**, decision from 2011.

The ideological motive that drives the establishment of the outposts manages to lessen severity of the crime and contempt for the rule of law for those who are responsible for law enforcement. Sasson was gained the impression that the inaction and lack of law enforcement stem from the ambivalence of the enforcement agencies that examine the construction of outposts and accompanying crimes.

The outcome is, therefore, clear: the outpost of Adei Ad, which was built illegally and whose construction involved criminal offenses, is a 14-year-old testimony to the feebleness of law enforcement in the West Bank.

CHAPTER 5

THE FAILURE OF LAW ENFORCEMENT UPON ISRAELI CITIZENS WHO COMMIT CRIMINAL OFFENSES AGAINST PALESTINIANS

The duty to enforce the law is imposed on the IDF as the occupying power and sovereign of the occupied territory. But shortly after the occupation of the West Bank in 1967 the IDF delegated the responsibility to the Israel Police and authorized it to act to enforce the law in the West Bank. The "Order concerning Police Forces Operating with the IDF (the West Bank) (No. 52) 1967"²³² grants the police identical powers to those granted to every soldier in the occupied territories, as well as the powers that were granted to police in the West Bank before it was occupied by Israel.²³³

From 1967 to 1994, the police operated in the West Bank through two sub-districts: the Judea Sub-district that was subordinate to the Southern District, and the Samaria Sub-district that was subordinate to the Northern District. In 1994 the police forces that operated in the West Bank until that time were united under a new district: the new SJ District (Samaria and Judea).²³⁴ As opposed to police districts operating within the borders of the State of Israel, the SJ District is subordinate to two bodies: in the professional (and budgetary²³⁵) areas it is subordinate to the Israel Police, whereas in the operational area is subordinate to the Commander of IDF Forces in the West Bank.²³⁶

The subordination of the SJ District Police to the Commander of IDF Forces in the West Bank and the security circumstances in the area create a dependency of the police on the IDF in many of its activities. For example, for security reasons, when SJ District police go out on an investigation at a site close to Palestinian localities, they require military escort

232 The Order concerning Security Provisions was amended many times and in 1970 was legislated separately, as an order rather than an appendix to a proclamation: Order concerning Security Provisions (Judea and Samaria) (No. 378), 1970.

233 For further elaboration see: **A semblance of law: law enforcement upon Israeli civilians in the West Bank**, Yesh Din, June 2006, p. 23.

234 Israel Police website (www.police.gov.il)>Judea and Samaria District).

235 In the past the police in the West Bank was funded by the Civil Administration, but the activity of the SJ District is funded by the Israel Police budget.

236 State Comptroller, **Annual Report 52a**, 2001, p. 180.

that is not always provided at the required speed, and sometimes is not provided at all. Dependence on military escort hinders the ability of police investigators to arrive on the scene of the incident and collect findings relevant to the investigation. As a result of this dependence, which limits the ability to conduct an investigation on the ground, most of the activity of the SJ District is conducted at the stations – receiving complaints and collecting testimonies.²³⁷ An investigation officer from the SJ District Police told Yesh Din that "the junior [military] echelon, from soldier to company commander, perceive themselves as the defenders of the settlers." He said the soldiers on the ground do not identify disturbances by Israelis as criminal events and do not have much motivation to stop such events. He added that one of the problems in the cooperation with the army is the rapid turnover of the forces stationed in the area, because by the time the forces on the ground internalize the required policy for handling Israeli disturbances, they rotate.²³⁸

The relationship between the SJ District Police and the settlers is complex: on the one hand, the police believe that providing service to the Israeli citizens in the area and protecting them are part of its job. As such, the SJ Police District maintains an ongoing dialogue with the settler leadership in the West Bank, resulting in moderated police enforcement actions.²³⁹ In certain cases the dialogue even serves as a substitute for meaningful law enforcement in the area. On the other hand, among the Israeli citizens in the West Bank there are some who show a suspicious attitude towards the SJ Police District and see it as "representatives of a practically foreign rule."²⁴⁰

VIOLENCE TOWARDS POLICE DURING THE ARREST AND INVESTIGATION OF RESIDENTS OF ADEI AD SUSPECTED OF INVOLVEMENT IN A SHOOTING INCIDENT AND ARSON OF OLIVE TREES

In certain cases Israeli civilians obstruct police operations, sometimes using violence. For example, on June 26, 2008 two residents of Adei Ad were arrested on suspicion of involvement in a shooting incident, the arson of olive trees and

237 **A semblance of law: law enforcement upon Israeli civilians in the West Bank**,. Yesh Din, June 2006, pp. 30-31.

238 Conversation with officer from SJ District of the Israel Police, September 19, 2011. The name of the officer is on file with Yesh Din.

239 An example of such a case can be found for example in the Itamar Newsletter, Issue 28, Tishrei 5764, October 19, 2003.

240 Sasson Report, 266.

the arson of a combine belonging to farmers from the village of al-Mughayer.²⁴¹ In protest against their arrest, 30 young settlers demonstrated outside of the Shaar Binyamin police station. They assaulted one of the police officers who came out to evacuate the demonstrators, and the latter needed medical treatment for the grave injuries he suffered.²⁴² Yudit Avidor of the Yesh Din field staff, who was present at the police station that day, accompanying Palestinian complainants to file a complaint. The following is her description of the incident:

... They blocked the entrance to the police station with tables and chairs, cursed and shouted at the police. They shouted obscenities, like "Police scum, resign!" They sprayed water with water guns through the building's openings. We also saw a burned barrel of an inflammatory substance with which they tried to burn down the station. The police said that they sang, laughed and drank alcohol. It lasted until 5 a.m. [Policeman] R.A. and another policeman who went out to the demonstrators were attacked by them. R.A. was hurt in his ribs and evacuated to hospital.²⁴³

The SJ District Police is in charge of law enforcement in the territories, which includes investigation of events in which Israeli citizens are involved in harming Palestinians. The investigations officer from the SJ District Police estimates that every year between 200 and 250 disturbance files are opened for Israelis in the Samaria district, half for offenses against Palestinians and half for offenses against the security forces.²⁴⁴ The establishment of the SJ District was intended to satisfy the need for better law enforcement on Israeli citizens in the West Bank, but in fact its resources are limited, its manpower is limited and most of its efforts are devoted to handling security offenses by Palestinians. Added to that, are the complicated relations with the settlers and the pressures exerted by their leaders, Palestinian mistrust of the police and the difficulties described above in the relationship with the army, which also undermine the ability to effectively enforce the law on Israeli civilians.

241 Yesh Din Case No. 1475/08. About 3.5 years later the Jerusalem District Attorney's Office decided to close the investigation file on grounds of "lack of sufficient evidence."

242 Guy Varon, **Army Radio**, June 26, 2008; Efrat Weiss, "Policeman from Binyamin station injured in assault by relatives of arrested settlers," **Ynet**, June 26, 2008.

243 Testimony of Yudit Avidor, Yesh Din, June 26, 2008.

244 Conversation with officer from SJ District of the Israel Police, September 19, 2011. The name of the officer is on file with Yesh Din.

CRIMINAL OFFENSES AGAINST PALESTINIANS IN THE AREA OF ADEI AD

The SJ District of the Israel Police is responsible for the criminal aspects of law enforcement and crimes by Israeli civilians. These aspects include receiving complaints from Palestinian complainants, opening criminal files and conducting comprehensive investigations. We shall hereby examine the extent of the SJ District's success in investigating complaints by Palestinian complainants of offenses against them by Israeli civilians near the Adei Ad outpost.

Yesh Din examined 96 incidents of a criminal nature that occurred near the outpost of Adei Ad on the land of the villages of Jalud, Qaryut, Turmusaya and al-Mughayer, from 1998 when the outpost was established until July 2012. These are not all of the incidents and offenses that occurred in the area, but only the cases that were brought to the attention of the organization. Yesh Din believes that the extent of the actual crimes is much greater but most of them were not reported. This is even truer when it comes to events that occurred before Yesh Din was founded in 2005 and began collecting data.

In most of the cases the identity of the perpetrators of the crimes cited in the report is not known to Yesh Din, nor is it known whether those involved were residents of Adei Ad or of the nearby outposts. All we can say is that the offenses were committed by perpetrators whom the victims identified as Israelis.²⁴⁵

The data referring to the years 1998-2004 is based on questionnaires filled out by residents of the four villages in 2009. Naturally, the incidents that were reported are the most exceptional and meaningful and were engraved in the respondents' memories. Considering the passage of time, it can be assumed that there were other events that were perceived as less meaningful and therefore less worthy of reporting. In most of the cases documented in the forms concerning the years in question, no complaints were filed to the police, and if they were, in most cases the complainant and/or Yesh Din have no information as to the outcome of the police investigation.

The data collected indicates that despite the variety of offenses, most of them are related to control of land – whether by direct attempts to seize land, cultivate it or evict its owners, sometimes using violence, or by indirect offenses, such as vandalism of crops and agricultural products.

²⁴⁵ See box in introduction, p. 12 of this report.



The types of incidents

Yesh Din examined incidents in which crimes were committed by Israeli civilians against Palestinians or their property in the areas near the outpost of Adei Ad from the time it was founded to the present. The incidents can be classified in three main categories, according to the nature of the main offense²⁴⁶ committed:

Violence: incidents of physical violence, including threatening with a weapon, beating and stone throwing.

Land seizure: incidents of seizure or attempted seizure of Palestinian lands. Includes fencing, cultivation, placing structures, caravans or greenhouses, building roads on the land, evicting Palestinians from their plots, preventing Palestinians access to their plots, and trespassing.

Property offenses: incidents in which damage was caused to property, including theft, arson, vandalism, vandalism of crops, theft of crops and more.

Of the 96 incidents Yesh Din documented, 21 (22 percent of the incidents) were offenses of violence against Palestinians and included bodily harm or attempted bodily harm as well as threats of harm. Ten of them were incidents of violent assault (three shooting incidents and the others battery, stone throwing or assault with a truncheon). In the rest of the violent incidents Israeli citizens threatened Palestinians, usually with guns. All of the violent incidents seem to have been attempts to evict the Palestinians from their land.

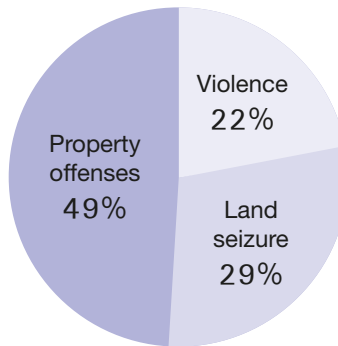
Forty-seven events (49 percent of the events) were property offenses, of which 35 were incidents of agricultural vandalism (including 27 cases of vandalism of olive trees – cutting down, uprooting, spraying with poisonous substance or arson of trees); eight cases of crop theft (mostly olive harvest); and four incidents of vandalism of vehicles or agricultural equipment.

Twenty-eight incidents (29 percent of the incidents) were offenses of seizure or attempted seizure of Palestinian-owned land near Adei Ad. Eight of them were incidents of placing

246 In some of the incidents we checked a number of offenses were committed during a single incident, for example: fencing plots and planting olive trees; eviction under threat of arms and shooting a horse to death; shooting at farmers, hitting them and setting a tractor on fire. The data presented in this report refers to the incident according to the most serious offense, defined as the "chief event." It should be noted that an examination of the additional offenses besides those that are defined as the "chief event" helps understand the pattern of action that leads to the takeover of lands.

caravans or tents on Palestinian land; ten incidents of cultivating Palestinian-owned agricultural plots (plowing, planting etc.); six incidents of evicting Palestinians from their land or preventing Palestinians access to plots they owned; one incident in which there was an attempt to pave a road on private Palestinian land; one incident in which construction waste was dumped onto a plot; and two more incidents in which construction equipment and a water hose were placed on Palestinian-owned land.

Incidents that occurred in the areas near Adei Ad, according to type of offense



The types of incidents indicate that they are ideological crimes whose goal is to take over land in the area surrounding the outpost of Adei Ad while intimidating and scaring the land owners, in order to cause the latter to stay away from the plots they own. Yesh Din believes that a connection can be seen between the offenses and the ongoing land theft that serves to constantly expand the area under control of the outpost residents.

Most of the incidents occurred on privately-owned agricultural plots whose status is not settled, and therefore evicting their Palestinian owners from them can lead to the loss of their property rights because of the inconsistency and discontinuity of land cultivation.

(NON) FILING OF COMPLAINTS TO THE POLICE

The Israel Police National Headquarters Order provides that every police officer is required to accept a complaint about the commission of a crime, whether it raises the suspicion that a crime was in fact committed or not.²⁴⁷ In practice, Palestinian victims of crimes by Israeli

247 Order of the Israel Police National Headquarters, January 14, 2001, Section 2: "Processing of a Complaint and Investigation File."

civilians in many cases refrain from submitting complaints to the police; the Karp Report published in 1982 discussed the varied reasons for this:

*The range of possible reasons for the lack of complaints might range from acceptance and a natural tendency not to complain, unwillingness to come into contact with the authorities, fear as a result of a threat or fear of revenge, and drawing conclusions from the absence of results from previous complaints to the police or from the police's refusal to process complaints.*²⁴⁸

Unfortunately, the reasons cited by the Karp Report are still relevant 30 years later. Of the 96 incidents reported to Yesh Din, in 80 incidents the victims filed complaints with the police. In the cases in which no complaints had been filed, Yesh Din tried to find out the reason the victim refrained from complaining. The following are some of the main reasons that were cited as causes not to file a complaint:

Mistrust of the Israeli enforcement authorities

The failure to file a complaint often stems from a lack of trust in the police. Considering the impotence the police and Israeli authorities demonstrate when it comes to law enforcement on Israeli civilians in the territories, many of the residents of the villages near Adei Ad have lost their trust and belief in the police's ability and willingness to help them.

Such mistrust was expressed to us by Saeed Kouk, a resident of the village of Turmusaya, who, with his wife, owns a plot with a water well. On October 1, 2000 at noon, when the two were near their well on their plot (200 m from Adei Ad), they were approached by a green tractor carrying armed Israeli civilians. The trespassers threatened Kouk and his wife that they would slaughter them if they came near them. When Kouk was asked why he had not complained to the police following the event, he replied: "It doesn't help."²⁴⁹

A similar response was given by Hussein Abu Alia, a resident of al-Mughayer, who arrived on the morning of October 26, 2009 to his land which is about a kilometer from Adei Ad. He found that 53 olive trees he owned had been cut down and the fruit had been stolen. To the question why he did not complain he replied: "I'm sick of it, I don't believe it would help."²⁵⁰

248 Report of monitoring team headed by Yehudit Karp, "Investigations against Israelis in Judea and Samaria," 1982, p. 26.

249 From the responses of Saeed Taleb Hasan Kouk of Turmusaya, Yesh Din Form No. 22.

250 From the responses of Hussein Sa'id Abu Alia of al-Mughayer, Yesh Din form No. 69.

Refusal of police officers to receive complaints

In certain cases police officers refused to receive complaints from Palestinian complainants. Following are several examples:

- On July 1, 2009, Palestinian shepherds were chased off their land about one kilometer from Adei Ad by two Israeli civilians. When Akram Na'san went to file a complaint following the event, he was told he could not do so because there was no investigator at the station who could collect his testimony.²⁵¹
- Rabah Hizmeh, a resident of Turmusaya, wished to file a complaint following an event that occurred on August 6, 2009 on his land 500 meters from Adei Ad, when an armed Israeli civilian fired at him and chased him with a brandished gun all the way to the village's houses. The police refused to receive his complaint, claiming that the Israeli had acted in self-defense.²⁵²
- Jamil Na'san's stubbornness took him to the Shaar Binyamin police station three times until he could file a complaint against Israeli civilians who had plowed his land with a tractor.

That same night [...] I went to the Binyamin police station (at around 6 p.m.) to file a complaint but the investigator, whose name I don't know, told me he could not receive the complaint because there was no interpreter, and that I should come the next day at 8 a.m. to file the complaint.

*The next day at 9 a.m. I went to the police again. I went in and an investigator, whose name I don't know, asked me whether I had documents proving that I am the land owner as well as a land extract. I didn't have the documents because I had not been asked to bring them, so again I couldn't complain. So I left the police without filing a complaint.*²⁵³

Ultimately, Na'san managed to file a complaint to the police on March 8, with the help of a Yesh Din staff member who escorted him to the station.

251 Akram Kamel Abdallah Na'san, resident of al-Mughayer, Yesh Din Form No. 7.

252 Rabah Ali Mohamed Hizmeh, resident of Turmusaya, about an incident that occurred on August 6, 2009, Yesh Din Form No. 38.

253 Yesh Din Case No. 2030/10.

- Mahmoud Hizmeh Mohammad al-Araj, a resident of Turmusaya, tells of his attempts to file complaints with the police over the years:

At first we would file complaints with the police in Beit El. For instance, on October 17, 2000 we filed a complaint against settlers who had stolen fruit from the trees. The policeman refused to receive the complaint and said "go complain to Yasser Arafat." On April 22, 2001 I went to the police to file a complaint against a settler who was grazing a flock on my land, and they completely ignored me. Apparently they don't want us to file complaints, and in Beit El they told me not to bring any more complaints. In July 2010 I went four times about poisoning trees and they told me to come another time and didn't come to see the damage. It is clear to me that the Israel Police collaborates with the settlers. The army treats us the same as the police – they don't come and don't check.²⁵⁴

INVESTIGATIONS OF OFFENSES AND THEIR RESULTS

The Criminal Procedure Law provides that the police are required to open an investigation after a complaint is filed that raises the suspicion that a crime was committed.²⁵⁵ The law goes on to say that the complainants must be given notice of a decision not to investigate or file an indictment.²⁵⁶ Of the 96 cases brought to the attention of Yesh Din, complaints were made to the police in 80 cases. Yesh Din has been monitoring the processing of 58 of the complaints.²⁵⁷

Of the 22 cases that are not being monitored by Yesh Din, in 16 cases (70 percent) the complainants do not know the outcome of their complaint, despite the aforesaid imperative to inform the complainant of the outcome of the investigation. For example, Mahmoud Hizmeh Mohammad al-Araj submitted 18²⁵⁸ complaints to the police of various offenses that took place on his land. The results of the investigations of 10 of the complaints are unknown to him (all are complaints that are not being monitored by Yesh Din).

254 From a meeting with Mahmoud Hizmeh Mohammad al-Araj, a resident of Turmusaya, on November 30, 2010 in Turmusaya

255 Criminal Procedure Law (Combined Version), Section 59: Police Investigation.

256 Criminal Procedure Law (Combined Version), Section 57: notice of decision not to investigate or prosecute.

257 In 22 files the complaint was made before Yesh Din existed and we are unable to monitor its outcome.

258 Yesh Din Cases Nos. 1827/09, 1481/08, 1616/08, 1624/08, 2195/10, 2207/10. Yesh Din Forms Nos. 3, 5, 6, 13, 14, 15, 16, 17, 18, 27, 29, 30, 32, 34, 35, 36.

Of the 58 incidents for which complaints were made to the police and which are being monitored by Yesh Din:²⁵⁹

Decision in investigation file

The processing of 49 files has been completed. Of them:

- In three files²⁶⁰ indictments were served. These files constitute six percent of the total files whose processing has been completed;
- The rest, 46 files (94 percent of all the files the enforcement authorities have finished processing) were closed without serving indictments.

Nine additional files have not yet reached final decision. Of them:

- Seven files are still under investigation;
- Two files are under review by a prosecutor, whose job is to decide whether to press charges or close the investigation file.

