



June 2011

# The assault on the institution of appeals

Position Paper

# A

## Background

The right to appeal against decisions made by government authorities is one of the mechanisms meant to check and balance the power vested in the authorities and prevent the arbitrary exercise of the powers given to them. The right of appeal allows a certain degree of transparency, oversight and criticism of the actions and decisions of the authorities, serves as a means of restraining and supervising their actions and contributes to public trust of them.

The law grants a complainant the right to appeal against the decision to end an investigation and close the file without serving an indictment: Section 64 of the Criminal Procedure Law says that "a complainant is allowed to appeal against a decision not to investigate or not to prosecute because there is no public interest in the investigation or trial, insufficient evidence was found or it was determined that there is no guilt."<sup>1</sup> The law goes on to say that when a decision is made not to investigate and/or not to prosecute, the complainant should be given written notice that also states the reason for the decision, which is to say the grounds for closing the file.<sup>2</sup> A complainant who received notice of the closure of an investigation file may submit an appeal against the decision within 30 days from receiving the notice.<sup>3</sup>

The appeal grants the complainant the right of argument before a higher body in the law enforcement system than the one who made the decision to close the file, in order to indicate to it directions of investigation that were not exhausted and because of which the investigation should be resumed, or to argue that the evidence collected in the investigation is sufficient to file an indictment. Besides the fact that the appeal gives the complainant another opportunity to reverse the decision to close the investigation file, it allows the State Attorney's Office to supervise the work of the

investigation and prosecution bodies and thereby detect recurring defects in their activity and correct them. The writ of appeal is submitted to a senior prosecution official, depending on the investigative body: the head of the appeals department in the State Attorney's Office reviews appeals against the closure of investigation files by the Israel Police; the Deputy State Attorney (special assignments) reviews appeals against the closure of files by the Police Investigation Unit (PIU); and the Chief Military Prosecutor reviews appeals against closure of Military Police Criminal Investigation Department (MPCID) files. The appellant submits the appeal to the party who decided to close the investigation file (the prosecutor or authorized party in the investigating body), and the latter transfers the appeal, attached to the investigation file and his comments, to the party who decides on the appeal for the purpose of reviewing the appeal and making a decision about it: to reject the appeal, to order completion of the investigation or to order an indictment to be served against suspects on the basis of the evidential material in the investigation file. In some cases the party who closed the investigation file decides -- pursuant to the arguments raised in the appeal -- to reopen it in order to complete the investigation. In these cases the appeals are not transferred to the appeals department in the State Attorney's Office.

## B

### **Yesh Din Monitoring: Main Findings**

Yesh Din monitors the outcomes of investigations into the complaints of Palestinian victims of crimes it represents. Since 2005 the organization has been monitoring investigations undertaken by the Israel Police SJ (Samaria & Judea) District into crimes committed by Israeli citizens in the West Bank against Palestinians and their property, and since 2007 it has been monitoring the results of the investigations undertaken by the PIU and MPCID (into crimes committed by members of the security forces -- IDF soldiers and police -- against Palestinians and their property). The purpose of the monitoring is to assess to what extent Israel is upholding its duty to defend the residents of the occupied territories and their property, identify systemic defects in the exercise of that duty and act to correct them.

Since the organization was founded, Yesh Din's legal advisers have reviewed hundreds of investigation files that were closed in which Yesh Din represents the complainants. Over the years, the review of the materials in these investigation files has led to the submission of 185 appeals, mostly against the closure of investigation files without investigating or without completing the investigation, and some for closing files without serving indictments (even though the file contains evidence that would justify serving an indictment). Appeals about completing an investigation or opening an investigation were submitted only in cases where there seemed to be a reasonable chance that additional investigative actions would lead to filing an indictment. In many cases where the investigation was not exhausted appeals were not filed because of the long time that had passed since the crime was committed and the assumption

that completing the investigation with actions such as collecting evidence on the ground, investigating witnesses, conducting identification lineups and so on would no longer be effective.

**The results of the appeals submitted by Yesh Din against the closure of investigations, by investigating body**

	The appeal was accepted	The appeal was rejected	The appeal is being processed	Other	Total
Police files	27 <sup>4</sup>	92	37	-	156
MPCID files	1	5	2	-	8
PIU files	1	12	6	2 <sup>5</sup>	21
Total	29	108	46	2	185

In the last months a new trend has emerged, which threatens to violate the right of complainants to appeal against the closure of police investigation files without serving an indictment. Whereas the law establishes the complainant's right to appeal, new directives and procedures recently instituted by the State Attorney render that right meaningless and create a situation where only an elect few will be able to exercise it and challenge decisions to close investigation files.

