Crime without Punishment

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Cover photo: The unauthorized outpost of Hayovel as seen from the Palestinian village of Qaryut (Photo: Muhammad al-Baz, Activestills)
INTRODUCTION

"Yes. I said that as far as I was concerned work could continue. I am responsible. I still think so today. Everything that is built in Ofra gets stop-work orders. [...] Civil Administration officials do what they need to do as part of their function, and we continue to work, even though there is a stop-work order. We understand the situation, and not a single house has been demolished in Ofra."

Avraham (Avi) Roeh, Head of Binyamin Regional Council, 2012

Illegal construction by Israelis on West Bank land has been going on for nearly 50 years. Hundreds of thousands of structures and roads have been built in the Occupied Palestinian Territories (OPT) through trespass, land grab and myriad infractions against building and planning laws. This criminal activity denies Palestinian residents of the West Bank access to their land and violates many of their fundamental rights, including the right to property and the right to freedom of movement.

Over the years, as a result of political pressure, and diplomatic undertakings, the Government of Israel (GOI) committed to a moratorium on construction in the OPT. To circumvent these resolutions, Israelis began taking the law into their own hands, expanding settlements and unauthorized outposts on private and public Palestinian land without official Israeli support, but with the involvement of and assistance from various public authorities and government agencies.

The Civil Administration often issues stop-work and demolition orders for illegal structures, but this, in truth, is simply a façade of rule of law. The absolute majority of these administrative orders is not enforced. Palestinian landowners can petition the High Court of Justice (HCJ) to instruct the State to execute the orders and remove illegal construction pursued without permits throughout the West Bank. In some of these petitions, the High Court does issue interim orders that are meant to keep the status quo pending a decision on the petition. However, the reality in the OPT means both the administrative and the judicial orders are often callously violated by Israeli settlers in the West Bank.

This position paper examines how Israeli law enforcement agencies treat these criminal offenses, especially the violation of administrative and judicial orders, and argues that Israel’s law enforcement mechanism systemically and routinely fails in its duties and does

1 Police Confession of Avraham Roeh, February 9, 2012 (Police File No. 97623/09).
2 For further details, see Yesh Din report, Under the Radar: Israel’s silent policy of transforming unauthorized outposts into official settlements (March 2015), pp. 8-15.
not penalize offenders. From an overall perspective, it is even possible to say that the law enforcement system is mobilized in favor of the Israel settlement enterprise in the West Bank.

Without criminal enforcement, there is no element of deterrence against offenders, who, emboldened by the sense of immunity they are given by the authorities, repeat their practices elsewhere. The end result is, regrettably, that very little changes. Israelis continue building illegally in the West Bank and Palestinians are deprived of their rights to their lands.

**LAW ENFORCEMENT ON ISRAELI CIVILIANS IN THE WEST BANK**

The Military Commander of the West Bank is the Israeli GOC Central Command. He has effective control over this part of the OPT and serves as its temporary trustee. In that capacity, he is responsible for law enforcement in the area in its entirety, including building and planning laws. This role is carried out by military and police forces that operate pursuant to the military commander’s powers and under his authorization.

The Civil Administration is the military body that holds the powers to govern civilian life in the OPT, including the enforcement of building, planning, construction and infrastructure laws in Area C. This includes issuing stop-work and demolition orders. Over the years, the Civil Administration Enforcement Unit has issued thousands of demolition orders for buildings and roads built unlawfully and without permits throughout the West Bank; but in most cases, these administrative orders were never executed. In practice, the execution of demolition orders requires a decision by the Minister of Defense, who is naturally influenced by political pressure and ideology. With very few exceptions - usually after lengthy legal battles - defense ministers have traditionally refrained from ordering the execution of these orders.

In addition to the administrative enforcement track, planning and building violations are also supposed to be enforced criminally. The Samaria & Judea (SJ) District Police of the Israel Police is responsible for investigating criminal offenses. Criminal enforcement also includes prosecution, if merits the investigation, and it is the police or the State Attorney’s Office who have the power to draft indictments and prosecute offenders.

It is important to note the behind-the-scenes battle taking place between the Israel Police and the Civil Administration over whom is responsible for criminal enforcement regarding construction and planning violations by Israeli civilians in the OPT. The matter was addressed by the State Comptroller, as well as the Attorney General and the Minister of Defense. According to the State Attorney’s Office, in mid 2015, a decision was made to establish a

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3 The Interim Agreement signed between Israel and the PLO in 1995 determined that all civilian and security powers in Area C, which spans some 60% of the West Bank, will remain in Israel’s hands.

designated unit within the Civil Administration to investigate building and planning violations in the West Bank.\textsuperscript{5} To the best of Yesh Din’s knowledge, as of December 2016, no such unit has been established; if it has, its presence has not been evident.\textsuperscript{6}

### The duty to protect protected persons and their property in an occupied territory

Israel’s duty, as the occupying power, to enforce the law in the OPT is anchored in the rules of international humanitarian law, and includes the duty to actively protect the property of protected persons in the OPT from third parties, and to take action to ensure protected persons are able to enjoy their property and exercise other fundamental rights.\textsuperscript{7}

The duty to effectively investigate suspected violations of the prohibition on harming protected persons and their property, and to bring offenders to justice, is an inseparable part of the duty to protect the protected population.

The conventions that make up international human rights law detail the standards which obligate countries to conduct effective investigations into suspected human rights violations. These provisions include several requirements that, if met, would allow suspects to be brought to justice in keeping with the principle of accountability, while maintaining due process rights: independence, impartiality, effectiveness, thoroughness, professionalism, transparency, publicity and promptness.\textsuperscript{8}

### THE CRIMINAL PROCESS

Criminal law is a central branch of any legal system. Its role is to regulate public life and help protect society’s basic interests, by putting in place norms which are binding for all its members. Imposing criminal penalties, through penal codes, is meant to prevent or reduce violations of these norms, which is achieved both by effecting personal and public deterrence, and expressing a value judgment as to the morally reprehensible nature of the convicted person’s conduct.

Law enforcement begins with an attempt to prevent illegal activity. When prevention fails, and an offense is committed, retroactive investigation begins. The duty to investigate is

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\textsuperscript{5} HCJ 8088/14 Farhat v. Attorney General et al., Response on behalf of Respondent 1, November 10, 2015.

\textsuperscript{6} For further details on the division of responsibility between the Israel Police and the Civil Administration with respect to offenses committed in connection to illegal construction, see Yesh Din report, Mock Enforcement: The failure to enforce the law on Israeli civilians in the West Bank (May 2015), pp. 119-122.

\textsuperscript{7} Hague Convention respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (1907), Arts. 43 and 46; Fourth Geneva Convention; Arts. 27, 146, 147.

\textsuperscript{8} UN International Covenant on Civil and Political Rights, Arts. 2, 7.
entrenched in the Criminal Procedure Law which stipulates that once the police becomes aware of a suspected offense, whether through a complaint it receives, or through any other means, it must launch an investigation.\(^9\) Israeli Supreme Court jurisprudence has also recognized a duty on the part of the police to conduct effective investigations:

As is known, the duty to take action to uncover the truth and the duty to bring the true culprit in the commission of an offense to justice are fundamental for the duty to investigate. The duty the authorities have to properly conduct exhaustive investigations also forms part of the defendant’s right to a proper, fair trial, as it is a means for uncovering the truth.\(^{10}\)

Once the investigation is completed, the police must decide whether to transfer the file to the prosecution authorities to continue the criminal process, or to close the investigation. The main grounds on which the police decide not to prosecute a suspect are: absence of criminal culpability, insufficient evidence, and lack of public interest.

An investigation file that is transferred to the Police Prosecution Unit, or to the State Attorney’s Office (depending on the severity of the offense) is examined by these agencies, which then decide whether to serve an indictment against the suspects and on which charges. The Criminal Procedure Law stipulates two cumulative conditions for prosecution: availability of sufficient evidence to support an indictment and public interest in holding the trial.\(^{11}\) Alternatively, prosecution authorities have the power to decide the investigation was not exhausted, and the police must reopen the file and conduct a “supplementary investigation,” in other words, take essential investigative measures hitherto untaken. When criminal charges are laid, the lawyers of the State Attorney’s Office represent the public in court against the defendant.

By law, when an investigation file is closed, whether by the police or the State Attorney’s Office, the complainant must receive written notice of the decision, noting the grounds for the closure. The complainant may then appeal the decision to close the file without filing charges.\(^{12}\) The court has also recognized the complainant’s right to review the investigation file subject to several criteria.\(^{13}\) The appeal process grants the complainant the right to plead

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12. Ibid., Secs. 63-65.
before an official who is superior to the one who made the decision to close the file, and indicate that certain courses of investigation had not been fully pursued or argue that the evidence collected is sufficient for filing an indictment.

If the enforcement agencies reject the appeal, the complainant may petition the Supreme Court sitting as the High Court of Justice to instruct the State Attorney’s Office to reopen the investigation or charge the suspects. As a rule, High Court justices tend to shy away from intervening, unless they believe the decision made by the authorities was extremely unreasonable.14

CRIME WITHOUT PUNISHMENT

Since 2007, Yesh Din has helped file scores of High Court petitions asking the state be instructed to execute administrative demolition orders it itself issued for buildings, roads, and infrastructure facilities, and to thus remove unlawful construction in the West Bank. During the deliberations in some of these petitions, High Court justices issued interim orders prohibiting any further construction and occupancy to prevent any steps that would frustrate the remedies sought in the petition.15

Illegal construction and non-compliance with orders issued by administrative or judicial authorities are criminal offenses. Building and planning laws, as well as orders issued by the Civil Administration are enforced pursuant to sections 37-39 of the Order regarding the Planning of Towns, Villages and Buildings (Judea and Samaria) (No. 418) 5731-1971. As for the violation of a court order, the Israeli Penal Code states: “A person violating a directive lawfully issued by a court, an official or any person acting in an official capacity and authorized for that purpose, shall be sentenced to a prison term of two years”.16 Such violations also constitute contempt of court and are enforceable through fines and incarceration under the Contempt of Court Ordinance.17

This position paper is the outcome of qualitative research rooted in nearly a decade of work on access to land by Yesh Din. It focuses on five test cases that illustrate the grim reality of lack of enforcement on unlawful construction by Israelis in the West Bank, with an emphasis on violation of administrative and judicial orders.