Grounds for closing investigation files

Of 46 files closed without serving indictments:

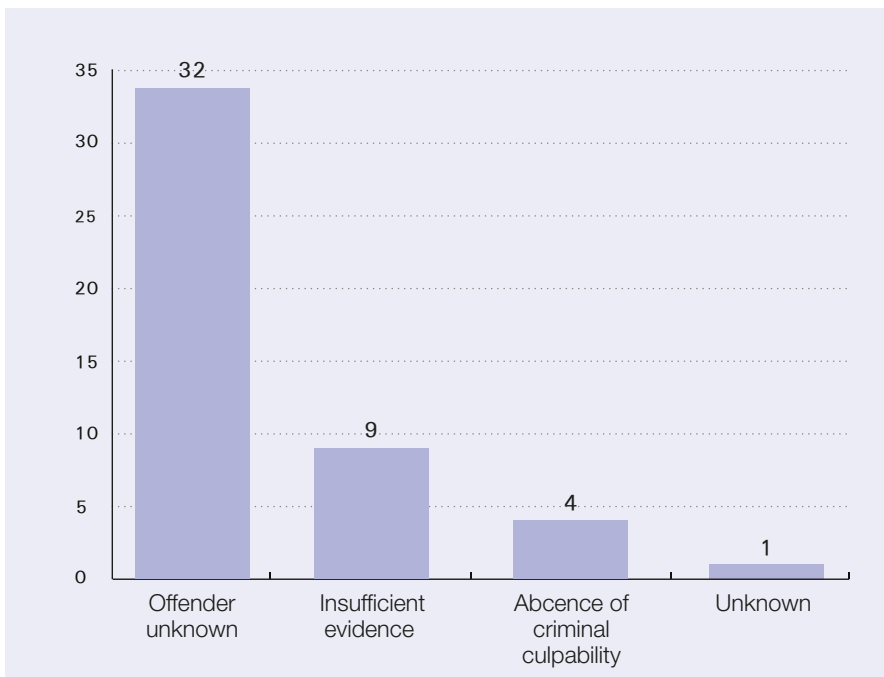
- Thirty-two files were closed on grounds of "offender unknown;"
- Nine other files were closed on grounds of "insufficient evidence;"
- Four files were closed on grounds of "absence of criminal culpability;" in three of them Yesh Din appealed the decision after an examination by the organization's lawyers found that there had been no cause to close the file on these grounds;²⁶¹
- In another file Yesh Din does not know the grounds for its closure.²⁶²

259 The figures are current as of August 27, 2012.

260 Yesh Din Case No. 1174/06 the defendant Boaz Melet was convicted of trespassing and sentenced to a suspended prison term, a NIS 1000 fine and signing a NIS 5000 commitment to avoid violating the law of which he was convicted for three years; Yesh Din Case No. 1923/09 an indictment on charges of trespassing and theft was filed against two defendants, the trial is still in progress; Yesh Din Case No. 1280/07 an indictment was filed for offenses of trespassing, the trial is still in progress.

261 According to the Order of the Israel Police National Headquarters, January 14, 2001, Section 5a, the grounds of "absence of criminal culpability" shall be assigned in cases where it emerges that the action does not constitute an offense, or in cases where there is not a shred of evidence that the offense was committed by the suspect.

262 Inquiries by Yesh Din to ascertain the grounds for closing the files were not answered.



Grounds for closure of investigation files monitored by Yesh Din

What these figures mean is that in 94 percent of the cases in which police processing ended, the criminals were not prosecuted and the investigation file was closed. **Ninety-two percent of the files²⁶³ were closed because the investigators failed in their investigations:** 41 files were closed on grounds that indicate a failure of the investigation ("offender unknown" and "insufficient evidence") and three files were closed on the apparently unjustified grounds, according to the position of Yesh Din's legal team, of "absence of criminal culpability" (Yesh Din has appealed their closure).

Concerning 11 of the files that were closed without indictments being served, Yesh Din appealed the decisions; three of the appeals were accepted and the files were reopened to complete the investigation activities.²⁶⁴

²⁶³ Out of the investigation files whose processing ended and whose results are known to Yesh Din.

²⁶⁴ Of the three appeals that were accepted, one file closed after additional investigation actions were taken; one file is still in the process of completion of the investigation, and another file was re-closed after additional investigation actions were taken, and Yesh Din submitted another appeal against its re-closure, which was also rejected. Four appeals were rejected and regarding another appeal no decision had been made by the time of writing this report.

INVESTIGATION FAILURE – SELECTED EXAMPLES

Yesh Din's legal advisor, who represents the complainants in the files the organization monitors, received copies of the investigation files the police decided to close in order to examine the possibility of appealing its decision.²⁶⁵ Here are some examples of investigation files that Yesh Din believes were handled ineffectively and inadequately. The reference to materials contained in the investigation files is based on the appeals Yesh Din submitted through its legal advisor.

ID 22435/11-3, Yesh Din Case No. 2388/11:

A suspect in an assault identified by the complainant was summoned to investigation only three months later and his investigation was limited to only seven general questions and without requiring him to present an alibi

On April 14, 2011 members of the Hizmeh family from the village of Turmusaya set out to till their land near the outpost of Adei Ad, after coordinating and receiving permits to do so from the Civil Administration. About an hour and a half after they began their work, representatives of the army asked them to leave the site "so that there won't be any problems with the settlers," but before they managed to get away an Israeli vehicle arrived and seven Israeli civilians got out of it. Soldiers in a military jeep noticed the vehicle and said good morning to its inhabitants over the jeep's loudspeaker.

The Israeli civilians, some of them masked, began attacking the Hizmeh family with truncheons, stones and teargas. Ribhi Hizmeh was beaten by a masked person all over his body and on his head with iron rods and needed stitches in his head. Another unmasked assailant beat him with a stick all over his body. Abdul Razek Hizmeh, who tried to help him and extract him from the assailants, was sprayed in the face with teargas and also assaulted. The assault went on for a long while without the soldiers who were present intervening, until they finally began firing in the air and the assailants escaped. One of the assailants was photographed during the incident by a Palestinian farmer.

²⁶⁵ This practice changed recently, when the State Attorney changed the procedure concerning the right of crime victims to review investigation files that were closed. Three organizations who represent victims of crimes petitioned the Supreme Court against the new procedure: Yesh Din, Noga Legal Center for Victims of Crime and the Association of Rape Crisis Centers in Israel (HCJ 2090/11, Yesh Din Volunteers for Human Rights et al. v State Attorney). Subsequent to the petition, the State Attorney changed the procedure again, expanding the range of cases in which victims of crimes will be entitled to look at the investigation material of a file closed concerning them, but it is still a regression from the procedure that existed until 2010, and therefore the petition is still pending.

On the day of the incident, the complaints of three complainants and the testimony of the Palestinian farmer were collected. Ribhi Hizmeh identified one of his assailants in pictures taken by the farmer.²⁶⁶

The suspect who was identified was summoned for investigation only three months later, without there being any explanation in the investigation material for the long delay. But those were not all the investigative defects in this file: in his investigation the suspect was asked only seven general and simple questions, and was not asked to present an alibi for the time of the assault; nor were any attempts made to find and investigate the soldiers who witnessed the assault so that they could identify the assailants.²⁶⁷ The investigation closed on grounds of "insufficient evidence."

Yesh Din filed an appeal²⁶⁸ against the decision to close the investigation file. In the appeal, the Appeals Department of the State Attorney's Office was asked to order a renewal of the investigation, including completion of the investigation of the suspect who had been identified, and investigation of the soldiers who were on the ground. The appeal was rejected as were the arguments raised therein.²⁶⁹

ID 3100/10, Yesh Din Case No. 2228/10:

The investigation file contains only the complainant's complaint about the poisoning of 137 olive trees on his land

Hussein Abu Alia, a resident of al-Mughayer, has a plot of olive, almond and fig trees. The plot is 200 meters from the outpost of Adei Ad and trees have been cut down and uprooted and their fruit has been stolen again and again over the years since the outpost was built.

On October 5, 2010, Abu Alia heard from another farmer from the village that the trees on his plot had been burned. Five days later Abu Alia filed a complaint to the police, and after five more days, on October 15, he managed to coordinate a visit to the plot with the DCO.

266 It should be noted that the statement by the farmer who photographed one of the assailants is not documented in the summary of the investigation file from August 15, 2011, where the grounds for closing the file are provided.

267 Yesh Din filed a complaint against the soldiers who stood by, refrained from protecting the Palestinian farmers and allowed the assault to go so far as to cause serious injuries to the farmers before they saw fit to intervene. In July 2012 the Military Advocacy for Operational Affairs decided to close the investigation file (Yesh Din Case No. 2388/11).

268 Appeal against the Closure of Police File No. 151271/11, ID 22435/11-3, April 22, 2012. Yesh Din Case No. 2388/11.

269 Letter from lawyer Sharon Edri, Director of Appeals at the State Attorney's Office, to lawyers Michael Sfard and Adar Grayevsky, August 12, 2012, Yesh Din Case No. 2388/11.

*When I got there I saw yellowed, dried out trees. At first I thought they had been burned but when I got closer I saw they had been poisoned. [...] I counted 137 dead trees. These are trees that my wife and I planted 30 years ago and that supported us. We have nothing left to harvest this year. We have 30 young trees left that do not bear fruit yet.*²⁷⁰

The material in the investigation file contains only the complaint Abu Alia made to the police before he saw the damage to the grove for himself. Inexplicably, the investigation material contained no documentation of another visit to the plot, which occurred on October 16 with a DCO representative and a policeman, in which the policeman examined the damaged trees and the holes drilled in each tree through which poison was injected. The investigation file contains no documentation of investigative actions and the file was closed on grounds of "offender unknown" in June 2011, without making any attempt to track down whoever was responsible for the grave damage. The investigation file has no documentation of searches for footsteps or material evidence left at the scene, or of the use of forensic identification tools.

ID 431857/08, Yesh Din Case No. 1632/08:

As soon as the complainant's ownership of the land was established, the investigation of his complaint of trespassing ended and the file was closed

Mahmoud Hizmeh Mohamed al-Araj, a resident of Turmusaya, owns a plot of land he inherited from his father. On October 29, 2008 al-Araj arrived at his plot at 5:15 a.m. and discovered on it 40 barrels containing olive tree saplings.²⁷¹

On November 2, 2008 al-Araj filed a complaint to the police for agricultural trespassing, which means trespassing by agricultural cultivation without permission. On November 25, 2009 the Binyamin police station announced that the file had been closed on grounds of "offender unknown."²⁷²

A review of the documents in the investigation file indicates that the investigative actions undertaken related exclusively to the question of ownership of the relevant land. Once al-

270 Yesh Din Case No. 2228/10.

271 From the appeal against the decision to close ID (Binyamin) 431857/08, March 23, 2010. Yesh Din Case No. 1632/08.

272 Response from Superintendent Yaacov Ohayon, Binyamin police station, to Yesh Din's inquiry. Received on November 25, 2005. Yesh Din Case No. 1632/08.

Araj's ownership of the plot was proven, the investigation ended without a single investigative act related to the agricultural trespassing and locating the perpetrators. For instance, no patrols of the land were undertaken in an attempt to locate the infiltrators, no attempt was made to inquire with olive tree suppliers about a recent purchase of saplings, etc.²⁷³

Yesh Din appealed the decision to close the investigation file without conducting an effective and conclusive investigation.

ID 32896/08, Yesh Din Case No. 1681/08:

An investigation file about the illegal placement of caravans was closed on grounds of "absence of criminal culpability." The police did not act to evict the caravans and locate those responsible for their placement

Mahmoud Hizmeh Mohammad al-Araj owns a plot of land 2 km from his village Turmusaya and next to the outpost of Adei Ad. He says that since the end of 2000 (after the beginning of the second intifada), Israeli civilians from Adei Ad have been invading his land and other adjacent plots, and placing on them caravans and building materials in an attempt to take over the land in the area.

On October 26, 2008 al-Araj filed his third complaint²⁷⁴ of trespassing, after four caravans were placed on his land. Three had been put there a few years earlier and the fourth was installed in August 2008. In early November 2008, following his complaint, the fourth caravan was evacuated but shortly thereafter a new caravan was placed on the site. Following the placement of the new caravan, on December 10, 2008 al-Araj made another complaint, following which the caravan was removed from al-Araj's land to nearby public land.

The investigation material in the file includes al-Araj's two statements in the two complaints he submitted to the police (on October 26, 2008 and December 10, 2008), as well as another statement from January 19, 2009, in which he described recurring trespassing on his land by Israelis, who he believes are residents of Adei Ad. Furthermore, on November 24, 2008 al-Araj gave the police seven photographs of caravans that had been installed on his land. The investigation file also includes a telegram from Senior Warrant Officer Aharon Yair from the day the investigation opened, where he notes there are no suspects of trespassing.

²⁷³ Appeal against the decision to close ID (Binyamin) 431857/08, March 23, 2010. At the time of writing this report no decision had been made on the appeal. Yesh Din Case No. 1632/08.

²⁷⁴ Previous complaints were submitted on February 7, 2000 and February 14, 2001.

The investigation file also includes an initial opinion provided by Uzi Gila, the Coordinator of Land Registration at the Civil Administration on November 23, in which he states which tests must be conducted to determine the ownership of the land; a report of a site visit by the Ramallah DCO in the Adei Ad area, during which a stop work order was given for the caravan and it was relocated from al-Araj's land to state land near the outpost (likewise, a light structure was evacuated independently and two demolition orders were given for a stone structure and a wooden shed); the opinion of Shmuel Hazan, the custodian's point man in the Ramallah district, saying that the new caravan is standing on land that is not public land and that two other caravans are standing on public land. On May 11 further testimony was collected from al-Araj, in which he confirmed that the new caravan had indeed been removed from his land.²⁷⁵



Photo No. 5: Mahmoud al-Araj against the background of a caravan

On July 13, 2009 a notice was received that the file had been closed by the director of the investigation department on grounds of "absence of criminal culpability."²⁷⁶ Even though the four caravans now stand on public land, their placement is still an illegal construction and therefore constitutes an offense. Nonetheless, the investigation file contains no evidence that the police acted to stop the offenses or locate the offenders.

The police did nothing to evacuate the caravans, remove the invaders and summon the offenders for investigation. Senior Warrant Officer Aharon Yair's comment that there are no suspects of trespassing is offensive, especially considering the fact that no effort was made

²⁷⁵ Ibid.

²⁷⁶ Response to an inquiry from Yesh Din to Senior Warrant Officer Aharon Yair of the Binyamin police station, received on July 13, 2009.

to find the people who live in the caravans or come to them on a regular basis, nor were those people defined as suspects.

An appeal by Yesh Din demanding completion of the investigative actions, including summoning the inhabitants of the caravans, their owners or their occupants to an investigation in order to hold them accountable, was rejected without examining the arguments it contained, on grounds that it was submitted too late.²⁷⁷



Ratib Na'san

RATIB NA'SAN

Ratib Na'san, resident of al-Mughayer, owns many plots of land near his village and close to the outpost of Adei Ad. In addition to the plots he owns, Na'san cultivates many plots whose owners are residents of the nearby villages, under leasing or rental agreements between him and the land owners.

The land is cultivated by family members and hired workers who are on the ground frequently to do various agricultural jobs. Since Adei Ad was founded, Na'san and his workers have suffered from recurring harassment by Israeli civilians who they believe live in the area. Over the years Na'san has submitted dozens of complaints to the police of incidents that occurred on his land and he keeps detailed and impeccably organized records of these events. He says: "We always have problems with the people from Adei Ad. They are taking over our land step-by-step. Once they pitched a tent on a plot of ours and once they killed one of our horses. Our experience with them is very bitter."²⁷⁸

277 Letter from lawyer Nechama Zussman, Senior Deputy A of State Attorney, Appeals Department, February 6, 2011. Yesh Din Case No. 1681/08.

278 Yesh Din Case No. 1389/08.

ID 1166/06, Yesh Din Case No. 1180/06 (form 11):

The investigation of a multi-participant assault ended without key investigative leads being investigated. The investigation files closed without indictments being served against suspects and other involved individuals

On April 28, 2006 Akram Na'san, the foreman of Ratib's fields, told Jamil Na'san (Ratib's brother) that Israeli civilians, who he believes live in Adei Ad, pitched a giant tent on Ratib's land, and that there were seven people inside the tent.²⁷⁹

The next day, April 29, Akram and six of his employees went to work in the plot he oversees. Around 10 a.m. a number of the tent's inhabitants approached them and demanded they leave the site. Akram and his workers ignored the calls and continued working, and the tent's inhabitants left. At around 2:30 p.m. the people who were in the tent approached them again shouting "ruhu min hon!" (get out of here). In response, Akram and his workers collected their tools and horses and called people from their village, asking them to call for army and police forces. At the same time, one of the people from the tent drove towards Adei Ad in a green ATV with a trailer wagon, and shortly thereafter returned with additional people in the wagon. He was followed by Adei Ad's security vehicle containing five passengers.²⁸⁰

Following the call for help, Jamil and three other people set out in a jeep towards the plot, but when they got to the land their path was blocked by 15 Israeli civilians with a big black dog, who got out of their vehicles and approached the jeep. Four of them aimed guns at the passengers, while five others opened the jeep's doors and started beating its passengers with their rifle butts. The dog bit one of the people in the jeep, Atef Atallah Atiya Nasser, who needed medical treatment as a result. When Akram and some of his workers tried to approach the jeep to help the people who were in it, three of the Israeli civilians opened fire at them. As a result of the shooting, Akram Na'san's horse was killed on the spot.²⁸¹

Speaking to the press following the event, the commander of the Binyamin police station, Deputy Commander Itzik Rahamim, said the police views the incident very gravely and acknowledged that "there have been previous events in this area involving assaults on Palestinians, their olive groves and their property."²⁸² Despite these strong words,

279 Yesh Din Case No. 1180/06.

280 Ibid.

281 Ibid.

282 Tal Yamin-Wolfowitz, "Settlers clash, horse shot," **NRG Maariv**, April 29, 2006.

on May 20, 2007 the police announced that the investigation of the case had ended and that it had closed the file on grounds of "insufficient evidence" against three suspects, and on grounds of "absence of criminal culpability" against three others.²⁸³ Because of defects Yesh Din found in the investigation material, an appeal was submitted against the decision to close the file.²⁸⁴

An examination of the material contained in the investigation file found that on the site from which the settlers had shot the horse (according to the testimonies), six 5.56 mm shells had been found. The veterinarian who examined the horse's carcass was impressed that it died of gunshot wounds.²⁸⁵

The examination of the investigation file also found that several aspects of the incident had not been investigated at all:

- The assault of Jamil and the three people who were with him in the jeep was not investigated at all.
- No testimony was collected from Jamil Na'san, the driver of the vehicle that was attacked, or from Atef Nasser, who was bitten by the assailants' dog, even though the testimonies indicate that the jeep passengers were closer to the place from which the horse was shot, and therefore they might have been able to shed light on the identity of the shooters.
- No attempt was made to locate the owner of the attack dog and none of the suspects who were investigated was asked whether he owned a dog.
- No attempt was made to locate the owner of a large backpack found near the tent, which included prayer books and a pocket notebook containing a large number of names and phone numbers, even though the patrol officer believed the bag belonged to one of the people involved in the incident. Moreover, the investigation file materials indicate that the day after the incident, when Senior Warrant Officer Aharon received the contents of the bag and listed the objects therein, he failed to list among them the pocket notebook and in fact it was never mentioned again in the investigation file.

283 Memo from Yair Aharon, SJ District investigator, to lawyer Michael Sfard, May 20, 2007. Yesh Din Case No. 1180/06.

284 Appeal against the Decision to Close File No. ID (Binyamin) 1166/06, March 3, 2008. Yesh Din Case No. 1180/06.

285 Ibid.

- As part of the investigation, several guns were sent for ballistic tests, to check whether the shells found on the ground were fired from them. The checks found that the shells had not been fired from the weapons that were checked, but the tests did not include all of the weapons located in Adei Ad.
- Despite significant gaps between the complainants' versions and those of some of the suspects, especially concerning the timeline of the events and the identity of its participants, and especially concerning the identity of the individual responsible for killing the horse, no witnesses were interrogated who could have shed light on the affair and helped settle the differences between the versions.
- Despite contradictions that emerged from the investigation of one of the suspects (who served in a security capacity in the outpost) concerning the timeline of the events, the number of armed people who took part in it and the identity of the people who were present, the suspect was not required to explain inconsistencies, even though the patrol officers called to the site thought his behavior was suspicious. He hurried to leave the site and before he left, he said in a suspicious way that he did not know any of the people who were there. Investigator Yair Aharon also took note that the suspect was hiding details he knew about the incident during his investigation.
- A confrontation was held between one of the suspects and Akram Na'san, which was limited to a single sentence Na'san said to the suspect, accusing him of taking part in the incident and that a person standing next to him had shot his horse. The suspect did not respond to this statement. Inexplicably, the confrontation ended at this point and the regular investigation of the suspect continued. Needless to say, this exchange was inadequate to achieve the goals for which confrontations are held between suspects and complainants.
- Another suspect failed to report for investigation for a long time, to the point that an arrest warrant had to be issued for his investigation. When he was finally investigated, he refused to cooperate with his investigators and maintained his right to remain silent. His investigation implied that he was the owner of the backpack found near the tent, and that the articles found in the backpack contained identifying information about him and members of his family. Furthermore, the investigation file contained the testimony of one of the members of the emergency squad, who according to the suspect, owns a green ATV. Before his investigation began, the suspect told the investigator that "he did what had to be done that day for the Jewish people and for Israel." It seems that

despite the existence of significant evidence, the investigation of this suspect was not expanded and it was decided to close the file against him.²⁸⁶

More than three years after filing the appeal against the decision to close the investigation file, the Appeals Department of the State Attorney's Office announced it had decided to reject the appeal on the grounds that the investigation material did not contain sufficient evidence to prosecute the suspects. It also claimed that the suspects denied they were at the site of the incident and implicitly that they were involved in it, and that with the passage of time additional investigative actions would not produce sufficient evidential basis for prosecution.²⁸⁷

Police File No. 31121/08 Yesh Din Case No. 1389/08:

The investigation file was closed on grounds of "offender unknown" without any investigative actions being taken to find the person who had uprooted and stolen olive and fig saplings

In November 2007, Ratib Na'san planted 100 olive trees and 70 fig trees on part of a 120 dunam plot northwest of al-Mughayer, a distance of 1-1.5 km from Adei Ad. On January 18, 2008 he discovered that the saplings had been uprooted from the soil and stolen:

*... On Friday, January 18, 2008 we went out to the plot again and found that almost all of the saplings were gone. The barrels we put around the saplings to protect them against animals were in place but the saplings had disappeared. About seven saplings that they didn't manage to uproot remained in the plot. Even those saplings were broken.*²⁸⁸

On January 23, 2008 an investigation opened at the Binyamin police station and testimony was collected from Ratib Na'san and Salah Asfur, the land owner. That day there was also a site visit to the land with police investigator Rafi Elbaz, Civil Administration Infrastructure Officer Atef Hasbani, the Coordinator of the Land Registry in the area, the Village Council Head of al-Mughayer, a representative of the B'Tselem organization and the land owner, Asfur. During the tour, remnants of olive and fig saplings that were broken in the attempt

286 Ibid.

287 Letter from Attorney Sharon Edri, Senior Deputy A of State Attorney and Director of Appeals Department, to Attorney Ido Tamari April 26, 2011.