**C**

**Update of State Attorney's Directive 14.8: A fatal blow to the complainant's right to review the investigation material**

To exercise the right to submit an appeal, enshrined in section 64 of the CPL, the State Attorney's directive sets forth the procedures concerning review of the investigation material in order to exercise the right to appeal. The State Attorney updates the directive -- "State Attorney's Directive 14.8 concerning the rights of various parties to review the investigation material contained in a police file" -- periodically.

In August 2002 the State Attorney's Office issued a version of Directive 14.8 according to which the complainant's right to review investigation material in order to file an appeal or petition the High Court of Justice against the decision to close an investigation file should be respected, because "the citizen needs this material to allow him to exercise a right granted to him by law explicitly."<sup>6</sup> However, the directive also established additional considerations besides the complainant's right, which should be considered before he is allowed to review the material.

The directive recognized that review of the investigation material is needed by the complainant in order to consider the basis for the decision by the investigation and prosecution bodies that the evidence that was collected was insufficient to file an indictment, and that the investigative actions that were taken did indeed lead to the exhaustion of the police investigation. Until recently, the investigatory and prosecuting bodies followed that version of the directive, and usually allowed complainants who wished to, to review investigation files.

On June 14, 2010 the State Attorney issued another update to Directive 14.8, which supersedes the previous directive and in most cases denies complainants the right to review investigation files. As opposed to the directive from 2002, which recognized that the right to review the investigative material is an inseparable part of the right to appeal against a decision to close a file (set forth, as aforementioned, in Section 64 of the CPL), the updated version of the directive renders the complainant's right to appeal against the decision to close an investigative file meaningless.

The new directive completely cancels the right to review files closed on grounds of "insufficient evidence" -- a common pretext for closing investigation files in Israel:<sup>7</sup> "...in the specific case of an appeal against the closure of an investigation file because of the lack of sufficient evidence -- as a rule, the complainant will not be given information from the investigation file. A file closed on the grounds of insufficient evidence is necessarily a borderline case in terms of evidence. If the appeal is accepted, the transfer of information from the investigation file to the complainant will weaken the weight of the latter's testimony in court and necessarily weaken the chances of a conviction."<sup>8</sup> This explanation relies on a paradoxical argument, because the very decision that the evidence is insufficient to submit an indictment is what is blocking the complainant from claiming that it actually is sufficient. The directive is based on a strange logical inference, according to which it is the complainant's own interest that supports denying the right to review the material, and the latter gives way completely considering the interest of the benefit of a future investigation if the file does reopen, but actually the directive undermines the possibility of such a potential investigation ever happening.

In Yesh Din's experience, it is rare for an investigation to resume and an indictment to be filed at the initiative of the investigative authorities and without the complainant's involvement. Most of the files the organization is monitoring, which were closed following the police's failure to collect sufficient evidence to file an indictment, were not reopened on its initiative. Considering the fact that most of the closed files remain in the police archives collecting dust, there is no real justification for the sweeping denial of the right to review the investigation material due to the minute chance the file might reopen in the future to complete the investigation.

Experience shows also that of 185 appeals Yesh Din submitted in its years of existence, only one appeal led to filing an indictment.<sup>9</sup> 28 other appeals were accepted and led to the completion or opening of an investigation.<sup>10</sup> These reasoned appeals were written by experienced legal teams following careful review of the material in the investigative file. It stands to reason that the inability to review the investigative material fundamentally neutralizes the ability to provide substantiated arguments that might convince the authorities to reconsider their decision and renew the investigation or file an indictment. The already small chance for the appeal to be accepted will shrink even further if an unreasoned appeal is made by a writer who does not know what investigative actions were taken and what their results were. Without examining the evidential material in the file it is impossible to appeal the professional decision to close it for lack of evidence. The likelihood that the State Attorney's Office will accept the appeal and order the reopening of the investigation or the serving of an indictment on the basis of an unreasoned appeal is so low that it fatally violates the very right to submit an appeal as set forth by the law.

