

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



MAY 2008

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REPORT'S SUMMARY

The report *Too Little, Too Late* examines the way the Office of the State Attorney supervises police investigations in the West Bank and the quality of that supervision. The report reviews and critiques the two means of supervision that currently exist at the State Attorney's Office:

- The "law enforcement team" headed by Deputy State Attorney (Special Assignments);
- The Appeals Department at the State Attorney's Office, regarding appeals submitted against decisions to close investigation files on offenses by Israeli civilians against Palestinians and their property.

This report was written by Yesh Din - Volunteers for Human Rights, as part of an ongoing project by the organization. The subject of the project is the identification of the causes of the ongoing failure by the Israeli authorities in the area of law enforcement upon Israeli civilians who commit offenses against Palestinians and their property in the West Bank.

Yesh Din's findings, detailed in the first chapter of the report, reveal a similar picture to the one presented in the organization's first report from June 2006 "A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank." The findings show that the high failure rate of SJ District (Samaria and Judea)¹ investigations into the complaints of Palestinians harmed by Israeli civilians remains constant: only 8% of those investigations result in filing indictments. Thus, in 87% of the investigation files on assault offenses whose processing was concluded, the investigation file was closed without an indictment being filed against suspects. Of the investigation files into offenses related to criminal trespass - including damaging olive trees, seizing land and vandalizing crops - the investigation files were closed in 92% of the cases Yesh Din is monitoring and whose processing by the law enforcement agencies was concluded. In the two groups of offenses of damage to property and other offenses, all of the files (100%) whose processing was concluded were closed without an indictment being submitted.

The ongoing failure of the law enforcement agencies in dealing with Israeli civilians in the Occupied Territories (OT) was reviewed extensively in the summary report of the national

1. "Samaria and Judea" are official Israeli terms for the area known internationally as the "West Bank."

commission of inquiry into the massacre at the Cave of the Patriarchs in Hebron (the Shamgar Commission), published in 1994. The report's recommendations were adopted by the Government of Israel, including the recommendation that "the Attorney General set forth coordination procedures between the Police and the State Attorney and the District Attorney, to guarantee the monitoring and supervision of the processing of case files, including supervision of each decision to close a case, filing indictments and managing trial procedures." The second chapter of this report examines the changes that occurred in the implementation of that recommendation over the years, focusing on the activity of the "law enforcement team" headed by a senior attorney from the Office of the State Attorney. The findings presented in that chapter show that the "law enforcement team" does indeed work on important and significant issues to increase law enforcement in the Occupied Territories. However, the findings show that the fulfillment of the Shamgar Commission's recommendation - that there be supervision on behalf of the Attorney General of the management of investigation files, decisions to close them, filing indictments and managing trial procedures - has been meaningless, and specific investigation files are examined only rarely by the senior attorney appointed to head the team.

Therefore, the only remaining means of supervising specific investigation files that were closed is the appeals track. As a rule, Yesh Din has found that Palestinian complainants who are not accompanied by an Israeli human rights organization avoid filing appeals. Yesh Din's legal team, which represents the Palestinian victims of the offenses whose investigation the organization monitors, regularly examines the investigation files that were closed without filing an indictment. When the legal team finds that investigation files were closed without the investigation being exhausted, or were closed without filing an indictment even though in its opinion the investigation file already contains sufficient evidence to prosecute suspects, Yesh Din files an appeal on behalf of the complainants against the decision to close the case .

The findings of our monitoring of the processing of appeals submitted by Yesh Din showed that the State Attorney's Office does not use appeals as a tool for meaningful supervision of SJ District Police investigations or to correct the defects and failures they reveal. The report's findings regarding the work of the Appeals Department are based on an analysis of the processing of 43 appeals submitted by Yesh Din, in which final decisions were granted in 31. The findings demonstrate that the Appeals Department tends to sweepingly accept the decisions of the Police and district attorneys to close cases. In doing so it adopts the testimonial accounts of the suspects, when suspects were found, accepts the failure to conduct basic investigation activities, and in some cases even ignores evidence contained in the investigation files and whose existence was pointed out in the appeals that were

filed. The report's findings also show that the Appeals Department exceeds the provisions of the law that limit the amount of time allowed for processing appeals on the closure of investigation files on offenses of serious violence.

A combination of the findings in the two parts of this report shows, as the Shamgar Commission said, that "much ink has been spilled on the subject [of law enforcement in the OT], and many words have been spoken, but what was actually done was too slow, too little and too late." This comment, written in the middle of the previous decade, is still true today regarding the supervision by the Office of the State Attorney of investigations into offenses by Israeli civilians against Palestinians.

Following the report's findings Yesh Din recommends that:

- The "monitoring and coordination procedure" be adapted with the necessary amendments in such a way that reflects the State Attorney's job of maintaining a close monitoring of the investigation files in the SJ District.
- Until the re-adaption of the said procedures, Yesh Din's recommendations published in the report "A Semblance of Law" regarding the supervision of investigations should be adopted: tightening the supervision of investigations in the SJ District in order to guarantee exhausting the investigations of Israeli civilian attacks on Palestinians and their property; transferring cases that are closed without filing an indictment to the review of the District Attorney; appointing an attorney from the District Attorney to follow the investigation of assault cases and other serious crimes.
- Likewise, until the adoption of the aforementioned procedure, the law enforcement team headed by the Assistant State Prosecutor (Special Assignments) should review on a monthly basis at least 10% of the investigation files closed by the SJ District concerning crimes by Israeli civilians against Palestinians.
- The staffing of the Appeals Department of the State Attorney's Office should be increased so that the department can fulfill its commitments by the law to decide on appeals regarding violence and sex crimes within six months. We propose that the Appeals Department establish a procedure to check appeals in other investigation files rooted in ideological crime within a given timeframe, in order to effectively complete the investigation at the appropriate time.

- The law enforcement team should be instructed to maintain permanent contact with the Appeals Department in order to ascertain patterns of failures and defects in the SJ District investigations.

INTRODUCTION

This is the third year in which Yesh Din – Volunteers for Human Rights is conducting a project whose goal is to strengthen and empower the system of law enforcement over Israeli civilians who commit offenses against Palestinians in the Occupied Territories (OT).

This report is a sequel to the previous report published by the organization in June 2006, entitled “A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank.” The report examined the initial stages of processing Israeli criminal acts directed against Palestinians in the West Bank, from the reactions of IDF soldiers present at the time of the incident, through the obstacles before Palestinian civilians who wish to file complaints at Israeli police stations in the West Bank, to the defects and failures found in the police investigations, which were discovered by studying and analyzing investigation files once closed.

The present report investigates how the Office of the State Attorney – the most senior of the bodies dealing with law enforcement within the Ministry of Justice – carries out the task of tracking, overseeing and supervising investigations in the SJ District Police (Samaria and Judea: Israeli term for the West Bank). An outside observer might wonder whether the demand to carry out close supervision of investigation of offenses committed by Israeli civilians against Palestinians in the OT is a demand for selective enforcement. This question might arise because a similar mechanism, whose function is to audit the investigation and prosecution processes, does not exist in regard to the investigation and prosecution of “regular” criminal offenses within the boundaries of the State of Israel. Indeed, that argument was propagated over the years by spokespersons on behalf of the Israeli population of the territories – but it is a flawed argument. During the last several decades the offenses committed by Israeli civilians in the OT against Palestinians and their property have become a daily part of the reality in the OT. These offenses are committed for ideological reasons, and therefore their perpetrators are not “classic” offenders. This fact creates difficulties in investigating such offenses, difficulties that are not encountered by investigators in other areas. It also should be emphasized that in addition to the regular responsibility of the State of Israel to defend its citizens from crime there is another dimension present in the West Bank. That dimension derives from the legal status of the OT as territories under “belligerent occupation,” and the duty imposed by international law on the “occupying power” – Israel – to defend the population of the occupied territory – Palestinians – from the criminal and violent acts of a third party, in this case the citizens of

that very power. Therefore the demand for oversight of investigation of these crimes is not based on a desire for “selective enforcement,” but rather for the creation of a mechanism that would enable effective law enforcement in the OT, in order to fulfill the standards of international law.

The failure of the State of Israel to fulfill its duty to enforce the law upon its citizens in the OT has not remained unknown to the governments of Israel. In response to recurrent law violations in recent decades, and in consideration of the weakness of the Israeli law enforcement system in the OT, committees have been appointed, conclusions have been reached and recommendations have been submitted. One of the main recommendations, rendered by the national commission of investigation into the massacre of Palestinian worshipers at the Cave of the Patriarchs by Israeli citizen Dr. Baruch Goldstein, was to appoint an “authorized official” to carry out a case-by-case audit of the investigation files against Israeli civilians accused of committing offenses against Palestinians which were closed without charges being pressed. By adopting the report and its recommendations, the Government of Israel also effectively accepted that recommendation. The described auditing role was discharged to a senior attorney in the Office of the State Attorney, who was to head a monitoring and coordination team over law enforcement upon Israelis in the OT. Many years have passed since then.

Supervision of police investigations in the West Bank and the scrutiny thereof are among the roles of the Office of the State Attorney, which carries out these tasks in two primary ways: 1. A team headed by Deputy State Attorney (special assignments) Shai Nitzan engages in the “systemic” examination of issues related to law enforcement upon Israelis in the West Bank. In the second chapter of this report we will discuss the activity of his team. 2. The Appeals Department of the Office of the State Attorney reviews individual investigation files after appeals are submitted against decisions by investigative bodies or regional prosecution offices to close cases without serving an indictment. The third chapter of this report will examine the performance of the Appeals Department.

At the beginning of the report we present the current findings of Yesh Din’s monitoring of the results of investigations by the SJ District Police of complaints by Palestinians whose bodies or property were harmed by Israeli civilians. The statistical figures presented in the first chapter of the report illustrate well the need to focus significant attention on the investigation of these files and their supervision by senior attorneys.

CHAPTER A

FINDINGS OF YESH DIN'S MONITORING

01 OFFICIAL FIGURES

The investigations by the Samaria and Judea (SJ) District Police of offenses by Israeli civilians against Palestinians and their property are met with little success. The findings of a Yesh Din study published in the report “A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank” (hereinafter: “A Semblance of Law”) in June 2006 revealed that some 90% of the SJ District Police investigations into such offenses ended in failure: investigation files were closed on the grounds of “lack of evidence” and “perpetrator unknown,” and in some cases complaints were filed and lost and thus never investigated. The findings were based solely on Yesh Din’s monitoring, as no official Israeli body maintains complete data on the investigation of offenses committed by Israeli civilians against Palestinians and their property, or about the results of such investigations.

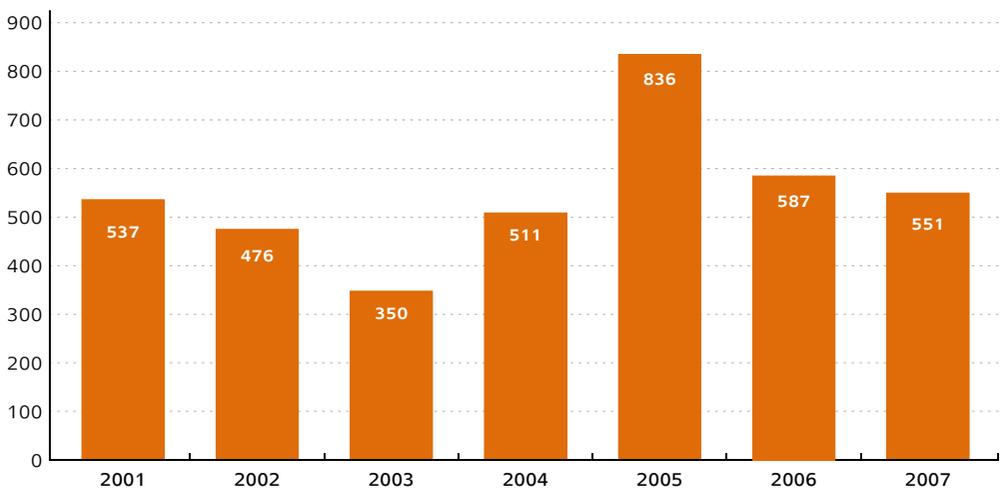
These investigation files are included in a category the SJ District Police calls “Israeli DOP,” meaning disturbances of the peace (DOP) by Israeli civilians. This category includes, along with “ideological” offenses against Palestinians, offenses by Israeli civilians against members of the Israeli security forces – the army and police. Therefore, the authorities do not regularly collect data regarding “Israeli DOP” against Palestinians and the results thereof, nor do they distinguish between them and figures on DOP cases and offenses committed against members of the security forces.²

Chart no. 1 therefore presents the only official figures that exist as to the number of investigation files opened in the last several years against Israeli civilians in the OT, in so-called “ideological” offenses. Only for the year 2005 did Yesh Din receive partial information from the police as to the ratio between the number of DOP cases against members of the

2. In June 2007 Yesh Din contacted the director of freedom of information at the Israeli Police and requested figures on investigation files opened in 2006 following complaints by Palestinians against Israeli civilians in the SJ District. The response of the director, Chief Superintendent Irit Liebman, included figures relating to all of the “DOP files,” including investigation files against Israeli civilians suspected of offenses against members of the security forces. Yesh Din asked to receive clarifications about the figures given to the organization, and in a phone conversation with Chief Superintendent Liebman’s substitute, Superintendent Hamutal Sabag relayed unofficially that the SJ District does not collect data about the results of processed DOP files on offenses against Palestinians separately from DOP files on offenses against members of the security forces.

security forces and those against Palestinians: from January to November of that year 299 investigation files were opened in the SJ District based on Palestinian complaints, while the remainder of the files – some 500 – investigated offenses committed against members of the security forces (only in the West Bank, not in the Gaza Strip).³ However it should be emphasized that 2005, the year in which the “Disengagement Plan” was implemented, was unusual in this context, and saw a significant increase in offenses by Israelis against members of the security forces.

Chart 1: Investigation files opened in the SJ District following offenses by Israeli civilians against Palestinians and members of the security forces, 2001-2007⁴



Following Yesh Din’s inquiries, the organization was also provided with figures as to the main offenses that appear in the “Israeli DOP” cases opened in 2006 and 2007:

3. A letter from Chief Superintendent Yaron Shetreet, assistant head of the investigation branch in the SJ District, to Yesh Din, May 14, 2007; comments by Commander Yisrael Yitzchak, then-commander of the SJ District, in a conversation with Yesh Din, March 23, 2006.

4. Sources for the 2001-2004 figures appear in the Yesh Din report **A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank** (June 2006) (hereinafter: “A Semblance of Law”), p. 39 (footnote 62); the source of the figure for 2005: SJ District Police response to the report “A Semblance of Law,” *ibid.*, p. 130; the source of the figure for 2006: the response of director of freedom of information at the Israeli Police, Chief Superintendent Irit Liebman, to a Yesh Din inquiry based on the Freedom of Information law, July 25, 2007; the source of the figure for 2007: response of Deputy State Advocate (special assignments) Attorney Shai Nitzan to a Yesh Din inquiry, March 19, 2008.

Table 1: Main offenses in “Israeli DOP” cases opened in the SJ District in 2006-2007⁵

Main offense	2006	2007
Causing death	1	0
Illegal use of a weapon (including threatening with a weapon)	14	19
Assault	232	186
Damage to property	105	106
Criminal trespass	53	59
Violation of an injunction	50	97
Other offenses	132	84
Total	587	551

02 YESH DIN MONITORING

Given that the SJ Police has declined to collect figures on the processing of offenses by Israeli civilians against Palestinians, Yesh Din’s monitoring of a broad sample of such investigations constitutes the only source of figures on the matter.

The report “A Semblance of Law” was based on 92 investigation files managed by the SJ District, which were examined by Yesh Din. Since the report’s release Yesh Din has continued accompanying Palestinian complainants who approach the organization for assistance and monitoring their cases’ SJ District Police investigations. At the time of the writing of this report Yesh Din was monitoring 205 investigation files managed in the SJ District. A current analysis of the results of the investigations shows that the high failure rate in investigating Israeli criminal activity against Palestinians in the West Bank, as was reported in “A Semblance of Law,” has remained.⁶

5. Source of the 2006 figures: the response of director of freedom of information at the Israeli Police, Chief Superintendent Irit Liebman, to a Yesh Din inquiry based on the Freedom of Information Law, July 25, 2007; source of the 2007 figures: response of Deputy State Advocate (special assignments) Attorney Shai Nitzan to a Yesh Din inquiry, March 19, 2008.

6. It should be noted that among the figures provided to Yesh Din by Shai Nitzan in his letter of March 19, 2008, the latter informed Yesh Din that until that time 72 indictments had been filed in DOP cases opened in 2007. However, the figure does not reveal how many of those indictments were filed following offenses committed against Palestinians and how many were concerned with offenses against members of the security forces. Therefore this figure says nothing about the filing of indictments concerning Israeli civilians accused of harming Palestinians.

Of the 205 investigation files, police processing and prosecutorial review have been concluded in 163 files.⁷ In 13 of the concluded cases, indictments were filed against defendants (representing 8% of the cases in which a final decision has been made). One case file (approximately 1% of the cases monitored) was lost and never investigated,⁸ and 149 investigation files (91%) were closed without filing indictments against suspects.

[a] The status of processing investigation files, by group of offense

Yesh Din follows the processing by investigation and prosecution bodies of three main categories of complaints: offenses of various kinds of assaults, trespassing on Palestinian land (and offenses that derive from trespass) and offenses of causing damage to Palestinian property. Alongside these main categories, other offenses were collected in a separate category, to be discussed below.