288 Yesh Din Case No. 1389/08.

to uproot them were found, as were saplings that had been uprooted and strewn on the ground and barrels that had served to protect the saplings.²⁸⁹

On January 29, 2008 a memo was sent by investigator Rafi Elbaz to Land Staff Officer Uzi Gila, in which Elbaz asked for an opinion about the land ownership. Attached to the memo was a tax extract from Asfur, and Gila was asked to translate and verify it as well as to mark on an aerial photo and a map the location of the plot with which the extract corresponded.²⁹⁰ On February 17, 2008 a meeting was held between Chief Superintendent Elbaz and Captain Ronit Levin from the Judea and Samaria Legal Advisor's Land Department. At the meeting, the findings of the tour and the property tax extract that had been transferred to the land staff officer were presented. It was also noted that no suspect had been found yet and that a request to find suspects had been sent to intelligence.²⁹¹ On August 31, 2008 the investigation file was closed on grounds of "offender unknown."²⁹²

An examination of the material in the investigation file found that the file was closed without a single investigative action being completed. Subsequently, Yesh Din appealed against the closure of the file. The appeal argued that according to the material contained in the file, nothing had been done to find the criminals, even though according to the complainants the plot is next to Adei Ad and they suspected the residents of the outpost, and despite the fact that only about 20 families lived in Adei Ad. No attempt made to find the stolen saplings in the outpost,²⁹³ nor was the investigation exhausted regarding the land ownership. Although actions had been taken to ascertain the ownership, there was no indication in the investigative material of the results or that the inquiry ended.²⁹⁴

On October 10 the State Attorney's Office's Appeal Department announced it had decided to reject the appeal and not interfere with the police's decision to close the file because the complainant could not point to suspects and no lead had been found to suspects.²⁹⁵

289 Appeal against Closure of Police File (Binyamin) No. 31121/08, March 15, 2009. Yesh Din Case No. 1389/08.

290 Ibid.

291 Ibid.

292 Telephone update, November 9, 2008.

293 Appeal against Closure of Police File No. 31121/08, March 15, 2009. Yesh Din Case No. 1389/08.

294 Ibid.

295 Letter from Attorney Etti Kahane, Director of Appeals Department at State Attorney's Office, to Attorney Michael Sfard, October 10, 2010. Yesh Din Case No. 1389/08.

ID 30944/08, Yesh Din Case No. 1461/08:

Insufficient actions were taken to find the criminals; file closed on grounds of "offender unknown"

Another plot cultivated by Ratib Na'san is located northwest of the village, about 1.5 km from Adei Ad. Access to this 120-dunam plot does not require coordination with the army. The work on the ground is overseen by Akram Na'san, who hires additional workers, including Awad Na'san, who drives a tractor.

On the morning of April 29, 2008 Awad set out with another tractor driver, Adel Abu Alia, to plow the land and prepare it for planting wheat. Somewhere near them, out of sight, Akram and a few other workers were planting olive trees. At 12:30 Awad noticed eight Israeli civilians marching towards the plot where he and Adel were working, led by an Israeli riding a white horse. Two of them were armed while the others were carrying sticks and rods.

Five of them were wearing white clothes. One had an M-16 and his face was covered. Two of them had skullcaps on their heads and the other two were wearing baseball caps. One settler was wearing blue clothes and the other two were wearing colorful shirts. The settler wearing blue was riding a horse. He had a gun (like an Uzi, not an M-16). He has dark skin, with long hair to his shoulders, without a head covering. The white horse was all fit out for riding (saddle, reins). Each of the settlers that did not have a weapon was carrying a stick or an ax.

When the settlers saw us they approached quickly. The rider spurred the horse. When they reached 10 m from us they aimed their guns at us and the others threw stones at us. The horseman started riding quickly around my tractor. Adel managed to get away with his tractor. I turned my tractor off, left the keys in and tried to run away. Meanwhile the horseman continued to circle me and threaten me with a gun. The masked settler also threatened me with a gun. The others continued with stones. I was not hurt. When I was far from the tractor I saw the settlers hitting the tractor with axes. They busted and broke the tires, the lights, the radiator and the gas tank. They cut the water and oil pipes. I ran over to the plot where Akram was working. When Akram and his five workers saw me they came towards me and then the two settlers stopped chasing me and went back to the other six who were busy ruining the tractor. I told Akram everything that happened. Akram called the DCO and the army.²⁹⁶

²⁹⁶ Yesh Din Case No. 1461/08.

About half an hour later a military jeep with four soldiers came from the direction of Adei Ad. When the settlers noticed the jeep they ran away in the other direction. The jeep chased them and caught three of them (according to Awad Na'san they caught three of the people dressed in white). After talking for about 15 minutes, the three settlers turned back to Adei Ad and the jeep approached Awad and his friends. To Akram's question why the assailant settlers were released, the soldiers responded that only the police could arrest them.²⁹⁷

Although IDF soldiers have the power and the duty to detain a suspect until the police arrive, the soldiers did not detain the settlers or find out their identities. Even after they learned from Na'san that these were the Israeli civilians who had vandalized his tractor, the soldiers stayed in the field and did not try to follow them and find them in Adei Ad. The investigation file contains a letter from the head of SJ investigations to the head of Binyamin investigations, saying, "Copies must be sent to the Military Advocacy to deal with the soldiers who did not detain the suspects."²⁹⁸ Shortly after the soldiers, representatives of the DCO and police arrived. The police wrote down the soldiers' testimony but did not go to the outpost to seek the assailants.²⁹⁹

A review of the investigation material found that the actions taken to find the offenders were severely lacking and inadequate. One of the soldiers said he could not identify the settlers while the rest of the soldiers who were with him in the jeep were not questioned at all. No attempt was made to find out whether they could provide identifying information about the settlers or identify them.³⁰⁰

In his testimony on the day of the incident Awad Na'san told the police that five of the settlers had escaped towards Adei Ad when they noticed the military jeep, and that he had seen them hiding their guns in a long white Subaru. Despite that information being provided, no searches were made of Adei Ad at the end of the incident or any other time to find the armed owner of the white horse, the settler who brandished the M-16 or the owner of the white Subaru. Again, even though at that time only some 20 families lived in Adei Ad. Furthermore, Adel Abu Alia, the other tractor driver who testified on July 13, 2008, was not given an identity lineup.

297 Ibid.

298 Appeal against the Decision to Close Police File No. 168833/08, ID 30944/08, December 21, 2009. Yesh Din Case No. 1461/08.

299 Yesh Din Case No. 1461/08.

300 Appeal against the Decision to Close Police File No. 168833/08, ID 30944/08, December 21, 2009. Yesh Din Case No. 1461/08.

No forensic identification investigators were called to the scene nor were any searches held to find evidence, such as fingerprints on the tractor. The patrol policeman's action report said, "We asked for the forensic identification department to come to the scene, but it did not come, on the directive of the chief of investigations."³⁰¹

On October 29, 2008 the Binyamin police station announced that the file had been closed on grounds of "offender unknown."³⁰² On March 17, 2009 Chief Superintendent Rafi Elbaz of the Binyamin police station announced that the file had reopened for investigation on December 1, 2008, and that there were suspects who were investigated in the file and arrest warrants had been issued against them.³⁰³ On December 7, 2008, after more than seven months in which there had been no investigative actions in the file, testimony was collected from two people under warning. One, a resident of Adei Ad, answered the investigator's questions and denied his involvement in the incident; the other, a resident of Beit El, refused to cooperate with his investigators. Two additional people were investigated under warning and denied any involvement in the incident.³⁰⁴

The first suspect said in his testimony that several people in the outpost of Givat Kol Zion,³⁰⁵ which is next to Adei Ad, have a white horse with brown spots. Even though the suspect stated their names in his investigation, they were not investigated nor was any action taken to check whether the horse in question was the same horse mentioned by the complainant in his testimony. The first suspect also provided in his testimony names of residents of Adei Ad who have M-16s, but they were not investigated either.³⁰⁶ Police had four suspects of involvement in the incident but the complainant and his friend were not given live or photo identity lineups of the four suspects.³⁰⁷

301 Ibid.

302 Telephone update, November 9, 2008. Yesh Din Case No. 1461/08.

303 Yesh Din Case No. 1461/08.

304 Appeal against the Decision to Close Police File No. 168833/08, ID 30944/08, December 21, 2009. Yesh Din Case No. 1461/08.

305 An outpost 1.5 km from Adei Ad. The outpost is apparently not inhabited on a regular basis and does not have permanent structures or infrastructures.

306 Ibid.

307 Ibid.

In response to an inquiry by Yesh Din, the SJ Prosecution Unit stated that the file was closed on July 8, 2008 on grounds of "insufficient evidence."³⁰⁸ Following the renewed closure, Yesh Din submitted an appeal requesting that all investigative leads in the file be followed.³⁰⁹ In October 2010 the State Attorney's Appeals Department said there were no grounds to interfere with the police's decision to close the file, and the appeal was rejected.³¹⁰

ID 33821/08, Yesh Din Case No. 1482/08:

No actions were taken to locate suspects of setting a wheat field on fire, even though the complainant had photographs documenting Israeli civilians escaping from the scene

Akram Na'san, resident of al-Mughayer, cultivates a plot belonging to Mahmoud al-Araj of Turmusaya. On June 10, 2008 Akram Na'san received word from one of his workers that the plot was burning. Following the report Akram set out for the field with Yesh Din representatives who were at his house at the time collecting testimony about other incidents that occurred in the area a few days earlier.

I set out immediately in my van with Azmi, Dina and Nadav to the site, and other residents joined in private vehicles and a tractor. We drove 2.5 km from the village and when we got there, fire was still burning in several places. We saw two other places where there had been an arson attempt that luckily did not succeed. When we got there we saw a number of settlers starting to come down towards us, and they turned back to the outpost. They must have noticed us and ran away towards Adei Ad.

About three dunams were burned [...]. Officials from the police, the DCO and the army arrived. We showed them the fires and the places they tried to burn. One of the police officers took pictures. We wanted to make it clear that this was arson because we were afraid more fires would be set before we had time to reap.³¹¹

308 Response from Attorney Eran Uri, Head of Prosecution Department at SJ Police Station, to letter from Attorney Michael Sfard. Received on July 12, 2009. Yesh Din Case No. 1461/08.

309 Appeal against the Decision to Close Police File No. 168833/08, ID 30944/08, December 21, 2009. Yesh Din Case No. 1461/08.

310 Letter from Attorney Nechama Zussman, Senior Deputy A of State Attorney, Appeals Department, to Attorney Michael Sfard, October 17, 2010. Yesh Din Case No. 1461/08.

311 Yesh Din Case No. 1482/08.

On November 26, 2008 the investigation file was closed by the Head of the Investigation Department in the Binyamin police station.³¹² The grounds for closure were not given to Yesh Din but after reviewing the material in the investigation file Yesh Din appealed the closure. The appeal noted that despite the fact that several Israeli civilians had been seen fleeing the site towards the outpost of Adei Ad and had been photographed, nothing had been done to find the suspects or identify them.³¹³ The arguments in the appeal were accepted and led to a renewal of the investigation,³¹⁴ but on October 21, 2010 the file was reclosed by the Jerusalem District Attorney's Office, on grounds of "insufficient evidence."³¹⁵

YESH DIN CASE NO. 1174/06: AN INDICTMENT THAT LED TO A CONVICTION³¹⁶

On October 21, 2004, Boaz Melet brought two young men from the Sdot Amir yeshiva and ordered them to harvest the olives in the grove. The harvesters did as they were asked, thinking that the grove was owned by the yeshiva. Members of the Na'san family and other residents of al-Mughayer arrived at the site and explained to the harvesters that the grove belonged to them, and called the Civil Administration and the police.

Subsequently, Adei Ad's security vehicle arrived with two residents of the outpost. The residents got out of the vehicle and opened fire at the Palestinians who were on the ground. Shortly thereafter police arrived.³¹⁷

On July 28, 2005 an indictment was served against Boaz Melet, who was accused that as head of the Sdot Amir yeshiva in the outpost of Adei Ad, on different occasions before October 21, 2004 he entered various agricultural lands in the valleys surrounding the outpost, which for years had been cultivated by local

312 Telephone update from December 9, 2009. Yesh Din Case No. 1482/08.

313 Appeal against Decision to Close Police (Binyamin) File No. 228156/08, May 4, 2009. Yesh Din Case No. 1482/08.

314 Letter from Yaacov Hayun, Deputy Head of Investigations, Binyamin, May 14, 2009, in response to letter from Attorney Avisar Lev from May 4, 2009. Yesh Din Case No. 1482/08.

315 Letter from Ronit Cohen, secretary in Jerusalem District Attorney's Office, from November 15, 2010. Yesh Din Case No. 1482/08.

316 As aforesaid, only three of the 52 files under Yesh Din monitoring led to indictments.

317 Yesh Din Case No. 1174/06.

Palestinian residents, including the Na'san family from the village of al-Mughayer. The indictment noted that Melet had entered those fields to harvest olives from the trees planted in them.³¹⁸

On June 25, 2006 Boaz Melet was convicted of trespassing. The judge stated, "... Having been proven to me that the defendant ordered olives to be harvested in a plot that had been cultivated by the Arabs since 1986, and that at the end of the harvest he collected the olives from the plot and brought them to Adei Ad, the defendant thereby trespassed and therefore I convict him of the offense of trespassing."³¹⁹

NON-ENFORCEMENT AGAINST CRIMINAL OFFENSES: RESULTS

The failure of the law enforcement system is evident at all stages of enforcement: from the stage of committing the crime without soldiers stationed on the ground interfering to stop the crime and detain suspects and participants; to the stage of filing the complaint; and all the way to the police investigation of the incidents.

The grounds for the closure of investigation files attest to the police's failure to find the criminals and collect the evidence. Considering the fact that a small number of Israelis live in this area in several outposts, these figures as to the police failure to locate the criminals raise many questions. In several of the files examined by Yesh Din, the police were given a description of the assailants and other identifying details, such as the vehicles or animals they own. Despite these details, the police investigation failed to identify the criminal; In other cases the police did not bother to apprehend the criminals at the scene, even when there was a high likelihood they would return to it. Examples of such cases include the placement of caravans on private Palestinian land and the invasion and cultivation of privately-owned Palestinian fields.

The significance of the non-enforcement is the absence of a deterrent mechanism; knowing they will not be punished, the harassers and invaders repeatedly offend, undisturbed. Indeed, some of the residents of the villages mentioned in this report can identify some of the people who were involved in various incidents on their land. There is no doubt that effective enforcement would have considerably reduced the number of offenses.

318 **SJ Prosecution Unit v Boaz Melet**. Indictment, July 28, 2005.

319 CF (Jerusalem) 2772/05, **Samaria and Judea District Prosecution Department v Boaz Melet**. Decision, on June 25, 2006.



This situation creates deep mistrust of the ability and willingness of the Israel Police to help when it comes to harassment by settlers. Even those residents of the villages who still file complaints with the police, as described above, no longer hope or believe it will find the criminals and bring them to justice.

The duty to enforce the law in the West Bank does not include only the investigation of complaints made by residents of the area. The security forces and police are obligated to ensure law and order even without a complaint. Law enforcement does not only mean investigating crimes but also attempting to prevent them. The Shamgar Report stated that the police must also investigate crimes reported by third parties, not only victims of crimes:

*The opening of a file shall be subject to the rules set forth in the provisions of Section 59 of the Criminal Procedure Law (Combined Version) 1982, according to which the police must open an investigation even when it learns a crime was committed in any way, which is to say, not only by a complaint of the victim.*³²⁰

While Israeli civilians continue to terrorize the residents of the villages in this area, damaging their property and at times causing bodily injury, the absence of an adequate enforcement response to these criminal acts amounts to abetting the criminals in their attempt to take over the land of their Palestinian neighbors.

320 Meir Shamgar (Chair), **Commission of Inquiry into the Massacre at the Cave of the Patriarchs in Hebron**, 1994 ("The Shamgar Report,") p. 250, Section 6 (e).

CHAPTER 6

THE RAMIFICATIONS OF THE OUTPOST AND OF THE ENFORCEMENT FAILURES ON THE RESIDENTS OF THE VILLAGES

The illegal outpost of Adei Ad was founded in 1998 on a hilltop near four Palestinian villages that have been in the area for hundreds of years. The built area of the villages is in Area B, where the Palestinian Authority is responsible for civilian control and Israel is responsible for military control. The agricultural lands of the villages are in Area C, which is under full Israeli military and civilian control. Most of the land in the area is unregistered privately-owned land, maintained by Palestinian farmers who have cultivated it for their livelihood for many generations.

The founding and growth of the outpost of Adei Ad have changed the character of the area's villages and daily life in them. The residents of the four villages reviewed in this report have felt the presence of their neighbors every single day for the last 14 years since the outpost was founded.

Land theft

The most obvious direct harm is to the property rights of the Palestinian land owners on whose land the caravans and other structures of the outpost were placed. As noted on page 44 of this report, the outpost took over land privately owned by residents of the villages next to it, and especially private land that belonged to the natural bloc of the village of Jalud, including more than a quarter of its total area.³²¹ As described in the report, over the years of its existence the area controlled by Adei Ad has expanded and it appears attempts to expand and take over additional land for construction and agriculture are still going on. The owners of the land on which the outpost's buildings stand are denied all access to their land, which is de facto "lost land:" the fate of other land that has been seized by settlers for agriculture and planted with (most often) grapevines is similar in its impacts on Palestinian land owners.

The land theft also includes taking over public land, which is supposed to serve for the benefit of the entire public. As aforementioned, 44 of the outpost's buildings are built on public land.

321 The data is based on official information layers received from the Civil Administration.

This constant theft of land is being done under state protection – by failing to evict the invaders and punish the offenders, as well as through indirect support to the outpost.

Restriction of access to land by the army

The establishment of Adei Ad, like any Jewish settlement in the West Bank, dictates security arrangements whose purpose is to protect the Jewish settlements. Even though the settlers of the outpost are lawbreakers who established their residences illegally, the State nonetheless ensures their safety through the army. The IDF's position is that wherever there are Jews, the military authorities are obligated to provide them with protection. In regards to this, Sasson wrote:

The result [of the outposts] is that the IDF, albeit unwillingly, has been dragged into giving the acts of illegal settlement a stamp of approval by its very presence and protection of the settlers therein; by its very presence and the protection it provides those lawbreakers it establishes facts on the ground, along with the lawbreakers themselves.³²²

The protection provided by the IDF is not limited to guarding the boundaries of the outpost's built area. Protection of the safety and well-being of the residents of the outpost includes creating a buffer zone between them and their Palestinian neighbors to prevent friction between the populations. To create the buffer zone, additional Palestinian land is stolen and access to it limited by the army. Access may be denied altogether, depending on how close Palestinian land is to the built area of the outpost.