15 For further details see: Yesh Din report Land Takeover Practices Employed by Israel in the West Bank (September 2016), pp. 5-10.
16 Penal Code 5737-1977, Sec. 287(a).
17 Contempt of Court Ordinance, Section 23, No. 12, 1929.
The position paper describes and analyzes the negligence and failures exhibited by the authorities at every phase of enforcement, beginning with enforcement action by the Civil Administration, through police investigation and the decision-making process regarding appeals at the State Attorney’s Office, and ending with court proceedings. The position paper also demonstrates the absurdity inherent in the state’s attempts to address criminal activity that is often conducted with state funding and assistance. It suggests that Israel, with its various agencies, makes rules and policy with one hand, and violates them with the other.

It is important to reiterate that the main victims of Israel’s law enforcement failure, as presented in this position paper, are Palestinian residents of the West Bank, who are protected persons under international humanitarian law, but are not afforded civil rights. Unlawful construction takes place on Palestinian land, and due to the presence of Israeli settlers, Israeli security forces deny Palestinian landowners access to their land, meaning these systemic failures lead to severe violation of Palestinians’ fundamental rights.
"Paving is part of the entire neighborhood, where enforcement never took place. If no enforcement is taken against the entire neighborhood, paving becomes secondary."

“Samaria Supervisor” in the Civil Administration Enforcement Unit, 2012

The Illegal Construction Procedure stipulates that the Enforcement Subcommittee, which includes senior planning and infrastructure officials in the Civil Administration, is responsible for issuing stop-work and demolition orders for illegal structures. The Central Enforcement Unit serves as the Civil Administration’s enforcement arm and it is the agency in charge of enforcing building laws in Area C.

Civil Administration enforcement inspectors do often issue stop-work and demolition orders for buildings or roads constructed unlawfully and without permits, and either hand them to the individuals carrying out the work or leave them at the site. However, as noted, enforcement (that is, the execution of these orders), often depends on decisions made at the government level, and in the vast majority of cases there is no enforcement. The Civil Administration’s practice of issuing orders is thus bureaucratic preparation for a measure that is seldom followed through.

Moreover, as presented below, experience shows that some Civil Administration enforcement inspectors demonstrate a great deal of sympathy for the individuals involved in the construction, turn a blind eye to violations, and even cover for them during police investigations. Sympathy for perpetrators has been observed by Yesh Din with respect to other Israeli law enforcement agencies in the West Bank as well.

UNLAWFUL ROAD CONSTRUCTION ON LAND BELONGING TO THE VILLAGE OF QARYUT

In March 2009, Yesh Din addressed the head of the Civil Administration, demanding he take all necessary steps to put an end to construction work on a road meant to connect the settlement of Eli with the unauthorized outpost of Hayovel, as this construction was on land belonging to residents of the Palestinian village of Qaryut. Concomitantly, the Head of Qaryut Village Council filed a police complaint regarding trespass and illegal activity on land.

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19 For further details see: Yesh Din report, *The Road to Dispossession: A Case Study – the Outpost of Adei Ad* (February 2013), pp. 74-76.
Correspondence with the Civil Administration revealed that it had issued stop-work and demolition orders for this segment of the road back in 2005, when work had just begun. The orders were never enforced.

The police interview held with A.W., “Samaria Supervisor” with the Civil Administration Enforcement Unit, as part of an investigation into the violation of judicial orders issued in this case, sheds light on the underlying assumptions for enforcement actions and on the relationship between the enforcement unit and the settlers, whose actions it is meant to oversee.

Responding to the police interrogator’s question: “Why did you not take enforcement action against the paving [of the road]. You did say in the beginning of your statement that a stop-work order was issued in September 2005?” A.W. said: “Paving is part of the entire neighborhood [i.e. the outpost of Hayovel], where enforcement never took place. If no enforcement is taken against the entire neighborhood, paving becomes secondary.” In other words, if the policy is not to enforce the law in the case of a severe violation that continues for years, there is no point in enforcement action against a relatively minor offense.

In addition, during his interrogation, Supervisor A.W. attempted to conceal the identify of the party responsible for the work, initially claiming: “I don’t know. We didn’t meet, and we didn’t see anyone”. However, when the interrogator refreshed A.W.’s memory regarding a telephone conversation with another interrogator, in which A.W. said the secretary of the settlement of Eli had told him the settlement was responsible for the roadworks, A.W. admitted to having made that comment, but added it was said “off the record” and that should it be revealed, his work with the settlement and his relationship with the settlers would be ruined.

Neither the police complaint nor the appeal to the Head of the Civil Administration prevented work on the road, and the Qaryut Council Head petitioned the High Court, with Yesh Din’s assistance, asking for the execution of the stop-work and demolition orders the authorities had issued for the road. Following the petition, the High Court issued an interim order on April 5, 2009, prohibiting any construction activity at the site.

But the High Court order did not stop construction either.

During deliberations in the petition, state counsel admitted, before the court, that the interim order had been violated. State counsel further stated that the police were investigating the matter, in tandem with an investigation into criminal liability for the unlawful construction. The justices wrote that they considered continued work on the road subsequent to the issuance of an interim order “a most grievous matter”\(^\text{22}\) and issued an *order nisi* for the State to explain why it had not taken any action against the parties that violated the interim order.\(^\text{23}\) The State chose to respond with a brief statement that several individuals had been questioned as part of the investigation and that “for obvious reasons, no further comments can be made regarding the content of the investigation at this stage.”\(^\text{24}\)

**The police investigation and the appeal**

After an investigation that lasted more than four years, during which only nine people were questioned, in July of 2013, the SJ Police District Prosecution Unit closed the file on grounds of insufficient evidence. The file was closed although top State Attorney’s Office officials found - back in September 2011 - that “there is an indication as to the identity of the entity carrying out the work.”\(^\text{25}\)

After reviewing the documents contained in the investigation file, Yesh Din appealed the decision to close the investigation to the State Attorney’s Office.\(^\text{26}\) The appeal was filed for two main reasons:

First, the materials contained in the investigation file indicated a sufficient evidentiary basis for indictment and prosecution of several parties involved in the affair, both for trespassing and illegal construction, and for violating a judicial order. The appeal detailed the negligence exhibited throughout the investigation, as well as contradictions between the different accounts given by the suspects. It was argued that although the investigation had not been exhaustive, enough evidence had been gathered to warrant an indictment against an aide to the Head of the Binyamin Regional Council and against the Eli Local Council and Cooperative Association as corporations that worked jointly to clear and pave a road unlawfully, while trespassing and in violation of administrative orders. These bodies could also be charged for their role in funding, aiding, and soliciting various entities to knowingly and explicitly violate a court order, or at least for doing so by turning a blind eye to these actions.

\(^{22}\) HCJ 2759/09, Decision, May 26, 2010.

\(^{23}\) HCJ 2759/09, *Order nisi*, April 6, 2011.

\(^{24}\) HCJ 2759/09, Response on behalf of Respondents 1-4, May 31, 2011.

\(^{25}\) Deputy State Attorney (Special Functions), *Cases of illegal construction and violation of judicial orders in the Judea and Samaria Area – Meeting Summary*, September 8, 2011.

There are at least two “smoking guns” which were not thoroughly explored during the investigation. The first is a bill for 458,056 Israeli shekels (approximately $120,500 USD) for overseeing construction on the road issued by the construction oversight company. The document is dated some six weeks after the High Court issued the interim order and is addressed to the Binyamin Regional Council. The second is Civil Administration supervisor A.W.’s statement to the police that the secretary of the Eli settlement told him that the settlement had ordered the construction.

The second reason meriting the appeal was substantial flaws in police work on the complaint, as well as on the violation of the interim order. A review of the investigation file indicated that the police failed to take essential steps required for a thorough investigation. Specifically, the police had not seized relevant documents, confronted suspects with the evidence and with contradicting accounts given by other suspects, or interrogated additional suspects that emerged from the investigative materials. Yesh Din argued that the defects in the investigation and the investigators’ failure to take the basic necessary steps were detrimental to the evidence-gathering phase and thus hindered the ability to assess the chances of conviction, which is required for a decision on prosecution (though, as noted above, there was sufficient evidence for prosecuting at least some of the suspects). Yesh Din’s appeal also asserted that if all the necessary steps had been taken for a thorough and professional investigation, investigation officials would more than likely have a sufficient evidentiary basis for prosecution, even according to the officials’ own assessment.

For example, the first significant investigative step was taken only eight months after the complaint was filed, and subsequent measures were taken months and even years after that. The elapsed time would certainly have impacted the collection of evidence required for a thorough, exhaustive investigation. The great delay in investigative action had an effect on the individuals who were interrogated as well. For instance, the lawyer who represented the Binyamin Regional Council before the High Court of Justice said during his interrogation, held in March 2013, that “these are old incidents” and “I cannot remember [things] from 2009.”

Furthermore, the role of Amana – Cooperative Association in clearing and constructing the road was never explored by the police, although the association was mentioned by several people questioned during the investigation, including the director of the construction oversight company, who expressly stated he was paid for the project by Amana.