Furthermore, it is not clear at all that the complainant's review of the investigative material could harm the chances of convicting the accused. It is precisely the prevention of the review that reduces the chances of conviction, because it reduces the already small chance to change the position of the party who ordered the investigative file to be closed so that an indictment is served or the investigation is completed.

As for the right to review files closed on the pretext of "lack of guilt" or "lack of public interest" -- here the point of departure of the language of the previous directive, according to which the complainant has the right to review the investigative material except for exceptional cases when there is a real interest to deny him that right -- was diverted. Instead, the updated directive says that the complainant's right to review the closed investigative file should be balanced with other interests: maintaining the functioning of the law enforcement authorities, guaranteeing public trust, preventing the abuse of investigative procedures and violating privacy.<sup>11</sup> The new directive does not state clearly that the point of departure remains respecting the complainants' right to review the material when it is needed for submitting an appeal, but says only that the various interests must be balanced.<sup>12</sup>

The language of the updated directive may state the importance of the right to review the investigation file in order to submit an appeal against the decision to close the file, and the complainant's legitimate interest to review the file for that purpose, but in the very next paragraph that right is diminished to the point of extinction in files that were closed on grounds of "insufficient evidence," and dramatically reduced concerning files closed on other grounds.<sup>13</sup>

The meaning of the new version of the directive is closing the door on the institution of appeals, because it denies the vast majority of complainants the right granted by

law to appeal against decisions to close investigation files on the basis of reasoned arguments based on a review of the investigation file. The implementation of the updated directive has already begun to have an effect:

- On January 23, 2011, following a notice from the Ayarot police station in the Negev district that it approved Yesh Din's request to photocopy three investigation files<sup>14</sup> closed on the grounds of "insufficient evidence," a representative of the organization went to copy them. But when she got there she was told that the copied material would only include the complainant's statements without additional materials usually found in investigation files, such as memos, action reports, institutional records, photographs and more.

The three files were opened following complaints of criminal trespassing, threats, produce theft and assault, filed by Palestinian residents of the seam zone in the South Hebron Hills area with the help of Yesh Din. Naturally, without the ability to review the investigative material in full, it is impossible to understand why following those serious events no indictment was served against the person who was caught several times on the complainants' land and even assaulted the complainant and his children, was taken to the police station and was investigated on suspicion of committing the aforesaid crimes. Without reviewing the investigation material it is impossible to examine the police decision that the file does not contain sufficient evidence to serve an indictment or to indicate other investigative actions that should have been undertaken.

- On February 23, 2011 Yesh Din's request to review and photocopy an investigation file closed by the PIU on the grounds of "lack of guilt" was denied. The letter of rejection noted that "the law does not grant the complainant a vested right to copy material from the investigation file. According to State Attorney Directive 14.8, the question of exposing the investigation material to various parties is at the discretion of the prosecution." The letter went on to say that when balancing the right to review with other interests, it was decided not to allow the material to be copied, "especially in light of the fact that the reason to receive a copy of the investigation material is not clear to us."<sup>15</sup> The letter does not state any real reason to deny the request, but lists generally the interests mentioned in the new version of the directive. Considering the fact that the request to photocopy the investigation file stated clearly that it was needed for the purpose of legal counsel for the complainant, and considering the fact that the PIU knows full well that Yesh Din submits appeals in the appropriate cases, the argument stated in the letter, that the reason for receiving a copy of the investigative material is unclear, is a strange argument. A brief inquiry found it is a standard formula by which the PIU has denied requests to copy investigation files since it adopted the State Attorney's new directive. It appears that the interpretation the updated directive

was given by the PIU in the State Attorney's Office is that the right of review must give way to the other interests and that the point of departure is preferring public interests over the complainant's right of review.