Assault offenses: 81 of 205 investigation files monitored by Yesh Din are concerned with attacks on Palestinians by Israeli civilians. Among those files, 11 cases involve shooting that led to death (two cases) and injury (nine cases). In the other cases Palestinians were assaulted with blows, sometimes with the use of sticks, knives and rifle butts, as well as with stones thrown at their houses, the cars they were driving, or their bodies while cultivating their privately owned land.

In 18 of the cases regarding assault the processing has not yet been completed: eight are still under investigation and 10 were transferred to the review of a prosecutor, in order to decide whether to close the case or file an indictment. Yesh Din does not have information about the status of processing of one investigation file because our requests to the authorities for information have not yet been answered.

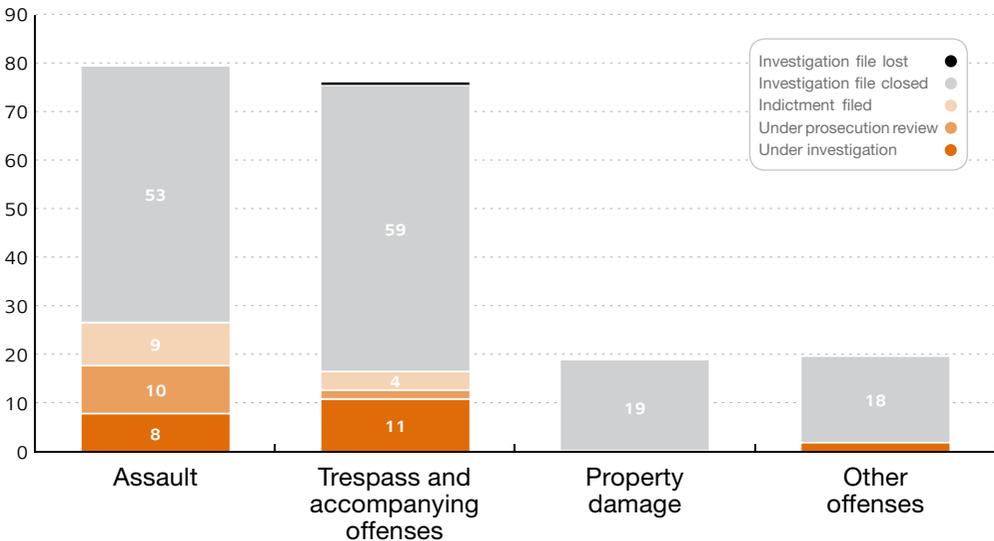
The processing of 62 of the cases dealing with assault offenses has been completed. In nine of them indictments were filed against defendants, including one case in which an indictment was filed only following an appeal submitted by Yesh Din on behalf of the complainant, asking to reopen the investigation after a decision had been made to close

7. Of the other files being monitored by Yesh Din 21 are still under investigation and 12 were transferred to a prosecutor – either at a district prosecution office or at the Prosecution Unit of the SJ District Police – whose job it is to decide whether to file an indictment or close the investigation file. The status of nine other investigation files is unknown to the organization because our inquiries to the investigation units about their statuses have not yet been answered.

8. That file is one of five files reported to Yesh Din as “lost” before publication of the report “A Semblance of Law.” Following the organization’s requests the other four files were located.

the case. In 53 of the cases (87% of the assault cases in which processing has been completed) the investigation was closed: 29 investigation files were closed on the grounds of “perpetrator unknown” and 23 on the grounds of “lack of evidence.” In an additional case Yesh Din does not have information on its grounds for closure.

Chart 2: Status of the investigation files being monitored by Yesh Din, by category of offense



Criminal trespass: 79 of the cases monitored by Yesh Din are concerned with the offense of criminal trespass and accompanying offenses: cutting down, uprooting and setting fire to olive and other fruit trees, seizing land (including fencing of Palestinian land and preventing Palestinians from cultivating their land), damaging crops, stealing olive sacks during the harvest season and others. 11 of these cases are still under investigation and two were transferred to the review of a prosecutor. The status of the processing of two other cases has not yet been reported to Yesh Din.

In 64 cases, a final decision has been reached. One of those case files was lost and the complaint was never investigated. In four cases indictments were filed, while 59 cases were closed (which represents 92% of the investigation files in this category in which a final decision was granted): 40 cases were closed on grounds of “perpetrator unknown,” 14 cases were closed for “lack of evidence,” and three cases were closed based on “no criminal culpability”. The grounds for closing the two remaining case files are unknown to Yesh Din.

Property damage offenses: a smaller group of investigation files is concerned with damage to Palestinian property: theft, arson, vandalizing agricultural equipment and damage to other property. This category includes 22 investigation files being monitored by Yesh Din. Regarding three of those files the organization has not yet been informed of their status. All of the remaining 19 cases - 100% of those in which Yesh Din was notified of the final decision - were closed: 16 on grounds of “perpetrator unknown” and three on grounds of “lack of evidence.”

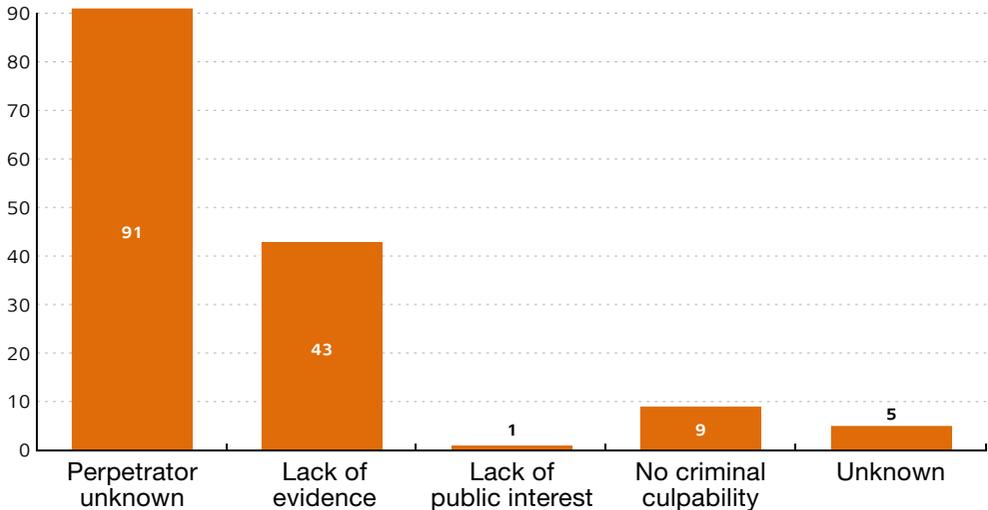
Other offenses: 23 investigation files included in Yesh Din’s monitoring were opened based on other offenses: killing of animals belonging to Palestinians, threats of violence, desecrating cemeteries and mosques, dumping waste from industrial plants located in settlements into Palestinian agricultural land, and more. Two of those cases are still under investigation and the status of three others has not yet been reported to the organization. The remaining 18 - again, 100% of the case files in which a final decision was reached - were all closed: six on grounds of “perpetrator unknown,” three for “lack of evidence,” six on grounds of “no criminal culpability” (half of those are concerned with dumping waste on Palestinian land) and another case, again involving dumping waste on Palestinian agricultural land, was closed on grounds of “lack of public interest.” The grounds for closing two other cases in that group have not yet been provided to Yesh Din.

[b] The grounds for closing investigation files

As mentioned above, 149 investigation files that were monitored by Yesh Din were closed on various grounds. Yesh Din is not aware of the grounds on which five additional cases were closed. Of the 144 other cases, 94% were closed on grounds that indicate a failure in the investigation: in 91 files investigators failed to identify suspected perpetrators of the offenses and those files were closed on grounds of “perpetrator unknown;” in 43 cases, in which suspects were identified, the investigators failed to collect sufficient evidence to prosecute them, and the cases were closed on grounds of “lack of evidence.”

In addition to the above, one case was closed on grounds of “lack of public interest” and nine cases (6% of the closed investigation files in which Yesh Din is aware of the grounds for closure) were closed based on “no criminal culpability.”

Chart 3: Grounds for closing investigation files monitored by Yesh Din



[c] Defects and failures in investigations

The main reasons for the SJ District’s failure to investigate complaints filed by Palestinian civilians against Israeli civilians who harm them and their property were described in the Yesh Din report, “A Semblance of Law.” Along with significant structural problems, including the dependence of police investigators upon IDF escorts in order to reach certain crime scenes, the inadequate manpower at the SJ District, and the lack of trust by Palestinians of the Israeli Police, Yesh Din has identified recurring patterns of defects and failures in investigations.

Among the main defects noted were: victims’ complaints and testimonies were recorded in Hebrew rather than Arabic, the language in which they were given; the police investigators rarely visited the crime scenes, and in the cases when they did arrive on site, defects were noted in documenting the events; in many cases testimony was not collected from key witnesses, including suspects and both Palestinian and Israeli eyewitnesses of the incident; live identification lineups of Israeli civilian suspects were hardly ever carried out; confrontations between victims and suspects were also rarely staged; in none of the investigation files checked by Yesh Din, in which the suspects offered claims of an alibi, were their claims verified before the case was closed; the contents of about one third of the investigation files were very sparse, and indicated a hasty closure of the case shortly after the complaint was received; in a number of cases a decision was made to

close the investigation, even though the material accumulated in the case file indicated sufficient prima facie evidence to prosecute the suspects; and an examination of cases closed on grounds of “no criminal culpability” raised questions about the decision to close cases on those grounds, given that the closure was executed on the basis of insufficient investigations.

The need for tight supervision of law enforcement upon Israeli civilians in the OT who commit criminal offenses against Palestinians and their property is demonstrated clearly by the figures presented above – and it is not a new idea. As early as the beginning of the 1980s an interministerial team headed by a senior attorney from the Office of the State Attorney (Attorney Yehudit Karp) was created in order to improve the level of law enforcement in the OT, which was perceived as very poor. In the report of the national commission of inquiry into the massacre by Baruch Goldstein of Muslim worshipers at the Cave of the Patriarchs in Hebron (the Shamgar Commission), one of the recommendations proffered was to institute regulations to guarantee the oversight of the processing of police investigation files in the OT by a party to be determined by the Attorney General. In the next chapter we will discuss the nature of the existing supervision of investigations in the SJ District, in light of the explicit recommendation by the Shamgar Commission.

CHAPTER B

THE LAW ENFORCEMENT TEAM

01 MONITORING INVESTIGATION FILES AND INDICTMENTS: THE ROLE OF THE “COORDINATING ATTORNEY”

[a] Conclusions of the Karp and Shamgar reports

The national commission of inquiry into the massacre at the Cave of the Patriarchs in Hebron, headed by then-Supreme Court Chief Justice Meir Shamgar (hereinafter: “the Shamgar Commission”) devoted a significant portion of its time and of the report it published to examining the status of law enforcement upon Israeli civilians in the OT. The commission’s summary report extensively reviews the discussions on that matter at the top echelons of the law enforcement agencies at Israeli cabinet meetings. The report also details the decisions made during those discussions.⁹ However, as the commission noted, “much ink has been spilled on the subject [of law enforcement in the OT], and many words have been spoken, but what has actually been done has been too slow, too little and too late.”¹⁰

In 1981 a “coordinating team” headed by then-Assistant Attorney General, Attorney Yehudit Karp, was created, including the Head of the Prosecution Unit at the Israeli Police national headquarters, the legal advisor of the Judea and Samaria Region, and the Jerusalem District Attorney. The establishment of that team was the most salient landmark regarding law enforcement in the OT, in the years before the massacre at the Cave of the Patriarchs and the national commission of inquiry created in its wake. In the letter of appointments signed by the Attorney General it was stated that “a problem exists regarding the management of investigations of the suspected commission of offenses by settlers in Judea and Samaria that are not simply criminal offenses but entail the relations with the Arab residents.”¹¹ Among its other tasks, the team was instructed to “track and coordinate as needed the management

9. Meir Shamgar (Chairperson), *Commission of Inquiry into the Massacre at the Cave of the Patriarchs in Hebron*, report: 5754 (National Commission of Inquiry: 1994) (hereinafter: “the Shamgar report”) [Hebrew] pp. 169-191.

10. *Ibid.*, p 192.

11. Yehudit Karp (Chairperson), *The Karp Report: Investigation of Suspicions Against Israelis in Judea and Samaria – Report of Follow-Up Team* (Ministry of Justice, May 23, 1981) [Hebrew], p. 1.

of investigations and the legal action taken when prima facie evidence is found of the commission of offenses as aforementioned.”¹² However, various constraints detailed in the summary of the report submitted by the commission’s chairperson a year after she was appointed prevented the coordinating team from thoroughly examining all of the relevant investigation files and monitoring their processing.¹³ Instead, the team examined the results of about 70 investigation files, and in a “sporadic check” found that in about 15 of them the investigation suffered from substantial defects.¹⁴ Despite the serious defects found in the activity of the law enforcement agencies, the work of the team and the subsequent report submitted did not lead to the creation of a supervision system of the investigations opened in the OT against Israeli civilians who harm Palestinians and their property.

As to the supervision of the investigation and prosecution procedures in the OT, significant weight was given to the recommendations of the Shamgar Commission report. Following the contents of the Karp report, and in light of documents and testimonies provided to the commission, its members noted in their concluding report that in order to lead to effective law enforcement in the OT the state authorities must conduct regular activity on three levels: creating constant and effective coordination between the police and the army in investigating suspects and prosecuting defendants; setting forth procedures and regulations on those matters; and finally, constant monitoring of the investigations and their results.¹⁵

The commission criticized the fact that there was no permanent monitoring of the investigations:

The monitoring of the processing of the investigation files did not include checking each and every file per se. The dissatisfaction with closing those files was therefore a conclusion that arose from the statistical data and not necessarily from the specific examination of each and every file, in order to conclude from it whether the police decision to close the file should be adopted, or whether an indictment should be filed on the basis of the material that was collected. It is unfortunate that no official body has carried out a case-by-case in-depth audit of the investigation files that were closed, in order to prevent unfounded decisions

12. *ibid.*

13. Among the “difficulties and constraints” mentioned were the balancing of other responsibilities of the team members, receiving partial information from the investigation or prosecution bodies, and the sense by the members of the team that handling all of the problems detected was beyond the limits of the team’s strength and power. Karp Report, pp. 31-32.

14. *Ibid.*, p. 7.

15. Shamgar report, p. 243.

- if there were any - and in order -to impact the quality of the decisions made in concrete files, by the very establishment and existence of a supervisory and auditing body. General comments, including the expression of displeasure from the situation, could only partially change the reality.¹⁶

Following the abovementioned the Shamgar Commission recommended that

the Attorney General set forth coordination procedures between the police and the Offices of the State Attorney and the District Attorney, in order to guarantee the monitoring and supervision of the processing of files, including the supervision of each decision to close a file, filing indictments, and managing trial procedures; for this purpose the Attorney General will decide on the party that is to carry out the particular monitoring.¹⁷

[b] Monitoring and coordination procedure

The Shamgar Commission report was submitted on June 26, 1994 to the Government of Israel, which decided that very day, unanimously, to adopt the report and undertook to act according to its recommendations.¹⁸ In the months of January and February 1995 the newspapers reported that a coordination procedure between the IDF and the police on law enforcement in the OT was under development.¹⁹ At the end of May 1995 it was reported that “most of the sections [of the procedure] are already being implemented on the ground, and the rest will be implemented in the coming weeks.”²⁰ It was also reported that Attorney Michael Shaked, the then-Assistant Attorney General, was appointed as head of a special monitoring team of the management of investigations and prosecutions in the OT, following the recommendations of the Shamgar Commission.²¹

As a result of the publication of the Shamgar Commission report and the cabinet decision,

16. Ibid., pp. 243-244. Emphasis added.

17. Ibid., p. 250.

18. Israeli cabinet decision number 3445, Report of the Commission of Inquiry into the Massacre at the Cave of the Patriarchs (“the Shamgar Commission”), June 26, 1994. The full decision appears on Yesh Din’s website.

19. Gidon Alon and Eitan Rabin, A procedure to handle settler demonstrations in the West Bank is formulated, Ha’arezt, January 15, 1995; Tova Tzimuki, Soldiers will videotape settlers disrupting order, Yedioth Achronoth, February 13, 1995.

20. Tova Tzimuki, Law enforcement in the territories will be handed from the army to the police, Yedioth Achronoth, May 28, 1995.

21. Ibid.

the Attorney General enacted the “Law and order enforcement procedure upon Israelis in the Judea and Samaria and Gaza Strip areas” (hereinafter: “the law enforcement procedure,”) which became a central guiding document that determined the distribution of labor between the army and the police regarding law enforcement upon Israelis in the OT. Adding to the law enforcement procedure was another, complementary procedure, entitled “the monitoring and coordination procedure between the Israeli Police and the Office of the State Attorney regarding investigations and charges against Israelis in the Judea and Samaria and Gaza Strip areas” (hereinafter: “the monitoring and coordination procedure”). The contents of the two procedures, which as stated above were an attempt to implement the conclusions of the Shamgar Commission, remained confidential until May 1998, when their main provisions were published in the Hatzofeh newspaper.²²

According to the publication in Hatzofeh, “the monitoring and coordination procedure” included a series of instructions as to the assembly of information related to law enforcement upon Israelis in the territories. The procedure determined that an attorney be appointed on behalf of the Attorney General (hereinafter: “coordinating attorney”) whose role it would be to coordinate the handling of the monitoring, the coordination and the supervision of the investigation files conducted and the indictments submitted against Israeli civilians suspected of committing crimes against Palestinians in the OT. The procedure included instructions as to the manner in which the coordinating attorney should carry out his role in the areas of coordination and monitoring.