After Adei Ad was built the IDF defined agricultural areas that had previously been cultivated by residents of the villages near the outpost as "no entry" zones for Palestinians. Entry into other areas is allowed only with IDF permission and with coordination and escort on its behalf. According to the residents of the Palestinian villages near the outpost, these restrictions are delivered to them orally on the ground by soldiers or officers, without providing them with written orders indicating the closure of the zones.

In the IDF Spokesperson's response to our inquiry (under the Freedom of Information Act) about closing zones, we were told that during the harvest season the security forces order the closure of zones near Israeli settlements for security reasons, cutting off entry for Palestinians. The IDF Spokesperson did not deny the Palestinians' claim as to the closure of zones and the restrictions of access imposed on them regarding extensive areas, every day of the year and for years. Nor did the Spokesperson deny that notice of those

322 Sasson Report, p. 257.

restrictions were given to the Palestinians orally without presenting the appropriate orders³²³ – a behavior that the court ruled in several incidents to be out of order.³²⁴ The statement that no documentation of orders has been found reinforces the suspicion that the statements were delivered orally:

*Our examination found no orders declaring a [closed] military zone for Palestinians in the area of the Adei Ad outpost. This refers both to an "absolute" closure and to closure of an area so that entrance into it is stipulated on coordination.*³²⁵

Due to the IDF restrictions, the Palestinian land owners have found themselves either completely blocked from accessing their land or required to receive permits and coordinate the escort of soldiers in order to cultivate it. The purpose of the permits is to provide protection for farmers who wish to work their land by coordinating with military escorts. The farmers must apply for permits from the Palestinian DCO, which then transfers the application to the Israeli DCO, which has the authority to approve or reject the application. This process tends to be prolonged and in many cases the permits that are finally granted are insufficient. Most of the approved coordination permits are given during the plowing and harvesting seasons; each permit allows a limited amount of time for a limited number of days, as determined by the army.

What this means is that the land owners are only allowed to access their land twice a year (in the spring and fall) and for the rest of the year they are prevented from reaching

323 Letter from Maj. Zohar Levy, Head of Public Inquiries Department at the IDF Spokesperson's Office, September 23, 2012. The letter was a response to a request under the Freedom of Information Act to receive information about the denial of Palestinian access to agricultural land in the area of the Adei Ad outpost. See appendix on p. 179.

324 See for instance: HCJ 9593/04, **Murad v Commander of IDF Forces in Judea and Samaria**. Decision from 2006, Section 21: "It should also be noted that the closure of areas must be done by issuing written orders by the Military Commander and in the absence of closure orders the access of Palestinian residents to their land must not be denied. The aforesaid does not detract from the power of the commander on the ground to orally order the ad hoc closure of a specific area for a short and limited time when unexpected circumstances arise that pose a risk of an immediate security danger that cannot be contended with by other means. [...] As a matter of principle, the closure of an area must be done by an order of which those who are going to be hurt are informed and which the residents whose lands are closed have an opportunity to contest." See also: HCJ 2150/07, **Head of Beit Sira Village Council v Defense Minister**. Decision from 2009, Section 37 (prohibition of Palestinian travel on Highway 443).

325 Letter from Maj. Zohar Levy, Head of Public Inquiries Department at the IDF Spokesperson's Office, September 23, 2012. The letter was a response to a request under the Freedom of Information Act to receive information about the denial of Palestinian access to agricultural land in the area of the Adei Ad outpost. See appendix on p. 179.

it. Consequently, many damages to the land and crops, man-made or natural, are only discovered a long time after they occur. The denial of access to land also prevents the ongoing cultivation of the crops, which degrades their quality and economic value.

In aerial photo no. 10 (see p. 123), the land located in the natural blocs of the four villages is marked as agricultural areas with various levels of access based on the following criteria: land to which access is absolutely denied by IDF orders; land to which access is limited and permitted twice a year subject to IDF permission and the coordination of an escort on its behalf; land to which access is impossible because of the farmers' fear of harassment; and land to which access is free and unhindered.³²⁶

Offenses by Israeli civilians against Palestinians and their land

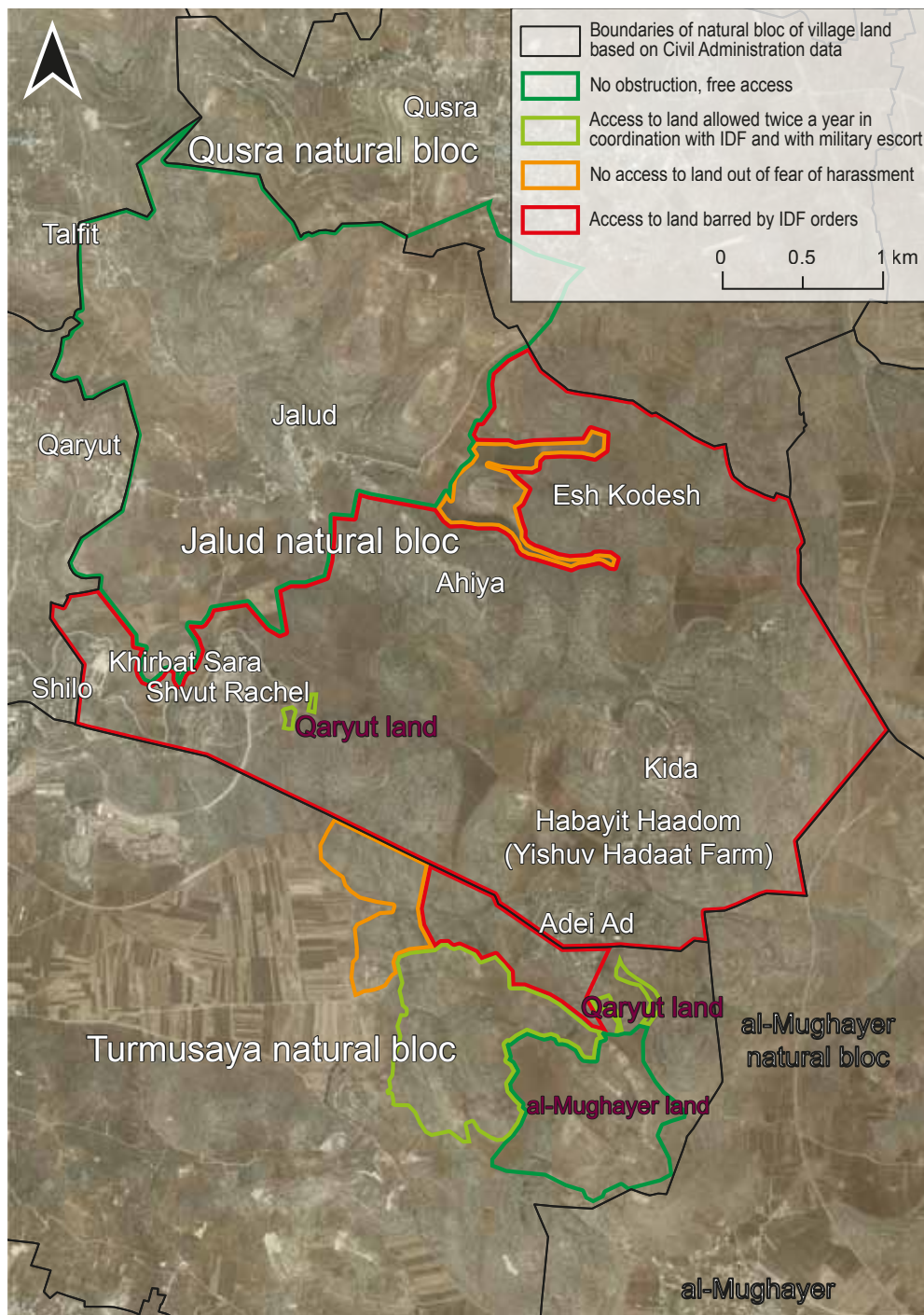
Besides establishing the illegal outpost of Adei Ad, which constitutes an offense in and of itself, there are the dozens of offenses that were mentioned in chapter 5 and other offenses that were not reported to Yesh Din. In the plots where access is permitted (whether with or without coordination), the farmers experience different kinds of harassment, including acts of violence, threats, theft, vandalism of property and crops and agricultural produce, as well as agricultural takeovers in the form of cultivating land, fencing it and so on.

Aerial photo no. 11 (see p. 124) shows offenses committed on land surrounding Adei Ad between the years 1998-2010. Each triangle denotes one offense: its location corresponds with the place the offense was committed and its color corresponds with the year it was committed. As the photo shows, most of the offenses were committed on privately-owned Palestinian land.

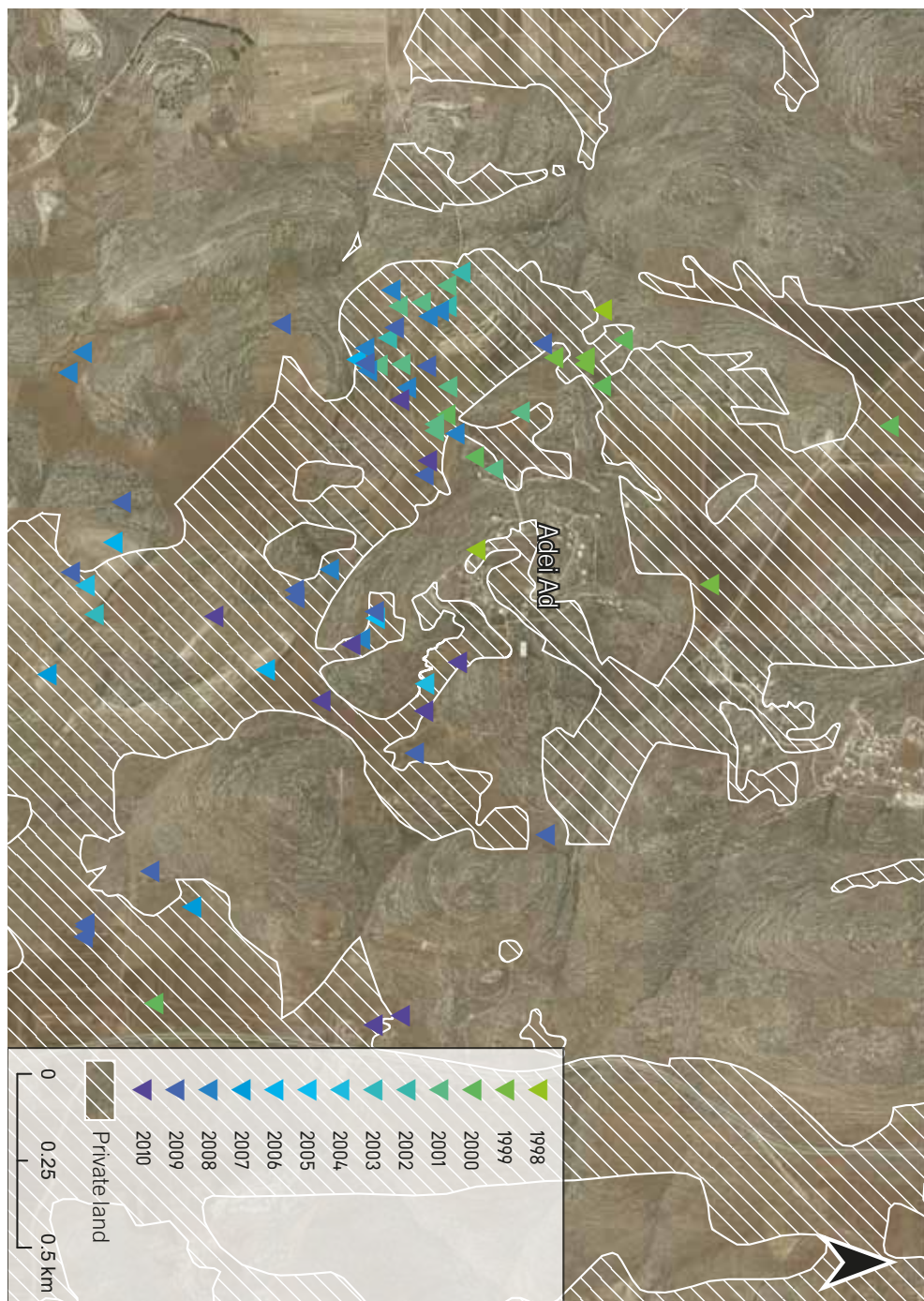
Even when access is not formally banned, many of the Palestinian farmers of the area avoid accessing their plots and cultivating. Some fear the settlers because of the harassment they have faced, including violence, threats and intimidation, while others are reluctant to cultivate a crop that will ultimately be vandalized or stolen by the settlers.

Given the proliferation of offenses in the Adei Ad area, the failure of the Israeli authorities to provide protection to the Palestinians living in the occupied territory is glaring. By shirking its law enforcement responsibilities, the State is failing to fulfill its duties in both the legal and moral sense. The non-enforcement of the law carries a clear message that criminals may do whatever they want to their Palestinian neighbors without being held accountable.

326 The boundaries of the natural blocs of the villages were received as an official information layer from the Civil Administration; the agricultural lands and access restrictions were marked based on the residents' testimonies. See specification for each of the villages below in this chapter.



Aerial Photo No. 10: Access to agricultural land of the villages Turmusaya, Al-Mughayer, Jalud and Qaryut, February 2012



Aerial Photo No. 11: The place of the occurrence of offenses committed by Israeli civilians against Palestinians in the area of the outpost of Adei Ad by year (this photo indicates most of the offenses mentioned in this report)

Economic consequences

Loss of land, forbidden or restricted access to agricultural land and frequent harassment – all have far-reaching economic consequences for individual land owners and the four villages overall, whose economy was almost exclusively based on agriculture for many years. The loss of the ability to make a living from agriculture has forced many of the residents of the villages to seek other sources of income.

The few who still rely on agriculture for their livelihood report tremendous financial losses as a result of restrictions on access (full or partial) to their land, inability to cultivate it, and as a result of the vandalizing of their crops by Israelis. Money invested in cultivating the plots and crops goes down the drain, as do future earnings from selling the produce.

In some of the villages residents indicate a trend of desertion in recent years. A substantial percentage of the residents leave the villages in pursuit of a better standard of living in the nearby cities of the West Bank or in other countries such as the US or Jordan. Those who leave are usually the village's younger generation, seeking alternative sources of livelihood since agriculture no longer offers a source of income to support their families.

Since most of the land is private land whose status is not settled, which can be declared public land if it is not cultivated consistently over time, termination of cultivation of the land can lead to the loss of property rights and to its passing into the hands of the State or invaders. An examination of the sequence of events in the area since Adei Ad was established raises suspicion that this is precisely the goal of the various parties who restrict Palestinians' access to their land.

We will hereby review the effects of the Adei Ad outpost on each of the nearby villages: Turmusaya, al-Mughayer, Jalud and Qaryut . Most of the data in this chapter is based on meetings between members of Yesh Din and land owners, farmers and key figures in each of the villages, as well as meetings with residents of the villages about offenses committed on their land by Israeli civilians.

TURMUSAYA



Mahmoud Hizmeh Mohammad al-Araj

Most of the information in this chapter about Turmusaya is based on conversations with Mr. Mahmoud Hizmeh Mohammad al-Araj,³²⁷ a resident of Turmusaya; al-Araj and his family own a large part of the agricultural land of the village. The area calculations were produced by a GIS system.

The village of Turmusaya is 22 km north of Ramallah. A population census by the Palestinian Authority in 2007 found the population of the village to be 3,736. The built area of the village extends over 2,500 dunams and contains 935 housing units and several public buildings, including a kindergarten, a school and a new hospital.³²⁸ The main source of livelihood for the village was agriculture, including seasonal crops and olive groves, until the outpost of Adei Ad was built.³²⁹

Access to land

The total area of the agricultural land around the village is 12,000 dunams, located in four areas called al-Muraba'a, a-Sider, al-Kharija and a-Tawil. All of the areas were cultivated and cared for in the past, but shortly after Adei Ad was established the IDF began limiting access to the plots near the outpost.

Regarding the 456 dunams of Turmusaya land closest to Adei Ad, access is completely forbidden on IDF orders. The residents were not given any order or document that indicated the closure of the areas or prohibition to entering them, but soldiers on the ground gave the residents oral instructions.

Access to 955 dunams is permitted only twice a year, and conditional on coordination with the IDF and military escort. Entrance to the land in coordination with the DCO is permitted for only two or three days at a time to perform plowing and picking work. The period in

327 The meetings were held in the village of Turmusaya on November 17, 2009, November 30, 2010 and February 5, 2012.

328 Population, Housing and Establishment Census 2007. Palestinian Central Bureau of Statistics, January 2009 (www.pcbs.gov.ps).

329 This information was provided in a meeting with Mr. Mahmoud Hizmeh Mohammad al-Araj, resident of Turmusaya, on November 30, 2010 in Turmusaya.

question is too short and does not allow the farmers to finish cultivating the area properly. The requirement to coordinate access to the land with the IDF was also given to the farmers orally and without presentation of an order or official notice.

In the year or two after the intifada, 2001-2002, the army was there and prevented us from approaching a certain "border" of the outpost on grounds that it had to prevent clashes and friction with the settlers. The army would turn us away if we came without "coordination." They never showed us maps or written documents.

*On the land there is an agricultural dirt path 300 m from the outpost, an old road of ours, south of the settlement. That road always served us, and **the army "marked" the dirt road as a "border" up to which we can go. Which means, we are forbidden from accessing all the land north of the path [...].** North of the path there are another 40 dunams of ours, my uncle has 40 dunams and my great uncle and his heirs have 80 dunams which we are forbidden from accessing.³³⁰*

The requests of the village residents to coordinate their entry into the area and to receive permits are presently answered in the affirmative, but only the direct land owners receive the desired permits and for short and insufficient periods of time. Coordination of the times of access to the land depends on decisions by the Civil Administration. The farmers often arrive on the land during the olive harvest and discover that the trees have already been harvested and the harvest looted while they were waiting for IDF permission and escort:

Since the outpost was built, around 1998, problems of access to the land began. [...] Since the beginning of October my family and I waited to coordinate access times to the harvest with the Civil Administration. At first they scheduled an escort for us for October 12, but it was postponed until October 26, on the grounds that there had been incidents of stone throwing at settlers on Highway 60 and we were being punished for them. On October 26 they postponed the coordination another day so that the harvest actually happened on October 27. I suspect this is coordinated with the settlers in a conspiracy to allow them to harvest and vandalize the land [...] On October 27 we went out to harvest, a group of 30 people from the village. I got to the land and was surprised to see that 135 olive trees had been vandalized [...] 30 trees had been cut down with a saw [...] 105 trees whose branches had been broken were partly damaged [...] The problem is that rehabilitating the trees requires a net fence for each of them to prevent

330 This information was provided during a meeting with Mr. Mahmoud Hizmeh Mohammad al-Araj, resident of Turmusaya, on November 17, 2009 in Turmusaya.

*damage by wild animals. To do that you need to go there and I don't believe the army will allow me to coordinate that.*³³¹

The army does not impose permanent restrictions on access to the plots that are south of the agricultural path, to which access depends on coordinating escort. But following the proliferation of incidents of violence, threats and harassment of Palestinian farmers in the area, they are afraid to go to their fields without the protection of IDF soldiers and try to coordinate escort in order to work in them. Sometimes those requests are answered in the affirmative and sometimes they are rejected on the grounds that there is no need for military escort to plots that are distant from the outpost.³³²

In another 414 dunams the farmers have experienced harassment and threats in the past, and are therefore afraid to access them and avoid doing so.

Another 899 dunams of the land of the natural bloc of Turmusaya is cultivated by residents of the nearby village of al-Mughayer, whose proximity to the land makes access to it easier. They are hired in exchange for part of the crops on the basis of various agreements between the parties, but following the proliferation of incidents of arson, crop thefts and plowing before the harvest, some of the lessees have stopped cultivating and working the land.

Economic damage as a result of limiting access to agricultural land

A large part of the arable agricultural land that remains in the ownership of the village of Turmusaya belongs to the Hizmeh family, which owns 560 dunams: 140 dunams belong to Mahmoud Hizmeh Mohammad al-Araj and his brothers and sisters, 140 belong to the sons of Mohamed Hussein al-Araj and 280 dunams belong to Mohamed Abdallah Hussein al-Araj. The 140 dunams that belong to Mahmoud Hizmeh Mohammad al-Araj and his family are distributed around Adei Ad at different distances from the outpost. In the 1940s and 50s members of the family began planting olive, fig, and almond trees, and vines on the land, along with seasonal plantings and vegetables (sesame, chickpeas, lentil, barley, onion and so on) on the planes. The family also dug three water wells. The family of Mohamed Hussein al-Araj also grew similar crops on its 140 dunams. Since Adei Ad was founded in 1998 the family has met increasing difficulty in cultivating its land. According to Mahmoud Hizmeh Mohammad al-Araj, "since 1998 when the settlers came the problems and harassment began and we stopped planting and sowing. All of us, including my 140 dunams, my uncle's and my great uncle's heirs."