- On April 11, 2011 Chief Superintendent Gil Desheh from the Samaria police region wrote to Yesh Din that he could not allow the copying of investigation files, based on the State Attorney's directive that "as a rule, complainants should not be allowed to receive information from investigation files."<sup>16</sup> Here too it appears that following the State Attorney's new directive, the Samaria police region thinks that the burden of proof as to the right of review has moved to the applicant, who is required to show why his right to review the material is greater than the interests set forth in the directive.
- On May 17, 2011 Chief Superintendent Gil Desheh wrote to Yesh Din that he could not grant a request to copy investigation files nor would he allow the copying of complainants' testimonies contained in the investigation material. Desheh specified the reasons for denying the request to copy investigative materials for each and every file, including, among others, the following answers: "A suspect was investigated based on information, denied connection to the incident. No evidence to substantiate suspicion;" "The complainant did not see suspects. There is no investigative material to copy;" "The complainant has no ability to identify. There is no investigative material to copy." Desheh explained his refusal to allow the copying of complainants' testimonies with the argument that "your clients can give you the information they gave the police, and the copying is not needed for consideration or submission of the appeal," and that files that were closed on the pretext of "unknown perpetrator" could reopen for a continued investigation if new information was received about them. Desheh added that "you should know that a substantial percentage of the 'unknown perpetrator'<sup>17</sup> files we handle reopen at a later stage."<sup>18</sup> Yesh Din's experience shows that the likelihood of the police reopening an investigation following new information it receives is lower than the likelihood of its reopening following arguments raised in an appeal based on a review of the investigative material in the file.

# D

## The 30 days to submit an appeal: A new strictness about schedules prevents the submission of appeals

Section 63 of the CPL says that "the complainant shall be given written notice of a decision not to investigate or not to prosecute, stating the reason for the decision."<sup>19</sup> Section 65 says that "the appeal will be submitted through the police or the prosecutor, as the case may be, within 30 days after the complainant was given notice under section 63, but the authorized party can decide in an appeal as set forth in section 64 to extend the deadline for submitting the appeal."<sup>20</sup>

The investigation and prosecution bodies claim that they send notices of closing investigation files to the complainants' homes. Attorney Eran Ori, head of the SJ District Prosecution Division, claims for instance that "notice of the closure is sent to the complainant according to the address he provided when making his complaint."<sup>21</sup> Actually, Palestinian complainants do not receive notices about the closure of investigation files. This is probably because of the fact, which is well-known to the enforcement agencies, that the postal services between Israel and the Palestinian localities in the West Bank are unreliable, and in many cases mail sent to Palestinian residents of the West Bank, especially in villages, does not reach its destination. Nevertheless, the relevant parties make no effort to deliver the notices after the closure of files as required by the law, for example by receiving confirmation of delivery or giving notice to the complainants' lawyers in cases when they are represented. Furthermore, for some reason the police send notices to the complainants' addresses even when they are represented by lawyers, seemingly in violation of the complainants' right to representation.

Since the notices sent to the complainants do not reach their destinations, Yesh Din, as proxy of the complainants, periodically approaches the relevant police stations and the State Attorney's Office to find out the status of the investigation files.<sup>22</sup> These inquiries yield very limited results in terms of the time of closure of investigation files. Despite repeated inquiries, in many cases word of the closure of a file is given long after the file was closed, and frequently after the end of the 30-day period set forth by the law to submit an appeal.

### The 30 day race to file an appeal from the moment notice is received of the closure of the investigation file

- Receipt of notice of closure of the investigation file
- Request to review the investigation file
- Making an appointment to review the investigation file
- Review of the material in the investigation file
- Writing an appeal based on the material contained in the investigation file
- Filing an appeal

Once it learns an investigation file was closed, Yesh Din contacts the relevant party on behalf of the complainants with the request to copy the material in the file. Until recently, most requests were accepted, albeit frequently only after a long time. After receiving approval in principle an appointment must be made to copy the material at the police station where the file is located, a procedure that also tends to take a long time. Our accumulated experience shows that from the time an investigation file handled by the police or the PIU<sup>23</sup> is closed until copying of the materials contained in it is made possible, many weeks and even months go by. For example, the copying of PIU files monitored by Yesh Din is made possible only after an average of 135 days (four and half months) from the request to copy them. This average does not include a few files where no such notice has been received yet, and which have been waiting for approval for half a year and even more than a year.

Until recently the State Attorney's Office examined appeals even when they were submitted after the 30-day deadline set forth by the law. Recently the policy became stricter, and appeals submitted after the 30 days are rejected in limine because of the lateness of their submission.<sup>24</sup> In Chief Superintendent Gil Desheh's letter from April 11, 2011 (in which he denied a request to copy investigation files that were closed), Ch.-Supt. Desheh mentioned among other things that "per the directive of the State Attorney's Office, appeals that were not submitted on time will not be handled."<sup>25</sup>

Toughening the policy by being strict about the 30-day period to file an appeal, while ignoring the failures and inadequacy of the authorities, means a substantial diminishment of complainants' ability to submit appeals, and the annulment of Palestinian complainants' ability to do so. Considering that notices of the closure of files are not even delivered to Palestinian complainants, updates about the closure of files are received very late and only after a lawyer makes an inquiry, and with photocopying investigation files that were closed requiring weeks or even months -- the chances of Palestinian complainants to win the 30-day race to file an appeal on time are null.