Among other things, the monitoring and coordination procedure included the following instructions:²³

Collecting information

1. Both in the police Investigation and Prosecution Units and at the Offices of the District Attorneys, information will be collected about all the files under their management concerned with the following: disturbances of the peace, events connected to law enforcement and offenses by Israelis in the Judea and Samaria and Gaza Strip areas, and in certain cases in other parts of Israel as well.

22. Hagai Huberman and Shai Aharonovitz, The discriminatory legal system created by the previous government exposed for the first time, Hatzofeh, May 13, 1998.

23. For the full text of the “monitoring and coordination procedure” as published in 1998 [Hebrew] see Yesh Din’s website: www.yesh-din.org.

Monitoring, coordination and supervision - appointment of an attorney

1. The Attorney General, in coordination with the State Attorney, will appoint a senior attorney to manage the aforementioned monitoring, coordination and supervision (hereinafter: “the attorney”).

The attorney's activities regarding coordination

Among the other responsibilities, as will periodically be defined by the Attorney General and the State Attorney, the attorney will be responsible for the following activities:

1. Creating a coordination and monitoring forum (hereinafter: “the forum”) including representatives of the following bodies:

Representatives of the IDF (Central Command - operations, prosecution, Military Police Criminal Investigation Department (MPCID) and the legal advisor to the Judea and Samaria area).

A representative of the SJ District (Investigation Department Officer or other senior representative).

A representative of the General Security Service (GSS).

A representative of the Police Prosecution Unit.

A representative of the Jerusalem District Attorney.

A representative of the State Attorney's Office, High Court of Justice Department.

2. The attorney will head the aforementioned forum.

3. The forum will hold a joint meeting once a month.

The attorney's activities in the area of monitoring

1. In general the attorney must be conversant with the various issues related to the enforcement of law and order upon Israelis in the Judea and Samaria and the Gaza Strip areas and remain informed via meetings with the various relevant parties about the variables, atmosphere, actions taken and future plans of those parties.

2. The attorney is responsible for analyzing the detailed information received from the aforementioned bodies, deriving the maximum results from it and instructing those parties in any related matter - toward the goal of improving and refining de facto law enforcement in the area.

3. Among other things the attorney will ask to expedite the processing of cases opened half a year ago which have not progressed since. The attorney will also conduct spot checks, random or deliberate, of closed cases, in order to ascertain the circumstances of the incident as apparent in the case files, the quality of the investigation and the reasons for closure.

[...]

Under the heading “special coordination and monitoring” the monitoring and coordination procedure reads:

1. The attorney will compose, in consultation with the members of the forum, a list of recidivist offenders (whether criminal with subversive nationalist background or criminal in the area of various disturbances of peace).
2. The parties who are members of the forum will provide the attorney, whether verbally or in writing, with all the information in their possession about those offenders (previous criminal records, copies of indictments, copies of verdicts and sentences, lists of pending cases, lists of cases closed in the past, various kinds of intelligence, etc.).
3. The attorney will manage a separate file for each of the aforementioned suspects dedicated to collating the aforementioned information.
4. The attorney will conduct “close and special monitoring” regarding the manner in which different parties handle the offenders on the list and set improving law enforcement upon them as a priority.
5. The attorney will be a party to discussions held in various forms regarding issuing restraining orders, expulsion orders, prevention of entry orders, administrative detentions and so on against Israeli suspects.

The contents of the “monitoring and coordination procedure” reflected the conclusions of the Shamgar Commission and the conclusions of the Karp report as to the need to monitor investigation files opened against Israeli civilians suspected of harming Palestinians and their property in the Occupied Territories, and the indictments filed in such cases. But the public revelation of the contents of the procedures led to a political campaign pressuring the Attorney General to cancel or change what right-wing elements referred to as “the special procedures,”²⁴ claiming, inter alia, that those procedures constituted discrimination against the Israeli population of the OT compared to Israeli civilians living within the boundaries of the State of Israel, and portrayed the settler population in a negative light in the eyes of the IDF forces to be briefed on the provisions of the “law enforcement procedure.”²⁵

The pressure campaign led then-Attorney General Elyakim Rubenstein to examine the existing procedures, and in September 1998 Rubenstein distributed to the cabinet ministers the amended version of the law enforcement procedure upon Israeli civilians in the OT, whose new title was “law enforcement procedure upon Israelis who violate the law in the

24. Amnon Shomron, [A law against settlers](#), *Maariv*, June 14, 1999.

25. Letter from “the Committee of Jewish settlement in Hebron” from September 16, 1998 entitled “complete cancellation of the special procedures.” The letter is available on the Yesh Din website.

Judea and Samaria and Gaza Strip areas.” In a letter attached to the procedure, addressed to the Prime Minister and Defense, Justice and Domestic Security Ministers, Rubenstein emphasized that “the procedure is directed toward law enforcement against law violators and does not intend to cast suspicion on Jewish settlers in those areas in general.”²⁶

As to the “monitoring and coordination procedure,” the Attorney General announced its cancellation and noted that the responsibilities given to the State Attorney in that procedure - responsibilities which he claimed had not yet been fulfilled - would be carried out as part of “a combined team to address incitement and sedition” created following a cabinet decision after the assassination of Prime Minister Yitzhak Rabin. The full text of the Attorney General’s letter is as follows:

It should be noted that when we learned of the existence of [the law enforcement procedure] we also learned of another procedure from the same period of time, called the “monitoring and coordination procedure between the Israeli Police and the State Attorney regarding investigations and charges against Israelis in the Judea and Samaria and Gaza Strip areas,” another result of the recommendations of the Shamgar Commission. The procedure offered, among other things, a special attorney to oversee the activity of the enforcement agencies, to ensure adequate enforcement. In that matter, too, questions arose. But upon inquiry it emerged that in fact no such managing attorney had formally been appointed. Meanwhile, unfortunately, the assassination of the late Prime Minister Yitzhak Rabin occurred, and it was followed by a focus on ideological criminality of Jews, in Israel and in those areas. For that purpose a team was established after the assassination headed by Attorney T. Sasson, head of the Department of Special Assignments in the Office of the State Attorney, and in practice the team was charged with addressing ideological criminality in **every place** in the country, in Israel and in the [aforementioned] areas alike. The focus moved from a territorial definition to the treatment of a certain kind of criminality regardless of place. This approach, which was actually reflected in practice from the beginning, back at the time of Attorney General Mr. Ben Yair, more adequately reflects the needs than focusing on the settlement in Judea and Samaria and the Gaza Strip areas. Therefore, from now on the procedure called “the monitoring and coordination procedure” should also be viewed as formally **canceled**, and the roles of handling ideological criminality in Israel and the Judea and Samaria area will be determined according to Cabinet Decision 6317 from 28

26. Letter number 14147/98 from Attorney General Elyakim Rubenstein to the Prime Minister, Defense, Justice and Domestic Security Ministers, September 1, 1998. Section a (1). Emphasis in the original.

Heshvan 5757 [sic] (November 19, 1995), which established a combined team to address incitement and sedition, which is concerned with effective law enforcement upon persons suspected of such violations, of using violence against public figures, as well as other suspects whose activity constitutes a danger to democracy in this country and the grave violation of public order. Indeed in practice the team deals with issues of subversion everywhere in the country, whether inside Israel or in the [aforementioned] areas, when it comes to focuses of risk, with regard to ideological criminality of all variations, right, left, the Arab population and so on. Their treatment is according to the aforementioned cabinet decision.²⁷

[c] Cabinet decision 6317

On November 19, 1995, about two weeks after the assassination of Prime Minister Yitzhak Rabin, the Israeli Cabinet reached decision 6317 entitled, “The treatment of subversive organizations and the creation of a law enforcement team against incitement and sedition offenders.”²⁸ That decision was made in the wake of the deep shock over the assassination of the Prime Minister by an Israeli citizen, and the memory of the broad incitement campaign against the prime minister before the assassination. Against that background the government decided to act against “extremist, violent, racist and terrorist organizations” and also ordered the creation of a combined team on behalf of the Attorney General, the Chief of Staff, and the Commissioner of the Police, who were each to appoint two officials on their behalf as members of the team.

It was decided that that team would be “responsible to the parties who appointed it for effective law enforcement upon people suspected of incitement and sedition, the use of violence against a public figure and other suspects whose activity endangers democracy in this country and constitutes a grave violation of public order.”²⁹ Section 2(5) of the decision detailed the responsibilities of the team regarding the collection of “all of the open and secret information about the suspects, about every offense attributed to each one of them,” and its job to ensure that the law enforcement bodies act on this matter according to their powers, including a) that the police is aware of the offense, is conducting an investigation to collect evidence, and has considered the need to detain the suspect; b)

27. Ibid., section 2. Emphases in the original.

28. Israeli cabinet decision number 6317, “The treatment of subversive organizations and the creation of a law enforcement team against incitement and sedition offenders,” from November 19, 1995. The full text of the decision is available on the Yesh Din website.

29. Ibid., section 2(3).

that there is no delay in transferring the investigation file to the criminal prosecution; and c) that there is no delay in the prosecutor handing down his decision.

Likewise, the team was empowered to manage a database regarding the suspects and their criminal records,³⁰ to consider issuing administrative injunctions against them, including restraining orders, and to ensure that the injunctions issued were enforced.³¹ Likewise, the Cabinet decision established that the police, the prosecution bodies and the IDF would brief the special team on any complaint, investigation, indictment and administrative injunction issued against the suspects.³²

As part of the amendment of the procedures by Attorney General Rubinstein in September 1998, it was decided that the responsibilities specified for the team headed by the “coordinating attorney” in the “monitoring and coordination procedure” issued following the Shamgar report, would be performed according to Cabinet decision 6317 by a combined team established on its basis. That team was headed by the then-head of the Department of Special Assignments in the State Attorney’s Office, Attorney Talia Sasson.

As far as Yesh Din is aware, Cabinet decision 6137 of November 19, 1995, and the decision by the Attorney General to include in it the supervision and monitoring of the law enforcement procedures upon Israeli civilians who commit offenses against Palestinians and their property in the OT, were never canceled.

[d] The activity of the combined team during the period of Attorney Sasson

Attorney Talia Sasson assumed the role of head of the Department of Special Assignments in December 1995.³³ As part of her job she headed the combined team to treat incitement and sedition, created following Cabinet decision 6317. In a conversation with Yesh Din, Attorney Sasson shared that she learned of her roles regarding law enforcement upon Israeli civilians in the OT, as set forth in the “monitoring and coordination procedure” and which according to press reports were assigned to her predecessor Attorney Michael Shaked, only as a result of the publication of the procedure in the press.

30. Ibid., section 2(6).

31. Ibid., section 2(11).

32. Ibid., section 2(12).

33. The contents of this section are based on a conversation by Attorney Natalie Rosen and Lior Yavne with Attorney Talia Sasson on January 31, 2008.

Despite this oversight, in accordance with the aforementioned responsibilities that were assigned to her, Attorney Sasson began convening, once a month, the combined team, which besides herself included an attorney from the Jerusalem District, a representative of the Military Advocate General (usually his deputy), the legal advisor to the Judea and Samaria area, a representative of the Israeli Police Headquarters Investigation Department, a representative of the GSS and a representative of the High Court of Justice (HCJ) Department at the State Attorney's Office. In addition, Attorney Sasson invited to discussions every two weeks the head of the investigation team and the head of the Prosecution Unit of the SJ District Police, and whenever relevant, the head of the Prosecution Unit of the Jerusalem District of the police. In addition Attorney Sasson visited the headquarters of the SJ District Police every few months, where she was briefed by the heads of the district on the treatment of the investigation files concerned with offenses by Israeli civilians against Palestinians and their property.

The practical performance of the job, according to Attorney Sasson, consisted of: convening the members of the team on a regular and permanent basis; coordinating the ongoing work between the different investigation bodies; receiving a report from each agency represented in the team - the GSS, the IDF, the Israeli Police and the State Attorney – regarding the cases they were managing at the time, and regarding legal problems involved in handling those cases, with the State Attorney providing ongoing guidance in their management; and intervention with the investigative bodies as needed. Likewise, the team discovered ongoing problems, such as in the area of the legislation necessary to increase law enforcement in the OT. Among other things a subcommittee was created to deal with cases of criminal trespass by Israelis onto Palestinian property, but the treatment of those cases did not succeed, according to Attorney Sasson, despite the ongoing involvement of the State Attorney's Office in the matter.

Attorney Sasson perceived her duties as requiring ongoing and constant supervision of all of the investigative bodies represented on the team, and involvement in all of the matters related to law enforcement in the West Bank and in the State of Israel in general, in "ideological" offenses. The main difficulty in confronting law enforcement in the Occupied Territories, according to Attorney Sasson, was the provided conceptual structure of law enforcement in the OT. Whereas the role of law enforcement is assigned to the Israeli Police, which is unable, for various reasons, to execute effective law enforcement upon the settlers in the OT, the overall responsibility for enforcement is tasked to the army which does not want, and perhaps is not able, to deal with criminal law enforcement in general, and upon Israeli civilians committing offenses in the OT out of ideological motives in particular. The root of the problem, according to Attorney Sasson, is that both the police and the army are fed by a political message that comes from the defense ministers and governments

throughout the ages, a message that has seeped through all of the hierarchy, that settling the land is an important job carried out by the settlers, whereas law enforcement is a marginal and much less important matter. The result is a lack of adequate legislation, and a clear absence of the will to enforce the law upon the Israeli civilians in the OT.

Attorney Sasson concluded that under these circumstances, the job of the supervising attorney is doomed to failure, even though a worthy effort on the part of the attorney could lead to results on the ground, albeit few, by encouraging the police and the IDF to enforce the law.

[e] The activity of the combined team during the time of Attorney Nitzan

Since Attorney Sasson retired from the State Attorney's Office in February 2004 and until present the law enforcement team has been headed by Deputy State Attorney (special assignments) Attorney Shai Nitzan. The team includes other members from the Office of the State Attorney (HCJ Department), the GSS, as well as representatives from the IDF, including the operations officer of the Central Command, the Judea and Samaria area legal advisor and the Investigation and Intelligence Department Officer of the SJ District Police.

Upon the retirement of Attorney Sasson and her replacement by Attorney Nitzan, the character of the treatment of the monitoring and supervision of law enforcement procedures upon Israelis in the OT was changed. A conversation by Yesh Din with Attorney Nitzan found that he views his job and the job of the team he heads as formulating policy and procedures and making operative decisions on "systemic and substantial" issues, rather than monitoring and supervising investigation files or criminal trials of Israelis who harm Palestinians in the OT. However, Attorney Nitzan clarified that since he entered office, about three and a half years before this report was published, the team held roughly 40 meetings chaired by him. In addition, Attorney Nitzan participates twice a year in a meeting called by the SJ District Commander on ways to improve law enforcement upon Israeli civilians in the OT. In those meetings briefings are given and figures are discussed as to the offense files of Israeli civilians against Palestinians and against members of the security forces.

Attorney Nitzan offered Yesh Din a number of examples to illustrate the issues the team has discussed over the last two years: regulating the work of the coordinators of military security (residents of settlements who receive weapons and are delegated powers of the IDF for the defense of the settlement), including how they are elected for the job, supervision of their work and regulating the areas of their activity; regulating the licensing of weapons under

“personal license” and “general license” to the Israeli residents of the West Bank; regulating the treatment of cases in which land disputes arise between Israelis and Palestinians, where each side claims ownership of the land; examining the possibility of reinforcing the SJ District Police force; considering the possibility of issuing administrative restraining orders to Israelis in the OT; deployment of the security bodies ahead of special events such as the olive harvest; examining ways to deal with recurring problematic phenomena in specific arenas, such as attacks on Palestinian children on their way to school; the response of security bodies to the charges raised in reports produced by human rights organizations such as Yesh Din, The Association of Civil Rights in Israel and B’Tselem; examining problems in the city of Hebron and other complex places; and examining the difficulty of handling disturbances of the peace by minors who are not punishable under the law within the overall attempt to find tools to deal with the phenomenon.³⁴

Thus, for example, in the conversation with Yesh Din, Attorney Nitzan speculated that the treatment of systemic problems - the regulation of the powers of the security coordinators in the settlements and the dismissal of those who had abused their authority, along with tightening the supervision on the weapons possessed by Israeli civilians in the OT and the increased presence of military forces on sensitive occasions such as the harvest season - contributes to reducing the number of serious offenses committed by Israelis against Palestinians, although it has a lesser impact, he said, on the more “minor” incidents.³⁵

02 SUPERVISION OF SJ DISTRICT INVESTIGATIONS - ONLY THROUGH THE APPEAL PROCEDURE

In response to a question by Yesh Din Attorney Nitzan noted that:

*The role of the team does not include ongoing supervision of the management of specific cases handled by the District Attorney, or the Investigation and Prosecution Unit at the SJ District Police, and therefore we do not conduct specific monitoring as a matter of course, but only in circumstances that justify it.*³⁶

Attorney Nitzan opines that the supervision of specific investigation files takes place in the framework of the appeals process, which a complainant may file after the case is closed.