331 Yesh Din Case No. 1936/09.

332 See for example pp. 145-146 of this report.

As a result of the difficulties, cultivation of seasonal crops stopped altogether and the village's farmers grow only olive trees. Stopping seasonal crops means significant economic losses that affect the hundreds of people who live off the land and its fruit.

*My 140 dunams support me and my 10 children and brothers. Between us we have about 60 children. The children have children so that altogether we are talking about 180 people. All of them were supported by those 140 dunams. My uncle has nine children (six boys and three girls) who have families of their own, so that they have a similar number of people. I don't know the exact number but there are even more of them than us and they live off their 140 dunams. My great uncle's son, his name is Mohamed, the one who inherited the 280 dunams with his son Naji, has nine children and they have children too, and altogether they are about 100 people.*³³³

Al-Araj estimates that the yield of the seasonal crops on his land was 2,250 kg legumes (chickpeas and lentils), worth NIS 15,000 a year; 7500 kg grain (wheat and barley) worth NIS 15,750 a year; and 300 kg sesame, worth NIS 4500 a year.

He claims that as a result of the vandalism of the trees (spraying with poison, cutting them down and so on) and the inability to take care of the trees properly over the year due to limited land access, the olive trees deteriorated, which is reflected in a serious decline in the quantity and quality of the harvest.

Al-Araj estimates that until 1998 the trees yielded 500 kg almonds, worth NIS 5000 a year; 400 kg grapes, worth NIS 1200 a year; 180 kg figs, sold dry, worth NIS 2700 a year; and olives that produced 2,100 kg of oil worth NIS 42,000.³³⁴

From 1998 to 2000 there was a deterioration, and since 2000 we only have olive trees that produce much less and there are times the trees were harvested before we even got to them because of access restrictions. This year [2009], for instance, we harvested after coordinating [with the DCO] four gallons – 70 kg of oil. Last year was the same thing. Seventy kg of oil is the only produce we have from all that is left, and its value is NIS 1750 [...] Of course it is not enough for our consumption and we have to buy.

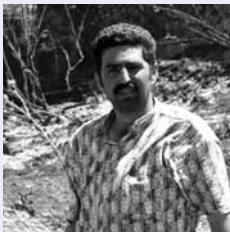
333 The statement was made during a meeting with Mr. Mahmoud Hizmeh Mohammad al-Araj, resident of Turmusaya, on November 17, 2009 in Turmusaya.

334 Based on a multi-annual average of NIS 20 per kilogram.

*We reached a point where two or three years ago we went out to glean for our needs from the land of other people near the village, after they harvested.*³³⁵

The Turmusaya council website reports that many residents of the village have left and now live in the United States, and presently serve as a main source of income for the village which is therefore dependent on these remittances.³³⁶

AL-MUGHAYER



Mr. Akram Na'san

Most of the information in this chapter about al-Mughayer is based on conversations with village resident Mr. Akram Na'san,³³⁷ a foreman of agricultural land owned by the Na'san family. The area calculations were produced by a geographical information system (GIS).

The village of al-Mughayer is 27 km north of Ramallah and 34 km south of Nablus. According to the Palestinian Authority population census of 2007, the population of the village was 2,368 residents living in 414 housing units.³³⁸ The village's built area is about 1 km² and most of its residents made their living from the traditional occupations of agriculture and raising sheep and cattle.

The village is surrounded by agricultural areas, including land that borders Adei Ad from the east and the south. Most of it was purchased by the residents of al-Mughayer through various arrangements from residents of the nearby villages of Sinjil, Qaryut and Turmusaya, but only a fraction of it is registered in the names of the buyers. Most of the land is planted

335 The information was provided during a meeting with Mr. Mahmoud Hizme Mohammad al-Araj, resident of Turmusaya, on November 17, 2009 in Turmusaya.

336 Turmusaya Village Council website: <http://www.turmusayya-mun.org>.

337 The meetings were held in the village of al-Mughayer on December 1, 2009, December 1, 2010, December 12, 2011 and February 5, 2012.

338 Population, Housing and Establishment Census 2007. Palestinian Central Bureau of Statistics, January 2009 (www.pcbs.gov.ps).

with olive trees and cultivated by the residents of the village, while seasonal crops are planted on whatever land is unsuitable for growing olive trees.



Photo No. 6: Terrace planted with olive trees in the lands of the Na'san family of Al-Mughayer, February 5, 2012. Photo: Yesh Din

A large part of the cultivated land surrounding al-Mughayer is owned and cultivated by Ratib Na'san's family. The Na'san family cultivates plots that belong to the village's natural bloc and owned by Ratib Na'san, and other areas which are given to him in various arrangements by land owners from neighboring villages. Na'san cultivates a total of 1,000 dunams. Most of the land in the family's possession was purchased in recent years, mainly because of its distance from its original owners and proximity to Adei Ad. Akram Na'san is Ratib's nephew and his foreman on the land he owns.

Access to land

Because of the relatively large distance from Adei Ad but mostly because of their determination to cultivate the land regularly, the farmers of al-Mughayer go freely to 889 dunams without needing to coordinate with the army. Their unrestricted access to the land allows them almost daily presence on the ground and continuous agricultural cultivation.

However, because of their frequent presence in the plots, the land owners and their hired workers face harassment by Israeli civilians. One of the ways the farmers of al-Mughayer deal with the harassment is to go out in groups of 15-20 people, on the assumption that a relatively large group of people makes it harder to harass them and may even deter the harassers. Despite these precautions, Yesh Din has documentation of dozens of offenses including violence, threats, vandalism of agricultural crops and property damage, that

occurred on al-Mughayer land; most of them resulted in complaints to the police. Despite the recurring harassment and land owners' requests, the army refuses to provide escort to the plots where they have free access and do not require coordination to cultivate. The harassment began with the appearance of the first caravan in Adei Ad in October 1998, during the Wye River negotiations:

It began with things like that, they would come down to us, I was (and still am) the foreman of all of my uncle and father-in-law's land and they used to tell us at gunpoint "go away, this is our land, leave." They shot at us.³³⁹

The access to two plots, whose total area is 80 dunams, depends on coordination with the army and is made possible twice a year – during the plowing and harvesting seasons. The order to coordinate the work in those plots was given to the farmers in 2005 by a representative of the DCO who visited the plots. Permits require application and are provided for a limited time – a day or two – which is usually not enough to perform the necessary agricultural work.

Jamil Na'san (Ratib's brother) from al-Mughayer owns land adjacent to Adei Ad. He has free access to two of the plots he owns, which allows for frequent access. But access to another plot requires coordination with the DCO. This is how Jamil Na'san described to a Yesh Din researcher the difficulties caused by the proximity of the plot to the outpost and the process of receiving a coordinated entry permit to the plots:



Jamil Na'san

My plots are in the northwestern area, about 2 km from the village and 600 m east of the outpost of Adei Ad. The area includes an eight dunam plot of olive trees (60 trees) and another eight dunams planted with wheat. Those two plots are adjacent. We get to the land about once a week. Since 2001, since the outpost (Adei Ad) was built, the trouble began. Trees were burned. There was also an attempt to take over the land [...]. I have another plot, six dunams, high up on the mountain and right next to Adei Ad, that you can access only in coordination with the army. The high plot has 34 olive trees. Usually there are soldiers up on the mountain, they see everything and don't make any effort to prevent the settlers from doing their deeds. We have to go there only after coordinating [...] The permit procedure is to submit an application to the Palestinian DCO; from there it is transferred to the Israeli DCO and

339 Comments made during a meeting with Akram Na'san, resident of al-Mughayer, December 1, 2009.

*then you have to wait for the permit. The permit usually does not limit the number of people but does determine exactly which days you can go. Usually the days are limited. The procedure takes quite a while, sometimes as much as a month.*³⁴⁰

The restriction of access to land limits the ability to oversee what is happening on it most days of the year. There are documented cases of this situation being abused by Israeli civilians who preceded the village farmers (who depend on receiving permits for the harvest) and were quick to harvest and steal the crop. In two such cases suspects were caught and charged: in one case Boaz Melet was convicted of trespassing,³⁴¹ and in another case indictments were served against two defendants on charges of trespassing and theft; their case is still pending.³⁴²

Another plot (purchased from a resident of Turmusaya) remains uncultivated. It is a level field suitable for planting wheat, but the danger that its crops will be vandalized is too great and makes it inexpedient to start cultivation. Thus the farmers avoid accessing it, even though coordination is possible.

Of the numerous complaints made to the police by residents of al-Mughayer³⁴³ about harassment by Israeli civilians, many were closed on the grounds of "offender unknown," even though in some of the cases there is evidence that makes it possible to identify the criminals. According to Akram Na'san the offenders have often been photographed by residents of the village and the pictures have been given to the police, but the next day the criminals returned to the site.

After some of the olive trees on his plot were burned on October 5, 2010, Hussein Abu Alia, a farmer from al-Mughayer, told Yesh Din of his difficulty in cultivating the land since Adei Ad was founded, as well as the harassment and damage Israeli civilians caused the trees planted on the land:

340 Yesh Din Case No. 2083/10.

341 Yesh Din Case No. 1174/06 (1) (see box on pp. 116-117 of this report).

342 Yesh Din Case No. 1923/10.

343 The Na'san and Abu Alia families maintain regular records of the incidents that occurred on their land and of the complaints they submitted to the police.



Hussein Abu Alia

*It is an olive grove. Until 1995 it had 600 olive trees, 200 citrus and almond trees and 100 fig trees. My family lived off it. In 1996, if I remember correctly,³⁴⁴ Adei Ad was founded and that is when the nightmare and suffering began. Since then hundreds of trees were uprooted and cut down and there was a time they stole the harvest. The land was badly damaged. I submitted dozens of complaints to the Shaar Binyamin police station myself. Today I believe there are 150 olive trees left, 1/2 dozen almonds. And we can't take care of those properly either. I had to access the plot conditional on the permission of the Israeli DCO. We get two days during plowing season to harvest. The rest of the time we are not allowed to go there and the trees have been damaged and my economic situation and livelihood severely harmed. I used to make NIS 40,000 a year. Now I make 10,000. It gets worse every year as does the settlers' harassment. The DCO is operating because I don't have access to it...*³⁴⁵

On March 19, 2010 Jamil Na'san, his brother and another 15 farmers from the village set out under IDF escort to cultivate their land. On his way to the plot Na'san wanted to work, they passed another plot of his and noticed that the wheat planted in it had been sprayed with a poisonous substance that dried it up. In his conversation with a Yesh Din field researcher, Jamil Na'san tried to estimate the economic damage and explained that he believed the acts of harassment and vandalism of this type were an attempt to evict the Palestinian farmers from their land:

... And then I saw the wheat was dry, as if it were burned. Its color was dry yellow. The whole area was affected. A week earlier I was on the land and the wheat was in good condition. I have been a farmer since I was a boy and it is clear to me that what happened was a result of spraying. My brother Akram's field was also sprayed [...] The damage is significant. The wheat is lost and I will have to plow and plant all over again [...] I believe the settlers want to kick us off our land to expand the settlement and are doing everything they can to evict us. We have already made a lot of complaints. By now it is the end of the season and I will have to wait until next year. I think the damage is to 170 kg of wheat, more than NIS 5000.³⁴⁶

344 Before the outpost was founded in 1998 there were other attempts to start a settlement on the land.

345 Yesh Din Case No. 2228/10.

346 Yesh Din Case No. 2083/10.

Economic damage as a result of restrictions of access to agricultural land

The recurring harassment by the local settlers, along with the ineffectiveness of the Israeli enforcement agencies, have made agriculture inexpedient for most of the farmers in the area. Akram Na'san estimates that in the past some 500 residents made a living from agriculture, whereas today only 30 of the village's residents farm for a living. The village's flocks have also been drastically reduced as a result of the decrease in available grazing land. Na'san estimates that before Adei Ad was built the village owned 15,000 sheep and goats, whereas today only 3,000-4,000 remain.

Four hundred dunams of Ratib Na'san's land are planted with 5,000 olive trees, most of them 20-24 years old. Four thousand olive trees were planted between the years 1985-1989 on 300 dunams. The average yield of the trees – 6.8 tons a year, Na'san estimates – is poor for their age. He thinks the reason is that during the years of the second intifada, from 2001-2003, access to the land was prevented and under that cover Israeli civilians vandalized the terraces and destroyed the buildings on the land. As a result, during those years there was no harvest and the trees were damaged. Despite their age the trees currently produce an average of about 1.7 kg oil per tree,³⁴⁷ compared to the 6-7 kg oil a healthy, cultivated 25-year-old tree is supposed to produce.

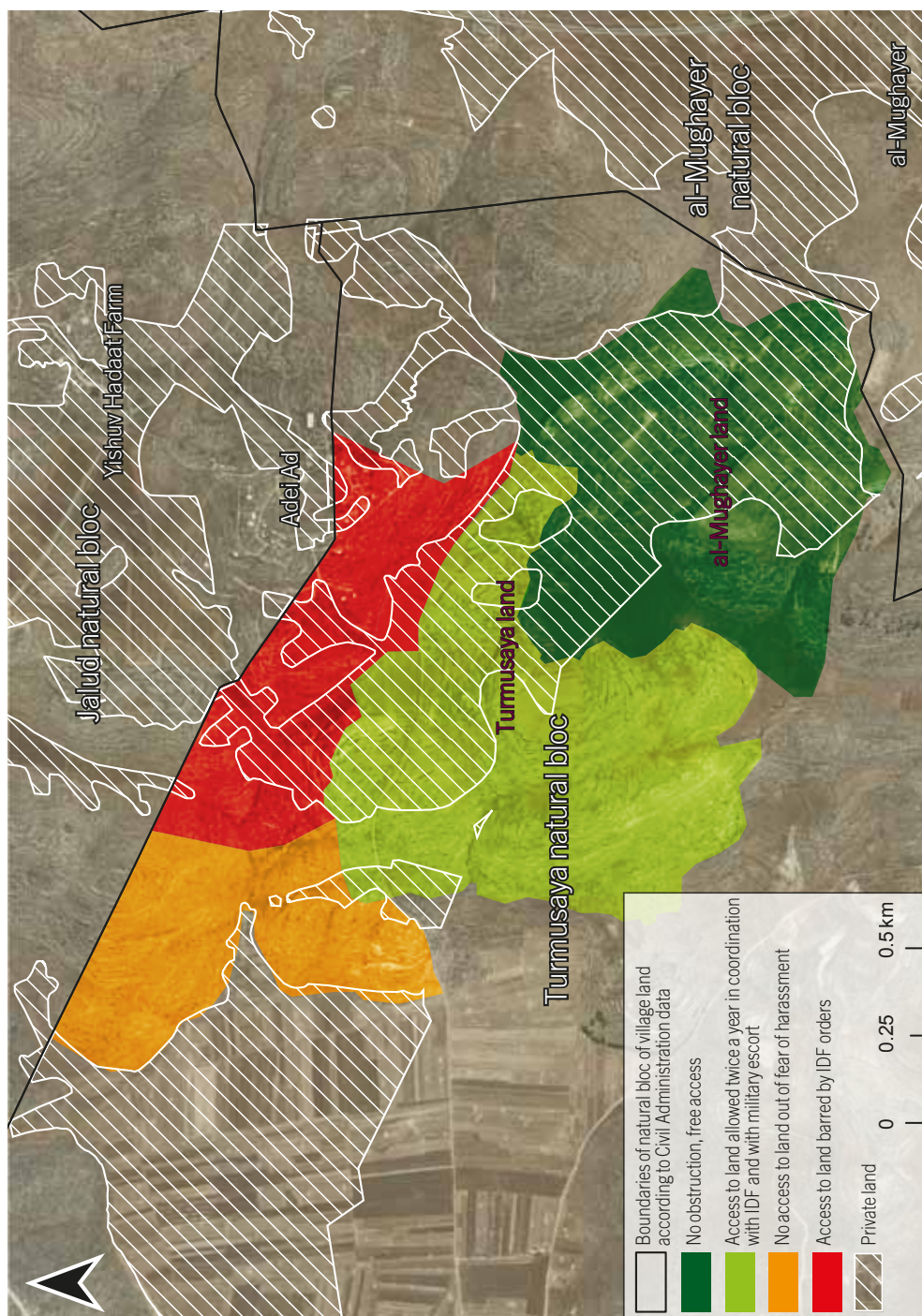
Between the years 1989-1995, another 1,000 trees were planted on an area of 100 dunams. Three hundred trees planted on 50 dunams do not produce any fruit at all; due to the plot's proximity to Adei Ad the family was forced to neglect the treatment of the trees for six years. The remaining 50 dunams have 700 olive trees that began to produce fruit in 2003 and the family estimates that they yield an average of a ton of olives a year.

The family claims that hundreds of their olive trees were cut down by Israeli civilians who live in the area, especially between the years 2006-2008.³⁴⁸ The amount of produce diminished because Israeli civilians had harvested the trees. The price of 1 kg of olive oil is an average of NIS 20, and therefore the loss of produce or poor produce has tremendous economic significance.

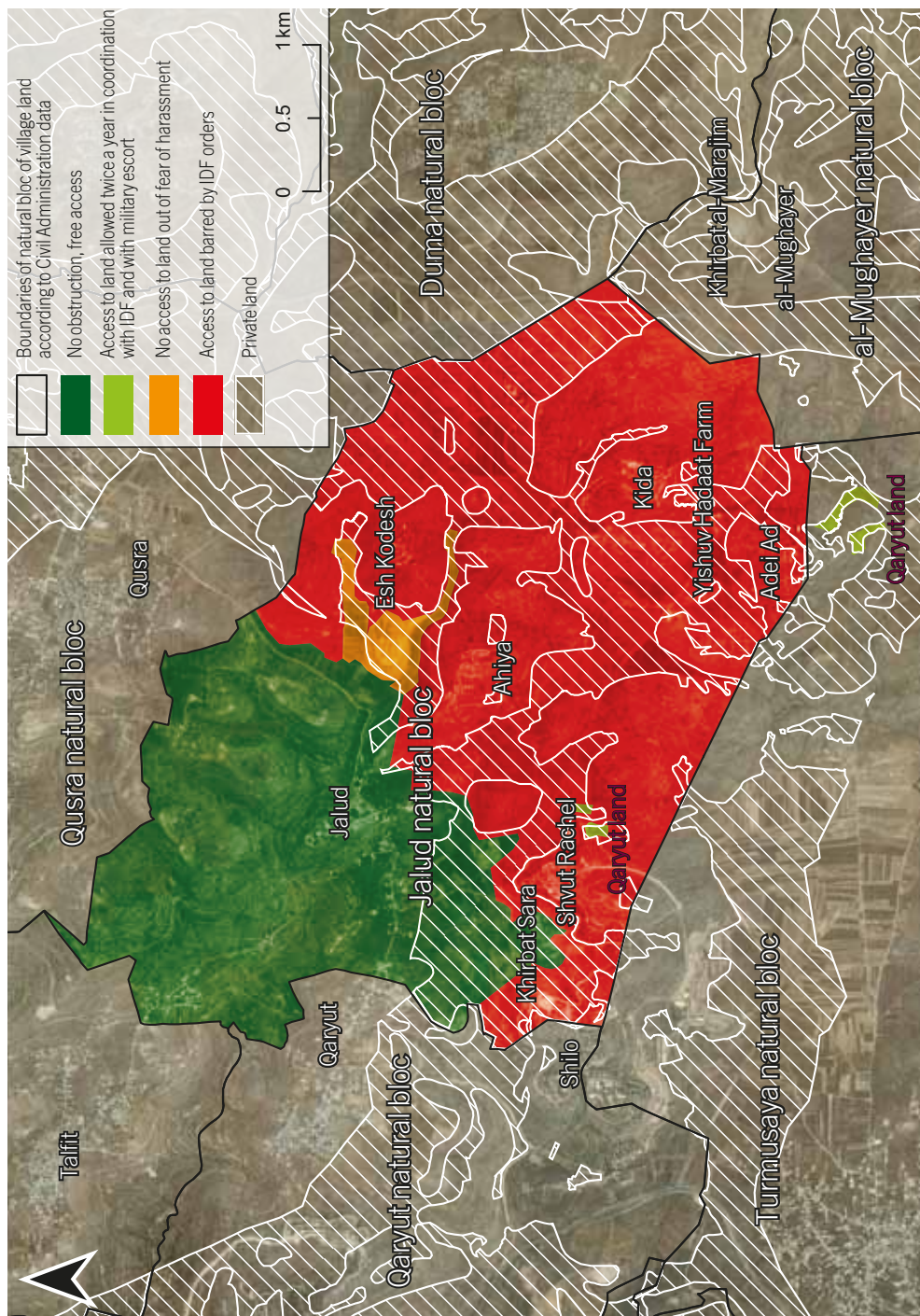
In addition to the plots planted with olive trees, the Na'san family also grows seasonal crops on the land it leases from residents of the neighboring villages. They claim that in the past the yield was 500 tons of flour, chickpeas and other crops, that were divided equally

³⁴⁷ The average yield for a 15-year-old tree.