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28 Amana was established in 1978 and functions as the settling arm of Gush Emunim and the Yesha Council. Amana plans and initiates construction in illegal settlements and outposts throughout the West Bank. The organization has been headed by Zeev Hever (Zambish) since 1989.
Appeal rejected

In January 2016, the State Attorney’s Office rejected Yesh Din’s appeal. The decision read: “There is no dispute that work on the road was carried out even after the High Court gave its decision,” but that “it is not possible to determine who carried out the work, nor can it be proven that the parties who carried out the work were aware that the land is privately owned, or that they continued work after receiving the decision of the High Court halting construction.”

In August 2014, more than five years after it was filed, the petition was partially accepted by the High Court of Justice, which determined that Israel must demolish within one year the parts of the road that are located on land that can not be declared state land. The ruling was handed down exactly a decade after the Civil Administration issued the demolition order. The parties responsible for the trespass, illegal construction and violation of judicial orders were never tried.

29 State Attorney’s Office, Appeal Department to Yesh Din, Appeal decision, January 19, 2016.
30 HCJ 2759/09, Judgment, August 20, 2014.
"Regrettably, the investigation was not exhaustive. Relevant regional council officials were never questioned, nor were all parties from the settlement of Kochav Ya’akov. Today, five years after the incidents took place, there is no longer a reasonable chance of reaching any findings in this matter."

State Attorney’s Office, 2014

Investigation, usually conducted by the police, is the bedrock of criminal enforcement that focuses on the accountability of the offenders. Without proper investigation, there is no prosecution or punishment. Without these, deterrence is crippled, and with it, public order. As noted, the duty to properly conduct exhaustive investigations is entrenched in international human rights law, Israeli law and jurisprudence. And, where grave breaches of the laws of occupation are concerned, the duty is also part of international humanitarian law.

And yet, a review of the police investigation files in the offenses covered in this position paper reveals significant shortcomings in the conduct of investigations into the violation of administrative and judicial orders, and into illegal construction by Israelis in the West Bank. As presented below, many of the investigations are commenced long after the offense is committed and are unreasonably protracted severely undermining their effectiveness. Furthermore, police investigators refrain from calling major witnesses and involved parties in for questioning; when they do, they fail to confront them with the suspects, or with contradicting accounts that emerged during the investigation. Police investigators also often refrain from seizing documents and other evidence that could prove significant and shed light on the suspects, their sources of funding, and the parties behind their actions.

31 State Attorney’s Office Appeal Department to Yesh Din, Appeal by your client regarding decision to close Police File No. 363851/09 Binyamin, August 13, 2014.

32 Unfortunately, criminal investigations carried out by the police into other matters in the OPT are also riddled with flaws. For further details see: Yesh Din Report, Mock Enforcement: The failure to enforce the law on Israeli civilians in the West Bank (May 2015), pp. 36-96.
In September 2011, top officials from the State Attorney’s Office, the SJ District Police, and the military’s Office of the Legal Advisor – Judea & Samaria (LA-JS) met at the office of the Deputy State Attorney (Special Functions) to discuss how to advance work on cases of “violation of judicial orders issued by the High Court for the cessation of illegal construction” in the West Bank.  

Participants emphasized “the importance of processing, and prioritizing these cases, as they entail severe harm to the rule of law,” and addressed the difficulties and issues affecting cooperation between the various enforcement agencies. At the meeting it was concluded that first, during police investigations, it is highly important to investigate not only the party carrying out the illegal construction work but also the parties that issued the instructions to violate the order, and funded same. Second, that there should be investigation into sequence by which the order was received by the various parties operating on the ground, in order to determine which party knew about the order and bore responsibility for implementing and enforcing it. The investigation must also address funding, that is, who paid for the work carried out in violation of the order.

Despite these conclusions, made by senior law enforcement officials, no significant change was observed in case processing.

THE CONSTRUCTION OF 12 ILLEGAL STRUCTURES ON LAND BELONGING TO THE VILLAGE OF KAFR ‘AQAB

In early August 2009, residents of the Palestinian village of Kafr ‘Aqab, located near Ramallah, discovered construction was underway on 12 illegal structures on land belonging to them, and located near the settlement of Kochav Ya’akov. The head of the Kafr ‘Aqab Village Council and the landowners filed an urgent petition to the High Court, with Yesh Din’s assistance, demanding construction cease.

The Court was asked to issue an order for the immediate cessation of construction, given the priorities Israel had set for law enforcement, according to which, once occupancy in the structures begins, eviction becomes much more difficult. The petition claimed that in the structures begins, eviction becomes much more difficult. The petition claimed that in

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33 Deputy State Attorney (Special Functions), Cases of illegal construction and violation of judicial orders in the Judea and Samaria Area – Meeting Summary, September 8, 2011.

34 HCJ 6505/09 Kafr ‘Aqab Village Council Head et al. v. Minister of Defense et al., Petition for Order nisi, Interim Order and Temporary Order, August 13, 2009 (hereinafter: HCJ 6505/09). The petition was filed after communications from Yesh Din to the Head of the Civil Administration and the Attorney General received no pertinent answer.

35 Priorities for enforcement of demolition orders issued in cases of illegal construction in the West Bank were provided in the state’s response to HCJ 9051/05 Peace Now - Shaal Educational Enterprises v. Defense Minister et al., October 28, 2008. For further details see: Yesh Din report, The Road to Dispossession: A Case Study – the Outpost of Adei Ad (February 2013), pp. 80-81.
eschewing their obligation to enforce the law regarding illegal construction, the authorities were granting tacit permission for offenses committed on the private property of West Bank residents, protected persons under international humanitarian law, and all for the sake of expanding an illegal settlement.

On September 1, 2009, the Binyamin Regional Council filed its response to the petition, in which it argued that all 12 structures housed families of recently arrived immigrants and that they had all been connected to utilities. Thus, the Binyamin Regional Council alleged that “the interim order requested on this matter is no longer relevant.” The response included an affidavit from the Council Chief Architect.36

The State Attorney’s Office filed its own response the next day, admitting that the structures were built illegally. The response also noted that the Civil Administration Enforcement Unit had issued stop-work orders on August 4, 2009, and that on August 16, 2009, a closed-military zone order was issued stating “Entry into the area by Israeli civilians and their presence therein is prohibited and constitutes a criminal offense”.37

The High Court issued an interim order prohibiting further construction on the buildings themselves and roads between, as well as connecting the buildings to utilities.38 The order was based on the assumption that the buildings were already in use, based on the affidavit given by the Binyamin Regional Council, but, as explained further below, the facts were very different.

In December 2009, the Civil Administration issued final demolition orders for the 12 buildings, but a year later, the State announced that “the Minister of Defense had launched survey proceedings to examine the status of the land on which work was carried out,” in a bid to clearly mark which plots were public land and which were not. This development was part of Israel’s new policy of considering avenues for retroactive authorization of illegal construction that is not located on privately owned land.39 And so, in April 2013, the State announced that “the construction which is the subject of the petition is located in an area considered state land, and merits declaration as ‘government property.’”40

36 HCJ 6505/09, Response on behalf of Respondent 5 to the Request for Interim Order and Preliminary Response, September 1, 2009.
37 HCJ 6505/09, Preliminary Response on behalf of Respondents 1-4, September 2, 2009.
39 HCJ 6505/09, Updating Notice (No. 3) on behalf of Respondents 1-4, November 15, 2010. “Survey proceedings” are meant to determine the status of rights to land whose status is unknown, and consider declaring such as state land. For more on the retroactive authorization of illegally built outposts and structures, see Yesh Din report, From Occupation to Annexation: The silent adoption of the Levy Report on retroactive authorization of illegal construction in the West Bank (February 2016).
40 HCJ 6505/09, Updating Notice on behalf of Respondents 1-4, April 23, 2013. In October 2013, the Kafr ‘Aqab Village
The police investigation and the appeal

The fact that the land in question had been declared public land did not absolve the police from the duty to continue the criminal investigation into the violation of the administrative orders, launched in 2009. During a High Court hearing held in December 2012, Yesh Din counsel remonstrated: “Why does it take three and a half years to investigate?” Chief Justice Grunis agreed, and criticized the authorities, charging, “This is a snail’s pace.”

In this case, too, upon completion of the investigation, the State announced that “following a review of the evidence contained in the file, the police has decided to close it on the grounds of insufficient evidence.” Even the High Court justices were dismayed that after four years, “the decision to close the file cites the reason as a lack of ‘sufficient evidence for prosecution.’ The grounds cited in the decision certainly raise questions […] A more detailed explanation for the decision made by the police to close the file should be provided.”

In December 2013, after receiving the investigation materials as provided by the police, Yesh Din filed an appeal against the decision to close the file with the State Attorney’s Office. The appeal argued that despite the slow, negligent investigation, there was in fact sufficient evidence for indictments against the residents of the buildings and parties affiliated with the settlement with respect to the violation of the military closure order, as well as against the parties involved in filing a false affidavit with the court and the attendant offenses.

With respect to the closed military zone order, Yesh Din argued there was no dispute residents lived at the site in violation of the order, such that the criminal investigation against them should not have been closed, let alone on the grounds of insufficient evidence. The point was particularly clear with respect to one resident couple who, according to their police statement, immigrated to Israel on September 10, 2009, three and a half weeks after the Council Head and the landowners filed an appeal against the public land declaration with Yesh Din’s help (Appeal 68/13 (Judea and Samaria Area) Kafr ‘Aqab Village Head et al. v. Custodian of Abandoned and Government Property in the Judea and Samaria Area, October 12, 2013). The Military Appeals Committee accepted the appeal in July 2016, revoking the public land declarations. As of December 2016, the land is not recognized as public land and no planning procedures can be pursued on it. For further details see: Yesh Din report, Land Takeover Practices Employed by Israel in the West Bank: Summary of legal proceedings with which Yesh Din assisted 2006-2016 (September 2016), p. 28.