34. Letter number 2007-0087-1608 from Attorney Shai Nitzan to Yesh Din, July 9, 2007.

35. A conversation by Attorney Nitzan with Lior Yavne and Attorney Natalie Rosen on January 31, 2008.

36. Letter number 2007-0087-1608 from Attorney Shai Nitzan to Yesh Din, July 9, 2007.

In the conversation with Yesh Din Attorney Nitzan stated that he would like to see tighter supervision of the investigations in the SJ District, if only for the sake of adding one more level of oversight into the investigation files. However, Attorney Nitzan noted that such supervision is just as necessary as it would be to have tighter supervision of files investigated in any other place in the State of Israel, and it would require the investment of substantial resources. Attorney Nitzan asserted that he did not think it was the job of the State Attorney to supervise the police on a regular basis: supervision of investigation files is the job of the Investigations and Intelligence Department Officer in every district, and specific criticism of the investigation takes place through the appeals process. The exception to that rule is providing briefings at law enforcement team meetings about “key offenders” as well as about specific investigation files “in cases when it is justified to do so,” although discussion of such cases within the framework of the team, as Attorney Nitzan said in his conversation with Yesh Din, is “relatively rare.”

Attorney Nitzan says he understands his role in law enforcement in the OT as deriving from his understanding of the need for that role and from “the general spirit of the Shamgar Commission report,” and not by virtue of a formal Cabinet decision.³⁷ At the meeting it emerged that Attorney Nitzan is not familiar with the wording of the “monitoring and coordination procedure” that was once published (although it was canceled a few years before Attorney Nitzan took office), nor with the assertion as to activating the mechanism established for incitement and seditious offenses in the framework of Cabinet decision 6317 for the supervision of the investigation of “ideological offenses” committed by Israelis against Palestinians.

In reference to a draft of this report provided to him for review before its publication, Attorney Nitzan commented that he did not consider Attorney General Rubinstein’s letter to be a source of transferring the powers and responsibilities of the “coordinating attorney” and the team he headed, as defined in the “monitoring and coordination procedure,” to the team created by virtue of Cabinet decision 6317.³⁸

Even though the Government of Israel adopted by Cabinet decision the Shamgar Commission report and the recommendations included therein, the Shamgar Commission’s recommendation, to appoint a party on behalf of the Attorney General to coordinate between the law enforcement agencies and supervise the processing of investigation and

37. To Yesh Din’s comments that the commission report was adopted by a Cabinet decision to accept its recommendations Attorney Nitzan responded that a generally worded cabinet decision that does not set forth a detailed procedure is insufficient, in his opinion, to “establish a team.”

38. Letter 2008-0087-770 from Attorney Nitzan to Yesh Din, April 8, 2008.

prosecution files regarding Israeli civilians who commit offenses against Palestinians in the OT, is not implemented in practice.

03 ADMINISTRATIVE INJUNCTION AS A SUBSTITUTE FOR EXHAUSTING THE INVESTIGATION

With the failure in investigation of recurrent offenses against Palestinians in the backdrop, the use of restraining orders as a substitute for legal procedures has increased in recent years. In the last two years the Military Commander has signed some 25 restraining orders for limited periods. Some of those orders forbade Israeli residents of the OT from residing in their permanent places of residence, and others prevented Israelis who are not residents of the OT from entering them.

In one of the discussions before the Knesset Constitution, Law and Justice Committee on this matter, Attorney Nitzan gave an example of the need to issue restraining orders where police investigations failed. The following exchange occurred at the meeting:

Attorney Nitzan: [...] The court ruled that the ultimate duty of the Military Commander in Judea and Samaria is also to protect the Palestinian residents against harassment directed at them, I think this is not contested. It stated that the system is not doing enough to protect, because there are very severe manifestations, and I do not need to describe here the most shocking cases that occurred in the past month, such as a man who was trapped inside a caravan while they attempted to set fire to it, which of course could have ended in his death.

Committee Chairperson MK Menachem Ben Sasson: Could you specify who was trapped and who set the fire? From which side?

Attorney Nitzan: A Palestinian resident, who was a guard at the site, was trapped inside the caravan, and the alleged arsonists were Israelis who were going around the territories.

MK Yitzhak Levy: Do you know who they are?

Attorney Nitzan: If we knew who they were to the point of arresting them and pressing charges, that would certainly have been done. They have not been arrested but there are indications. They were definitely Israelis. The man testified that he managed to break through the door at the last minute.³⁹

39. Knesset Constitution, Law and Justice Committee, minutes number 25 (July 5, 2006).

The incident to which Attorney Nitzan referred occurred on the night of May 12, 2006, at the stone crushing site near the illegal Israeli outpost know as, “the Ronen Arousi Hill.” On previous occasions residents of the outpost threatened a Jewish worker employed at the site. Mohamed Ghaneb, a guard at the stone crushing site, told Yesh Din field investigators about the event:

I woke up at 3 a.m. I didn't hear anything special but still I got up and opened the door. I saw two men next to the tractor and another two groups of masked people at a distance of about 20-30 meters away from me. Judging by their bodies, the six masked men were young. I could see them because the area outside of the caravan is illuminated by a large lamp that lights up the area. When I opened the door the four who were close to me ran in my direction, and the other two stood at a distance on the hill. I went right back to my caravan and locked the door. They tried to break through the door by force and pushing. I tried to call with my mobile phone [...] but I did not have time. They broke a window on the southern side of the caravan and spilled gasoline in it. The whole thing lasted seconds. Every time one of the assailants tried to get near the window I threw everything I could at him, pieces of glass from the window they broke and anything I found. I wanted to make them go away but they still managed to set fire to the caravan. Fire broke out in the caravan. I felt I was choking from the smoke. The mattress burst into flames and a lot of thick smoke rose up. I tried to escape through the door but they locked me in from the outside with a metal rod they inserted into the handle.

I managed to open the handle and force the door open. I had walked only about two meters when they pounced on me. I think there were four of them. They all had metal rods or sticks. None of them was empty-handed. They hit me in the face, the head and the back. I said to myself: “If I fall they're going to kill me.” I bumped into something and almost fell. I fought with one of them and managed to pull off his mask.⁴⁰

Ghaneb added that when he managed to escape his assailants, they turned toward the nearby outpost. The knitted hat he managed to pull off one of the assailants was handed to the police.

Only on July 2, 2007, after repeated requests, was Yesh Din told that the investigation file was closed on the grounds of “perpetrator unknown.” When Yesh Din tried to photocopy

40. Testimony of Mohamed Ghaneb in Yesh Din case 1184/06. The testimony was collected on May 15, 2006 by Ruth Kedar and Azmi Bdeir at the scene of the incident.

the investigation file, parties at the Samaria District placed obstacles in its path, but ultimately Yesh Din was able to review the investigation file. The review revealed that the police investigators managed to derive a DNA profile from the hat but did not take the next obvious step and compare it to the DNA profiles of the few residents of the outpost, to which the assailants escaped according to Ghaneb's testimony.⁴¹ And so the investigation file was closed without any of the assailants being prosecuted, after the investigators failed to exhaust the investigation. The failure of the criminal procedure sometimes leads, as described by Attorney Nitzan,⁴² to the need to issue restraining orders against those suspected of involvement in the incident.

That is not the only example. In another case a suspect was investigated for throwing stones at night at a house in the Palestinian village of Asira Al-Qibliya and stealing a water pump from the house's yard. The owner of the house saw the stone thrower, who was wearing a black mask on his face. The suspect was arrested by IDF forces at 2:30 a.m., shortly after the incident, on the road stretching from the village up to the settlement of Yitzhar, with a black knitted hat in his possession. In his investigation the suspect refused to respond to the investigators' questions. Despite these clues, the investigation file was closed on grounds of "lack of evidence," and Yesh Din filed an appeal on behalf of the complainant.⁴³

This suspect, against whom the police refrained from filing an indictment despite the alleged evidence in the file, was also among the recipients of administrative restraining orders.

41. Letter of appeal on the closing of ID (indictment detail) file 2633/06 of the Samaria District police, from Attorney Michael Sfard to Deputy Commander Tzvika Gelber, Investigation and Intelligence Department Officer of the Samaria District Police, February 21, 2008.

42. In addressing the Knesset Constitution, Law and Justice Committee, Attorney Nitzan said: "There are two ways to address the problem of law breaking in the territories: one is the criminal way. If the police manages to collect evidence that is admissible in court that is of course the preferred way. We always prefer to go to court. On that matter there is of course no difference between Israelis and Palestinians. There is no need to mention there are many hundreds of Palestinians under administrative detention, where they are only detained, not under restraining orders, there too it can only be done if there is no possibility of criminally prosecuting. If you can criminally prosecute it is always preferable. But since Israel is in a complicated situation, a situation defined as a 'state of emergency,' you can also take non-criminal measures. Those measures can be taken only when there is convincing and founded evidence that a person is endangering the security of the area, and then you can take a variety of measures, from restricting their entry to a certain place to the most drastic measure of administrative detention. Such injunctions can be based on open information but they can also, according to the rulings of Israeli courts and according to Israeli law, be based on confidential material which is presented to the Military Commander, the area commander, who is the party authorized to issue the order, as long as the material is highly convincing and is also based on sources."

43. Yesh Din case number 1014/05. The appeal was submitted on November 1, 2005 but at the time of writing this report, March 2008, no final decision has been made by the State Attorney's Appeals Department.

04 LACK OF SUPERVISION OF INVESTIGATIONS: THE INVESTIGATION OF THE KILLING OF A BOY, MAHYOUB ASI

Another concrete example of the need to tighten the supervision of the investigations in the SJ District and of the processing by the prosecution bodies, can be found in the police and Jerusalem District Attorney's conduct in the investigation file of the killing of Mahyoub Asi, a boy from the village of Beit Liqya.

On July 8, 2005, Mahyoub Asi, age 15, set out with a friend to a vineyard that belongs to Asi's family, next to which the separation fence was under construction at the time. According to the findings of the investigation by Yesh Din, Asi entered the grove to pick grapes for himself and for his friend, and after he climbed on the gate on his way out of the plot he was shot by an Israeli civilian employed as a guard at the construction site of the fence. Asi collapsed on the spot and his friend, who witnessed the event, escaped to a nearby hiding place from which he saw the guard approach Asi's body and check with his foot whether he was dead or alive.

Testimony collected by Yesh Din field researchers from the deceased's father and friend indicated that the police investigation team appointed to investigate the circumstances of the boy's killing did not come to the village to talk with his father or ask for photos of the body. The investigation was completed without even collecting the testimony of the eyewitness to the event, Asi's friend. Attorney Michael Sfar, who inquired with the head of investigations at the Binyamin police station on this matter on behalf of the Asi family and Yesh Din was informed that the investigation file was transferred shortly after it was opened to the review of an attorney at the Jerusalem District Attorney's Office. The file was classified "investigations-general," a classification that indicates absence of a criminal offense. In other words, the police investigation team reasoned that the investigation into the suspected killing of a Palestinian boy could end with collecting the testimony of the suspect alone. It is no wonder then that the investigators were inclined to close the file without filing an indictment.

During the months of November and December 2005 Yesh Din wrote to the Jerusalem District Attorney twice, and another time to the attorney appointed to the case by the Jerusalem District Attorney, and warned against closing the file. Yesh Din explained there was an eyewitness to the event who had not yet been investigated and that the organization had a videotape filmed one day after the incident documenting the testimony of that witness as it was collected by an investigator from the B'Tselem organization. It should be stressed that all three letters mentioned above opened with an explicit statement that they pertained

to an incident in which a boy was killed by gunfire. Nonetheless, when Attorney Natalie Rosen spoke to the attorney appointed to the case on behalf of the Jerusalem District Attorney at the end of December 2005, she discovered that the file was classified at the State Attorney's Office as a case of "shooting by a guard at the separation fence" and that the attorney did not even know that the incident had involved the killing of a boy. Even after Yesh Din gave the attorney the videotape in which an eyewitness described the incident, many more months went by until August 2006, when the attorney instructed the Binyamin police station to complete the investigation. Only after the investigation was reopened and completed, including collecting the testimony of the eyewitness to the event – a year and four months after the incident, and 11 months after the State Attorney was informed of the existence of an eye witness – did the attorney order the guard prosecuted, subject to a hearing, on the charge of manslaughter. Following the hearing, the completion of other investigation measures, and another hearing, the Jerusalem District Attorney decided to reduce the charge to negligent manslaughter. As of the time of publication of this report no indictment has been filed.

The chain of defects described above - from the police failing to investigate the eyewitness to the event, through the extended period of time in which the investigation file "lay" at the Jerusalem District Attorney's Office without being processed, to the prolongation of the completion procedures - conducting further investigation actions, a hearing and a completion hearing - led to the fact that today, more than two and a half years after Mahyoub Asi was shot and killed, no indictment has yet been filed against the man suspected of killing him.

5. CONCLUSION

In Yesh Din's conversation with Attorney Nitzan, the latter stressed his satisfaction with the fact that Yesh Din is conducting a systematic examination of the investigation files in the SJ District related to offenses committed by Israeli civilians against Palestinians and their property. He stated that he views Yesh Din's activities in the matter as "an excellent mechanism." It should be stressed that the role Yesh Din took upon itself should have been carried out by the authorities, and should not be the voluntary undertaking of a non-governmental organization.

The importance of tracking the investigation and prosecution procedures used with Israelis suspected of committing offenses against Palestinians in the West Bank, and the oversight of those procedures, was presented in the Karp report in the early 1980s and in the

Shamgar Commission report in the 1990s. As a result of the recommendations on that matter the procedure presented in this chapter was developed, although it is not clear whether it was ever officially adopted. In any case, the instruction given by former Attorney General Elyakim Rubenstein to follow so-called “ideologically motivated offenses” in Israel and the OT according to the provisions of Cabinet decision number 6317 clearly linked the activity of the monitoring team on incitement and sedition to the criminal activity by Israeli civilians against Palestinians.

Yesh Din’s investigation found that as a practical matter there is currently no official monitoring of the “ongoing” investigation files at the SJ District. This is so even though the figures published in the Yesh Din report “A Semblance of Law” and the complementary figures appearing in this report show that a high rate of those investigations end in failure. The absence of a systemic monitoring system of the investigation files also prevents correction of the recurring defects in the investigations that take place in that district, which Yesh Din highlighted in “A Semblance of Law.” The “alternative track” of issuing restraining orders against Israeli civilians suspected of committing offenses against Palestinians is inadequate, as it severely undermines the duty of the State of Israel to enforce the law effectively and determinedly upon Israeli criminals in the OT, while simultaneously undermining the rights of suspects to due process of law. This is the case despite the fact that the incidence of this abuse is smaller and more limited in its scope and intensity when compared to the system of administrative detention orders issued against Palestinians suspected of security offenses.⁴⁴

The Mahyoub Asi case illustrates how even in serious offenses the prosecution bodies pay little attention to the quality of investigations, which may undermine law enforcement upon criminals and in fact often actually does severely hamper it. Given the situation described above, and despite the fact that the State Attorney bodies are concerned with the “basic” and “systemic” aspects of law enforcement in the OT, there appears to be a need to enact a similar procedure to the “monitoring and coordination procedure” written in the mid-1990s. The supervision of the investigation and prosecution of ideological criminal activity should be undertaken by the State, and not, as suggested, by voluntary organizations.

44. According to figures published by Yesh Din, in the three years between 2004 and 2006 the military commander in the OT issued 8150 administrative detention orders against Palestinians, including 3720 “first” administrative detention orders, while the rest were orders extending the administrative detention of people who were already in such detention. For more details on this issue see Yesh Din report “Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories,” (December 2007), pp. 53-55.

Attorney Nitzan's assumption, as presented in his conversation with Yesh Din, that the defects in police investigations can be criticized and corrected through the appeals submitted by the organization requires examination. Such an examination is conducted in the following chapter.

CHAPTER C

APPEALS

01. THE SUBMISSION AND PROCESSING OF APPEALS

Section 64 of the Criminal Procedure Law (CPL) allows a complainant to appeal the decision to close the investigation file opened based on the filing of his complaint.⁴⁵

The CPL provides that when a decision is made to close an investigation file, or if it is decided not to file an indictment at the conclusion of the investigation, the complainant must be given notice thereof in writing, including the grounds for the decision:⁴⁶ lack of sufficient evidence to file an indictment, lack of public interest or lack of guilt.

A complainant who received notice of the closure of the investigation file may file a statement of appeal against the decision within 30 days of receiving the notice, via the party who made the decision to close the investigation file - the prosecutor (of the State Attorney's Office or the Police Prosecution Unit) or the police investigation unit, when it is the body that decided to close the file.⁴⁷ After the appeal is filed to the party who decided to end the investigation, that party transfers the statement of appeal, with the investigation file and the closing party's comments, to the Appeals Department of the State Attorney's Office, in order to examine the appeal and provide its decision on the matter.⁴⁸

45. Criminal Procedure Law (CPL) (combined version), 5742-1982.

46. CPL, section 63.

47. CPL, section 65. This section determines that the official through whom the appeal is submitted is also allowed to extend the deadline for submission.

48. Until January 1, 2007 appeals of decisions to close files submitted with the Israeli Police Investigation and Prosecution Units (that is, appeals against closure decisions made by investigators or prosecutors of the Israeli Police and not by District Attorneys) went through another stop on their way to the Office of the State Attorney Appeals Department: the Prosecution Unit of the National Headquarters of the Israeli Police. In January 2007 that stage was canceled and the appeals are transferred directly from the party who decided to close the investigation file to the State Attorney.