- On January 17, 2008, about three weeks after it was opened, the Samaria region closed a file concerning an assault on the land of the village of Tell. Notice of closure of the file was given to Yesh Din only on July 20, 2008 (almost half a year after it was closed) and after making five inquiries (between February and July) to find out the status of the investigation file. Three times the police responded to the inquiries that the file was still under investigation even though it was already closed. The 30-day period to file

an appeal passed before Yesh Din was informed that the investigation file was closed.<sup>26</sup>

- On July 7, 2010 the Samaria region closed a file concerning arson of trees. A notice of its closure was delivered to Yesh Din on November 1, 2010, almost four months after it closed. Following the notice, on November 4, 2010 Yesh Din asked Chief Superintendent Gil Desheh from the Samaria region to copy the material contained in the investigation file. When the request went unanswered, another request was sent on November 24, 2010, following which an appointment was made to photocopy the file. On December 8, when a representative of Yesh Din arrived to copy this and other files, it turned out that the Samaria region forgot to extract the investigation file from the archive and therefore it could not be copied that day. Yesh Din's representative was told she could copy the file only a week later. The file was finally copied on January 16, 2011. From the date the file was closed until the investigation material in the file was copied more than half a year passed. The 30-day period to file an appeal passed even before Yesh Din was told that the file was closed.<sup>27</sup>
- On July 29, 2009, the SJ District prosecution division closed a file concerning assault and the transport of caravans near Bil'in. Notice of closure of the file was given to Yesh Din only on September 6, 2009 (more than a month after it was closed), and after periodical inquiries (between January 2008 and September 2009) to ask about the status of the file. Following the news of the closure of the file, Yesh Din made a request to the SJ prosecution division on September 21, 2009 to copy it. After prolonged negotiations, including written correspondence and phone reminders, the request to copy the material was finally approved more than three months after it was made, and the file was copied on January 28, 2010. When the file was copied it turned out that the investigation material that was provided for copying omitted reports, memos and a disc with a film. Two weeks later the rest of the materials were copied without the film. Yesh Din's efforts to receive the disc lasted almost four months. From the day of the decision to close the file until the investigation material was received in full, almost a whole year went by. The 30-day quota for filing an appeal had passed even before it was known that the investigation file had closed.<sup>28</sup>

## **The workload at the State Attorney's Office and police: Delays in decisions by the appeals division**

In the second part of section 65 of the CPL, establishing the 30-day period to submit appeals, it says that in files concerning sex crimes or violence that constitutes a felony, a decision should be made on the appeal and given to the complainant within six months. The party authorized to decide on the appeal may decide to give his decision at a later time "for special reasons that are noted."<sup>29</sup> Experience shows that the parties who decide on appeals violate that duty routinely. In 32 appeals Yesh Din submitted against police decisions on files concerning assaults, and in which a decision was made on the appeal, only in 13 cases was the decision made within half a year as required by the law, whereas in the rest of the appeals<sup>30</sup> decisions were made only after an average of more than 484 days (about 16 months).<sup>31</sup>

Thus, for instance, in the appeal against closing the investigation file about two separate cases of assault against two shepherds from the village of Thulth, the advocacy decided to reject the appeal only more than three and a half years after the appeal was filed.<sup>32</sup> The reason given for the long delay in making the decision was the police and State Attorney's Office's heavy workload.<sup>33</sup>

In another appeal, submitted following the closure of an investigation file about an assault on Palestinian farmers from the village of al-Mughayer (near the outpost of Adei Ad) including stone throwing, hitting and shooting, as a result of which their horse was killed, the advocacy gave notice about the rejection of the appeal only three years and two months later.<sup>34</sup> Like in many other cases, in this case too the reason given for the delay in making a decision about the appeal was a heavy workload in the State Attorney's Office's appeals division.<sup>35</sup> A workload, as heavy as it may be, is not "special reasons" that justify such a blatant deviation from the timeframe set forth by the law, especially when it is a regular and not exceptional situation.