42 HCJ 6505/09, Updating Notice on behalf of Respondents 1-4, April 23, 2013.
43 HCJ 6505/09, Decision, September 2, 2013.
44 Yesh Din to Binyamin Police and State Attorney’s Office, Appeal regarding decision to close the investigation in Police File No. 363851/2009 regarding offenses connected with the petition in HCJ 6505/09, December 23, 2013.
45 On the issue of making a false oath, the Penal Code stipulates: “Anyone who knowingly provides a false affidavit, whether under oath or by affirmation, or not under oath or by affirmation, before a person authorized to accept the affidavit shall be sentenced to a prison term of three years” (Penal Code 5737-1977, Sec. 239).
military order was issued, and a week after the High Court issued the interim order. Another resident, also a new arrival in the country, came to Israel ten days after the closure order was issued. This evidence proves there were grounds for charging each of the residents with disobeying a lawfully-issued order, entering an area closed to Israelis, and then remaining in it.

The appeal also stated that the investigation file revealed that parties associated with the Kochav Ya’akov Cooperative Association signed a tenancy agreement with the couple who arrived at the settlement on September 10, 2009, a week after the interim order was issued in the petition, and ten days after settlement representatives provided an affidavit that all of the buildings were occupied. This was undertaken although the cooperative association was aware, at the time, of the closed military order since it, together with the Binyamin Regional Council, were parties to the petition. These individuals induced the residents to disobey a legal order and aided them in so doing, and as such, their prosecution for these offenses should be considered.

Yesh Din further argued that the Binyamin Regional Council Chief Architect had allegedly signed a false affidavit, which was filed with the Supreme Court. As noted, the affidavit, presented to the justices as part of the Council’s response dated September 1, 2009, stated that occupancy had begun in all structures at the site, at a time when at least one, was still vacant, considering that the aforementioned couple landed in Israel as new immigrants and arrived at the settlement only ten days later. Not insignificantly, the Council repeated the statement that “the structures are in use and connected to utility services” during the hearing held in the petition on September 3, 2009.

The false affidavit, the appeal stated, prevented issuance of an interim order that would preclude occupancy, and there was a sufficient evidentiary basis for prosecuting the Council’s Chief Architect for numerous offenses, including: taking a false oath, giving false testimony, fabricating evidence, obstruction of justice, and conspiracy to obstruct or prevent the execution of the law.

In the conclusion of the appeal, Yesh Din noted that, though sufficient evidence for filing indictments did exist, the police investigation, which, as stated, took four years, had been severely flawed. Not a single member of the Binyamin Regional Council was questioned by the police regarding their involvement in the building and funding of the structures, including the Chief Architect. Not one person was confronted over the role they played in soliciting residents to live at the site in defiance of the closure order. Finally, no documents were seized.

46 Police File No. 363851/09.
from the offices of the Kochav Ya’akov Cooperative Association or the Binyamin Regional Council.

**Appeal rejection**

In the judgment that dismissed the petition due to the retroactive assignment of the land as “public land,” but left the interim order pending, the justices urged the State to take action, stating “one would hope that the decision in the appeal against the closure of the police file is made shortly.” Five months later, the State Attorney’s Office rejected the appeal.

The State Attorney’s Office affirmed the arguments made by Yesh Din in the appeal, asserting that “a review of the material contained in the investigation file indicates that, regrettably, the investigation was not exhaustive. Relevant regional council officials were never questioned, nor were all parties from the settlement of Kochav Ya’akov. Today, five years after the incidents took place, there is no longer a reasonable chance of reaching any findings in this matter.”

Moreover, the State Attorney’s Office ignored the fact that residents were living at the site, and, in so doing, violating the military closure order. Worse still, it ignored the indications that some residents arrived in Israel after both the closure order and the interim order were issued, repeating the erroneous statement that all 12 structures were housed prior to the issuance of the orders. The State Attorney’s Office went so far as using this erroneous claim to support its finding that there was no basis for the allegation that the Chief Architect had made a false affidavit.

The police investigation was not exhaustive and unreasonably long. The State Attorney’s Office ignored the evidence, and, in the interim, the State declared the site “public land” (a declaration since revoked by the Military Appeals Committee⁴⁵), resulting in the retroactive authorization of illegal construction, without any of the offenders being brought to justice.

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⁴⁸ HCJ 6505/09, Judgment, March 5, 2014.
⁴⁹ State Attorney’s Office Appeal Department to Yesh Din, Appeal by your client regarding decision to close Police File No. 363851/09 Binyamin, August 13, 2014.
⁵⁰ See supra note 40.
"I am referring to a very prosaic aspect of criminal law – that the state must protect those whose safety, security, and property it is entrusted with protecting."

Zvi Zylbertal, Supreme Court Justice, 2016

When the police transfers an investigation file to the prosecution authorities (the Police Prosecution Unit or the State Attorney’s Office, depending on the severity of the offense), it is evaluated according to statutory and case law, in order to determine whether the suspects should be charged.

According to the law: “Inasmuch as the prosecutor who was provided with the investigation materials observes that there is sufficient evidence to indict an individual, the prosecutor shall lay charges against said individual, unless the prosecutor believes there is no public interest in holding trial.” The court’s interpretation of this provision was that sufficient evidence is evidence that holds “reasonable prospects for a conviction.”

In other words, prior to serving an indictment, the prosecution must examine all the evidence before it, assess its admissibility and weight and evaluate whether, after passing the gauntlet of criminal procedure, including cross examination, it could prove the accused’s guilt.

If sufficient evidence for an indictment does exist, then, unless there is no public interest in the trial, prosecution authorities must indict.

The test cases presented in this position paper demonstrate how even the most senior gate keepers of Israel’s law enforcement system – the State Attorney’s Office and the Attorney General – in a series of unreasonable decisions in the best case scenario, or decisions tainted by political and other extraneous interests in a less favorable scenario, practically prevent criminal enforcement against the people who drive Israel’s unlawful building enterprise in the West Bank.

51 HCJ 8088/14 Farhat v. Attorney General et al., Court Transcript, January 13, 2016 (hereinafter: HCJ 8088/14).

52 Criminal Procedure Law [Consolidated Version] 5742-1982, Sec. 62(a). There are additional, restricted exceptions that allow the State Attorney’s Office discretion to refrain from indicting, for instance, arrangements pertaining to minors.

ILLEGAL CONSTRUCTION ON LAND BELONGING TO THE VILLAGE OF A-SAWIYAH

In February 2009, Yesh Din contacted the Military Commander of the West Bank, the Military Legal Advisor – Judea & Samaria (LA-JS) and the Head of the Civil Administration regarding unlawful construction on nine homes in the unauthorized outpost of Rechelim, carried out without permits, outside the jurisdiction of any Israeli settlement and in contravention of master plans. With no response forthcoming, the Head of the a-Sawiyah Village Council, with Yesh Din’s legal assistance, petitioned the High Court to order the authorities to halt the illegal construction, and to have the structures demolished.54

Responding to the petition, the state admitted the construction was illegal, and added that Civil Administration inspectors issued stop-work and demolition orders for the structures back in May 2008, but these were violated. The State further noted that after the petition was filed, the GOC Central Command issued a closed military zone order, forbidding Israeli civilians from entering the area and instructing any Israelis present in it to leave.55

The Samaria Regional Council and the unauthorized outpost of Rechelim filed their responses on the same day, March 19, 2009, claiming that three of the nine homes were already in use, housing families. The response was supported by an affidavit signed by Noam Shamba, Rechelim Secretary at the time.56

On March 22, 2009, the High Court issued an interim order prohibiting further construction at the site, any transactions relating to the structures, and occupancy.57

Following three years of delays by the State Attorney’s Office in the case, the Government of Israel decided to shift its policy and “regulate construction in the area” – in other words, retroactively authorize Rechelim and other outposts, despite the fact that they had been illegally built. In December 2012, on orders issued at the ministerial level, the Military Commander of the West Bank changed Rechelim’s legal and municipal status, transforming it from an unauthorized outpost into an official settlement (unlawful under international law).58

At the same time, the LA-JS clarified that Rechelim’s building status had not changed, and

54 HCJ 2295/09 a-Sawiyah Village Council Head v. Minister of Defense et al., Petition for Order nisi and Interim Order, March 12, 2009 (hereinafter: HCJ 2295/05).
55 HCJ 2295/05, Response on behalf of Respondents 1-4 to Request for Interim Order, March 19, 2009.
56 HCJ 2295/05, Response on behalf of Respondents 5-6 to Request for Interim Order, March 19, 2009.
57 HCJ 2295/05, Interim Order, March 22, 2009.
58 HCJ 2295/05, Updating Notice on behalf of Respondents 1-4, July 18, 2013.
construction there was prohibited until planning procedures were pursued as required by law.59

The High Court justices dismissed the petition on the grounds that “the factual basis has changed in no small measure” – that is, Israel had retroactively authorized the outpost – but they did leave the interim order in place so long as Rechelim’s planning status remained the same, elucidating that, “naturally, any further construction is prohibited.”60

The police investigation and the appeal

In April 2009, the Israel Police launched a criminal investigation into suspected unlawful construction and violation of judicial orders in the case. The investigation file was augmented with photos, supplied by Yesh Din in communications made on behalf of the a-Sawyiah Village Council Head, which documented the continued construction and violation of the interim order issued by the High Court.