In some cases the party that closed the investigation file decides to reopen it in order to complete the investigation, following the arguments raised in the statement of appeal. In such cases the appeals do not proceed to the Appeals Department.⁴⁹

The CPL does not as a rule create a timeframe for rendering decisions on appeals, with one exception: section 65a of the CPL provides that a decision in an appeal against the closing of an investigation file in which the suspicion is a violence or sex offense classified as a felony, the list of which appears in the Rights of Victims of Crime Law, 5765-2001, shall be granted no later than six months after the appeal is submitted. However, this section authorizes the party rendering the decision in the appeal to delay granting a decision and informing the petitioner “for special reasons that will be noted.”⁵⁰

02 THE MINISTRY OF JUSTICE’S FIGURES ON THE PROCESSING OF APPEALS

According to figures published by the Ministry of Justice in 2007, the Appeals Department of the Office of the State Attorney has processed in “the last years” about 2000 appeals per year (this figure does not include appeals that did not reach the State Attorney’s Appeals Department after the investigation unit or the prosecutor decided themselves to accept the appeal and reopen the investigation file). According to the Ministry of Justice’s figures, between 4.5% and 9.9% of the 2000 appeals filed every year are accepted while the rest are rejected.

It also emerges from the Ministry of Justice publication that the Appeals Department does not have figures about the rate of appeals submitted regarding investigation files that were concerned with the serious offenses in which the State Attorney is required to make a decision within six months. However, a one-time check into the matter in 2003 found that 4.2% of the appeals were filed regarding investigation files in such offenses, and that the average time lapsed until an answer to the appeal was provided was seven and a half months. As to the lack of updated figures on this matter the State Comptroller commented in his Annual Report published in 2007 that “in the absence of figures it is impossible to know whether the length of processing meets the requirements of the law, and for the

49. Letter number HH-1596 from Attorney Drora Nachmani-Roth, from the Advisory and Legislation (Criminal Affairs) Department of the Ministry of Justice to Attorney Efrat Rosen, legal advisor to the Knesset Constitution, Law and Justice Committee, October 7, 2007.

50. CPL, section 65a. The section does not elaborate on what those “special reasons” might entail.

Appeals Department to deduct conclusions and learn lessons.”⁵¹ As for exceeding the six-month limit provided in the law for granting decisions on appeals of violence and sex offenses, the State Comptroller commented in light of the Ministry of Justice’s approach that “as long as the timeframe has been defined in the law the State Attorney must act in every possible way to comply with it.”

03 APPEALS AGAINST THE CLOSURE OF FILES IN THE SJ DISTRICT: FINDINGS OF YESH DIN MONITORING

In June 2007 Yesh Din applied to the Israel Police on the basis of the Freedom of Information Act to receive information about appeals submitted against decisions to close investigation files in the SJ Police District. The request focused on files opened following complaints by Palestinians against Israeli civilians. Among other things, Yesh Din requested information on how many of the appeals filed led to the renewal of investigations into cases that were closed and how many of them led to the submission of indictments. Yesh Din also asked to receive figures on how many of the decisions to renew investigations or file indictments were made before the appeal was transferred to the State Attorney and how many were made as a result of a directive by the State Attorney. The Police response to all three questions was identical: “we do not have that figure.”⁵²

Since the beginning of its operations, and as of this report’s writing, Yesh Din has followed 205 investigation files opened in the SJ District following complaints by Palestinians that they and/or their property were harmed by Israeli civilians. After examining more than 100 of the files that were closed, Yesh Din submitted appeals on behalf of the complainants against the closure of 49 investigation files.

Those appeals constitute, apparently, the vast majority of appeals filed due to the closure of this type of cases. In a conversation held by Yesh Din with Attorney Dvori Nov, who until recently served as Head of the Prosecution Unit of the SJ Police District, Attorney Nov noted that Palestinian complainants do not usually submit appeals against decisions to close investigation files opened following their complaints. Attorney Nov noted that appeals

51. State Comptroller, Annual Report 57b for the year 2006 and for the accounts of the financial year 2005 (Jerusalem: State Comptroller’s Office) [Hebrew]. p. 328.

52. Response from Chief Superintendent Irit Liebman, Director of Freedom of Information at the Israeli Police, to request for information number 1223 by Yesh Din, July 25, 2007.

filed by the human rights organizations Yesh Din and Rabbis for Human Rights⁵³ are the only appeals submitted on behalf of Palestinian complainants in the SJ District.⁵⁴ Yesh Din figures in this chapter therefore represent the results of the only systematic external supervision of investigation files in the SJ District.

Filing appeals “exceeds any possible reasonableness”

Applications and notices Yesh Din received from investigation parties in the SJ District indicate a faulty awareness on the part of the district investigation units of the legal right of the victim of a crime to file an appeal against the decision to end the investigation into a complaint without filing an indictment. So, for instance, on a number of occasions officials in the various SJ District investigation units forbade copying the full investigation material from various investigation files. Those obstacles were removed after Yesh Din clarified to the officials their duties as to providing investigation material to the attorney of the complainant the investigation file into whose complaint was closed.

In the second half of 2005 Yesh Din began copying investigation files managed in the SJ District regarding complaints submitted by Palestinians with the help of members of the organization and that were closed without filing indictments. The investigation files were examined by the organization’s legal team and in cases in which it found defects in the investigation or that the file contained sufficient evidence to submit an indictment, Yesh Din filed appeals. A few months after the organization began filing the appeals a letter was received at the offices of Attorney Michael Sfar, the legal advisor of Yesh Din, from Deputy Commander Chaim Fadlon, the then Officer of the Samaria Region Investigation and Intelligence Unit. At the time Yesh Din was monitoring 49 investigation files in the Samaria Region and had appealed against the closure of eight of the 18 files closed until that point. In his letter to Attorney Sfar Deputy Commander Fadlon wrote, among other things: “You have to copy each file and submit an appeal against each decision to close each case. This exceeds any possible reasonableness and creates an unnecessary work load, even though you are supposedly exploiting the right given to you by the law.”⁵⁵

53. The human rights organization Rabbis for Human Rights has submitted from 2006 until today 11 appeals against decisions to close investigation files opened following complaints by Palestinians of attacks by Israeli civilians in the West Bank. Six of those appeals were rejected, and in five a decision has not yet been made.

54. A conversation between Lior Yavne and Attorney Natalie Rosen and Attorney Dvori Nov, February 25, 2008.

55. Letter ID/88/9190-01 from Deputy Commander Chaim Fadlon to Attorney Michael Sfar, November 15, 2005.

In response, Attorney Sfarid wrote to Deputy Commander Chaim Fadlon, among other things: “I did not manage to understand exactly what the purpose was for your letter. Are you asking me to stop copying case files and refrain from filing appeals in investigation files in which I represent the victims of the crime and believe the file was closed unjustifiably? [...] I know that the feeling that somebody is following your activity and criticizing it is not pleasant. But there is a long way from this feeling to complaining over the fact that I, the attorney of the victims of crimes of severe violence, property crimes, trespass and other crimes, ‘copy’ the files and ‘file appeals.’”⁵⁶ After that exchange there were no more complaints from the Samaria Region about the manner in which Yesh Din operates.

[a] The results of processing appeals

For the purpose of this report Yesh Din examined the results of the processing of 43 appeals.⁵⁷ Twenty-four of them were filed after Yesh Din’s attorneys, who examined the investigation files, reached the conclusion that the investigation file was closed even though it contained sufficient prima facie evidence to file an indictment against one or more suspects. Fifteen additional appeals were filed after an examination of the investigation material found that the investigation had not been exhausted and that there was room for additional investigative actions that could lead to finding suspects or strengthen the evidence against suspects in the case. Four other appeals were submitted with a request to file indictments on the basis of the existing evidence in the investigation files or, alternatively, to reopen the investigation.

In 12 appeals filed by Yesh Din no final answer has been received to date. The first one was filed as far back as November 1, 2005,⁵⁸ about two years and four months before the writing of this report (as to the duration of processing appeals, see below).

56. Letter from Attorney Michael Sfarid to Deputy Commander Fadlon, November 27, 2005.

57. Regarding six appeals filed by Yesh Din the organization decided to avoid drawing conclusions for various reasons. For example, in one case Yesh Din filed an appeal over the closure of an investigation file (after the organization was told that the file had been closed and it was possible to copy it) but later Yesh Din was told by the Central District Attorney that the file in fact had never been closed and its processing continued; in other cases Yesh Din decided to stop processing the appeal due to the result of an investigation completion by the SJ District Police; in another case the organization stopped processing the appeal at the request of the plaintiff.

58. Appeal against the closure of ID 2214/05 of the Samaria Regional Police (Yesh Din case 1003/05).

In the remaining 31 appeals a final answer from the State Attorney's Appeals Department was received: one appeal was accepted and 30 others were rejected.

As far as Yesh Din is aware, in at least eight cases investigation files were reopened following appeals submitted by the organization for the purpose of completing the investigation. In four of those cases the organization received the decision of the Appeals Department to reject the appeal after the completion of the investigation. In four other cases the organization has not yet received a decision.

One appeal that was accepted

On Thursday, September 1, 2005, Hashem Aza, a resident of Tel Rumeida in Hebron, was entertaining relatives. Aza and his cousin stepped out of the house at the sound of shouting, and saw a group of Jewish boys throwing stones and burning papers at them from the area of the caravans where settlers live next to the Aza home. At one point the boys moved toward the Aza home, sprayed powder from a fire extinguisher at the members of the household and set fire to an olive tree in the yard of the house. The owner of the house identified among the group a boy whom he knows who lives near his house and reported that to the police in a complaint he filed the very same day. That suspect was identified by the complainant in pictures presented to him later. In the investigation of the suspect held two days after the incident the suspected minor maintained silence and refused to answer the investigator's questions.

A few weeks after the incident Yesh Din began following the investigation file, whose findings were transferred in September 2006 – an entire year after the incident - to the SJ Prosecution Unit to receive a decision about the continued processing of the case. On December 28, 2006 the head of the Prosecution Unit decided to close the investigation for lack of evidence. After Yesh Din copied the investigation file its legal advisor, on behalf of the complainant, filed an appeal against the decision to close the file. In the statement of appeal the organization's legal advisor enumerated a list of evidence found in the investigation file that incriminated the minor who was identified by the complainant, including the testimonies of additional eyewitnesses to the event, among them an IDF officer. The appeal also pointed out that the suspect remained silent in his investigation, which according to Israeli law serves to reinforce the evidence against him.

On November 27, 2007, 26 months after the incident, and nine months after the appeal was filed, Attorney Ety Kahane from the State Attorney's Appeals Department announced that after reviewing the appeal and checking the evidentiary basis for the case she decided to file an indictment against the suspect.

[b] The duration of processing appeals

"First of all, I would like to apologize for the delay in answering your inquiry." That is the standard formula that opens the reply letters in which the Appeals Department announces its decisions on the appeals filed by Yesh Din. And indeed, the processing of appeals takes a very long time and in some cases even exceeds the provisions of the law.

Crimes of violence: as mentioned above, section 65a of the CPL states that in appeals submitted after closing investigation files concerned with violence and sex crimes defined in the Rights of Victims of Crime Law⁵⁹ a decision on an appeal will be granted within six months of its filing. This will be such except in cases of "special reasons" for delaying the decision and informing the appellant of it. Within those six months the party that closed the case must examine the statement of appeal and transfer it with comments to the State Attorney, who must also review the file during that time. An examination of the results of the appeals filed by Yesh Din in cases of violent crimes shows that the Appeals Department is very far from fulfilling this duty, as set forth by the law.

23 of the 43 appeals submitted by Yesh Din are concerned with the investigation of complaints in the aforementioned crimes, especially crimes of assault, causing bodily harm, injury, and intimidation.⁶⁰ In 16 of those appeals a final reply was received. An examination of the time between the submission of appeals and the receipt of the decisions found that not even in one of those appeals was a decision granted within the timeframe set forth by the law: the average number of days that passed between filing an appeal and receiving a decision on it was 373 days, more than 12 months: twice the duration set forth by the law.

59. These crimes are enumerated in the first appendix to the Rights of Victims of Crime Law.

60. It should be emphasized that the figure of 23 appeals filed by Yesh Din concerning crimes of violence that fall under the provision of the law that requires providing an answer within six months from the time the appeal is filed is a high number: as stated above, in 2003, the only year for which the Ministry of Justice provided figures, only 86 appeals were submitted against closing investigation files in such crimes, out of the approximately 2000 appeals filed per year.

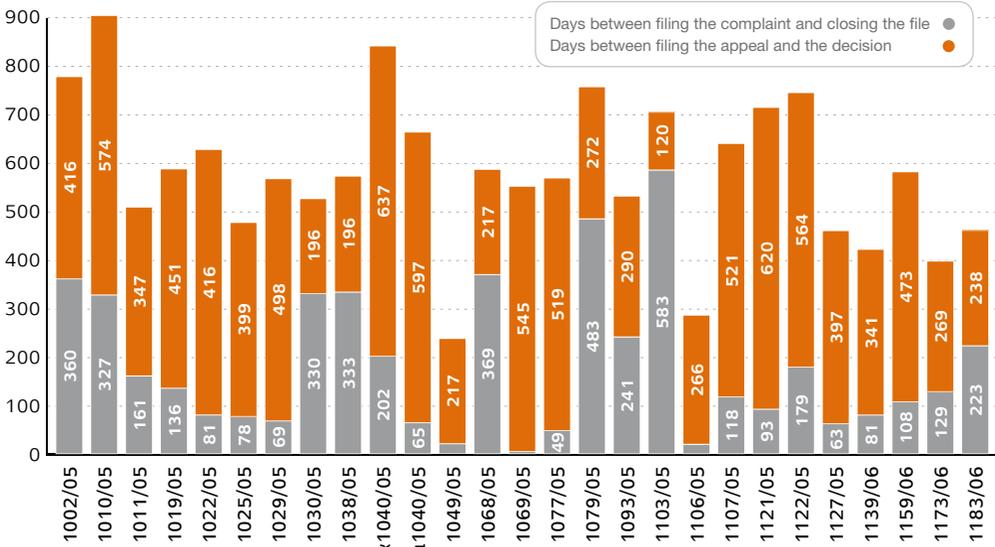
In two of the seven appeals about which no final decision has yet been received, at the time of compiling the data for this report six months had not passed since their dates of submission.⁶¹ In the five other appeals that were not yet answered, by the time of compiling the figures for this report on February 28, 2008, an average of 519 days had lapsed, which is slightly over 17 months: almost 3 times the duration set forth in the law for handing down a decision.

Other crimes: a comparison of the figures mentioned above regarding appeals in cases of violent crimes to the timeframe of receiving decisions on appeals in investigation files of crimes that do not require an answer within six months revealed that there is actually not much of a difference between the two. In 16 appeals filed by Yesh Din over the closure of “regular” investigation files the decision of the State Attorney’s Appeals Department was made within an average of 15 months (446 days) after they were filed.

In the five appeals in which no decision has yet been received an average of 465 days, or 15.5 months, had passed from the time the appeal was filed until the compilation of the data for this report.

61. From the date of filing an appeal in ID 631/06 of the Samaria Regional Police, by February 28, 2008 (the closing date for data compiled for this report) just over two months had gone by; 99 days had passed since an appeal was filed in ID 1117/05 of the Hebron Regional Police.

Chart 4: Appeal files in which a final decision was made: number of days that lapsed between filing the complaint and closing the investigation file, and between filing the appeal and receiving the decision on it⁶²



The duration of processing appeals until they are transferred to the Appeals Department: in October 2007 Yesh Din's legal advisor Michael Sfarid wrote to Attorney Etti Kahane, who served at the time as Director of Appeals at the State Attorney's Office. In his letter Attorney Sfarid gave some examples of the delay in processing appeals filed by the organization on behalf of Palestinian complainants against decisions to close investigation files concerning crimes of violence (as they are defined in the Rights of Victims of Crimes Law). In her answer attorney Kahane wrote among other things that

First it should be noted that [...] The processing of the appeal file at the State Attorney's Office does not begin with filing the appeal by the petitioner. The statement of appeal is first presented to the party that closed the case, who prepares an opinion for the appeal, and sends it to our office attached to the investigation file. Sometimes the opinion of the party that closed case arrives at our office a few months after the appeal is filed.⁶³

62. The appeals files are identified based on the Yesh Din cases rather than on the ID numbers of the investigation files. This chart does not provide figures for another four cases in which Yesh Din is not aware of the date on which the investigation files were closed.

63. Letter from Attorney Etti Kahane, (Acting) Director of Appeals at the State Attorney's Office to Attorney Michael Sfarid, November 8, 2007.

In 35 of the appeals filed by Yesh Din on behalf of Palestinian complainants that did reach the State Attorney,⁶⁴ the organization examined the duration between filing the appeal to the party that decided to close the case and opening an “appeal file” in the State Attorney’s Appeals Department.⁶⁵ The figures show that in general an appeal is delayed in the offices of the parties to which it was served - District Attorneys, the Prosecution Units of the SJ District or the various Investigation Units of the SJ District - a little more than an average of six months (187 days) until an appeal file is opened in the offices of the Appeals Department.