In 16 other appeals submitted by Yesh Din against decisions to close police investigation files concerning assaults, no decision has been made yet; 12 of them were submitted more than six months ago, of which eight were submitted more than a year ago, and on average these files have been waiting for decision for a year and four months.<sup>36</sup> For example, on an appeal submitted 774 days ago (more than two years) following the closure of an investigation file concerning stone throwing at Tapuach Junction at a Palestinian couple who live in Kafr Yasouf, no decision has been made yet.<sup>37</sup>

While the State Attorney's Office has taken a tough stand on the first half of section 65 and announced that appeals submitted after the end of the 30-day quota will be rejected out of hand, it repeatedly and blatantly violates the duty incumbent on it in the second half of the very same section.

# E

## Denying complainants the right of appeal

The reduction of the right to review investigation files that were closed and the insistence on the 30-day period to submit an appeal substantially undermine complainants' ability to submit appeals.

This assault on the institution of appeals means the removal of a main check on the activity of the investigation and prosecution bodies, and the cancellation of an oversight mechanism that reviews their decisions and allows them to be challenged. The absence of an oversight and restraining mechanism will allow the investigation or prosecution bodies to close files arbitrarily at will without having to explain their decisions. The trend of reducing the rights of complainants stands in sharp contrast to the public interests the State Attorney declares in the current directive: maintaining the proper functioning of the law-enforcement authorities, guaranteeing public trust of the law-enforcement authorities and maintaining cooperation with them, and preventing abuse of investigation procedures.<sup>38</sup>

For the Palestinian complainants, whose chances of meeting the 30-day quota are slim to nil, this is a severe blow that negates their right to submit an appeal. The violation of the right of these people to appeal against the closure of investigation files should also be understood in light of the worrisome figures concerning law enforcement in the territories in general and the high rate of investigation files that close in particular: about 90% of the investigation files managed by the police JS District into crimes committed by Israeli citizens against Palestinians, were closed on the grounds of "insufficient evidence" or "unknown perpetrator," which attest to the failure of the investigators;<sup>39</sup> as well as 94% of the files investigated by the MPCID into offenses by soldiers against Palestinians and their property.<sup>40</sup> Blocking the possibility of appealing against the decision to close investigation files deepens the mistrust the Palestinians harbor towards the Israeli law-enforcement system and its willingness to protect them.

On April 27, 2011,<sup>41</sup> Yesh Din, along with the Noga Legal Center for Victims of Crime and the Association of Rape Crisis Centers in Israel asked the State Attorney's Office to restore the State Attorney's Directive 14.8 to its previous form and allow complainants to review investigation files that closed. Following the request, the State Attorney's Office announced that the State Attorney is planning to update Directive 14.8 soon.<sup>42</sup> Yesh Din is waiting for the publication of the updated directive.

**Yesh Din file 1079/05: An appeal against closing a file on the grounds of lack of evidence was accepted and an indictment was served**

On September 1, 2005, Hashem Younes Hashem Aza and his cousin were assaulted by a group of eight boys who threw stones and burning papers at Aza's home in Tel Rumeida. During the incident the boys sprayed powder from a fire extinguisher on a tree on the grounds of Aza's home and tried to set it on fire. As a result a fire broke out in the vines planted next to Aza's house.

Aza gave the police investigators the details of one of the assailants who lives next door to him and whom he knows well, provided a detailed description of the boy and identified him in a photo lineup. He also claimed he could identify other boys who participated in the incident, but he was not presented with additional pictures. Another description of the boy was provided by a platoon commander in the IDF's Lavi brigade, called to the site because of the fire that broke out in the vines. The officer, who witnessed the stone throwing by four boys, gave their descriptions. One of them was identical to the description given by Aza. His statement placed the boy Aza had identified at the site of the incident minutes after it began. Aza's cousin, who was present during the incident, told the investigators he could identify some of the boys, but he was not given an identification lineup. Evidence was also found at the site of the incident, such as burned newspapers and stones.

The suspect whom Aza had identified did not report for investigation for many months, and when he was finally arrested he remained silent throughout the investigation and refused to respond to the charges against him. On December 28, 2006 the JS District prosecution division decided to close the investigation file on grounds of "insufficient evidence."