The State Attorney’s Office did not deny the court order was violated. In May 2011, it notified the court that “in recent visits by the Civil Administration Enforcement Unit and the Israel Police to the site that is the subject of the petition, it has been found that infrastructure work had been undertaken (the construction of a fence, supporting walls, pavements, and the like) near the three homes […] in apparent violation of the interim order issued by the court.”61 In September of that year, senior State Attorney’s Office officials stated, “This is a very serious case, in which, aside from the violation of a judicial order, there has been an attempt to mislead the High Court, which may constitute perjury and obstruction of justice.”62

However, in July 2013, the State said the evidence was not found to be sufficient for charging anyone with violating the interim order,63 and that the only charges laid were against Rechelim Secretary Noam Shamba, for perjury and obstruction of justice, due to the false affidavit he gave to the court.64

60 HCJ 2295/05, Judgment, July 31, 2013.
61 HCJ 2295/05, Updating Notice on behalf of Respondents 1-4, May 2, 2011.
62 Deputy State Attorney (Special Functions), Cases of illegal construction and violation of judicial orders in the Judea and Samaria Area – Meeting Summary, September 8, 2011.
63 State Attorney’s Office High Court Department to Yesh Din, HCJ 2295/09 Fadiyah v. Minister of Defense (“Rechelim”), July 25, 2013.
64 HCJ 2295/05, Updating Notice on behalf of Respondents 1-4, July 18, 2013.
In September 2013, Yesh Din appealed the decision to close the file for lack of evidence. The documents contained in the investigation file, which Yesh Din requested and received from the police, revealed that despite the negligence exhibited by the police in some of the investigative measures (for instance, that most of them were carried out in 2011, two years after the investigation began), enough evidence had been gathered to support the prosecution of the parties involved in violating the interim order. These parties are the leadership of the outpost of Rechelim and the Amana Cooperative Association, which implemented the construction project. The appeal argued that these parties could be prosecuted for occupancy in the three houses, continued construction, as well as other, undisputed building violations.

On the issue of occupancy, the appeal referred to a letter from a police interrogation and intelligence officer, dated a week after the interim order was issued, in which, after a visit to the site, the officer determined: “No one lives in the units at the site […] Construction has not been finished, and the place looks like a deserted construction site.” The officer added “We met the Civilian Security Coordinator, Yossi, on site, and, according to his statements, no one lives there.”

The appeal also referred to the police interviews with two of the residents in the buildings (the third refused to cooperate with the investigation). They stated they purchased the apartments from Amana and moved into them over the course of 2010. In other words, the residents themselves admitted they moved into the buildings several months after the interim order forbidding occupancy was issued.

If that were not enough, the most damning document contained in the investigation file was a letter sent on November 9, 2009, from the Rechelim secretariat to one of the families set to move into the houses. Under the heading “Occupancy of new homes,” the letter states:

> Work on the three new homes is expected to conclude in the near future […] We are making efforts to advance work as quickly as possible, in order to begin occupancy as soon as possible […] These homes are meant to be in use, and have been reported as such […]. As far as the High Court of Justice is concerned, the bottom line is that the homes are considered occupied for all intents and purposes […] Amana is assuming the risk, and therefore undertakes to compensate residents in the event that the houses are demolished.

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65 Yesh Din to SJ Prosecution Unit and Director of Appeals, State Attorney’s Office, Appeal regarding decision to close the investigation in Police File No. 154482/09, September 4, 2013.
68 Letter from Rechelim Outpost Secretariat to S. Family, Occupancy of new homes, September 9, 2009 (Police File No.
[Translation of letter sent by the Rechelim secretariat to prospective residents]

November 9, 2009

To:

S Family

Re: Occupancy of new homes

Work on the three new homes is expected to conclude in the near future, followed by the remaining homes in the upper row.

We are making efforts to advance work as quickly as possible, in order to begin occupancy as soon as possible. Occupancy is essential for several reasons, of which I will specify only two. First and foremost, as soon as you move into these homes, we will be able to accept new families to the community. Furthermore, these houses are meant to be in use, and have been reported as such. Should an inspection take place, and it comes to light that they are vacant, their status may change.

We realize that the move to the homes is accompanied by certain concerns on your part that you may be evicted and have no place to go, as your current caravans will have been transferred for use by new families.

Given this, the Admissions Committee, with the help of N.M. has made inquiries with Zambish at Amana, and revealed the following:

As far as the High Court of Justice is concerned, the bottom line is that the homes are considered occupied for all intents and purposes, such that the attempt on them has already been made several months ago, and they are under no threat of evacuation.

Occupancy in the remaining homes is planned immediately upon completion of construction. Legal proceedings are underway with respect to these homes, and their fate is unclear. However, in any event, we have been told that Zambish plans to begin occupancy in them immediately.

Amana is assuming the risk, and therefore undertakes to compensate residents in the event that the homes are demolished, as was the case in Amona.

As far as the community is concerned, we must continue accepting new families and renting out the caravans.

In the worst-case scenario, if the homes are demolished subsequent to occupancy, Amana will take responsibility and no one will be left without a roof over their heads. We have been told by Amana that, if necessary, they will build new caravans for the families.

Sincerely,

Rechelim Secretariat
Thus, some six months after the High Court issued the interim order, the secretary of Rechelim admitted, in writing, that the houses were in fact vacant, and solicited prospective residents to move in, in a display of blatant, shameless disrespect for Israel’s highest judicial instance.  

The investigation file also contains enough evidence for prosecution on the issue of construction in violation of the court order, which was, as mentioned, reported to the State Attorney’s Office in real time. Such evidence includes, for instance, the interrogation of the project contractor who said the Rechelim secretary contracted him to do the work in 2011, some two years after the interim order was issued.

In the appeal, Yesh Din argued that this ample evidence, coupled with the further proof contained in the investigation file, clearly indicate that the Rechelim and Amana leadership wilfully took action to violate a High Court order in terms of occupancy of the houses and continued construction, and even solicited other parties to commit offenses.  

This is why they must be prosecuted.

Indictment withdrawn and appeal rejected

Even before responding to the appeal, the State Attorney’s Office continued to change of legal course and in February 2014, withdrew the indictment against Noam Shamba. Yesh Din has no way of knowing what went on behind the scenes of this decision in the State Attorney’s Office. It is, however, safe to say that not only is the decision odd, considering the evidence described above, but also that there is a measure of impropriety in the fact that the Supreme Court made its decision in the petition under the impression that one of the suspects in the affair had been charged, only to have the charges dropped by the State Attorney’s Office after the dismissal of the petition, on the grounds of “insufficient evidence,” when in fact, the investigative material had remained unchanged.

154482/09).

69 To remove any doubt, site resident S.S. admitted to having received this letter prior to purchasing the unit (Police confession of S.S., September 21, 2011 (Police File No. 154482/09)).

70 In October-November of 2013, Yesh Din reported the continued violation of the interim order and illegal construction in Rechelim in general, and on the nine homes in particular, in a letter to the State Attorney’s Office. During the correspondence between the parties, the State Attorney’s Office confirmed the persistence of illegal activity, stating: “The Respondents are aware of the matter and are seeing to it”, and that “an investigation was opened immediately, and is still underway. It is superfluous to note that law enforcement officials view the violation of judicial orders extremely seriously and the investigation thereof is conducted accordingly”. (State Attorney’s Office, High Court Department to Yesh Din, HCJ 2295/05 Rechelim, November 12, 2013).

71 State Attorney’s Office, Appeal Department to Yesh Din, Decision in request for reconsideration of appeal, June 2, 2016.
An additional two years later, the State Attorney’s Office decided to reject the appeal. Admitting there was “substantive suspicion that the order was violated by parties acting on behalf of the settlement of Rechelim or with their knowledge,” the State Attorney’s Office nevertheless claimed it was “impossible to prove, with the level of certainty required under criminal law, that the interim order was willfully or maliciously violated.” The decision of the State Attorney’s Office relied on an operational report given by soldiers that the three homes had been in use before the interim order was issued, though this report was contradicted both by the residents’ own statements to the police and by the letter sent to the families by the Rechelim secretariat in November 2009. 72

On June 27, 2016, after a request to reconsider the rejection of the appeal was also dismissed by the State Attorney’s Office, the a-Sawiyah Village Council Head and Yesh Din petitioned the High Court, demanding a reversal of the decisions made by the State Attorney’s Office and indictments against the Rechelim and Amana leadership for their involvement in the violation of the interim order, obstruction of justice, illegal construction, and the violation of closed military zone orders. The petition also sought an indictment against Noam Shamba for perjury and obstruction of justice. 73 As of December 2016, the petition is still pending.
ILLEGAL CONSTRUCTION ON LAND BELONGING TO THE VILLAGE OF EIN YABRUD

Over the course of 2007, the Binyamin Regional Council began construction on a sewage treatment facility for the settlement of Ofra. The facility was illegally built on registered, privately-owned land74 belonging to residents of the Palestinian village of Ein Yabrud, in violation of building and planning laws.75

In the summer of 2008, the Civil Administration issued stop-work and demolition orders for the facility, but work halted only a year later, after landowners, with Yesh Din’s assistance, petitioned the High Court to have the orders implemented.76 In its response to the petition, the State admitted the sewage treatment facility was built on privately owned land, without receiving building permits as required by law and without an approved masterplan. It also admitted the construction was partly funded with taxpayer money.77 In its judgment, the High Court forbade completion of the facility, its connection to the electricity grid or “any other work in connection thereto.”78

In terms of criminal proceedings, the police investigation in this case was, again, extremely lengthy, and lasted nearly four years. However, differently from most other cases, this file was not closed but transferred to the State Attorney’s Office for evaluation.79

It took 18 months for the Attorney General (AG) to announce he had decided against filing charges in the affair. The AG did not dispute that the investigation contained sufficient evidence for an indictment or that there were reasonable prospects for a conviction. He did, however, argue that certain circumstances surrounding the commission of the offense mitigated the public interest in filing an indictment. The AG added that: “Had an indictment been served in this case, it would have been a relatively precedential one, given there has

74 Registered privately owned land is land that underwent the official registration process and is registered under its owners’ name in the West Bank Land Registry (known as the Tabu).