An examination of the duration of retaining the appeals by the various parties reveals significant differences between them. Appeals against the closure of investigation files by the Investigation Units of the SJ District are delayed in their possession for an especially long time - about seven months - as illustrated by the following chart:

Table 2: the duration between filing Yesh Din appeals and receiving decisions on them, according to the party to which the appeal was submitted

The party to which the appeal was submitted	Appeals submitted	Average number of days between filing the appeal and opening an appeal file in the Appeals Dept.
Central and Jerusalem District Attorneys’ Offices	4	70
SJ District Prosecution Unit	9	168
SJ Police Investigation Units	22	217

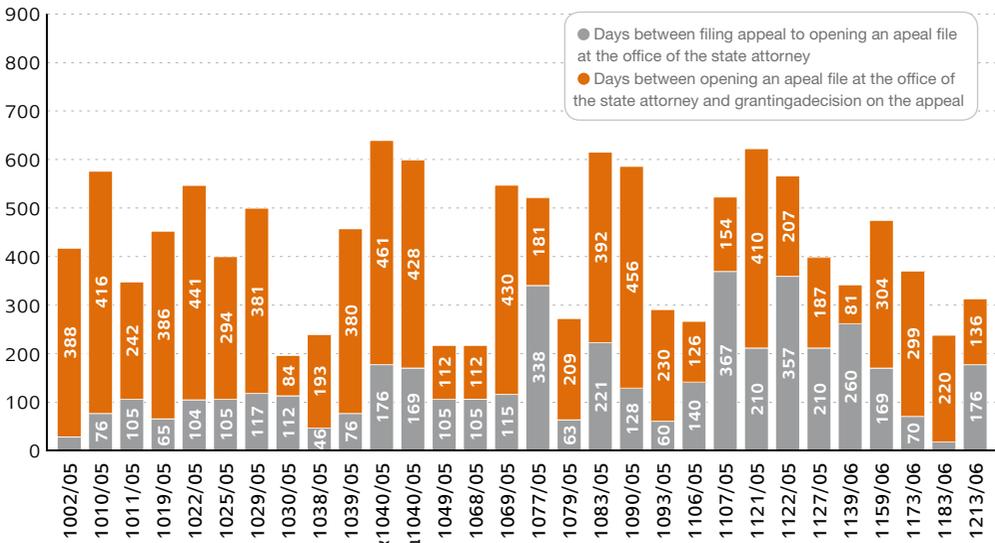
Duration of processing appeals after they are transferred to the Appeals Department: Section 65a of the CPL states that the duration of processing an appeal against closing an investigation file in a specific list of violence and sex crimes should not exceed six months from the date the appeal is filed. As presented above, the processing of the appeals filed by Yesh Din on behalf of Palestinian complainants lasts an average of six months before they are even transferred to the State Attorney’s Appeals Department. However, the

64. As far as Yesh Din is aware, in the remaining eight of the 43 appeals filed by the organization, the appeal has not yet been transferred by the party that ordered the case closed - the District Attorney, the Police Prosecution or Investigation Unit - to the State Attorney’s Appeals Department.

65. According to Yesh Din’s partial information, usually one to three weeks lapse between the “departure” of the appeal filed with the investigation file from the offices of the parties to whom the appeal was served until an appeal file is opened in the Appeals Department.

processing of these appeals at the Appeals Department lasts even longer, as illustrated by the following figures:

Chart 5: The duration of processing appeals filed by Yesh Din in which a decision was given, before and after they reached the State Attorney’s Appeals Department⁶⁶



In 30 of the 31 appeals filed by Yesh Din in which a final decision was granted on the appeal the organization is aware of the dates of opening the appeal files in the Appeals Department and the dates of the decisions. An examination of the figures shows that on average more than nine months lapse (280 days) from the time an appeal file is opened in the Appeals Department to the time a decision is made. A comparison of the 13 violence cases in which a decision was made and the 17 other cases shows that the time that goes by until a decision is made on violence files is an average of 8.5 months (256 days) while in other files it is 10 months (299 days).

Work load as a reason for prolonging the processing of appeals: as to the reasons the processing of appeals in the Appeals Department is prolonged, Attorney Kahane wrote the following in her letter to Attorney Sfarid:

66. This chart does not include the figures regarding one appeal for which Yesh Din does not know the time of its transfer to the Appeals Department.

One of the reasons the processing is prolonged, and maybe the main one, is the very heavy work load of the few people in charge of processing appeals. The small team at the disposal of our department handles about 2000 appeals every year. The volume of the evidence in some of the appeals is large, sometimes a number of boxes full of evidentiary material, and many other files also include quite a lot of evidentiary material. Many of the applications require prolonged processing, due to their nature and the complexity of the evidentiary material in the file. [...] As I said, we regret the reality in which a reply to the appellants is in many cases given at a considerable delay. In any case, we are making a considerable effort to conclude the processing of as large a number as possible of appeal files as soon as possible.⁶⁷

The personnel shortage at the Office of the State Attorney, as in the SJ District Police Investigation and Prosecution Units,⁶⁸ is a familiar problem and of course it should be given weight when considering the delay in the processing of appeals. However, the vast majority of the dozens of investigation files Yesh Din reviewed - SJ District Police investigation files into crimes allegedly committed by Israeli civilians against Palestinians and their property - are very far from the description of "boxes full of evidentiary material." In fact, many of those investigation files consist of only a few pages, and in many cases they contain only the testimony of the complainant and nothing more.⁶⁹

In any case, the personnel shortage in the Office of the State Attorney Appeals Department and in other units, which is a permanent and routine situation, cannot be construed as "special reasons" of the type for which the legislator allowed exceeding the six months set forth to make decisions on appeals concerning serious crimes. Nonetheless, in none of the appeals filed by Yesh Din on behalf of Palestinian complainants for crimes of that nature was the decision made within the timeframe required by law.

67. Letter from Attorney Etty Kahane, (Acting) Head of Appeals at the State Attorney's Office to Michael Sfard, November 8, 2007.

68. For more on this matter, see Yesh Din, "A Semblance of Law," pp. 35-37.

69. For more, see *ibid.*, p. 100.

The appeal was not processed for a whole year because the suspect sued the police

On December 31, 2005 four Israeli civilians assaulted two residents of Kafr Thulth, Muheib Oudeh and Omar Khouli, separately, who were on their land near the illegal Israeli outpost 'Elmatan.' According to the victims' complaints, the four approached Oudeh while he was herding his sheep on his land, cocked their guns and aimed them at him, then hit him with their fists and with the guns. Later the four bound him, continued beating him while he was bound and left him lying that way on the ground. It was also asserted in the complaint that after the assailants left Oudeh they went off, found Omar Khouli and attacked him in a similar manner.

Two days later on January 2, 2006, Oudeh and Khouli, accompanied by Yesh Din volunteers, filed a complaint at the police station in Kedumim.⁷⁰ A description of the assailants led to the arrest of two suspects, A and Y. One of the suspects was identified by the complainants a few days later in a photo lineup conducted by the police. In his investigation the suspect offered an alibi which he later replaced with another version. On March 26, 2006, the investigation file was closed by the SJ District Prosecution Unit on grounds of "lack of evidence."

Yesh Din examined the investigation file, and the organization's legal advisor filed an appeal on behalf of one of the complainants against closing the file, in which he listed a number of defects he found in the police investigation. Among other things he claimed that the suspect's alibi was inadequately checked, that it raised suspicions that the alibi was coordinated between the suspect and those who corroborated his version - with the knowledge of the police investigators - and raised a heavy suspicion of the crimes of disrupting legal proceedings and suborning an investigation. It was also argued that the alibi claim that was ultimately offered does not refer to the time when Oudeh and Khouli were attacked.

After a lengthy monitoring of the processing of the appeal, Yesh Din learned that on June 30, 2006, after the appeal was filed, the investigation file was transferred to the Central District Attorney following a compensation claim filed by one of the suspects

70. ID 20/06 of the Samaria Regional Police.

in the file. The claim was submitted due to the entry of a police officer into the suspect's house without a search warrant in order to summon the suspect to an investigation, and because the male police officers saw the suspect's wife in her pajamas. And so, for an entire year, the appeal that was filed was not handled at all. Only on August 8, 2007, was Yesh Din informed that an appeal file was opened in the Appeals Department of the State Attorney's Office. Until today a decision by the Appeals Department on this appeal has yet to be received.

04 DECISIONS ON APPEALS: IS THERE ANY ACTUAL OVERSIGHT OF DECISIONS TO CLOSE FILES?

As mentioned above, Yesh Din has so far learned of the decisions made in 31 appeals of the 43 the organization filed on behalf of complainants it represents. Only one appeal was accepted, while the remaining appeals were rejected. A full analysis of the reasons behind the decisions to reject the appeals would require a detailed and meticulous exposé which is beyond the scope of this report. However, we will present three examples that illustrate some of the main faults Yesh Din has found in the standards set by the Appeals Department for the SJ District Police. It should be kept in mind that the appeals were filed over decisions to close investigation files without submitting indictments in cases when the organization's legal team was of the opinion that the investigation was insufficient or that the case file in fact already contained sufficient evidence to file an indictment. The following examples will demonstrate the perspective of the Appeals Department, whose job it is to supervise the work of the SJ District Police, scrutinize and set minimal standards for adequate investigations.

[a] “Two and a half years after the incident there would be no point in another identification lineup”

The amount of time that lapses between the submission of an appeal and the receipt of a decision, added to the (often) lengthy period of time that has already passed between filing the complaint and closing the case, in many instances undermines the possibility of conducting basic investigation actions following the filing of the appeal, even if the prosecution rarely admits that. This was the case in an investigation file opened following the assault of a Palestinian farmer near the settlement of Kfar Tapuach.

On Saturday, March 5, 2005 Marouf Hussein, a 58-year-old farmer from the village of Yasouf, was cultivating his plot of land near the settlement, Kfar Tapuach, when he was attacked by a number of Israelis. In the testimony he provided Yesh Din Hussein said among other things: “Two of them grabbed my hands and held them forcefully behind my back. The third one punched me in the eye. One of them picked up a stone and hit me with it on the head. My head was bleeding and my face was covered with blood. Then they pushed me off the terrace, about one meter high, and ran away.”⁷¹

In the course of the investigation Hussein commented that one of the assailants, all but one of whom were masked, was called by his friend by name – S. In the investigation a man named S., a resident of Kfar Tapuach, was investigated along with two other suspects. In the photo lineup held for the complainant Hussein did not identify anyone in the pictures presented to him as the assailant whose face was bare. However, from the investigation file later reviewed by Yesh Din it emerged that the pictures of the two other suspects (besides S.) apparently were not presented to the complainant at all.

On February 28, 2006, about a year after the incident, Yesh Din was told that the case was closed on grounds of “lack of evidence.” A few more months went by before the organization was allowed to copy the investigation file (a delay explained by “heavy work load and personnel shortage”).⁷² A further delay was caused by the Investigations and Intelligence Officer of the Samaria Region’s refusal to give Yesh Din information that was likely to corroborate the suspicion that the pictures of the two suspects were not provided at all in the picture identification lineup held for Hussein. On July 30, 2006 Yesh Din filed an appeal on behalf of the complainant against closing the case and demanding it be reopened in order to conclude the investigation. Among other things it argued that the police should have included the pictures of the two other suspects in the photo identification lineup.

Despite repeated reminders, the decision of the Appeals Department was sent only on September 19, 2007, 14 months after the appeal was filed.⁷³ The decision of Assistant State Prosecutor for Criminal Affairs, Attorney Yehoshua Lamberger, not to reopen the investigation into the complaint was supported by a number of reasons. Among other things Attorney Lamberger actually accepted the omissions of the investigation: he said that even though the picture of one of the suspects, a resident of Tapuach, was not

71. Yesh Din case 1002/05 (ID 1676/05 of the Samaria Regional Police).

72. Letter from first Sergeant Major Shachar Mor, Criminal Records Officer at the Samaria Regional Police to Attorney Michael Sfard, March 6, 2006.

73. Letter from Attorney Maya Cohen, Assistant State Attorney (Appeals), to Attorney Michael Sfard, September 19, 2007.

presented in the photo identification lineup held for the complainant, “now, two and a half years after the event, there would be no point in another identification lineup.”⁷⁴

That answer illustrates how the prolonging of the appeal procedures hampers the supervision and oversight of the Appeals Department. At times, as in this case, the prolonging of the procedures actually undermines the possibility of conducting adequate oversight.

[b] Factual errors and a strange interpretation

The report “A Semblance of Law” showed defects in the Hebron District Police investigation into the complaint by Nabil Salah, resident of al-Khadr, of the vandalization and theft of some 20 vines from his land near the illegal Israeli outpost of Neve Daniel North (“Sde Boaz”).⁷⁵ According to Salah’s complaint the attack on his grove occurred a day after an incident in which he was attacked (in the presence of his sister) by M., a resident of the outpost, who grabbed Salah’s identity card from him, threatened him with his gun and demanded he pay him NIS 5000 or else he would vandalize his land.⁷⁶

During the investigation Salah and his sister each separately identified the picture of M. in two photo identification lineups held for them. M. himself avoided appearing for the investigation and arrived only when an arrest order was issued against him. Later he repeatedly shirked offering an alibi even though he claimed he could provide one. Another person identified by the complainant as having been present at the scene of the crime was identified by M. as his friend. Salah and his sister did not identify the picture of V. in an identification lineup and therefore the police refrained from summoning him for an investigation. Again, the assumption that the person who was present at the site was indeed the same V. was based only on the words of suspect M. himself.

The statement of appeal submitted by Yesh Din on behalf of the complainant against closing the case without concluding the investigation said among other things that

It appears that the fact of M. avoiding the police, whether by evading investigation or by failing to offer an alibi, turned out to pay off for him. First, for more than two months M. ignored police efforts to make contact with him [...], and only after

74. In addition the decision said that the picture of that suspect was presented to the guard at the gate of the settlement, who did not identify him.

75. “A Semblance of Law,” pp. 112-113.

76. Yesh Din case 1090/05 (ID 2143/04 of the Hebron Regional Police).

an arrest order was issued against him did he go to the police. Secondly, his promises to check his alibi were not fulfilled and after a few attempts to clarify that point the police “gave up” and chose to close the case.⁷⁷

The decision of the Appeals Department was written on August 16, 2007 - more than 19 months after the appeal was filed.⁷⁸ Ety Kahane from the Appeals Department explained her decision to reject the appeal by claiming that there was “a substantial gap that undermined the credibility of the testimony” between the complainant’s initial statements to the patrol police officer called to the scene of the incident when Salah discovered the damage to his plot, in which “he claimed only that the complainees had threatened him” and his statements in the detailed testimony he gave at the police in which he described the circumstances of the assault, the threat with the gun and the blackmail on the previous day. Kahane’s assertion ignores the fact that the statement collected by the patrol police officer was short, one paragraph long, with only two lines referring to the events of the previous day. This reasoning also ignores the complainant’s words in his detailed statement in which upon being questioned by the police investigator why in his initial statement he did not give a description of the assault, the threats with a gun and the blackmail attempt, he stated that he had reported to the patrol police officer the events of the previous day in full, but that the latter had not written them down. Therefore there is not “a substantial gap,” and there is no doubt that the gap between what was relayed in a brief statement and a detailed statement should not undermine the credibility of Salah’s complaint, which was supported by the testimony of his sister who was present at the scene.

In addition to the aforementioned claim of a “substantial gap” Attorney Kahane relied on “inconsistencies” between the testimony of the complainant and his sister’s version - “inconsistencies” that Yesh Din’s legal team did not find - and the claim that there is “a difficulty in giving full weight to the identification lineup held for your client and his sister, given the previous and long acquaintance with M. and the length of time that went by between the incident and the lineup.” This argument is a misrepresentation because the photo identification lineup held for Salah in which he did identify the picture of the suspect took place only two days after the event. The identification lineup held for the complainant’s sister did indeed take place four months after the event. “Under the circumstances,”

77. Letter of appeal from Attorney Michael Sfar to Attorney Dvori Nov, Head of Prosecution Unit at the SJ District Police, January 9, 2006.

78. The delay was explained by saying that “as part of the processing of the appeal the file was sent to the Jerusalem District Attorney in order to be examined with other files we thought could have implications on the decision in this file.”

Attorney Kahane concluded her decision, “there is insufficient evidence of the level of high certainty required for criminal prosecution.”

So, in this case as well the Appeals Department accepted the police investigation as is, with its faults, and relied on an unreasonable interpretation and erroneous factual claims in order to reject the appeal. Moreover, the Appeals Department’s position is that the complainant’s account of the events, which was not refuted by external, independent evidence, is in fact not credible. The investigation and prosecution bodies are of course allowed to decide whether the evidence submitted by a complainant is credible. But in this case, like in many other cases, the investigating bodies’ point of departure, which is followed by that of the Appeals Department, is to doubt the credibility of the complainant.

**[c] An identity card was found at the scene of the crime?
That is not evidence. Checking an alibi? Not necessary.**

An examination of all of the investigation files managed by the SJ District Police following Palestinian complaints against Israeli civilians for harming them and their property found that the police does not conclude many of these such investigations and that they are rife with defects. An elaboration of the defects of the investigations of the SJ District Police appeared in the Yesh Din report entitled “A Semblance of Law.” The following is one example of the way the State Attorney’s Office adopts the defects of the police investigation.

On the night between November 8 and 9, 2004, during the olive harvest season, many olive trees on land owned by Ibrahim Salah, a resident of the village of Fur’ata, were burned, uprooted and cut down. Sacks of olives which had previously been harvested and left on the ground were stolen.⁷⁹ The incident occurred a day after A., an active leader of one of the illegal Israeli outposts in the area, confronted Salah over the ownership of the land. Among the trees that were vandalized Salah found the identity card of R., a resident of one of the Israeli settlements in the area. In his testimony the complainant said that he suspected the residents of one of the nearby outposts where A. lives. Following the complaint by Salah A. and R. were investigated and gave alibis. R. noted he “lost” his identity card around the time Salah’s grove was attacked, but offered no explanation of how his identity card appeared there.