Subsequently, Yesh Din submitted an appeal against the decision to close the file even though the investigation material contained sufficient evidence to serve an indictment against the suspect. In this file, the appeal claimed, there is an incriminating version by a complainant who identified his assailant against the silence of the suspect. In principle that should be enough to serve an indictment, all the more so when along with the complainant's testimony there is additional testimony and evidence that support the complainant's version.<sup>43</sup>

On November 27, 2007, the State Attorney's Office's appeals division decided to accept the arguments raised in the appeal and to prosecute the accused.<sup>44</sup>An indictment on charges of attempted assault was served on February 27, 2008.

At the beginning of 2010 proceedings on the file were suspended because the accused was not located and did not report for the hearings. In May 2010, after the accused was arrested as a suspect in another case, resumption of the proceedings was made possible. The trial is being conducted in a youth court in camera, because the accused was a minor at the time of the incident.

## F

### Recommendations

In light of the above Yesh Din recommends:

1. Restore the previous language of the directive so that complainants can review material contained in investigation files and exercise their right set forth by the law to appeal against a decision to close investigation file and/or a decision not to file an indictment.
2. Establish procedures to guarantee that complainants and/or their proxies receive notice of the closure of investigation files in their complaints and that such notice be delivered close to the time of the closure of the file.
3. Amend Section 65 of the CPL so that the countdown of the 30 days the complainant has to file an appeal begin only after he has the opportunity to review the investigation material contained in the file, or alternatively to allow appeals to be made even after the end of the 30 days, in cases when the notice about the closure of the investigation file was delivered to the complainant late or in cases when review of the file was delayed.
4. Reinforce staffing of the State Attorney's Office's appeal division so that it can meet its commitments under the law to decide within six months on appeals concerning crimes of sex and violence. We also recommend that the appeals division establish a procedure ordering a review of appeals in investigation files concerning ideological crimes within a limited time to allow the effective completion of the investigation when needed.<sup>45</sup>

1. Criminal Procedure Law (Combined Version), 1982, Chapter 4, Pre-trial Procedures, Section A: Complaint, Investigation and Prosecution, Section 64.
2. Ibid., Section 63.
3. Ibid., Section 65.
4. Of which: 19 appeals were accepted by the police, which decided to renew the investigation and complete it following the appeal; eight appeals were accepted by the State Attorney's Office's appeals division, which decided to renew investigations of seven files and serve an indictment in one file. The authority of the party that closed the file to renew the investigation without referring the appeal to a party empowered to decide on it (a power exercised in many appeals submitted by Yesh Din) is not enshrined in the law and is therefore questionable. In many of the files that reopen for investigation by the party that closed them in the police, no significant additional investigative activities are undertaken before the file re-closes after many months. These appeals and the criticism they contain of the work of the police or the decision of the closing party do not even reach the State Attorney's Office at all.
5. One appeal was canceled by Yesh Din, after the investigation file was transferred to the police SJ District. Another appeal became redundant after it turned out that disciplinary measures had been taken against the police who were involved in the incident.
6. State Attorney Directives, Directive No. 14.8, Requests by various parties to review investigation material in a police file, August 1, 2002, Section 5 (14).
7. As far as we know, there are no official figures on the grounds for closing investigation files in Israel. Figures provided in July 2001 by Moshe Lador, at the time the Jerusalem District Attorney, to the Knesset Constitution, Law and Justice Committee -- figures which he said he "pulled out of his sleeve" -- indicate that 55%-60% of the investigation files in Israel were closed on grounds of "insufficient evidence." Source: The policy of closing files by the State Attorney and police prosecution, Knesset Information Center, 2002. Yesh Din's monitoring of investigation files that closed shows that 430 out of 488 (88%) monitored investigation files closed on grounds of absence of evidence (115 closed because of insufficient evidence and 315 were stored away on grounds of "unknown perpetrator" which is also classified under the grounds of insufficient evidence).
8. State Attorney Directives, Directive No. 14.8, Requests by various parties to review investigation material in a police file, June 14, 2010, Section 3 (5).
9. See box, p. 9.
10. Of these, 15 files closed again after the completion of the investigation and 13 are still being processed by the State Attorney's Office or undergoing completion of investigation.
11. State Attorney Directives, Directive No. 14.8, Requests by various parties to review investigation material in a police file, June 14, 2010, Section 4 (1-5).
12. Ibid.
13. Ibid, Section 3 (4-5).
14. Yesh Din Files 2034/10, 2123/10, 2088/10.
15. Letter by Ms. Hila Seigler, February 23, 2011, Police Investigation Unit, State Attorney's Office. Yesh Din File 1233/10.
16. Letter by Chief Superintendent Gil Desheh, Deputy Investigations Officer, Samaria Region, to Lawyer Michael Sfar, April 11, 2011.
17. As aforesaid, "unknown perpetrator."
18. Letter from Chief Superintendent Gil Desheh, Deputy Investigations Officer, Samaria Region, to Lawyer Ido Tamari, May 17, 2011.
19. Criminal Procedure Law (Combined Version), 1982, Chapter 4, Pre-trial Procedures, Section A: Complaint, Investigation and Prosecution, Section 63.
20. Ibid, Section 64.
21. Response from Lawyer Eran Ori, head of the SJ District Prosecution Division, to a letter from Lawyer Ido Tamari, April 13, 2011. Yesh Din File 1954/09.
22. This is based on an agreement between the sides that requests for an update be periodical and concentrated.
23. The PIU tends to be quick to approve Yesh Din requests to copy investigation files it handled and closed.
24. For example, Yesh Din Files 1777/09, 1908/09 and 1954/09.
25. Letter by Chief Superintendent Gil Desheh, Deputy Investigations Officer, Samaria Region, to Lawyer Michael Sfar, April 11, 2011.