75 For many years, sewage produced by Ofra was treated in oxygenation tanks built on land that was confiscated from residents of the Palestinian villages of Ein Yabrud and Silwad. The settlers complained of sanitary hazards and odors, and in 1998, use of the tanks was discontinued, with sewage now directed into a nearby valley and land belonging to Ein Yabrud residents.


77 HCJ 4457/09, Response on behalf of Respondents 1-6, March 1, 2011.


79 National Fraud Investigation Unit, South Branch to Yesh Din, Police File No. 97623/09 – Ofra sewage treatment facility, January 8, 2013.
been hardly any criminal enforcement on planning and building laws in Judea and Samaria [the West Bank] to date. 80

Since the file was closed by the Attorney General, the decision could not be appealed. After reviewing the investigation file, the landowners and Yesh Din filed another High Court petition, demanding the prosecution of Avi Roeh, Head of Binyamin Regional Council the man responsible for the construction of the facility and whose signature appears on a fictitious building permit, as well as Pinchas Wallerstein, Head of Binyamin Regional Council at the time, who was also the chair of the local building and planning committee that approved and ordered the construction of the facility. 81

In the petition, Yesh Din argued that the investigation file contained clear evidence of a litany of offenses including criminal trespass and unlawful construction carried out in conjunction with takeover of the petitioners’ privately owned plots. Other offenses included falsifying official documents and issuing unlawful permits. All of these actions were knowingly carried out in violation of administrative orders. The petition, it was stated, was filed in response to a curious, and outrageous decision made by the AG, who chose to ignore continued, serious illegal activity that wilfully and deliberately violated the fundamental rights of the petitioners and other Palestinian residents of the West Bank - activity no one denied took place, including the suspects themselves.

**Selected petition arguments: criminal trespass and unlawful construction**

When questioned by the police, Council Head Roeh admitted without hesitation that he knew all construction in Ofra, and specifically construction of the sewage treatment facility, was unlawful, that the land on which the facility was built was privately owned and that it was built without permits and without an approved masterplan:

> Ofra has no formal area of jurisdiction, no city masterplan. What I mean to say is that all structures in Ofra, including public institutions, including schools built by the state, are, by definition, illegal, because the community has no masterplan, and anyone who has built [there], is, according to this definition, also a “criminal”;

> There is a “shadow plan” based on which we advance construction of public buildings and new neighborhoods. I cannot recall who made the plan. It is not

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80 Office of the Attorney General to Yesh Din, Police File No. 97623/09 (Ofra sewage treatment facility), May 29, 2014. For more on the AG’s arguments, see below.

81 HCJ 8088/14, Petition for Order nisi, November 11, 2014.
a statutory plan. It is not legally approved and it is not signed, but it helps us work in an organized fashion.

And referring specifically to the sewage treatment facility:

I do not deny it [the land] is privately owned. We also knew that beforehand.82

Pinchas Wallerstein, who was Head of the Binyamin Regional Council when construction on the sewage treatment facility began, as well as Chair of the Special Committee for Building and Planning, when it approved the building permit for the facility, though it had no authority to do so, confessed in his own investigation that he did so knowingly. When police investigators asked him why he decided to advance and execute construction, Wallerstein replied: “It was a strategic decision I took part in, including with respect to priorities as to which communities.”83

Selected petition arguments: false building permit

A year after work began, the construction company asked to see the building permit for the sewage facility. On March 27, 2008, Avi Roeh signed a building permit meant to appease the contractor, and have him continue the work. The document, however, was fictitious. The building permit Roeh signed was designed to look like a military document, though it is not. As presented, the permit related to an area that is under military seizure orders, but the area on which the facility was built had never been seized.84 And, finally, the permit purports to legally authorize the construction of a sewage treatment facility when there is no statutory plan or planning program pursuant to which such a permit can be issued. In short, the document was a forgery.

Roeh, the man at the helm of the local council, never denied his signature was affixed to a false document:

To the best of my recollection, the person who demanded this document was the contractor who was doing the work. After he heard there was a petition and

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83 Police confession of Pinchas Wallerstein, January 26, 2012. Generally, a review of the list of building permits issued on the same day the sewage treatment facility permit was issued reveals that the committee headed by Wallerstein issued scores of building permits that were, in fact, illegal, as they were issued for construction in localities that have no masterplans (Police File No. 97623/09).
84 International humanitarian law allows an occupying power to seize private land and structures for imperative, urgent military needs. Military seizure is designed to be temporary, until the urgent, imperative security need dissipates, and it does not alter ownership of the property. Incidentally, even if the relevant area had been militarily seized, it could not be used to build a sewage treatment facility as such a facility is meant to serve civilian needs rather than any imperative, urgent, and temporary military need.
a High Court case, he made his calculations and concluded he should have a permit to cover him, otherwise he would be told he had built without a permit. If he has a permit, then, as far as he is concerned, he is all right. Then it came my way, because I am the person who signs at the end of the process. 85

**Selected petition arguments: violation of stop-work order and solicitation of violation of a lawful order**

On June 4, 2008, the Civil Administration delivered a stop-work order to the laborers at the site. The next day, M.S., Director of the Binaymin Regional Council Water and Sewage Infrastructure Department expressly ordered the construction company to disobey the order. In a letter entitled “Continuing work at the site,” M.S. wrote: “I hereby wish to instruct you to continue work at the Ofra sewage treatment facility site.” 86

When asked during his police interrogation about the wilful violation of the stop-work order and whether he had “approved the letter,” Council Head Roeh answered:

Yes. I said that as far as I was concerned work could continue. I am responsible. I still think so today. Everything that is built in Ofra gets stop-work orders. We are law abiding people. We respect the law. But Ofra, in its location, is on land that has the same status as the sewage treatment facility. Civil Administration officials do what they need to do as part of their function, and we continue to work, even though there is a stop-work order. We understand the situation, and not a single house has been demolished in Ofra. 87

In this manner, the head of the regional council admits to approving a directive to defy the order and continue building illegally. Roeh’s explanation for his brazen, open, and continued defiance of the law is lack of enforcement, which he interprets as a policy of turning a blind eye on the part of the authorities.

**Selected petition arguments: Unreasonable decision by the Attorney General**

As stated, during their investigation, both the current and former Binyamin Regional Council heads effectively admitted to committing the offenses of criminal trespass, unlawful construction, issuing a false building permit and soliciting the violation of a stop-work order. In its petition, Yesh Din argued that the suspects’ confessions and the documents contained

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85 Police Confession of Avraham Roeh, February 9, 2012 (Police File No. 97623/09). It is important to note that, contrary to what he said during the investigation, the petition was filed more than a year after Roeh signed the fictitious permit.

86 M.S., Director of Sanitation, Water and Sewage, Binyamin Regional Council to G.E.S, continuing work at the site, June 5, 2008 (Police File No. 97623/09).

in the investigation file constitute conclusive evidence, sufficient for prosecution on numerous offenses.

In his decision to close the investigation, the Attorney General did not dispute the fact that the affair involved criminal activity or that there was indeed sufficient evidence for proving same. The AG did, however, claim that the suspects should not be indicted due to the circumstances. The main considerations given for the decision were: The public interest in managing Ofra’s sewage problems, and the demand put forward by the Ministry of Environmental Protection to address the matter; government funding for the project provided through the Sewage Infrastructure Development Agency; the time that had elapsed since construction concluded (roughly five years); and the fact that an indictment would be precedential given the lack of enforcement on planning and building laws in the West Bank.88

Yesh Din addressed these arguments in detail in the petition.

First, there is no dispute over the importance of resolving the issue of wastewater produced by the settlement of Ofra, especially when it is discharged into land belonging to nearby Palestinian villages, polluting it. However, the fact that a problem needs to be solved cannot justify an illegal solution that harms the fundamental rights of protected persons.

Second, it is not clear how the fact that the project was approved by the Ministry of Infrastructure Sewage Department, or that 7.8 million NIS (roughly 2 million USD), in taxpayer money, was invested in the project can excuse the commission of criminal offenses, particularly given that the budget proposal came with an express warning that funding should not be construed as a substitute for the required permits.89 In fact, public interest in the case is stronger, given the illegal waste of public funds.

The claim that five years had elapsed since the conclusion of construction borders on impudence on the AG’s part. As noted, the police investigation took nearly four years, and the evidence was then considered by the State Attorney’s Office for an additional 18 months approximately, before deciding to close the investigation. Yesh Din does not dispute the position that the passage of time may, in certain cases, be relevant in the exercise of prosecutorial discretion. However, as Yesh Din argued, it cannot trump other considerations that reflect significant public interests such as the integrity of public service, the rule of law and the like, particularly given that the processing of the file by the authorities had been so protracted.

Finally, the argument that lax enforcement against building and planning violations in the West Bank precludes prosecution in this case is particularly outrageous. This is a circuitous

88 Office of the Attorney General to Yesh Din, Police File No. 97623/09 (Ofra sewage treatment facility), May 29, 2014.
89 Ibid., Para. 5.
argument that makes non-enforcement of illegal activity the justification for the same illegal activity and (as aptly described by Council Head Roeh during his police interrogation) leads to additional such activity. Yesh Din argued that the case is especially severe precisely because of its particular circumstances – willful illegal construction, use of public funds, trespass and takeover of land, spearheaded by public officials who forged documents and solicited others to violate orders – and that the public clearly has an interest in the indictment, even if it is precedential, given the ongoing enforcement failure. In practical terms, the argument that prosecution is not possible due to past non-enforcement, especially coming from the Attorney General, gives offenders immunity and sets the course for continued illegal activity and lack of enforcement.