79. Yesh Din case 1077/05 (ID 7900/04 of the Samaria Regional Police).

The investigation file, which included only the testimony of the complainant and the testimonies of the two suspects, was closed on grounds of “perpetrator unknown,” without the police investigators doing anything to confirm or refute the alibis provided by the suspects. In the statement of appeal filed by Yesh Din on behalf of the complainant on January 9, 2006, Attorney Sfarid demanded the investigation be renewed and the suspects’ alibis verified. On June 12, 2007, about a year and a half after filing the appeal, the decision of the Appeals Department was received. The decision said that

A review of the material shows there is no evidence to confirm the suspicion raised by your client that the complainees are the people who committed the alleged theft of olives from his grove. The complainees were investigated and denied any connection to the incident. Your claim that a day earlier a conflict arose between the appellant and the complainee A. about the said land was raised for the first time in the appeal you filed, and in any case does not constitute concrete evidence against the complainee, on the basis of which he can be criminally prosecuted. Likewise, finding the identity card of complainee R. on the ground is insufficient in itself to constitute the basis of an indictment against him, especially considering his claim that the identity card was lost. Under the circumstances the police decided there was no room to investigate the alibi claims offered by the complainees, because even if those claims are baseless (which is prima facie impossible), it would not constitute sufficient evidence to criminally prosecute them.

In addition to that your client has the option, if he sees fit, to exhaust his claims against the complainee in the framework of a civil procedure. Therefore, the appeal is rejected.⁸⁰

Thus in this case, too, the Appeals Department accepted the police investigation as is, with its defects, and made excuses for the investigators’ inaction.

80. Letter from Attorney Sharon Edri, Senior Deputy of the State Prosecutor in Charge of Appeals, to Attorney Michael Sfarid, June 12, 2007.

Failure to perform basic investigative actions: the perspective of the SJ District Prosecution Unit

It is the SJ District Prosecution Unit that decides on the continued processing of most of the investigation files that are not closed by the Investigation Unit on grounds of “perpetrator unknown.” That unit’s considerations and its instructions as to the necessary actions to complete an investigation play a key role in the way the police investigators perform their jobs. Those considerations, which are also provided as part of the opinions of the Prosecution Unit that follow appeals of its decisions, also have an understandable impact when it comes to rendering a decision on an appeal.

One of the most obvious investigation defects and recurring failures Yesh Din discovered in the SJ District investigation of Palestinian complaints against Israeli civilians, was the fact that the investigators almost completely avoided conducting “live” identification lineups, confrontations between complainants and suspects and checking alibis provided by suspects.⁸¹ In a conversation with Yesh Din, Attorney Dvori Nov, who a few months earlier had finished a five-year term as Head of the Prosecution Unit of the SJ District, presented her perspective on performing those investigation activities as part of investigating “ideological” crimes committed by Israelis in the OT.

According to Attorney Nov one cannot carry out “live” identification lineups in the OT because there are no volunteers among the Israeli population of the OT who would agree to participate in such identification lineups: “It is not in their interest,” she said; confrontations in many cases undermine the possibility of filing an indictment because the ideological commitment of the suspects on the one hand, and the Palestinian complainants’ suspicions about the Israeli police on the other hand, render the confrontation “unfeasible” for the prosecution. As to the argument that alibis are not verified, even though refuting them could strengthen the weight of the prosecution’s evidence, Attorney Nov commented that it is a question of “proportionality,” and that according to her perception it is not necessary to conduct complex activities “in every case of trespass and for every scratch.” However, Atty. Nov emphasized that a substantial portion of the Prosecution Unit’s work – approximately 40 percent, by her estimation – is dedicated to “ideological” crimes perpetrated by Israelis in the

81. A Semblance of Law, pp. 95-103.

Occupied Territories, including treatment of offences that when committed inside the State of Israel, such as incidents of trespass or minor property damage, are hardly ever investigated.

Attorney Nov's comments attest to the objective obstacles that face the SJ District investigators, and such obstacles do exist, but so too does compliance with the very situation that the Shamgar Commission recommendations on the matter were meant to prevent, a situation that precludes law enforcement. The failure of law enforcement due to the suspicions of the Palestinian population of the OT towards the Israeli Police and the ideological commitment of the criminals were at the basis of the conclusions of the Shamgar Commission on the matter and formed the background for its recommendation to maintain an effective mechanism of supervision and control of the investigations and prosecution in the OT. It is specifically those obstacles that require the law enforcement agencies in the OT to be meticulous in the performance of investigations, as complicated as they may be, in order to exhaust the investigation of such crimes.

05 CONCLUSION

The appeal track is supposed to give the victim of the crime an opportunity to present his objections regarding the manner in which the investigation was managed and the circumstances of its closing, and to allow control of the investigations' management by higher echelons than those who decided to close the case.

An examination of the answers of the Appeals Department to the appeals in cases in which suspects were identified in the police investigation indicates a failure of that control system. In general the decisions on appeals are characterized by a sweeping acceptance of almost all of the original closure decisions, while adopting the versions of testimony of the suspects, in cases when suspects were identified, acceptance of the absence of basic investigation activities, and in some cases even ignoring evidence found in the investigation files whose existence was pointed out in the appeals that were filed.

The prolonging of the processing of an appeal from the moment it is filed until a decision is made is a serious detriment to the effectiveness of the process. The more time goes by, beginning with filing the complaint and ending with the police investigation into it,

through the delay in the processes of reviewing the appeal by the parties who ordered the investigation file closed, and ending with the handling by the State Attorney's Appeals Department, the less the chances of the reopening of the investigation file in order to complete it and develop evidence that would allow prosecuting the criminals. Even when an instruction is given to perform supplementary investigative actions in files that were closed, the time that passed makes it harder for all those involved - complainant, eyewitnesses and suspects - to provide answers to the investigators' questions.

The personnel constraints in the State Attorney's Office, as well as at the SJ District of the Israeli Police, indeed make it very difficult to review appeals and the investigation files attached to them and carry out additional investigative actions, even when a decision is made in the appeal that they should be performed. Those constraints undermine the chances of those actions being performed within a reasonable timeframe, and in appeals against closing investigation files into the violence and sex crimes mentioned in the law, within the defined timeframe of up to six months. However, as the State Comptroller's Office saw fit to note, as long as the article of the law demanding a decision on appeals of certain crimes within a given time is valid, it is the duty of the Office of the State Attorney, whose members head the law enforcement system in Israel, to avoid violating it.

In 2007 one step was taken toward reducing the duration of processing appeals, when an "interim station" in the Prosecution Unit of the Israeli Police Headquarters was canceled. Until then that department was required to review the appeals of files that were closed by the Police Investigation or Prosecution Units before they were passed on to the State Attorney's Office. However, it appears that the cancellation of that stage did not lead to a significant shortening of the appeals process. A significant portion of Yesh Din's appeals were filed after that change in the appeals procedure, but no significant improvement in the duration of the process was observed.

The department in charge of appeals handles appeals over the closure of investigation files in all of the police units and districts of the Israeli Police. The number of appeals against the closure of investigation files into attacks by Israeli civilians on Palestinians is relatively minute, and it cannot be expected in the framework of the existing personnel of the department to give special priority to those appeals. That fact already prevents the possibility of maintaining an extra-police systemic oversight of the SJ District Police investigations into crimes with an ideological background.

Yesh Din believes that these conclusions magnify the importance of implementing the recommendation of the Shamgar Commission to appoint an attorney to oversee the



investigation and prosecution procedures in cases rooted in the various ideological crimes of Israeli civilians against Palestinians, and in the process to review the appeals procedures in those cases.

CONCLUSION AND RECOMMENDATIONS

The criminal activity of Israeli civilians against Palestinians in the OT is a phenomenon that has typified the Israeli occupation for the last several decades. The helplessness of the law enforcement agencies against the phenomenon is not new either.

In a conference of “The Association of Public Law” at the end of November 2006 Dr. Eyal Gross addressed Attorney General Meni Mazuz and asked him to comment on the findings of the report “A Semblance of Law” on the high failure rate of the SJ District investigations into crimes by Israeli civilians against Palestinians and their property. In his response the Attorney General admitted:

I don't know if I will surprise you but I agree with you that the condition of law enforcement in the OT not only is unsatisfactory but is very poor. And as you also know this reality has been with us almost from the beginning of Jewish settlement in the OT until this day. It changes forms but I think there was never a time when the situation was satisfactory. It has different explanations: from objective difficulties deriving from a non-civilian environment, the military reality, the lack of overall cooperation by the offended population, not to speak of the suspect population, and also, we should make no bones about it, the State of Israel does not devote enough resources to this issue. Next to you are sitting several members of the HCJ Department who deal with this every single day in a very frustrating way. We have meetings with the elite of the police and the elite of the army and the political echelon, and we raise the subject at almost every opportunity. There are small gains and there is an even bigger lack of gains, unfortunately. [...] I agree with you on the bottom line that the situation is completely unsatisfactory. We as an enforcement system are acting from a distance there, it is first of all a matter of the army, and the army has priorities and missions it considers usually more urgent than allocating forces, and the police has problems there, and there is a whole range of problems. I definitely agree with you that the situation is completely unsatisfactory.

The Shamgar Commission in its recommendations tasked the Attorney General with appointing an official to take responsibility for the coordination and monitoring of police

investigations in the OT. As a result of that recommendation the “monitoring and coordination procedure” was written, defining the powers of the “coordinating attorney” between the enforcement agencies and addressing the needs as far as monitoring the management of the investigation and prosecution files of Israeli criminals in the OT. Political pressures led to the cancellation of that procedure, and the “substitute” established for it by the then-Attorney General is not familiar to the State Attorney today. As of now the monitoring and coordination jobs at the State Attorney’s Office are carried out at the discretion of the attorneys in charge of law enforcement in the OT.

Currently the State Attorney carries out only a sporadic examination of systemic issues, and no extra-police party follows the police investigations of the SJ District or supervises them. In the opinion of Attorney Shai Nitzan, the senior lawyer who has been in charge of law enforcement in the OT in recent years, the role of supervising investigations in the SJ District is exclusively that of the Officer of the Investigations and Intelligence Unit of the SJ District Police. Supervision of specific investigation files, according to Attorney Nitzan, should in general take place through the appeals process. That approach is not in keeping with the reality in which Palestinian complainants who are not accompanied by Israeli human rights organizations do not file appeals at all. Monitoring the investigation and prosecution processes, a job that the Shamgar Commission assigned to the Attorney General, is now carried out in practice by civil society.

That approach actually returns the situation of law enforcement upon Israelis in the OT to what it was before the establishment of the Shamgar Commission. Although the SJ Police District was established following the report’s recommendations, that is not enough, as the Shamgar Commission thought itself. The lack of constant supervision by the State Attorney of the police investigators and prosecution bodies in the specific cases themselves means a lack of supervision in general.

When appeals are filed against decisions by the investigation or prosecution agencies to close investigation files without submitting indictments against suspects, in the rare cases when suspects are found, the appeals track is also far from being satisfactory, as described in Chapter 2 of this report. The long periods of time required for decisions on the appeals and the reasons for their rejection, which in many cases ignore weighty arguments as to the lack of completion of the investigation and the sufficiency of the existing evidence that does exist in the file, undermine the hope to maintain external and detailed oversight of the investigations in the SJ District.

RECOMMENDATIONS

Following the report findings Yesh Din recommends that:

- The "monitoring and coordination procedure" be adapted with the necessary amendments in such a way that reflects the State Attorney's job of maintaining a close monitoring of the investigation files in the SJ District.
- Until the re-adaption of the said procedures, Yesh Din's recommendations published in the report "A Semblance of Law" regarding the supervision of investigations should be adopted: tightening the supervision of investigations in the SJ District in order to guarantee exhausting the investigations of Israeli civilian attacks on Palestinians and their property; transferring cases that are closed without filing an indictment to the review of the District Attorney; appointing an attorney from the District Attorney to follow the investigation of assault cases and other serious crimes.
- Likewise, until the adoption of the aforementioned procedure, the law enforcement team headed by the Assistant State Prosecutor (Special Assignments) should review on a monthly basis at least 10% of the investigation files closed by the SJ District concerning crimes by Israeli civilians against Palestinians.
- The staffing of the Appeals Department of the State Attorney's Office should be increased so that the department can fulfill its commitments by the law to decide on appeals regarding violence and sex crimes within six months. We propose that the Appeals Department establish a procedure to check appeals in other investigation files rooted in ideological crime within a given timeframe, in order to effectively complete the investigation at the appropriate time.
- The law enforcement team should be instructed to maintain permanent contact with the Appeals Department in order to ascertain patterns of failures and defects in the SJ District investigations.



APPENDIX 1: OFFICE OF STATE ATTORNEY'S RESPONSE

State of Israel
Ministry of Justice
Office of Deputy State Attorney
(Special Assignments)

12 Nissan 5768
17 April, 2008
Letter no.: 2008-0087-821

To:
Mr. Lior Yavne, Yesh Din

Re: Draft of Yesh Din Report on State Attorney Supervision of the Investigation of Offenses by Israeli Civilians against Palestinians in the Occupied Territories – Office of the State Attorney Response

Reference: your letter of April 6, 2008

Following are the State Attorney comments on the report in reference:

1. Chapter 1 of the report details the data from Yesh Din's monitoring. In the report you claimed that the figure that appeared in my letter to you from March 19, 2008 - that to date 72 indictments had been submitted in Israeli DOP cases that were opened during 2007 in the SJ District - says nothing about the submission of indictments for offenses by Israelis against Palestinians, because some of those indictments were filed based on offenses against members of the security forces, and it is not clear what percentage of the total they represent. At my request, members of the SJ District Prosecution Unit checked how many of the aforementioned indictments were submitted for offenses by Israelis against Palestinians. The inquiry found that 30 of the 72 indictments submitted were filed following complaints by Palestinians. That constitutes 42% of the indictments. I shall add that according to the SJ District figures, some 45% of the investigation files opened in the district during 2007 were opened based on complaints by Palestinians.

In your report you refer to having reviewed 205 case files, which we do not know how you chose, and you state that you found that in those cases only 13 indictments

had been submitted to date, constituting only 8% of the cases. But a systematic analysis of all of the investigation files opened in 2007 found that 30 indictments have already been filed due to complaints by Palestinians, which constitutes a significantly higher percentage than the percentage found in your inquiry.

In addition, the figures show that the ratio between the number of indictments filed following complaints by Palestinians compared to the number of investigations opened into complaints by Palestinians is very similar to the ratio between the number of indictments filed following complaints by the security forces and the number of investigations opened into complaints by the security forces.

2. Chapter 2 of the report is about the law enforcement team in the Occupied Territories, of which I have served as the head for the last three and a half years. In the report you claim that in the letter of September 1, 1998, the previous Attorney General assigned to the law enforcement team in the Occupied Territories all of the roles that were assigned to the Office of the State Attorney as part of the “the monitoring and coordination procedure between the Israel Police and the State Attorney’s Office regarding investigations and charges against Israelis in the Judea and Samaria and Gaza Strip areas,” as quoted in the report.

But that claim is erroneous. The previous Attorney General’s letter from September 1, 1998, explicitly stated that the aforementioned monitoring and coordination procedure had been canceled, and that the treatment of ideological crime in Israel and in the Occupied Territories would be according to Cabinet decision 6317 - which established a different team, a team for matters of “incitement and sedition,” which operates on a non-territorial basis. This change is also supported by additional information found in our office.

Needless to say, Cabinet decision 6317 and the conclusions of the Shamgar Report are well known to the team I head, and we implement them accordingly. It should also be noted that the team deals frequently with law enforcement in the Occupied Territories and discusses systemic aspects thereof. But the team does not act, and does not need to act, according to a procedure that was canceled and abolished some 10 years ago.

3. It was also claimed in Chapter 2 of the report that the lack of ongoing monitoring by the State Attorney’s Office of the SJ District’s investigation files prevents the correction of recurring defects in managing the district’s cases. As I explained to you

in our conversation on January 31, 2008, I believe that there are grounds for specific monitoring of SJ District investigation files when there is a special justification to do so, and this is indeed what we do. I should note that the specific monitoring of various cases over the years has revealed fundamental problems that have been discussed within the team.

However, there is neither reason nor do we have the capacity to maintain ongoing specific monitoring by the State Attorney's Office of all SJ District cases, as you suggest. As you have been informed before, ongoing supervision of the SJ District cases is conducted by police monitoring bodies, as well as through appeals procedures (and I will respond below to your claims regarding those procedures). I should also note that decisions to close cases in the SJ District are made by senior and professional bodies (only the Prosecution Unit is allowed to close cases on grounds of lack of evidence or lack of public interest, and only regional investigation and intelligence officers are allowed to close cases on grounds of "perpetrator unknown"). In addition, the law enforcement team in the Occupied Territories monitors the SJ District's processing of certain cases, as well as follows the State Attorney's Office HCJ Department's processing of appeals regarding law enforcement in the Occupied Territories.

As was explained to you, the role of the law enforcement team in the Occupied Territories is not to conduct ongoing and specific monitoring of all SJ District cases, but to deal with systemic and fundamental issues. The team includes senior officials in the law enforcement system in the Occupied Territories, and it is in charge of establishing procedures and policy on various issues regarding law enforcement in the Occupied Territories and the oversight of their implementation. Needless to say the team's outcomes have led to the improvement of the SJ District investigations, and they are certainly more beneficial than the ongoing monitoring of specific cases. I will not enumerate the team's many achievements on a large array of subjects, even though the report does not discuss them, but it will suffice to refer to the variety of subjects with which the team deals, some of which are detailed on page 17 of the draft report.