³⁴⁸ The trees that were cut down were not included in the count of the trees mentioned above.



Aerial Photo No. 12: Access to agricultural land – Turmusaya and al-Mughayer



Aerial Photo No. 13: Access to agricultural land - Jalud and Qaryut

Hadaat Farm), which were founded on the village's agricultural land and dispossessed its residents of the source of their livelihood.

The agricultural land surrounding the village used to include more than 15,000 dunams, some of which was mountainous terrain. After 1967 many residents began working in Israel and the area of the cultivated land shrunk.

Adei Ad was built on land belonging to Jalud. Some of the outpost's buildings are on privately-owned but unregistered land of residents of the village totaling 1,668 dunams: bloc 16 whose area is 1,182 dunams (owned by 38 residents of the village) and bloc 17 whose area is 486 dunams (owned by six residents of the village).³⁵³ The rest of the outpost buildings are on public land that is part of the village's natural bloc.

The first caravans in the outpost were placed on privately-owned unregistered land belonging to Jalud resident F.M. and his family:

*We are eight people, seven sisters and myself. We inherited from my father, Ibrahim Abd, 454 dunams of land in an area called Wad Sabs, where the Adei Ad outpost currently stands. Adei Ad's houses are right on our land. Northwest of Adei Ad (that is, northwest of Wad Sabs, right next to the Wad Sabs land) my family owns another 280 dunams of land in an area called Abu Rahm. That land is mostly level. Besides that land, the family owns a lot of land that is not in the Adei Ad area. The last time I visited the Abu Rahm land was in 2001, and even then it was with coordination to plow it. The last time I was on the Wad Sabs land was in 1998. The first caravan of Adei Ad was placed on my land in 1998 and then additional caravans were added on the land.*³⁵⁴

Access to land

Since Adei Ad and other outposts around it were established, the IDF has denied access to 9,937 dunams of Jalud land. The denial of access occurred gradually: first, access was denied to land on which the outposts buildings were placed as well as the land closest to them. Later, in 2000 the army denied access to additional areas: "When we went to harvest or plow or plant, soldiers came and told us it was a closed military area and we must not go

³⁵³ A list of the land owners was given to Yesh Din by the head of the village council.

³⁵⁴ From a conversation with F.M., resident of Jalud, December 2009.

there [...] Every year the land owners try to coordinate and then every year they tell us the same thing: it is a closed military area, you must not go there."³⁵⁵

The farmers avoid accessing another 319 dunams out of fear of harassment, though access is not limited by the army.

Access is free to 5,965 dunams, but most of that land is rocky and uncultivable, and only parts of it were planted with olive trees and seasonal crops.

(See Photo No. 13, p. 138)

Economic damage as a result of restriction of access to agricultural land

For many years seasonal agriculture was the exclusive source of livelihood for the residents of Jalud, who grew mainly chickpeas, wheat and olive trees on their land. Since the loss of land as a result of the establishment of Adei Ad and the other outposts in the area, the village's ability to live on agriculture has been severely impaired and it has stopped serving as the main source of income. While in the past the village's manpower was insufficient to cultivate all of its land, today there is not a single family left in the village that supports itself solely on agriculture. The residents work as laborers or Palestinian Authority employees and struggle to make a decent living. Many of the residents of the village are supported by UNRWA (the United Nations Relief and Works Agency), and it is considered one of the poorest villages in the area.

One symptom of the village's impoverished economic situation in the last decade is the decline in the number of residents. Until Adei Ad was founded, the village had 1,000 residents, but since the outpost was built 400 of them have left (40 percent). The head of the village council explains how most of the people who left are young people who moved to Ramallah and Nablus as a result of the difficult economic situation and the damage the outpost and its residents caused to their livelihood.

The extent of the economic damage to the residents of the village is huge and exceeds the direct damage to the land owners and their families. Other families who made a living from working the land in exchange for produce, or laborers who were hired for wages, also lost the source of their livelihood. F.M., one of the owners of the land on which the outpost's buildings were built, tried to estimate the number of people who were harmed by the loss of his land when Adei Ad and the other outposts were built on the village's land:

355 The comments were made at a meeting with Mr. Abdallah Toufik Hajj Mohamed, head of the Jalud village council, on February 15, 2012 in the council offices in Jalud.

At least 20 families lived from working the land, an average of seven persons per family. Each family received one third of the produce it grew itself. Sometimes hired workers were also employed and they too received one third of the produce they grew. My family also lived off this land, at least 60 people (my and my sister's families). Work stopped gradually since 1999 and stopped altogether in 2000, since which we have not accessed our land at all.³⁵⁶

F.M. estimates the economic damage caused by the loss of his land at NIS 6,400,000 a year,³⁵⁷ based on the assessment that a dunam produces an annual harvest worth NIS 800.

QARYUT

The information contained in the section about Qaryut is based on conversations with Mr. Mohamed Abu Wael, one of the leaders of the community, and Mr. Mufid Muqbel, secretary of the village council of Qaryut,³⁵⁸ and on data produced by a Geographic Information System (GIS).

The village of Qaryut is 28 km south of Nablus. In 2007 the village's population was 2,321 people living in 431 housing units.³⁵⁹ The village's built area covers 4 km² and is surrounded by thousands of dunams of agricultural land, most of which is west of the village in the area of Givat Haroeh, Eli and Hayovel – beyond the scope of this report. Seven outposts and settlements have been built on most of the agricultural area of the village's natural bloc. In addition to the agricultural land that is in the village's natural bloc, the residents of Qaryut purchased additional agricultural land from the village of Jalud – in areas near Adei Ad.

The residents of the village used to own 2,000-3,000 dunams of agricultural land, most of which was east of Adei Ad and west of Highway 90, beginning 10 m from the Adei Ad caravans and extending eastward towards Highway 508 and up to Highway 90. The families who own the land are the Alan family, the Muqbel family and the family of Hatem Isa.

356 From conversation with F.M., resident of Jalud, December 2009.

357 8000 dunams X NIS 800 = NIS 6,400,000.

358 The meetings were held in the village of Qaryut on November 29, 2010, December 2, 2010 and February 15, 2012.

359 Population, Housing and Establishment Census 2007, Palestinian Central Bureau of Statistics, January 2009 (www.pcbs.gov.ps).

The traditional source of livelihood of the residents of Qaryut was agriculture based on seasonal crops such as wheat and barley as well as olive trees. Since Adei Ad was established, and especially after 2000, the ability of the residents of Qaryut to support themselves from the fruit of the land has been gravely undermined. Because of intimidation and harassment they experienced by Israeli civilians, the residents of the village began to stay away from the lands.

Over the years, some of the land the residents of Qaryut used to cultivate was given to the Na'san, Abu Alia and other families from al-Mughayer under agricultural agreements based on cultivation of the land in exchange for a share of the produce. One of the main reasons for handing over the land is the physical proximity of al-Mughayer to the land, which allows its residents easier and safer access to the plots. However, some of these transactions became unprofitable even for the farmers of al-Mughayer because of the harassment and looting of crops. According to Abu Wael: "After 2000, the people from al-Mughayer that we used to give the plots to also stopped planting because the settlers come, harvest their crops or burn them and it was not worth it. The land stayed barren."

Access to land

Arial photo no. 13 (see p. 138) shows the plots that are still cultivated by farmers from Qaryut (and are in the blocs of the villages of Jalud and Turmusaya). Access to these plots, whose total area is 80 dunams, is allowed only twice a year in coordination with the IDF and with military escort.

Economic damage as a result of access restrictions to agricultural land

The transfer of the land and the difficulty of cultivating the plots that are still owned by residents of the village have impeded the residents' ability to rely on agriculture as their main source of livelihood. According to Mohamed Abu Wael Muqbel, "today the source of livelihood has been drastically reduced. Even olive trees: either they poison them or they cut them down or they burn them. Nothing remains."

Mohamed Abu Wael and Mufid Muqbel evaluate the loss of income from the agricultural plots at NIS 2 million a year, based on the estimate that a single dunam produces an average annual produce of NIS 800. Of course this calculation does not include the loss of the land itself.

The loss of income is reflected by the economic condition of the village residents. According to the head of the council, this leads many residents to leave the village and seek alternative sources of livelihood. He estimates that since Adei Ad and the other settlements and outposts were built around Qaryut, 6,000 residents have left, mostly to Jordan. The village's population is gradually shrinking and today numbers only 2,800 residents.

SUMMARY

The Rashed Murad petition to the High Court of Justice, regarding restrictions imposed on Palestinian farmers in the West Bank, was a landmark case in the struggle to defend the right of Palestinian farmers to work their land. In 2006, the High Court ruled that the State must strike a balance between its obligation to ensure security in the area and its obligation to ensure the right of the Palestinian farmers to freedom of movement on their land and realization of their property. The State must also set principles for action designed to ensure the protection of those rights. The obligation to protect the safety and property of Palestinians was defined by the decision as "one of the most basic duties of the military commander on the ground."³⁶⁰

The petition, submitted by the Association for Civil Rights in Israel on behalf of the residents of five Palestinian villages in the West Bank, raised two key issues: one was the right of Palestinian farmers to access their agricultural land, which had been obstructed by security forces claiming it was necessary to ensure the safety of the Jewish residents living near the land; the other concerned the failure of the security forces to enforce the law in the West Bank and prevent harassment by Israeli civilians who harm the bodies and property of the Palestinian farmers.

In the decision given in June 2006 the High Court established four principals meant to ensure the right of the Palestinian farmers to work their land. The picture portrayed by this report indicates that not a single one of the principles delineated by the High Court is being implemented in relation to the area of Adei Ad:

- 1. First, action must be taken to ensure the safety of the Palestinian farmers who set out to do their agricultural work, and inasmuch as necessary to protect them while they are doing there agricultural work. The protection of the Palestinian farmers must be administered with minimum interruption of their agricultural work.***

As detailed in the Chapter 6 of this report, the main way in which the IDF ensures the safety of Palestinian farmers and protect them while they carry out their agricultural work is by limiting their access to plots near Adei Ad. The farmers are denied complete access to some of those plots and they are closed to the entrance of Palestinians. To access other plots, they are required to obtain special permits that allow them to access their land on

360 HCJ 9593/04, **Murad v Commander of IDF Forces in Judea and Samaria**, Section 33, p. 24.

specific dates. The permits are a means to coordinate the dates with IDF soldiers to escort the Palestinian farmers to cultivate their land and provide them with protection against harassment by Israeli civilians. Obtaining these permits involves a long and cumbersome process and is limited to a few days a year in which the army allows access to the plots.

The High Court ruling in the Murad case criticizes the use the IDF makes of the measure of closing areas to Palestinians for their protection, as a routine and exclusive measure: "If the intended purpose is to protect the safety of the Palestinian farmers against the violence that is directed at them, the appropriate measure ought to be directed at the threatening party, namely those who commit the assaults on the Palestinian farmers. The problem is that when setting out to protect the Palestinian farmers the military commander chose to act against them again, even though they are the victims of the assaults."

A complete restriction on accessing a plot does not constitute minimal harm to agricultural work, but fatal damage that destroys the possibility to cultivate the land and raise crops. Restricting access to only a few days a year severely limits farmers' ability to live off the fruit of the land and affects the kind of crops chosen, their quality and the quantity of the produce. The permits that limit the number of people allowed to enter the area further complicate the agricultural work.

In the plots that are farther away from the outpost, which do not require permits to access, the farmers are exposed to recurring abuse by Israeli civilians while the security forces hardly do anything to protect the farmers' safety.

The presence of IDF soldiers on the ground or nearby is no guarantee of the safety of the Palestinian farmers from Israeli assailants who wish to harass and harm them. Yesh Din has documentation of incidents in which Israeli civilians harassed Palestinian farmers working their land while soldiers who were present refrained from intervening and stopping the attacks. In many cases the soldiers' reaction is limited to ordering the farmers to leave the plot and return to their homes in the village, while the Israeli attackers are allowed to stay. Contrary to the duty imposed on them, the soldiers do not protect the farmers and their right to continue their work, nor do they detain the assailants until the police come.

On April 14, 2011, farmers from the village of Turmusaya wanted to plow their land. Following bitter experiences from the past, the farmers went to the DCO and asked to coordinate military escort to protect them while they worked in their plot. They were told that since the land in question was 500 m from the outpost of Adei Ad, there was no need for escort.

Shortly after the farmers reached the land they were met with a group of Israeli civilians armed with truncheons, axes and stones. Because of their growing fear the farmers called in military forces, who arrived a while later. The soldiers asked the farmers to leave the site because they did not want friction, and refrained from protecting the farmers even when the assailants attacked them with truncheons and stones. As a result of the violent assault some of the farmers were injured and one of them needed medical care and stitches. Instead of fulfilling their duty to provide protection to the Palestinian farmers and removing the assailants from the situation, the soldiers demanded that the farmers leave the site at gunpoint while using force and violence. The soldiers did not do anything to find out the identity of the assailants and detain them, but rather let them get away before the police arrived.³⁶¹

II. Second, clear and unambiguous instructions must be given to the forces operating on the ground as to how to behave so as not to deny residents who are entitled to it access to their land, unless there is a legal basis to do so.

In total and complete contradiction to this principle and its basis, the IDF restricts the access of the farmers to their land: the farmers of Qaryut are completely prevented from reaching some of their land, whereas their access to other land, which the IDF decided is beyond the line to which access is permitted, is allowed only twice a year and depends on obtaining a permit and military escort. Other land of the village of Qaryut, which its residents avoid accessing out of fear of the settlers, is cultivated by residents of the village of al-Mughayer, whose proximity to the land allows them relatively safer access. The farmers of Turmusaya have limited access that depends on obtaining a permit and military escort twice a year to some of the land whereas they are denied free access to other plots because of their fear of the settlers, and they do not reach them either without escort to ensure safety; access to two plots belonging to residents of al-Mughayer depends on permits and military escort; and the residents of Jalud have no access to their land at all as outposts and settlements are built directly on it.

These areas are closed only to Palestinians, whereas the access of Israeli civilians, some of whom harass the Palestinian farmers and threaten them, is not limited at all and they are allowed and able to go into such lands as much as they want. The procedure of closing areas to the farmers is described in the Murad ruling with the following words: "The policy that denies Palestinian residents access to land that they own, to achieve the purpose of

361 Yesh Din Case No. 2388/11.

protecting them against attacks against them, is like a policy of ordering a person not to enter his home to protect him against a robber waiting for him there to attack him."³⁶²

III. Third, forces must be deployed to protect the property of the Palestinian residents.

Yesh Din does not have data regarding the amount of forces allocated for the mission of the protection of Palestinian property, nor do we pretend to establish what the desirable size of a force for that purpose should be. However, the grave data presented in this report indicate that the property of the Palestinian residents is not adequately protected. Most of the incidents in which offenses have been committed by Israeli civilians against Palestinians have been property offenses and the takeover of land.

Escorting farmers to their land and providing protection only to certain plots on certain days, according to a permit issued in advance by the army, is inadequate, in part because, without the owners' presence, their land is vulnerable to invasions by Israeli civilians, who enjoy unlimited movement and full access to it, and are free to do as they like, from stealing produce and setting it on fire to the full takeover of the land. Contrary to the spirit of the third principle delineated in the Murad affair, the IDF does not view the protection of the farmers' land (when they are not present on it) as part of its job. In an internal report by the Defense Ministry Comptroller to examine the deployment of security forces ahead of the 2006 harvest, the Comptroller recommended, among other things, "to find a way and a method to enforce law and order, especially in friction areas, all year round, day and night, and not only in the harvest season."³⁶³

The ongoing takeover of private land owned by residents of the villages in order to expand the built area of the outpost, to build roads and to cultivate the land is not met with an appropriate enforcement response. The dozens of demolition and eviction orders issued by the Civil Administration against the outpost's buildings and its agricultural takeover of private land are not enforced and the invading offenders go unpunished.

362 HCJ 9593/04, **Murad v Commander of IDF Forces in Judea and Samaria**, Section 25, p. 19.

363 Defense Ministry Comptroller, **Comptroller Report - Enforcement of Law and Order in Judea and Samaria in respect of the Olive Harvest**, February 6, 2007, p. 7.

IV. Fourth, the complaints raised by the Palestinian residents should be examined objectively and investigated as soon as possible. Investigations must be opened as soon as information is received of an act of harassment and patrols should be initiated by the military and security forces to discover such acts ... Therefore the enforcement, investigation and prosecution mechanisms must be perfected [...] The respondents must act independently to locate the violators, hold them accountable and consider what measures can be taken so such blatant violations of the law will not be repeated.³⁶⁴

The large number of offenses committed around the outpost indicates that efforts to prevent harassment and law breaking in that area have been inadequate. All of the investigation files mentioned here were opened following complaints by the residents of the Palestinian villages. None of them were opened following proactive and independent law enforcement actions by the police or the IDF.

The vast majority of investigation files into crimes by Israeli civilians against Palestinians in the areas near the outpost of Adei Ad (93 percent) were closed without filing an indictment.³⁶⁵ The grounds for closure indicate a particularly dismal failure to locate the offenders (over 62 percent of the investigation files closed on grounds of "offender unknown") and the effectiveness of the investigation (over 25 percent of the investigation files closed on grounds of "insufficient evidence.")

In this report we selected the outpost of Adei Ad as a case study through which we could learn how outposts severely affect surrounding Palestinian villages. Some 100 outposts now stand throughout the West Bank, and many more Palestinian villages experiencing similar difficulties, attempting to live under the negative effects caused by outpost establishment and development.

Almost five years have passed since the High Court outlined the four principles for the protection of the right of Palestinian farmers to work their land and the duty of the State to enforce the law and protect the property of the Palestinian farmers. However, the IDF and the police have not yet integrated these principles into their actions. The High Court ruling in the Murad affair was preceded famously by the Karp Report (1982), the Shamgar Report

³⁶⁴ The respondents in the petition were the Commander of IDF Forces in Judea and Samaria and the Commander of the SJ District of the Israel Police.

³⁶⁵ Of the files of which the investigation and prosecution bodies concluded their treatment and a decision was made whether to close the file or submit an indictment.

(1994) and the Sasson Report (2005) all official government reports that have attempted to draw attention to the severity of the problem of law enforcement in the West Bank.

In reference to the question of law enforcement in the occupied territories, the Shamgar Report discussed the connection between law enforcement and the existence and upholding of the rule of law:

*Our point of departure is that in the absence of effective law enforcement there is no effective government. In an atmosphere where everyone does as they like without taking any real risk of bearing responsibility if they exceed the rules of what is permitted, the proper operation of the authorities responsible for effective control of the area is impeded. The High Court commented years ago that the rule of law is not created out of nowhere and is not an abstraction. It must have a tangible and daily expression by the very existence of binding normative arrangements and their exercise in practice towards the entire world...*³⁶⁶

According to the Sasson Report, the roots of the law enforcement defects stem from the message conveyed by the political echelon concerning law enforcement in the occupied territories: "a message of non-enforcement." Sasson asserts that the obvious conclusion is that beyond the fact that the criminals are not punished, "nobody intends seriously to enforce the law." And further:

Some of the illegal seizure of land and construction were carried out with the help of the Housing Ministry and the Settlement Department, without permission and without authority while breaking the law in broad daylight; the State of Israel underwrites at least part of the construction of the unauthorized outposts; the Civil Administration has been for years ignoring expansions amounting to entire neighborhoods near or not near settlements, without detailed plans as required by law, some on private Palestinian land; does not undertake inspection of construction there; does not report when it is required to report the outposts with excuses of definitions of what constitutes an outpost, and claims to an absence of information about the outposts, among other reasons because of the inspection restrictions that were applied within the boundaries of the settlements, which it "stretched" well beyond the directive it received; caravans sometimes receive entry permits to Judea and Samaria from the Defense Ministry even if the requested destination for their installment has no legal planning basis; the Defense Minister's

366 Report of the Commission of Inquiry into the Massacre at the Cave of the Patriarchs in Hebron (The Shamgar Report), 1994, p. 234.