**Crime without punishment**

In its response to the petition, the State repeated its admission that “work continued at least until April 23, 2009, that is, some nine months after the decision to issue a final order,” and that “the investigation findings revealed the sewage treatment facility had, in fact, been built on privately owned Palestinian land, without permits as required by law, and that the document appearing to be a permit, and signed by Respondent 2 [Avi Roeh], is not a lawful building permit. There is no dispute that these are grievous acts that cannot be tolerated.” However, the State Attorney’s Office echoed the AG’s decision, stating that “it would be wrong to begin criminal enforcement with this particular case.”

In the hearing held in the petition, the justices of the High Court criticized the state’s policy of avoiding criminal enforcement in this case, as voiced in Chief Justice Zylbertal’s remark: “I am referring to a very prosaic aspect of criminal law - that the state must protect those whose safety, security, and property it is entrusted with protecting.”

In September 2016, the State notified the court that a “conditional plea agreement” had been reached with Avi Roeh and Pinchas Wallerstein, meaning that following negotiations between the State and the offenders, the parties would agree that the current and former heads of the Binyamin Regional Council would admit to one offense only: unlawfully issuing a permit. Furthermore, as long as the parties met the agreed conditions, an indictment would not be served against them, and they would avoid criminal conviction. The terms of the agreement were that each of them would pay a 2,500 NIS (roughly $650 USD) fine, and the case would be closed without affecting their criminal records.

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90 HCJ 8088/14, Response on behalf of Respondent 1, November 10, 2015.
91 HCJ 8088/14, Transcript, January 13, 2016.
92 HCJ 8088/14, Supplementary Response on behalf of Petitioner 1, September 15, 2016.
In response to the proposed agreement, Yesh Din argued that the type of offenses committed by Roeh and Wallerstein and the circumstances in which they were committed were not suited for a conditional plea agreement, given the definition, nature, and purpose of this arrangement. Moreover, the suggested agreement offered only a partial and insufficient substitute for a full criminal procedure. It related only to one, relatively minor, offense out of all offenses committed, and completely ignored other, much graver offenses indisputably committed by the suspects. Yesh Din added that use of a conditional plea agreement as such, and one that does not include an undertaking to refrain from committing similar offenses in the future, demonstrates an extremely lenient approach toward the offenses committed, while completely ignoring the victims.93

The hearing of this petition is scheduled for February 2017.

93 HCJ 8088/14, Response on behalf of Respondents to Supplementary Response on behalf of Petitioner 1, October 25, 2016.
"Since the Ministry of Housing was party to the planning of the houses and the infrastructure for the entire neighborhood [...] as well as funding for electricity, sewage and water infrastructure, roads, pavements [...] I innocently believed there was no impediment to building the homes."

Yoel Tsur, Kiryat Yeshiva Beit El Development Company CEO

Criminal law, which helps establish norms for conduct that are binding on all members of society, is one of the state's main tools for governing public life. In the case of illegal construction by Israelis in the West Bank, however, while law enforcement agencies are tasked with uprooting illegal activity and the violation of judicial and administrative orders (even if they do not always carry out their mission), absurdly, other state authorities actively help and fund the very same activities.

Government ministries, led by the Ministry of Construction and Housing and other publicly funded agencies initiate and lead numerous illegal construction projects in outposts and settlements in the OPT. Adding to the State’s inherent conflict of interests as it functions in various capacities, ideological considerations result in the involvement of many political actors in Israeli construction in the West Bank. This, in turn, results in pressure on law enforcement agencies to refrain from exercising their powers.

A team appointed by the AG to examine ways to address illegal construction in Israel concluded in January 2016 that:

All steps must be taken to prevent undue intervention by political actors, in an effort to maintain investigative and prosecutorial independence, as it is maintained with respect to all types of offenses. In this context, it is important to stress that a relevant distinction should be made between the establishment of enforcement policy and intervention in specific cases. With regards to policy making, while putting in place enforcement priorities, certain issues may be prioritized, in keeping with judicial decisions. However, once the policy has been established, or, in cases in which the court has issued a final order,
politicians and planning bodies must not interfere in the work of enforcement or prosecution officials.\textsuperscript{95}

In 2003, the State Comptroller examined Ministry of Construction and Housing involvement in the illegal construction of outposts and settlements in the West Bank. The report concluded that the ministry “invests public funds in illegal construction, in projects that have no building permits, in places where no masterplans have been approved, or in places that have not been cleared for settlement by the government.” In many of these sites, construction was undertaken after the Civil Administration had issued stop-work and demolition orders. One example, presented above, is the illegal construction of the Ofra sewage treatment facility, with a 7.8 million NIS (roughly 2 million USD) investment from the Ministry of Infrastructure. Another example, discussed below, is the over 4 million NIS (roughly 1 million USD) invested by the Ministry of Construction and Housing in illegal construction in Jabel Artis.\textsuperscript{96}

Time passed, but Israel’s policy remained largely unchanged. Government ministries, public authorities, and other publicly funded agencies continue to fund and support illegal construction activity. Funds are funnelled to settlements and outposts using countless sections that are not specified in the government budget and through transfers conducted by the Knesset Finance Committee after the budget is approved.\textsuperscript{97}

**ILLEGAL CONSTRUCTION ON LAND BELONGING TO THE VILLAGE OF DURA AL-QARA**

In 1999, the Civil Administration issued demolition orders for five houses that were under construction, illegally and without permits, on land privately owned by residents of the Palestinian village of Dura al-Qara. The construction site was located outside the settlement of Beit El, on a hill known locally as Jabel Artis (and would come to be called Ulpana Hill). Four years later, the Civil Administration issued final demolition orders for the homes.

In 2008, two residents of Dura al-Qara filed a police complaint regarding trespass and unauthorized use of their land (hereinafter: Plots A and B). In October of that year, the residents petitioned the High Court of Justice, with Yesh Din’s help, demanding the execution


\textsuperscript{96} State Comptroller, *Annual Report 54B for 2013 and for Accounts for the 2002 Fiscal Year*, May 5, 2004, pp. 363-375. According to the State Comptroller report, between January 2000 and June 2003, the Ministry of Housing signed contracts for illegal construction in the OPT for the total amount of 29.7 million NIS (approx. 7.8 million USD). The contracts included infrastructure for housing units, security roads, access roads, public use area development, water, and electricity connections and public institutions. During this period, Israeli taxpayers provided 18,608,234 NIS (almost 5 million USD) for illegal construction in 33 different sites in the OPT.

\textsuperscript{97} For further details, see Yesh Din report, *Under the Radar: Israel’s silent policy of transforming unauthorized outposts into official settlements* (March 2015), pp. 10-13.
of the demolition orders issued for the homes that were built without building permits or a masterplan and outside the settlement’s area of jurisdiction. Following a lengthy legal battle, the court accepted the State’s notification that the Government of Israel had decided that “construction on private land will be removed, as distinct from construction on state land.”

In the summer of 2012, the houses were removed. Israel, however, has since denied the Palestinian landowners access to their land.

As in previous cases, this petition proceeded concomitantly with a police investigation as to whether anyone involved in the illegal construction and the violation of administrative orders should be prosecuted. As in most previous cases, in this case too, the SJ Police District Prosecution Unit decided to close the case without indictment, this time on grounds of absence of criminal culpability.

Appeal

In December 2010, after receiving the investigation file, Yesh Din appealed the decision to close it. Yesh Din argued the file contained enough findings to support an indictment against Yoel Tsur, Kiryat Yeshiva Beit El Development Company CEO, for trespass, land grab, and a slew of building and planning violations; and that, at the very least, supplementary investigation was required with respect to other parties involved, including Amana officials and the Ministry of Construction and Housing.

In fact, the statements made by Yoel Tsur during his police investigation are reason enough for prosecution. First, Tsur said construction on the homes began in 1998 and ended in the summer of 2008, thereby admitting to violating the stop-work orders issued by the Civil Administration back in 1999.

99 HCJ 9060/08, Judgment, September 21, 2011. Note that in exchange for a peaceful evacuation, the Israeli Government promised to build 300 new residential units in Beit El and allocate more land for the settlement (Chaim Levinson, “Cabinet expected to approve today: Hundreds of units for peaceful evacuation”, Haaretz (Hebrew), June 20, 2012.
100 Return fax from SJ Prosecution Unit to Yesh Din, Police Case ID. (Binyamin) 32899/08, August 5, 2010. “Absence of criminal culpability” serves as grounds for closure when the prosecutor decides there is no evidence tying the suspect to the commission of the offense. A case closed on these grounds is expunged from police records.
101 Yesh Din to State Attorney’s Office Appeal Department, Appeal against decision to close Police File No. 388999/08 (Binyamin) (Police Case ID. 32899/08), December 14, 2010.
102 The Kiryat Yeshiva Beit El Development Company was established in 1981, as one of the institutions of the Beit El main yeshiva. Over the years, its name was heard in connection with several affairs. See, e.g.: Chaim Levinson, “Large-scale Fraud Halts Land Deals in West Bank Settlement of Beit El”, Haaretz, October 15, 2013.
Second, the Kiryat Yeshiva Beit El Development Company CEO admitted that he built the homes without having any substantive proof that he had rights in the land. Tsur said he was told by Amana that Plot A, “was in the process of being purchased, and they thought the deal would go through;” and that, “I received no contract, but I was told, verbally, I cannot recall by whom, that the matter was being taken care of and the deal would go through.” It is interesting to note that ten years after the fact, Tsur remained cautiously optimistic: “The man, whose name I cannot recall, from Amana, told me that Plot A was in the process of being purchased, and, God willing, the deal will go through, and this was ten years ago.”