26. Yesh Din File 1367/08, assault in Tell on December 26, 2007.
27. Yesh Din File 2153/10, arson of trees in Jit, May 27, 2010.
28. Yesh Din File 1372/08, assault and transport of caravans near Bil'in on January 1, 2008.
29. Criminal Procedure Law (Combined Version), 1982, Chapter 4, Pre-trial Procedures, Section A: Complaint, Investigation and Prosecution, Section 65.
30. 59% (19 appeals).
31. On this matter see also: **Too Little, Too Late: Supervision by the Office of the State Attorney over the investigation of offenses committed by Israeli civilians against Palestinians in the Occupied Territories**, Yesh Din, May 2008.
32. The appeal was filed on July 30, 2006. Notice of its denial arrived on March 3, 2010. Yesh Din File 1134/06.
33. Letter from Sharon Edri, Senior Deputy State Attorney and Head of Appeals Division, to Lawyer Michael Sfard, March 3, 2011. Yesh Din File 1134/06.
34. The appeal was filed on March 3, 2008. Notice of its denial was received on May 4, 2011. Yesh Din File 1180/06.
35. Letter from Sharon Edri, Senior Deputy State Attorney and Head of Appeals Division, to Lawyer Ido Tamari, April 26, 2011 (received May 4, 2011). Yesh Din File 1180/06.
36. 485 days, at the time of this writing.
37. Yesh Din File 1523/08.
38. State Attorney Directives, Directive No. 14.8, Requests by various parties to review investigation material in a police file, June 14, 2010, Section 4 (1-3).
39. **Law Enforcement upon Israeli Civilians in the West Bank**. Yesh Din monitoring figures, datasheet from February 2011. The figures refer to 642 investigation files under Yesh Din's monitoring from 2005 until February 2011.
40. **Investigations of Criminal Offenses by IDF Soldiers against Palestinians and Their Property**. Figures for the years 2000-2009, Yesh Din, datasheet from February 2011.
41. This request was preceded by requests on November 17, 2010, January 16, 2011 and February 22, 2011, in which the State Attorney was asked to reconsider the directive considering the anticipated violation of the rights of victims of crime and freedom of information.
42. Letter from Lawyer Yariv Regev, Senior Deputy of the State Attorney, to Lawyer Michael Sfard, May 9, 2011.
43. Appeal against the closure of File ID 3131/05, March 25, 2007. Yesh Din File 1079/05.
44. Letter from Ms. Eti Kahane, Head of Appeals at State Attorney's Office, to Lawyer Michael Sfard, November 27, 2007.
45. As already recommended in **Too Little, Too Late: Supervision by the Office of the State Attorney over the investigation of offenses committed by Israeli civilians against Palestinians in the Occupied Territories**, Yesh Din, May 2008.