Advisor on Settlements approves before state authorities that unauthorized outposts are settlements that are entitled to a settlement symbol (which means they are entitled to Interior Ministry budgets for local authorities) while the Defense Minister declares publicly that they are unauthorized; thousands of demolition orders issued over the years are not exercised; the outposts are proliferating and growing and demarcation orders are not issued, not even for those outposts that are on the March 2001 list, for which Israel made an explicit international commitment to evacuate them; demarcation orders that were already issued and approved by the High Court were not realized (four [of them orders for the evacuation of outposts] plus another two that were evacuated and came back); orders that are vital for law enforcement and amendments of existing orders are not legislated.

This situation sends a message to the army, its soldiers and commanders, the Israel Police and its officers, the settler public in particular and the public in general.³⁶⁷

Again and again, official parties on behalf of the State indicate the problems of law enforcement in the occupied territories and even do so in harsh and scathing language. It is outrageous and unfortunate that despite the gravity of the situation, the State does not take measures to bring about a meaningful change in the area of law enforcement in the West Bank and tip the scales in favor of the diminishing rule of law. By these enforcement failures the State is betraying its duties under international law to protect the population in the occupied territory and to protect that population's ability to exercise its rights.

367 Sasson Report, p. 44.

RESPONSES

Before publication of the report, Yesh Din transferred its principal findings to the main bodies mentioned in it, for their response: The SJ District Police, the IDF, the Civil Administration, the WZO Settlement Division, the Mateh Binyamin Regional Council and the outpost of Adei Ad.

The Civil Administration, the Mateh Binyamin Regional Council and the outpost of Adei Ad chose not to provide responses. The responses of the Settlement Division, the SJ District Police and the IDF Spokesperson are presented in full in the following pages.

All the responses were translated from the Hebrew by Yesh Din.



The Response of the Settlement Division

World Zionist Organization
The Office of the Legal Advisor



ההסתדרות הציונית העולמית
World Zionist Organization

לשכת היועץ המשפטי October 28, 2012

The Office
of the Legal Advisor

To
Ms. Ziv Stahl
Yesh Din
By fax: 035664228

Dear Madam,

Re: Response of The Settlement Division to Yesh Din report

Reference: your letter from October 17, 2012 to chairman of Settlement Division

Your letter in reference was transferred to the undersigned and I hereby respond as follows:

1. As you know, Adei Ad outpost mentioned in your letter is the subject of a pending court proceeding in the Jerusalem District Court regarding the provision of information about the aforesaid outpost.
2. As long as the question of the Settlement Division providing Yesh Din with information is part of a legal proceeding, the WZO Settlement Division cannot provide information and/or respond to any report Yesh Din publishes about the outpost of Adei Ad.
3. Therefore, any response and/or information about Adei Ad will be provided by the Settlement Division subject to the decision of the court in the aforesaid legal proceeding.
4. I think your aforementioned inquiry is a foolish attempt whose purpose is to undermine a pending court proceeding and it looks like nothing but extortion and threats, as if you were saying "if you do not provide us with information we will damage you by one publication or another."
5. In my opinion there is no urgency in writing the report cited in your letter and you could wait until the end of the legal proceeding.
6. I wish to inform you that everything that appears in the report on your behalf and certainly if it is published is your sole responsibility and needless to say the report you publish without receiving my client's response might be subject to every law, including libel law.

Sincerely,

Yosef Laufer, Adv.
Legal Advisor of Settlement Division

CC:

Mr. Danny Kritzman, Chairman of Settlement Division
Mr. Yaron Ben Ezra, Adv., Director General of Settlement Division

Mr. Yuval Funk, Adv., Director of Central Region and Contracts and Securities Division
Mr. Yeshayahu Nun, Director of Information in Division

Yesh Din Reaction to the Settlement Division Response

MICHAEL SFARD | LAW OFFICE

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 contact@sfard.co.il

Michael Sfar, Adv.
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מיכאל ספרד, עו"ד
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 אבישר לב, עו"ד
 אמילי שפיר, עו"ד
 כרמל פומרנץ, עו"ד
 אדר גרייבסקי, עו"ד

To
 Adv. Yosef Laufer
 Legal Advisor – World Zionist Organization, Settlement Division
 48 King George St., Jerusalem
And by fax: 02-6204107 (02-6202454)

Dear Sir,

Re: Response of your client, the Settlement Division of the World Zionist Organization, to the report by Yesh Din about the unauthorized outpost of Adei Ad

Reference: Your letter to Ms. Ziv Stahl from Oct. 28, 2012
 Letter from Ms. Ziv Stahl of Yesh Din to Mr. Ofer Amar, the Settlement Division's media advisor, from October 17, 2012

Dear Sir,

1. I hereby confirm on behalf of our client, Yesh Din (henceforth: "our client" or "the organization") receipt of your letter from October 28, 2012 in reference. Since our undersigned office represents the addressees of your letter, you are requested to conduct all correspondences with the undersigned from now on.
2. Ms. Stahl's letter to you was sent on October 17, 2012. That letter stated explicitly that our client was finishing the writing of a new report about the unauthorized outpost of Adei Ad, and that the report included a number of claims referring to the settlement division that operates as part of the World Zionist Organization. Our client contacted representatives of your client to elicit their response to those points, and explained that it intended to publish those responses fully as part of the report.
3. In your response on behalf of your client, you refused to address even a single one of the points. Instead your client chose to hide behind the clearly irrelevant excuse as if the outpost of Adei Ad is the subject of a legal proceeding about the provision of information regarding the aforesaid outpost, and therefore any response about the outpost would be given subject to the decision of the court where the claim is being heard.



Yesh Din Reaction to the Settlement Division Response (continued)

4. If you read Ms. Stahl's letter carefully we are sure you would understand there is no connection between the freedom of information proceeding being heard in the District Court and **our client's offer** to your client to respond to the claims made towards it as part of the report. And more specifically, whereas in the freedom of information proceeding your client was requested to provide information, Ms. Stahl's letter offered your client to provide a response to concrete claims (which do not include a demand to provide documents or information), so that the readers of the report can receive a full picture where not only the claims towards your client are presented but also its responses to those claims.
5. We would like to be clear: our client's request for a response was an indulgence, and in as much as your client is not interested in responding to the point, that is its prerogative. Your position that publication of the report must be postponed is baseless and our client has appointed us to inform you that the report is going to be published in the coming weeks. If your response is not provided by next Sunday, November 11, 2012, the report will be published without including your response and with statement of the fact that your client was given the opportunity to respond but chose not to do so.
6. Peripherally we should note that your choice to use language such as "extortion by threats" and the quotation that went with that phrase, is unfortunate and would better not have been written to begin with. It is unfortunate your client operates in the dark, and it is even more unfortunate that when a scrutinizing body turns on the light it sees that as "extortion" or "threats." You may be well advised to remind your client what we learned in our youth in law school, that "sunlight is the best disinfectant." Sadly, your client chooses consistently to hide public information it holds by virtue of its offices. Particularly offensive is your client's behavior when it chooses to use that concealment as a justification (albeit weak and unfounded) not to provide its response to the contents of the report.

Sincerely,

Michael Sfard, Adv.

Shlomi Zachary, Adv.

The Response of the Samaria & Judea District Police



חטיבת דובר המשטרה



- בלמס -

מחוז
לשכת
חטיבת דובר משטרת ישראל
טלפון: 02-5424277
פקס: 09-7697913

Police Spokesperson Division

- Unclassified -

Samaria and Judea District
Office of District Commander
Israel Police Spokesperson Division
Tel: 02-5424277
Fax: 09-7697913

October 25, 2012

Re: Response to Yesh Din report

1. Following is the response of the SJ District Police to the Yesh Din report.
2. The SJ District is in charge of law enforcement in Judea and Samaria, including offenses against Palestinian residents.
3. Law-enforcement is administered equally, in accordance with the general police policy that requires equal enforcement regardless of religion, race and sex.
4. The SJ District throughout the years has learned lessons from the diverse areas to which it is required to respond and one of them is handling complaints by Palestinian residents about ideological offenses.
5. Attached is a chart that indicates our activity in the last two years against offenses occurring in Judea and Samaria against Palestinians, which indicates a constant improvement in our handling of the phenomenon.

Total investigation files opened in regard to offenses by Israelis against Palestinians

Year	total files	Total indictments against Israelis in disturbance offenses
2011	392	80
2012 until September	271	75



The Response of the Samaria & Judea District Police (continued)



חטיבת דובר המשטרה



- ❖ Continued intensive action
 - Deployment of overt forces and conducting roadblocks and patrols combined with the Border Police at friction points, and deployment for nationalist crime.
 - Conducting intelligent initiated actions against rioters
 - Activity of special task force against rioters at friction points with Palestinians.
 - "Adaptation" patrols by entry of combined forces into problematic areas as part of assertion of sovereignty and law.
- 6. Difficulty filing complaints: the SJ District has set itself the goal of service to the citizen as a central plank of its activity, and that goal is one of the Police Commissioner's main goals for the organization. The Palestinian residents, like all citizens in Judea and Samaria, are entitled to receive police services. Therefore the SJ District is deployed to provide police services through the DCO police officers, who are deployed in eight points near the cities of Jenin, Tulkarem, Qalqiliya, Nablus, Jericho, Hebron and Ramallah. These police officers speak the Arabic language and can write in Arabic. The police are available for Palestinian complaints.
- 7. It should be noted that processing the complaints presents investigative difficulties for several reasons:
 - a. The complaints are not made directly after the events and are submitted late, which hinders the arrival at the scene and collection of evidence.
 - b. The complaints are usually general and do not indicate specific suspects.
- 8. Following is the deployment of the SJ District to handle the phenomenon of Israeli disturbances.
 - ❖ Activity on three levels: on the ground level, region/station, on the district level and on the national level.
 - ❖ Declaration of public order as a district goal for 2012 in the basket of influential offenses measured by the new measurement system, the "Mifneh" system, raising the number of indictments compared to the previous year.
 - ❖ Continuing to raise the awareness of the field policemen to the area of nationalist crime, while increasing friction and inspection of extreme right activists, including briefings and instructions to the police operating in the area cell.

The Response of the Samaria & Judea District Police (continued)



חטיבת דובר המשטרה



- ❖ Tight control and oversight of the enforcement of court decisions on house arrests (based on investigations filed) and administrative restraining orders for extreme right-wing activists.
- ❖ Transferring exceptional nationalist crime files to the attention of the Central Unit (solving the case of the firebombs thrown at a Palestinian taxi and the grave injury of its passengers, investigation of the arson of the mosque in Jab'a – there is evidence but not sufficient yet for an indictment, solving the case of the vandalization of monuments, including at Yad Vashem, and more).

Superintendent Dudi Asraf
 SJ District Spokesman
 050-6277828, 02-5424277
Dover_shay@walla.co.il

Yesh Dins comments:

The data as to the number of indictments served does not correspond with Yesh Din's information. Yesh Din's monitoring over the last years indicates that nine percent of the investigations into ideologically motivated offenses by Israeli civilians against Palestinians and their property lead to indictments. Our requests to the SJ District spokesman to clarify his data were answered that he stands behind the figures he presented. A few days after giving his response, on November 4, 2012, the SJ District spokesman issued a press release following the indictment of two Israeli boys for offenses against Palestinians, which commented: "It is important to note that this is one of the only cases where an indictment has been served against perpetrators of a crime with nationalist motives in the Jewish sector." This description matches what Yesh Din knows and of course contradicts the figures given to us in the response that appears herein.



The Response of the IDF Spokesperson



Israel Defense Forces
IDF Spokesperson Division
Public Relations Branch
Public Inquiries Department
Tel: 03-5695757/1657
Fax: 03-5693971
Reference: 16214
August 14, 2012

To
Roni Pelli
Yesh Din

Re: Your inquiry to the IDF Spokesperson

1. Your inquiry about the denial of the access of Palestinians to agricultural lands in the area of the unauthorized outpost of Adei Ad was received by our department.
2. First, we regret the fact that, contrary to accepted practice, Yesh Din chose to provide for our review only an abstract of the report that is going to be published on the subject and not the draft of the full report. Accordingly, the responses presented herein are only initial responses to the organization's claims.
3. An in-depth inquiry we made with the Central Command found that, contrary to what was claimed in your inquiry, there are no agricultural lands close to the unauthorized outpost of Adei Ad that are closed to Palestinians, except during the harvest season, as detailed below in Section 4. However, the IDF recommends to Palestinians who want to cultivate their land near the outpost to coordinate their access to the land for security reasons. Despite the aforesaid, the military commander maintains the power to declare the closure of the areas in accordance with his duty to ensure security and public order.
4. As for the olive harvest season, at this time the IDF closes the areas adjacent to Israeli settlements to prevent illegal activity that might disrupt the orderly conduct of the harvest, on the one hand, and allow the security forces to protect the Israeli residents from the security threat posed to them by the harvest close to their settlements, on the other.
5. The IDF, with the other security authorities, including the SJ District of the Israel Police, works very hard to protect the Palestinian residents and their property against harassment. As part of that effort, Palestinians who accede to the recommendation of the security forces to coordinate their arrival to the land to which the inquiry refers receive escort and protection by the forces.
6. Further, it should be noted that the Civil Administration is conducting procedures by virtue of the Order concerning Disruptive Use for one of the plots next to the outpost of Adei Ad for which a claim of invasion was made. As for that invasion, proceedings are underway in H CJ 2186/11 **Al-Araj v Civil Administration**. It should be noted that law enforcement efforts to prevent invasion of private land are being made in other places in the Shilo Valley as well, including next to the

The Response of the IDF Spokesperson (continued)

outposts of Esh Kodesh and Ahiya, where proceedings have been launched by a disruptive use order.

7. We should also note that all IDF forces operating in Judea and Samaria are regularly briefed about the powers given to them and are directed to use them in the appropriate cases, including the need to prevent offensive acts and holding their perpetrators accountable.
8. It is important to note that during the harvest and plowing seasons there was close coordination with the Ramallah and Nablus DCOs.
9. We would be happy to be at your disposal for any questions or clarifications.

Sincerely,

Public Inquiries Department
IDF Spokesperson

APPENDICES

All the appendices were translated from the Hebrew by Yesh Din.

Letter from Mr. Yehoshua Nun, Settlement Division – World Zionist Organization, January 11, 2012

Settlement Division



World Zionist Organization

January 11, 2012

To:
Atty. Shlomi Zachary
Michael Sfar Law Office
45 Yehuda Halevy St.
Tel Aviv 65157

Re: Request to receive information from Settlement Division

Even though you did not send us a power of attorney from your client Yesh Din, I hereby respond to your letter from November 15, 2011 as follows:

1. First, I do not understand why you call the outpost of Adei Ad an unauthorized outpost.
2. Second, I hereby inform you that the entire area of the outpost is under a valid contract between the World Zionist Organization and the Supervisor of Abandoned and Governmental Property in Judea and Samaria.
3. To your specific request: we attach an orthophoto (clearer than the one you sent us) marking in blue lines the boundaries of the aforesaid contract and in green lines the areas designated for farmers, for agricultural use only, which is our response to sections 3a and 3c of your letter.
4. As for our response to 3b and 3d, the matter is under review and I hope we can answer you on the matter within one month.
5. As for your request to receive data on plots and blocs, we do not have that information.

Letter from Mr. Yehoshua Nun, Settlement Division, January 11, 2012 (continued)

6. The period of the contract between the Supervisor of Abandoned and Government Property and the World Zionist Organization is 49 years long and ends in 2033.
7. We cannot provide you with information about the parties to which the World Zionist Organization allocated the land and the allocation agreement because they are private people and/or parties.

Sincerely,

[Signed]Yehoshua Nun

CC:

Mr. Danny Kritzman – Head of the Settlement Division
 Mr. Yaron Ben Ezra, Atty. – Director General of the Settlement Division
 Mr. Yosef Laufer, Atty. – Legal Advisor of the Settlement Division
 Mr. Yuval Funk – Director of Central District

Letter from Mr. Yehoshua Nun, Settlement Division, January 11, 2012 (continued)



Letter from Mr. Yehoshua Nun, Settlement Division – World Zionist Organization, March 13, 2012

Settlement Division



World Zionist Organization

March 7, 2012

To:
Atty. Shlomi Zachary
45 Yehuda Halevy St.
Tel Aviv 65157

Re: Your letters from February 1, 2012 and March 6, 2012

Unfortunately, you continue to use the term "unauthorized outpost" for the outpost of Adei Ad, even though I pointed this out in my previous letter but you still continue doing it.

To your questions in sections 3b and 3d, we checked and found that the World Zionist Organization did not allocate rights (licensed) for building housing in the outpost of Adei Ad.

As for your claims concerning other questions as if you had not been answered, much work was necessary to prepare an answer and even though in your letter from February 1, 2012 you wrote that you sent us an aerial photo (see section d (c)), I hereby add the aerial photo we sent you in my first letter, with the agricultural locations we allocated to different parties on the ground.

That is all we are able to provide.

Sincerely,

[Signed]
Yehoshua Nun

CC:
Mr. Danny Kritzman
Mr. Yosef Laufer, Atty.
Mr. Yuval Funk

Planning Authorization Agreement drawn up and signed in Beit El on November 24, 2002 between the Supervisor of Government and Abandoned Property in Judea and Samaria and the World Zionist Organization – Settlement Division



The Civil Administration for Judea and Samaria
The Supervisor of Abandoned and Government Property

File no.: 71015076a
Account no.: 977091677

Planning authorization agreement

Drawn up and signed in Beit El on November 24, 2002

Between

The Supervisor of Governmental and Abandoned Property in Judea and Samaria (henceforth – the supervisor), whose address for the purpose of this contract is: The Civil Administration Building, POB 43, Beit El

On one side;

And

The World Zionist Organization – the Settlement Division ID/Corporation no. 507000081

Jointly and severally (henceforth – the licensee), whose address for the purpose of this contract is: POB 7053 Tel Aviv Jaffa

On the other side;

Whereas the supervisor is the competent authority to administer the land (henceforth – the property) as detailed in the "list" that follows the articles of the agreement (henceforth – the list);

And whereas the licensee asked the supervisor to authorize it to plan the property for the purpose of the authorization stated in the list (henceforth – the purpose of the authorization) and the supervisor agreed – all subject to what is said and stipulated in this agreement as follows;

And whereas the licensee hereby declares that no restrictions apply to it under the provisions of section 5 (b) (6) of this agreement concerning its contracting with the

Planning Authorization Agreement between the Supervisor of Government and Abandoned Property in Judea and Samaria and the Settlement Division (continued)

supervisor and that it knows that only on that fundamental and precedent condition is the supervisor willing to contract with it according to this agreement;

And whereas in addition to the conditions of the following planning authorization agreement the following special conditions apply:

Therefore it was agreed between the sides as follows:

1. The introduction of this agreement and its appendixes are inseparable parts thereof. The meaning of the terms and provisions of this agreement that refer to planning, various plans, changes of plans, planning institutions and permits by planning institutions is as their meaning in the planning and building law that applies to the Judea and Samaria area, unless the context requires a different meaning according to the agreement.
2. The supervisor hereby authorizes the licensee to prepare for the purpose of carrying out the objectives of the authorization for the property, a plan or plans for the property and/or a change of plan or the plans that apply to the property (henceforth – the planning), only for the period of the authorization for planning specified in the list – all subject to the conditions of this agreement.
3. a. The licensee undertakes to execute the planning with expertise and credibility in coordination with the supervisor, and to submit for the supervisor's approval, by the time specified for that matter in the list, planning that does not contradict the supervisor's position and accords with his requirements and the objective of the authorization.

All copies of the documents, plans, blueprints and maps of the planning that is approved by the supervisor will become the supervisor's exclusive property and remain in his possession and control, and any use of them will be only by the supervisor's permission.

b. The planning will be done by the licensee at its expense only, and the supervisor will not participate in its expenses or reimburse it for them in any case, subject to section 8 below.

c. The licensee will submit for the approval of the planning institutions only the plan that is approved by the supervisor, immediately after it is transferred to the licensee by the supervisor as aforesaid. The licensee will take all necessary actions and procedures so that the planning receives the approval of the planning institutions.

d. The licensee will bear sole responsibility for any damage caused to any person or party because of its actions or inactions in the property and will personally bear all payments or expenses that result from such damage or are connected to it. The

Planning Authorization Agreement between the Supervisor of Government and Abandoned Property in Judea and Samaria and the Settlement Division (continued)

licensee will undertake to indemnify the supervisor for any amount the supervisor is required to pay to any person as compensation for a damage the responsibility for which is borne by the licensee as aforesaid.