Regarding Plot B, Tsur said during his questioning that “sometime in the early 2000s,” Amana managed to initiate a purchase deal for the plot. Tsur said that, “the entire land issue was handled by Amana,” and that he did not look into whom had rights to the land. Amana CEO Zeev Hever (Zambish), and M.D., who brokered the deal, were also interrogated by the police in this connection. In his police interrogation, Zambish said: “The deal got stuck. It was not advanced. [...] The original deal was left in the safe, and we were left with a bitter disappointment.” The broker confirmed the account: “We did not make progress with the deal, and it did not go through” due to issues with the seller’s identity. The broker noted that Yoel Tsur “knew the deal did not go through.” Thus, the investigation revealed the homes were knowingly built on private land without rights thereto.

Third, Yoel Tsur was asked during his police interrogation if he had received permits from the authorities to build the homes. He replied: “Plans were submitted to the Beit El Local Council, as well as the Ministry of Housing, but we did not receive permits.”

Furthermore, Tsur told the interrogating officer that he saw no impediment to trespassing and committing a number of building and planning violations, as he had the support of the Ministry of Construction and Housing: “Since the Ministry of Housing was party to the planning of the houses and the infrastructure for the entire neighborhood [...] as well as funding for electricity, sewage, and water infrastructure, roads, pavements [...] I innocently believed there was no impediment to building the homes.”

104 Ibid.
105 Police confession of Zeev Hever Friedman, June 17, 2009 (Police File No. 388899/08).
106 Police confession of M.D., June 28, 2009 (Police File No. 388899/08).
107 The police investigation indicated this was likely a fictitious transaction, which, in any event, was never completed, let alone registered in the West Bank Land Registry as required by law. To remove any doubt, on November 23, 2008, the Civil Administration Land Registry Coordinator confirmed that the land in plot B is owned by the petitioner, H.M., a resident of Dura al-Qara and that there were no confiscation or seizure orders with respect to the plot (Land Registry Chief Officer Headquarters, Civil Administration to Israel Police, Binyamin Station, Dura al-Qara, invasion complaint, Mr. H.M., report, November 23, Police File No. 388899/08).
Yesh Din concluded the appeal by noting that given the matters described in detail within, including Yoel Tsur’s open admission to the offenses of trespass and a slew of building and planning violations, as well as his identification of accomplices, the decision to close the file on the grounds of absence of culpability was erroneous, and could even be considered as undermining the rule of law.

**Petition and appeal rejection**

After the State Attorney’s Office refused to make a decision in the appeal for more than three years, the landowners petitioned the High Court with Yesh Din’s assistance, demanding an indictment against Yoel Tsur and the Kiryat Yeshiva Beit El Development Company and supplementary investigation into the involvement of other parties.109

The petition argued that though the trespass on the petitioners’ land, and its illegal use began years ago, and though there was no dispute that this constituted illegal activity, none of the suspects had been prosecuted due to the unreasonably slow progress made by the State Attorney’s Office toward a decision in the case. The petition also noted that the prospects for a proper investigation and for the prosecution and conviction of the suspects diminished as time went by. Yesh Din added that the failings of the State Attorney’s Office and the investigating authorities before it, constituted disrespect for the petitioners’ right to property, the obligation to protect protected persons, the rule of law and the importance of law enforcement.

Following the petition, the state announced it had decided to reject the appeal – three and a half years after it was filed. The State Attorney’s Office did revoke the grounds on which the file was closed (absence of criminal culpability), and admitted that the “investigation had not been exhaustive,” but ruled the file should be closed as “the circumstances do not justify continuing the investigation.” The State Attorney’s Office completely ignored the arguments Yesh Din made in the appeal, as well as the investigation findings, claiming that the late filing of the complaint “made it very difficult, to the point of impossibility, to conduct an effective investigation at such a late stage.” The State Attorney’s Office added that given the passage of time, and the fact that the buildings had been removed, public interest in a criminal proceeding had waned.110

High Court Justice Salim Joubran voiced harsh criticism of both the response and the conduct of the State Attorney’s Office. In a hearing held in the petition, the Justice said: “I am somewhat perturbed by the State’s response. I believe that the State has not responded properly. You have attempted to find a simple solution, but this is escaping reality […] Why

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110 HCJ 868/14, Preliminary Response on behalf of Respondent 1, May 11, 2014.
does it take so long to make a decision in the appeal? I find it, to use restrained language, unreasonable.” Justice Joubran went on to say: “I do not think it should take three years to decide - perhaps three hours.”

Despite the criticism leveled at the decision made by the State Attorney’s Office, the Court ultimately dismissed the petition. High Court Chief Justice Miriam Naor held: “Though the decision made by the State Attorney is not bereft of flaws, I see no room for intervention therein.” Naor criticized the investigative action regarding the involvement of the Ministry of Construction and Housing, stating: “It appears that in the case at hand, no attempt was made to examine the involvement of the authorities in illegal acts. It is unclear how a certain issue that is extremely pertinent to the decision at hand can be deemed impossible to examine or investigate without making even the faintest attempt to do so.”

The houses, built illegally on private land, with state assistance, were removed, but the parties responsible for the illegal acts, some of whom are involved in other, similar affairs, were never brought to justice, and the Palestinian landowners are still denied access to their land.

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111 HCJ 868/14, Transcripts, July 30, 2014
112 HCJ 868/14, Judgment, March 2, 2015.
CONCLUSION

“Lack of criminal enforcement on building and planning violations in the Judea and Samaria Area [West Bank] contributes to the perpetuation of existing lawlessness in the Judea and Samaria Area [West Bank].”

State Comptroller, 2013

This position paper describes the grim reality of lack of law enforcement in the face of widespread illegal construction by Israelis on Palestinian land in the West Bank, violation of administrative orders, and even orders issued by the Supreme Court. Worse still, an analysis of the practices, as presented, indicates this is not an incidental, or local failure by Israel’s law enforcement system, but rather a systemic one, perhaps even the result of policy instituted by those in charge of maintaining public order.

The parties that commit such illegal activity in connection with unlawful construction in the West Bank – beginning with building and planning violations, continuing with fabricated statements and false affidavits submitted to the Court, and ending with disregard and disrespect for orders issued both by the Court and the military commander – are fully aware of their actions, which they undertake with backing from the State and the knowledge that they will not be prosecuted.

Without criminal enforcement, prosecution and punishment, there is no deterrence against the offenders – council heads, public functionaries and senior government agency officials – who, relying on the immunity they effectively receive from Israel, repeat their actions and continue building illegally on Palestinian land in the West Bank.

On this particular issue, immunity from prosecution has become a constant reality, due to the impotence of law enforcement agencies, including the State Attorney’s Office, itself a result of political pressure. When law enforcement is influenced by extraneous motivations, the sense is that rule of law is sacrificed to serve political interests.

If this were not enough, there is a clear connection between illegal construction and other ideologically motivated offenses, such as violence and vandalism, as many of the settlements and outposts are hotbeds for crime against Palestinians. The law enforcement system’s inability or reluctance to faithfully discharge its duties allow for the offenses against residents of the OPT and the violation of their rights to continue.114

114 For further details on the connection between the presence of an unauthorized outpost and ideologically motivated crime in
Both the State Comptroller and the Attorney General have addressed this issue. In 2013, the State Comptroller stated: “The findings included in this report signify a grievous, ongoing reality in terms of law enforcement in the Judea and Samaria Area [the West Bank], a situation of lawlessness, especially concerning planning and building, water and transportation. This is a multisystem dysfunction, which must be promptly addressed by the relevant ministers.”

In the state’s response to the petition against the Ofra sewage treatment facility, the State Attorney’s Office claimed: “The AG’s position is that the fact that criminal enforcement against planning and building violations in the Judea and Samaria Area [the West Bank] is virtually non-existent cannot be condoned.”

Israelis build illegally on Palestinian land throughout the West Bank, with support and funding from Israeli authorities and government ministers.

The Attorney General and the State Attorney’s Office reject appeals against investigation file closures, and paradoxically, defend the decisions to refrain from enforcing criminal law against the offenders in court.

The Israel police and the State Attorney’s Office delay processing the files for lengthy periods of time, and ultimately close them without serving indictments against the offenders, ignoring indisputably solid evidence which includes suspect confessions, testimonies, and documents.

The Civil Administration issues stop-work and demolition orders for illegal structures and roads. For the most part, these orders go unenforced and serve as a façade of law enforcement.

Sometimes, usually following a complaint regarding suspected violations of administrative or judicial orders, the Israel Police launches a criminal investigation. These investigations are usually negligent and not exhaustive, often closed on grounds of lack of sufficient evidence, indicating investigative failure rather than the absence of an offense.

its vicinity, see: Yesh Din report, The Road to Dispossession: A Case Study – the Outpost of Adei Ad (February 2013).


116 HCJ 8088/14, Response on behalf of Respondent 1, November 10, 2015.
Each of the test cases presented in this document illustrates the failures criticized by the AG and the State Comptroller. However, a survey of the issue reveals that this is a pattern, a vicious cycle, where not only do Israel and its law enforcement system launder illegal activity by Israelis in the West Bank, in fact, they produce a reality that is geared toward perpetuating this illegal activity.

Yesh Din calls on the Military Commander of the West Bank, the State Attorney’s Office, headed by the Attorney General and the Government of Israel, to end to shameful lack of criminal law enforcement in cases of violations of administrative and judicial orders, and illegal construction perpetrated by Israelis in the West Bank. The Israel Police must conduct thorough, exhaustive, impartial, and expedient investigations. The State Attorney’s Office must execute its duty as the agency tasked with sustaining the rule of law, and enforcing criminal law, and must act independently and impartially. The Government must cease to fund development and construction in illegal settlements and outposts in the West Bank, and reform the law enforcement practices presented in this report, which deny Palestinian residents of the West Bank access to their land and violate their fundamental rights, including the rights to property and to freedom of movement.