I should note that even when Attorney Talia Sasson headed the team, the team did not conduct ongoing monitoring of all of the SJ District cases, as opposed to what may be inferred from the report.

4. On page 20 of the draft report you attempted to illustrate the need to tighten the supervision of SJ District investigations and the prosecution bodies with the example

of the investigation of the killing of the boy, Mahyoub Asi. You claim that no indictment has yet been filed in this case even though the boy was killed almost three years ago. But in the report you did not mention for some reason that two months ago the Jerusalem District Attorney's Office (Criminal Department) sent a letter to Attorney Michael Sfarid in which it informed him that the Office was considering filing an indictment on charges of negligent manslaughter.

In that letter the Jerusalem District Attorney's Office explained its reasons for its position and invited Attorney Sfarid to convey his comments before it would render a final decision on which charges to include in the suspect's indictment. Attorney Sfarid has not as of yet responded to that letter, and the District Attorney's Office is waiting for his reaction in order to make a final decision. These facts should have been mentioned in the report.

5. Following is the reaction of the Appeals Department in the State Attorney's Office to your arguments detailed in Chapter 3 of the report, about the State Attorney's processing of appeals against the closure of cases by the SJ District Police:
 - 5.1. As to the prolonging of processing appeals, indeed, to our great chagrin, in too many cases the processing of appeals is much more prolonged that it should be. Among the reasons for the prolonging of processing is the fact that the appeal is first transferred by law to the party who closed the case to allow time to prepare an opinion about the appeal. Only then are the appeal and the opinion transferred to the Appeals Department, attached to the investigation file. For that reason, sometimes the material reaches our office only a few months after the appeal has been submitted. In addition to that is the very heavy work load that rests upon the shoulders of the few who handle appeals in our office who thoroughly handle two thousand appeals each year. The volume of the evidentiary material in some of those appeals is large, sometimes a few box loads of evidence. Some of the appeals require, by their nature, a prolonged processing. Clearly, since some of the appeal files include a number of box loads of evidence, this has an effect on the duration of the processing of all of the appeals under our advisement, including appeals against the closure of investigation files by the SJ District Police, and including those case files whose volume is not large. In addition to the large number of appeal files that open every year, in many cases there are repeated applications by appellants that require renewed examination. These circumstances, which are out of our control, cause the prolonging of processing appeals. We are making efforts to shorten the duration of processing and we hope in the future that these efforts will prove fruitful.

- 5.2. You claim that in all of the appeals you submitted on violent offenses classified as felonies either the decision on the appeal was made after the timeframe set forth by the law (half a year), or no decision had yet been made even though the timeframe had already expired. Since your report did not provide the details of all of the cases in regards to which the argument was mounted, we cannot provide a complete response to this claim. However, the information you detailed suffices to establish that your argument is not true. So, for instance, in appeal file 1763/07/14 (ID 1/07 SJ District), over the death of the girl Abir Aramin in the village of Anata, as mentioned in the report, the appeal was filed by Attorney Sfar on September 24, 2007, and a decision on the appeal was made by the Deputy State Attorney (Criminal Department) on February 4, 2008, less than four and a half months after the appeal was submitted and before the deadline set forth by law to complete the processing of the appeal. We would appreciate your attempt to be accurate in the future.
- 5.3. You also noted that the personnel shortage cannot constitute a “special reason” for prolonging the deadline for handing down a decision on an appeal, as required by section 65a of the CPL. We do not agree with that interpretation of the provision of the law, and therefore we do not share your opinion that the State Attorney’s Office is supposedly violating a provision of the law.
- 5.4. In addition to measures taken by the relevant parties outside of the State Attorney’s Office in order to shorten the processing time of appeals, a change was recently made in our office regarding the processing of some of the appeal files, with the goal of streamlining and shortening the duration of processing appeals by the Attorney’s Office, and as we stated above we hope that change will prove successful.
- 5.5. As to the percentage of appeals that we reject, we shall state as follows: our office receives appeals over the closure of cases by all police units in Israel, by other investigation bodies as stated in section 64 of the CPL, by the District A Attorneys’ Offices and by the Police Investigation Unit. In general, at the end of a thorough investigation, sometimes prolonged and very complex, into the appeals submitted to our office, the rate of appeals that are accepted is low, out of the total number of appeals submitted. This indicates that a professional inquiry had already been made by the party who closed the file in the first place.

We do not have figures about the breakdown of the decisions on appeals according to different investigation units, type of offense and so on. However, on the basis of our processing of thousands of appeal files, we can assert that even in appeals submitted

in regard to other units that are not from the SJ District the rate of appeals that are accepted is relatively low, and there is no grounds to suppose that appeals submitted against decisions by the SJ District are rejected for irrelevant reasons.

Moreover, and this is the main point, the role of the State Attorney's Office Appeals Department is to conduct specific reviews of the appeals submitted, while thoroughly reviewing the investigation material in each case. The decision on each case is made professionally, based on the totality of the material contained therein.

It should be remembered that decisions on appeals, like all administrative decisions, are subject to HCJ review. As far as we know, no petition has been made to the HCJ over the decision to reject any appeal submitted against the closure of an SJ District case, and this fact speaks for itself.

- 5.6. As for the appeal files mentioned in your application, a full and detailed reference to those files appears in the appendix, since you asked us to limit the length of our response. We would of course welcome you to publish the appendix as well, so that the readers of the report have a full picture of the facts. In any case we shall state in summary that unfortunately some of the reasons the specific appeals were rejected were not mentioned by you in the report and we regret that. Also absent from the report was the fact that most of the appeals in the cases you mentioned were submitted with substantial delay, which justified their rejection at the outset. So, for example, one of the appeals was submitted more than a year after the case was closed, contrary to the law that requires an appeal to be filed within 30 days of closure. Nonetheless, as an act of indulgence, all of the appeals were reviewed, and we regret that you did not state that important information.

Sincerely,

Shai Nitzan
Deputy State Attorney
(Special Assignments)

Appendix

Our reference to the appeal files mentioned in your application:

1. Appeal 1047/07 (ID 20/06). First of all, the case was closed by the police in March 2006 and notice was sent by the police at that time to the complainant. Later, in response to an application by the complainant's counsel, Attorney Sfar, from April 6, 2006, on April 18, 2006, Attorney Sfar was sent another notice by the police notifying him of closure of the case for lack of evidence. The appeal was filed on July 30, 2006, more than four months after sending the first notice about closing the case, more than three months after sending the second notice about closing the case, and contrary to the provisions of section 65 of the CPL, that states that an appeal will be submitted within 30 days after the complainant is given notice that the case has been closed.

We would like to add to that that the appeal file was opened in our office only in August 2007, since the police sent the case file, before it reached our office, to the Tel Aviv District Attorney (Civil Department), due to their request to receive the file in order to handle a civil suit filed by one of the complainees. As the police told the complainant's counsel in its letter of July 11, 2007, the case file was returned to the police only on July 9, 2007. Due to these circumstances the appeal file was opened in our office only in August 2007, and that is why its processing has not yet been completed.

2. Appeal 1191/07/14 (ID 2214/05). The appeal file was opened in our office on September 6, 2007, and no decision has yet been made on it. In your report it was stated that you submitted the appeal on November 1, 2005, and that no decision had yet been made. For some reason you failed to mention the following facts. First, the case was closed in April 2005 and the appeal was filed only about half a year later. Adding to that is the fact that the appellant in this case is not the person who filed the complaint in the case, and his testimony was given only as part of the completion of the investigation conducted following submission of the appeal. We hope processing of the appeal will be concluded as early as possible.
3. Appeal 1360/06/14 (ID 1676/05). A review of the opinion prepared in our office for the appeal, as well as the letter announcing the decision in the appeal, showed that the appeal was examined by our office thoroughly and deeply, and the letter announcing the decision on the appeal mentions many reasons that constitute grounds

for rejecting the appeal. Most of those reasons, with the exception of one, do not appear in the report you prepared. Among the reasons stated was the fact that the complainant did not appear on two occasions scheduled with him for an identification lineup regarding one of the suspects. It also emerged that the suspect was not identified in an identification lineup conducted for the guard stationed at the entrance to the nearby settlement. Besides that, because of a technical failure it was impossible to establish which pictures were shown to the complainant at the identification lineup. Given this array of circumstances, and others stated in our letter, and despite the remaining suspicion regarding the involvement of some of the complainees in the incident in which the complainant was attacked, there was no choice but to reject the appeal.

4. Appeal 789/06 (ID 2143/04). The material in the case file showed that there is a big difference between the first version of events provided by the complainant to a patrol officer who arrived at the scene and the version he provided two days later in his police investigation. Due to additional evidentiary obstacles that emerged from the material in the case file, as detailed in the decision to reject the appeal, obstacles that add to the aforementioned difficulty, the explanation you provided for the difference in versions in order to substantiate a sufficient evidentiary basis for prosecution is insufficient. As opposed to what you said in your report, the decision to reject the appeal does not constitute doubt of the complainant's credibility, but only indicates that the total evidentiary material existing in the case is insufficient to intervene in the decision to close it.
5. Appeal 1908/06/14 (ID 7900/04). This case was closed in December 2004. The appeal was filed in January 2006, more than a year after the police closed the case. It also emerged that in the appeal an argument was made for the first time which was not made by the complainant in his police investigation. In these circumstances, and based on the additional arguments detailed in the decision to reject the appeal, no basis was found to intervene in the police decision to close the case.

In conclusion, it appears that a detailed examination of the decisions to reject the appeals you mentioned shows that they were handled by the State Attorney's Office carefully and thoroughly.

English Translation from Hebrew original by Yesh Din, at the request of the Office of Deputy State Attorney.



APPENDIX 2: YESH DIN'S REPLY TO DEPUTY STATE ATTORNEY

Attorney Shai Nitzan
Deputy State Attorney (Special Assignments)
29 Salaheddin Street
Jerusalem 91010

April 18, 2008

Re: The Office of the State Attorney's Response to the Yesh Din Report

Thank you for your response to the report. During the research conducted prior to writing this report we met with you and other relevant officials; we also received written comments, and indeed, many of the comments that appear in your response were included in the report itself even before we received the response.

In general, we do not intend in this response to comment on your reaction as a whole. We enabled you to respond as you saw fit to the contents of the report and for that purpose we provided you with a draft of the report before it was published. Even though in your response you generally avoid a head-on confrontation with Yesh Din's chief conclusions and the recommendations contained in the report, we respect your choice. However, we felt the need to address a number of points in your reaction that we believe would mislead the readers of the report were they to remain unanswered by us.

1. In your response (Section 1) you presented figures you received at your request from the Police about the extent of investigations and prosecutions in the SJ District against Israeli civilians who harmed Palestinians. As described in the report, Yesh Din was repeatedly told by the Israel Police that it was impossible to produce such figures (and previous figures we received from you also did not distinguish between offenses against Palestinians and members of the security forces), and we are pleased to hear that a means was finally found to present figures regarding the investigation of offenses by Israeli civilians against Palestinians.

A calculation of the figures you presented in your response shows that out of 248 investigation files opened in the SJ District in 2007 into offenses by Israeli civilians against Palestinians 30 indictments were filed: only 12%. Even though your response presented quite a few numerical figures, including percentages, you appear to have

chosen not to state that figure specifically, which out of all the numbers you presented is the most relevant one to the report and its findings. We are consoled by the fact that this indicates the possibility that it is clear to you as well that a figure of filing indictments in 12% of the investigation files (or in other words, an 88% failure rate of investigations) is not a figure of which to be proud.

We would also like to note in this context that the figures about the cases being monitored by Yesh Din are multi-annual figures, including cases falling under the jurisdiction of district attorneys' offices. As such, the cases monitored by Yesh Din, and the findings derived from that monitoring, are not limited to the range of figures presented in your response: investigation files from 2007, handled by the SJ District Prosecution Unit alone but not other prosecution bodies. Yesh Din's monitoring found, as detailed in the report, that the multi-annual average of submitting indictments following SJ District investigations into offenses by Israeli civilians against Palestinians is only 8%.

2. In Section 2 of your letter you claim that we erred about changes that resulted from the letter of the former Attorney General of September 1, 1998. It is not clear to us what "error" you are referring to or what the purpose of that comment was, because the details that appear in the "correction" you propose - the fact that the "monitoring and coordination procedure" was canceled and the provision to handle "ideological" crime in Israel and the Occupied Territories on the basis of Cabinet decision 6317 - are written clearly and accurately in the draft report you received.
3. Your comments on the negligent processing of the investigation into the killing of the boy Mahyoub Asi are outrageous. You are attempting to place the blame on us for the series of defects that for two and a half years delayed the submission of an indictment against the suspected killer of the boy. Indeed, a few weeks ago we were allowed to photocopy the investigation file, review it and reach our conclusions regarding the investigation material. We will give you our comments in the coming days, but this certainly cannot justify the prolonged delay and the other defects in the Jerusalem District Attorney's Office's processing of this case, defects detailed in the report and upon which you refrained from commenting.
4. In section 5.2 of your response (comments on the Appeals Department in Chapter 3) it is stated that our conclusion that all of the decisions on appeals submitted by Yesh Din against the closure of investigation files on violent crimes classified as felonies were made after the deadline set forth by the law is not true.

- a. You noted that you could not give our conclusion a “full response” because the report does provide the details of all of the cases on the basis of which we reached our conclusion. As you know, there was an extensive dialogue between us even after we gave you the draft report in order to prepare your response. You gave us questions and interim comments and received comprehensive answers. Had you asked for the details of the appeals to which we were referring (namely, the numbers of the case files given by the Appeals Department to the appeals we submitted) we would have gladly provided you with them. Since you did not ask for those details, your claim on that matter at this point is strange. We are still willing to provide you with those figures should you request them, and in any case the figures we cited in the report are accurate of course.
- b. However, you saw fit to emphasize that “the information [we] specified is sufficient” in order to establish that our conclusions about the duration of processing appeals against the closure of cases classified as felonies are incorrect. To substantiate your assertion you noted that in the appeal file regarding the killing of Abir Aramin, a case which according to you “is mentioned in the report,” the decision on the appeal was made before the deadline set forth by the law to conclude the processing of an appeal. Your refutation of our conclusions on the basis of that example is strange, because contrary to your argument the subject of processing the appeal against closing the case on the killing of Abir Aramin does not appear in report at all. Therefore, your comment that “we would appreciate your attempt to be accurate in the future” is uncalled for.

For the sake of clarity, we would like to add that the processing of the appeal against closure of the investigation into the killing of Abir Aramin was not mentioned in this report because the report is only concerned with incidents in which the suspects are civilians, whereas the suspects in the killing of Abir Aramin are members of the security forces, Border Policemen. In a separate report on law enforcement upon members of the security forces in the Occupied Territories we will discuss, among other things, the various defects that led to the failure of the investigation into the circumstances of the killing of Abir Aramin.

5. As to the Appeals Department’s comment about the “substantial delay” in filing appeals by Yesh Din, we would like to note that in the vast majority of cases there is a delay in receiving permission from the SJ District units to photocopy the investigation file, after receiving notice that the case has been closed. In many

cases permission was given months after receiving notice that the investigation file was closed, and in other cases the Police refrained from handing over the full investigation material, and its completion upon our demand extended over an additional period of time. Knowing that these are the circumstances you have heretofore refrained from commenting about the “delay” in submitting appeals, a delay for which the SJ District Police and its units are responsible.

Parenthetically we would like to point out that the report focused on the duration of processing an appeal both from the day it is submitted and from the day it is received by the Appeals Department, and therefore even if there were an unjustified tardiness in submitting the appeal, it would not change our conclusions regarding your failure to meet the requirements of the law.

6. Naturally, the scope of this report does not allow a detailed explanation of each one of our arguments in the appeals and of your answers. Therefore it is obvious that some of your reasons were not presented in the examples in the report, just like many of our reservations about the investigation failures and about your responses to the appeals were not included either.

Sincerely,

Lior Yavne
Director of Research
Yesh Din – Volunteers for Human Rights

Too Little, Too Late is the second report in a multi-year project by human rights organization, Yesh Din, examining the reasons for the continuing failure of the State of Israel to enforce the law on Israeli civilians for harming Palestinians and their property in the West Bank. The report studies the manner in which the Office of the State Attorney oversees police investigations in the West Bank and the quality of that supervision. The report reviews and critiques the two currently existing means of supervision in the State Attorney's Office: the "Law Enforcement Team," headed by the Deputy State Attorney (Special Assignments), and the Appeals Department in the State Attorney's Office, which processes appeals against decisions by the police and the prosecution to close cases without submitting indictments. The report reveals that the State Attorney's supervision is inadequate and does not fulfill the recommendations of the various official committees that conducted inquiries into the issue. The report includes recommendations for strengthening the State Attorney's supervisory roles in the investigation of offenses by Israelis against Palestinians in the Occupied Territories.

Yesh Din – Volunteers for Human Rights was founded in March 2005 and since then its volunteers endeavor to achieve long-term structural improvements in the human rights situation in the Occupied Territories. The organization works towards this goal by documenting and disseminating accurate and up-to-date information about the systematic violation of human rights in the OT; by applying public and legal pressure on government agencies to end them; and by raising public awareness of human rights violations in the OT. In order to attain its goals more effectively, Yesh Din operates according to a model unique to human rights groups in Israel: while the organization is directed and run by volunteers, it also receives daily assistance from a professional team of lawyers, human rights experts and media consultants.

The Ministry of Justice building in East Jerusalem, in which the Office of the State Attorney is housed.

Photograph: Nir Kedar