The licensee undertakes to ensure itself with comprehensive insurance that covers it from any claim as aforesaid.

4. a. If the supervisor approves the planning, he will transfer it to the licensee shortly after the time of approval, to be submitted by the licensee to the planning institutions as aforesaid.
- b. During the period of the planning authorization, representatives of the supervisor will act in the planning institutions to approve the planning that was approved by the supervisor and submitted by the licensee as aforesaid.
- c. During the period of the planning authorization, the supervisor will not bestow or undertake to bestow any rights to the property to any third party, unless during that time the licensee informs the supervisor that he is no longer interested in the property.
- d. Upon receipt of such notice by the deputy, this agreement will be terminated without the need for any further notice from any side, and the licensee will not have any rights to the property or claims or demands or suits in connection with the property or because of this agreement or according to it, and the supervisor will be permitted to authorize any third party to undertake the planning of the property and/or to bestow or undertake to bestow rights in the property to any third party, without needing to inform the licensee thereof.
5. a. The conditions specified in sections 3, 9 and 10 of this agreement are principal and fundamental conditions, and their breach or the breach of any of them will be considered a material breach of the agreement and the supervisor will be permitted to terminate it instantly because of that breach.
- b. Without derogating from the aforesaid, in any of the following cases this agreement will end and be terminated immediately without the need for any prior notice:
 1. If a change occurs that is not initiated by the supervisor in the designation of the property or the plan that applies to it, which would prevent realization of the objectives of the authorization for it.
 2. If the rights to the property are purchased by another, by notice or order published in the official gazette of announcements.
 3. If the planning is not approved by the supervisor.

Planning Authorization Agreement between the Supervisor of Government and Abandoned Property in Judea and Samaria and the Settlement Division (continued)

suffered as a result of its signature on this agreement or according to it or because of undertakings the licensee undertook following its signature of this agreement or according to it or because of damages caused following its signature of this agreement or as a result of its cancellation or termination, if there were any, all subject to the aforesaid in section 8 above.

7. If all of the precedent and fundamental conditions specified below are met, the supervisor will accede to make available to the deputy, as a guest only, areas in the property that are suitable for carrying out the objective of the authorization, as determined by the supervisor and at his exclusive discretion:
 - a. The licensee fulfills all of its commitments according to this agreement and at the times set forth by the agreement.
 - b. The planning is approved by the planning institutions by the end of the planning authorization period.
 - c. The licensee informs the supervisor no later than 30 days after the planning is approved by the planning institutions that it is interested in receiving, as a guest only, areas in the property to carry out the objectives of the authorization.
 - d. The director's board, at its exclusive discretion, approves the transfer of areas in the property to the possession of the licensee as an authorized, no later than one year after the end of the planning authorization period.
 - e. No later than 30 days from the date of the aforesaid approval by the supervisor's board will a development contract be signed that is accepted by the supervisor at that time.
 - f. The value of the areas made available to the licensee will be determined by the government assessor for a date that is close to the day of their delivery to the control of the deputy.
 - g. The transfer of areas to the control of the licensee will be for the purpose of undertaking the objective of the authorization of the property, and in consideration, for the period and under the conditions that will be set forth in a development contract that will be accepted by the supervisor at the time of delivery, and also subject to conditions set forth by the supervisor's board for the purpose of the aforesaid approval mentioned in section (d) above.
8. If no areas of the property are made available to the licensee for any reason, whether by responsibility of the licensee or the responsibility of the supervisor, and if the supervisor decides at his exclusive and absolute discretion to use the planning approved by the supervisor himself, the supervisor will reimburse the licensee for direct expenses only, which the licensee spent preparing the part of

Planning Authorization Agreement between the Supervisor of Government and Abandoned Property in Judea and Samaria and the Settlement Division (continued)

the planning that was approved by the supervisor and which the supervisor is going to actually use at his exclusive discretion.

In this section "expenses" – against approved receipts and no more than the amount set forth in the Ministry of Housing and Construction's rates for commissioning the kind of planning that is the subject of this agreement, as was valid at the beginning of the planning authorization period.

9. This agreement does not authorize the licensee to take possession of the property or to act in it in any other way without explicit and written permission from the supervisor, except for taking the necessary actions to carry out the planning according to this agreement. If the licensee takes possession of the property in any way or acts in it in any other way contrary to the aforesaid, the supervisor will be allowed to dispossess the licensee from the property and sue it for all the damages caused to him, without derogating from all of the remedies to which the supervisor will be entitled by this agreement and by law.
10. The licensee may not assign or transfer in any way its rights by this agreement. If the licensee is a corporation by its definition in the Betterment Tax Law 1963, any transfer, directly or indirectly, of 10% or more of the deputy's nominal value of the paid share capital or offered share capital – whichever is lower – or 10% or more of the voting power in the licensee or of the right to appoint directors of the deputy, will be considered a transfer or assignment of rights, which is forbidden by this section.
11. If the licensee is more than one individual or corporation, the liabilities of the people or corporations that constitute the licensee will be jointly and severally whereas their rights by this agreement will be only jointly.
12. General conditions
 - a. This contract is subject to the laws of Israel and the jurisdiction will be the competent court in Jerusalem.
 - b. The aforesaid in this contract does not derogate from the powers of the commander of the area/head of the Civil Administration in the area to give orders by decree concerning the validity of contracts and regarding any right, duty or liability of any of the parties to them.
 - c. This contract does not derogate from the power of the commander of IDF forces in the area and/or the head of the Civil Administration in the area to exercise their powers by any law concerning this property.
13. Special conditions

The licensee knows that the developer who signs the development contract will undertake to employ a security company that has all of the permits required by the law and the security legislation to act in the area of Judea and Samaria, and which receives permission to do so from the Civil Administration, to secure the performance of all of the works that will be carried out based on the development



Planning Authorization Agreement between the Supervisor of Government and Abandoned Property in Judea and Samaria and the Settlement Division (continued)

contract. The security company will act on the directives of the relevant territorial brigade.

The licensee also knows that the developer who signs the development contract will undertake to coordinate the performance of all works under the development contract, before they are undertaken, with the relevant territorial brigade.

The list

- "The property": As detailed as follows and as a demarcated in the attached scheme, which constitutes an inseparable part of this agreement:
- The place: Shilo
- The area: 3,100,000 m² approximately
- The owner: Abandoned Government Property
- Bloc/village: _____ Plot/folio number: _____
- "Objective of authorization": planning an area designated for agriculture and forestry.
- "The period of the planning authorization": 07 years, beginning January 13, 1998 and ending January 12, 2005.
- "Date of submitting planning for the approval of the supervisor": December 1, 1998.

And in evidence thereof, the sides hereby sign:

The supervisor:

[stamped and signed]

Segal Yossi

Supervisor of Abandoned and Government Property in Judea and Samaria

The deputy:

[signed]

I the undersigned hereby confirm that I identified the signatories "on behalf of the aforesaid deputy" by the identity cards they presented before me and that they signed this contract in my presence.

Name: _____

Title: _____

Signature of approver: _____

Planning Authorization Agreement between the Supervisor of Government and Abandoned Property in Judea and Samaria and the Settlement Division (continued)





**Letter from Second Lt. Bar Akoka, Civil Administration Public Inquiries
Officer, May 21, 2012**



Unclassified

Israel Defense Forces
Civil Administration for Judea and Samaria
Public Inquiries
Tel: 02-9977001
Fax: 02-9977341
Freedom of Information Act - 9752
May 21, 2012

To
Atty. Michael Sfar
By Israel Postal Company

Re: Freedom of Information Act – Allocation contracts in Adei Ad, your inquiry,
continued

Your inquiry from May 17, 2012

1. I hereby confirm receiving your inquiry in reference.
2. Pursuant to your inquiry and my phone conversation with Ms. Roni Pelli, attached to this letter is a map that constitutes an inseparable part of the planning authorization contract that was provided to you on May 10, 2012.
3. I shall stress that an examination of this matter found this is the only contract that was signed for the area you asked about.
4. For your information.
5. Sincerely,

Bar Akoka, Second Lieut.
Public Inquiries Officer
Office of Head of Civil Administration

Special Land Allocation Agreement drawn up and signed on January 23, 2011 between Assaf Azoulay and the Settlement Division and the Shilo Cooperative Association

Special Land Allocation Agreement

Drawn up and signed on January 23, 2011

Between:

The World Zionist Organization through the Settlement Division
(henceforth: "the settling body")

On one side

And:

Assaf Azoulay, ID [REDACTED]
(henceforth: "the user")

On the second side

And:

The Shilo Cooperative Association – [stamped] Shilo Agricultural Cooperative Village for Community Settlement Ltd, Cooperative Association 57-002598-1
(henceforth: "the association" and/or "the settlement")

On the third side

Whereas:

the user is interested in using for the purpose of planting a piece of land that was allocated to the settling body, within the boundaries of the settlement of Shilo (henceforth: "the land") and which is marked on the map attached to this agreement as **appendix A**;

And whereas:

an agreement was drawn up between the settling body and the Supervisor of Abandoned and Governmental Property in Judea and Samaria (henceforth: "the supervisor"), according to which the land was provided by permission to the settling body for planning the development and establishment of the settlement. The agreement is attached to this contract and marked as **appendix B**;

And whereas:

the agreement marked as appendix B allows the settling body to allocate the land to the user for planting subject to the user signing this agreement;

And whereas:

the association (the settlement) gave its agreement to plant in the area within the settlement;

And whereas:

the user recognizes the settling body's responsibility for the land and its right to allocate this land, subject to the agreement of the association as aforesaid.

Special Land Allocation Agreement between Assaf Azoulay and the Settlement Division (continued)

Attached to this agreement is a permit from the settling body's allocation committee, which is marked as **appendix C**;

Therefore it has been agreed and stipulated as follows:

1. The introduction to this agreement constitutes an inseparable part thereof.
2. The settling body allocates the land to the user for the period beginning on February 1, 2011 until February 1, 2032 (henceforth: "**the period of allocation**").
3. The sides will be permitted to extend the allocation for an additional period, 60 days prior to the end of the allocation period.
4. It is hereby agreed that each of the sides of this agreement may terminate the agreement for any reason and without being obligated to explain the reasons, by written notice to the other side 60 days prior (henceforth: "**the period of prior notice**").
5. The user undertakes to use the land solely for the purpose declared in the introduction to this agreement.
6. The user undertakes all of the settling body's obligations, with the required changes, as detailed in appendix B of this agreement, including maintaining the land allocated to it to the best of its ability.
7. In consideration of the allocation the user will pay the settling body a token allocation fee of one shekel a year.
8. It is declared and agreed by the user, that the use of the land will be its exclusive responsibility. If the settling body is sued by anyone because of the user's activity on the land, the user will indemnify the settling body and/or the association (the settlement) for any amount imposed on the settling body and/or the association (the settlement) because of its activity on the land.
9. The user will not make any financial investment in the land without the permission of the settling body and coordination with the association. In general, **any investment related to the land is forbidden, except for fencing and planting only**. If the user invests money in developing the land for the purpose declared in the introduction to this agreement then:
 - a. Terminating this agreement by the settling body will be only on grounds of public needs. However, the definition of public needs is given exclusively to the settling body.

Special Land Allocation Agreement between Assaf Azoulay and the Settlement Division (continued)

- c. The settling body and/or the association (the settlement) will make an effort to allocate the user alternative land for the use it made of the land. All in the boundaries of their financial abilities and the legal restrictions of the settling body and/or the association (the settlement) at that time.
10. Any dispute about this agreement will be adjudicated in the court vested with the local and relevant authority to adjudicate it. The sides may appoint an agreed arbitrator on their behalf. The arbitration will be exempt from legal procedure and laws of evidence.
11. Despite all of the aforesaid, it is declared and agreed between the sides that the fulfillment of this agreement depends on the fulfillment of the agreement between the settling body, concerning the land, and the supervisor [of Abandoned and Governmental Property]; and between the settling body and the association. If the agreement between the settling body and the association and/or the agreement between the settling body and the supervisor is terminated for any reason or the allocated land is reduced, this agreement will be canceled immediately without any of the sides having any claim against the other side.

And in evidence thereof, the sides hereby sign:

[stamped]

WZO Settlement Division

[signed] Assaf Azoulay

[signed and stamped] Shilo

The settling body

The user

The association

Special Land Allocation Agreement between Assaf Azoulay and the Settlement Division (continued)



The State's commitment to evacuate the agricultural invasion by August 2011 (preliminary response by respondents in HCJ 2186/11, Mahmoud al-Araj v Commander of IDF Forces in the West Bank, May 12, 2011)

In the Supreme Court
Sitting as the High Court of Justice

HCJ 2186/11

Mahmoud Muhammad Mohsen al-Araj et al.

Represented by Atty. Michael Sfard et al.
Yesh Din – Volunteers for Human Rights
45 Yehuda Halevy, Tel Aviv
Tel: 03-620-6947/8/9, fax: 03-620-6950

The Petitioners

v

Commander of IDF Forces in the West Bank et al.

Represented by State Attorney's Office
Ministry of Justice, Jerusalem
Tel: 02-646-6472, fax: 02-646-7011

The Respondents

Preliminary Response by the Respondents

1. Pursuant to the decision by the Hon. Justice Hayut from March 17, 2011, and the decision from April 28, 2011, to extend the deadline, the respondents hereby submit a preliminary response to this petition.
2. The subject of the petition is the petitioners' motion to enforce a land eviction demand from September 21, 2010, which was issued based on the Order concerning Disruptive Use of Private Land (henceforth: **the order**), and attached as **appendix a/1 of the petition**.
3. The Head of the Civil Administration in Judea and Samaria addressed the matter of the order several days ago. The Head of the Civil Administration ordered the forced eviction by virtue of the order to take place no later than the end of August 2011.
4. Under these circumstances, the petition seems to have been obviated and should be dropped. Alternatively, if the Honorable Court decides it would be premature to drop the petition, the respondents will move to allow them to submit an update notice by September 15, 2011.
5. This preliminary response is supported by the affidavit of Brig. Gen. Moti Almoz, Head of the Civil Administration in Judea and Samaria.

Today, May 12, 2011

[signed]
Atty. Aner Hellman
Director of HCJ affairs
At State Attorney's Office



The State's commitment to evacuate the agricultural invasion by August 2011 (continued)

Affidavit

I the undersigned, Brig. Gen. Moti Almoz, hereby declare the following:

1. I serve in the office of Head of the Civil Administration in Judea and Samaria.
2. This affidavit is given in support of the preliminary response on behalf of the respondent in HCJ 2186/11 (henceforth: **the preliminary response**).
3. The facts detailed in this preliminary response are true.
4. This is my name, this is my signature and the contents of my affidavit are true.

[Signed]

Brig. Gen. Moti Almoz

Confirmation

I, the undersigned, Yaakov Ivtzan, hereby confirm that on May 11, 2011, I appeared before Brig. Gen. Moti Almoz whom I know personally, and after I apprised him of his obligation to tell the truth and that if he did not do so he would be subject to the penalties set forth by the law, he signed his affidavit before me.

[Stamped]

Yaacov Ivtzan, Atty.

Letter from Maj. Zohar Levy, Head of Public Inquiries Department at the
IDF Spokesperson's Office, September 23, 2012



Israel Defense Forces
IDF Spokesperson Division
Public Relations Branch
Public Inquiries Department
Tel: 03-5695757/1657
Fax: 03-5693971
Reference number 16341
September 20, 2012

Roni Pelli, Yesh Din

**Re: Your request under the Freedom of Information Act to receive information
about the denial of Palestinian access to agricultural areas around the outpost of
Adei Ad**

1. Pursuant to your inquiry on the matter in reference, following is our position after checking with the competent parties:
2. In recent years, ahead of the olive harvest season, the security forces order the closure of areas adjacent to Israeli settlements. The purpose of the closure of the areas to Palestinians is to allow the security forces to guard the settlements against the security threat posed to them by terrorist elements who might try to take advantage of the harvest near the settlements in order to attack the Israeli residents who live in those settlements. The purpose of the closure of the areas to Israelis is to prevent illegal activity by Israelis that might disrupt the orderly conduct of the harvest.
3. Attached for your review are the declarations that were signed as to the closure of areas in the area of the unauthorized outpost of Adei Ad in the years 2010-2011. We do not have documentation of closure orders for the period before those years.
4. Beyon
d the aforesaid, our inquiry found no orders of declaration of closed military zones to Palestinians in the area of the outpost of Adei Ad, neither of "absolute" closure or of closure of the area so that entry into it depends on coordination (in both cases the closure of the area is based on the provisions of Section 318 of the Order concerning Security Provisions [Combined Version] (Judea and Samaria) (No. 1651), 2009).
5. However, we cannot rule out the possibility that such closure orders were issued during the period to which your request refers, and that the said orders were not documented.
6. We would be happy to be at your disposal for any questions or clarifications.

Sincerely,
Zohar Halevy, Maj.
Head of Public Inquiries Department
IDF Spokesperson



**Letter from the Office of Head of the Civil Administration,
November 25, 2010**

Unclassified



**Israel Defense Forces
Civil Administration in Judea and Samaria
Public Inquiries
Tel: 02-9977001
Fax: 02-9977341
Infrastructures – 12
November 25, 2010**

To
Atty. Shlomi Zachary
Tel: 03-620-6949
Fax: 03-620-6950

**Re: Your demand for the immediate evacuation of the illegal outpost of Adei Ad in
Judea and Samaria**

1. I hereby confirm receiving your inquiry in reference. Following is our response.
2. First, I wish to apologize for the long response period to your letter.
3. As for your claims about granting access to the land owned by the Palestinian villages in the area, we note that the competent parties in the Civil Administration are in direct contact with the residents of the villages cited in your inquiry. Furthermore, the representatives of the villages, for their part, know how to directly contact the cell phones of the relevant officers for any request or matter.
4. In this way, all of the required coordination was undertaken to allow the residents of the villages to perform the agricultural work on their land.
5. As for your demand to enact enforcement measures against the illegal construction in the outpost of Adei Ad, let me stress that further inspection procedures will be undertaken subject to the discretion of the competent parties, according to their priorities and subject to all the relevant considerations.
6. For your information.
7. Sincerely,

Amos Wagner, Second Lieut.
Officer of Supervision and Public Inquiries
Office of Head of Civil Administration

Some 100 outposts - illegal Jewish settlement points in the West Bank - have been built to date. In this report, the outpost of Adei Ad serves as a test case illustrating how the foundation and establishment of an outpost leads the farmers in the nearby villages to lose their ability to work their land. The observation of a single outpost helps understand the general phenomenon and the method of the outposts as a means to take over Palestinian land.

The outpost of Adei Ad was founded in the fall of 1998. Over the years that have followed, Israeli civilians have committed and continue to commit dozens of criminal and administrative offenses on and around the outpost. The agencies responsible for law enforcement in the West Bank fail to perform this function adequately. This enforcement failure is shared by the IDF, which is responsible via the Civil Administration for enforcement against the administrative offenses that include illegal construction and invasions of agricultural land; and the Samaria & Judea (SJ) District Police, which is responsible for enforcement against criminal offenses including violence, property offenses and the takeover of land, and is obligated to prevent crimes, locate offenders and complete investigations so that they lead to serving indictments against suspects.

The founding of Adei Ad led the IDF to define extensive areas as no entry zones for Palestinians, and to allow Palestinians into other agricultural areas only with IDF permission and advance coordination. Other areas have become inaccessible to Palestinians following events of violence, harassment and threats by Israeli civilians who have intimidated the Palestinian farmers. Consequently many farmers are unable to cultivate their land or can do so only partially and discontinuously.

This report presents the connection between the failure of the authorities responsible for law enforcement and the protection of Palestinians and their property, and the dispossession of Palestinians from their land, by drawing a continuum that begins with the absence of effective law enforcement upon Israeli civilians, both on the criminal and the administrative levels, and ends with the inability of the Palestinian land owners to work their land and live off its fruit.

Yesh Din - Volunteers for Human Rights was founded in March 2005 and since then its volunteers have been working to achieve long-term structural improvement in the human rights situation in the Occupied Palestinian Territories. The organization works through collection and dissemination of credible and current information about systematic violations of human rights in the territories; exerting public and legal pressure on the state authorities to stop such violations; and raising public awareness of human rights violations in the territories. In order to achieve its goals effectively, Yesh Din uses a unique model in the field of human rights in Israel: the organization is operated and administered by volunteers and assisted on a daily basis by a professional team of lawyers, human rights experts and strategic and communications consultants.

