


Tailwind

Non-enforcement of judicial orders, foot dragging and the retroactive legalization of illegal construction in the occupied Palestinian territories





בבית המשפט העליון

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NON-ENFORCEMENT OF JUDICIAL ORDERS,
FOOT DRAGGING AND THE RETROACTIVE
LEGALIZATION OF ILLEGAL CONSTRUCTION IN THE
OCCUPIED PALESTINIAN TERRITORIES



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PRINCIPAL FINDINGS

This report traces various aspects of the Israeli State's conduct concerning 16 petitions to the Israeli High Court of Justice (HCJ) submitted by Palestinians with the help of human rights organization Yesh Din. The petitions were filed after Israel's law enforcement agencies refrained from taking action to enforce stop work and demolition orders issued by the Civil Administration against illegal construction in the West Bank, and to carry out eviction orders issued after crops were planted and fields were fenced off ("agricultural infiltrations") on land privately owned by Palestinians.

In 11 of the petitions submitted with Yesh Din's help, the HCJ issued interim orders whose purpose was to freeze the situation on the ground as is until a decision would be made in the petitions. Five of those orders were violated, and the construction work on the ground continued despite a Supreme Court order specifically forbidding it. But these grave violations were not met with an adequate enforcement response by the authorities – prevention of the violations and prosecution of the lawbreakers.

The enforcement failures are compounded by lengthy delays on the part of the State in presenting its position to the court, leading to the prolongation of hearings on the petitions and substantial delays in reaching a judgment. Since the interim orders, which were intended to freeze the situation until a decision would be rendered in the petitions, are not enforced, the foot dragging is frequently used to establish new facts on the ground with the purpose of undermining the possibility of providing the requested remedies in the petitions.

Furthermore, the State makes visible efforts to forestall the court's issuance of judicial orders to demolish buildings and evict their tenants. When possible, the State tries to legalize the illegal construction by declaring the land as "state land" (public land), or submitting and retroactively approving plans. In other cases, when it could not act retroactively to legalize the illegal actions, the State has promised to enforce the orders according to an order of priorities it presented to the court. In a few cases the State even undertook to implement the orders within a defined time frame. By the time of writing this report, the State has not yet carried out the evictions to which it committed itself in the petitions.



INTRODUCTION

One of the salient expressions of the weakness of the rule of law in the West Bank is the absence of effective enforcement actions concerning building offenses by Israeli citizens. In 2005 the State Comptroller asserted that “the conclusions of the investigation and the illegal construction actions described therein... indicate an ineffective response by the security system and administration to the illegal actions in the area of construction, including the invasion of state land, and the evacuation of unauthorized outposts, and attest to the situation in Judea and Samaria in those areas.”¹ Added to the actual enforcement failures is the State’s conduct in recent years in the petitions submitted to the courts against it because of the failure to carry out the orders issued by the Civil Administration. In this report we attempt to identify the main trends in the State’s conduct in these legal proceedings. The report is based on Yesh Din’s experience over more than three years of assisting Palestinians in petitioning the Israeli High Court of Justice to order the state authorities to implement orders they issued themselves following illegal construction by Israelis in the West Bank.² The first part of the report concerns the violation of judicial orders and the State’s failure to enforce those orders; the second part describes the long saga of the State’s avoidance of presenting its positions concerning the petitions, failure to implement demolition orders despite declarations of its intention to do so and decisions to legalize illegal construction retroactively.

The human rights organization Yesh Din works to protect the human rights of the protected population of the occupied Palestinian territories, partly through oversight of the Israeli law enforcement system in those territories. As part of a multi-annual project on the authorities’ handling of the theft of land belonging to Palestinian civilians in the occupied Palestinian territories, the organization seeks to strengthen procedures of effective law enforcement

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1. State Comptroller, **Annual Report 56a**, 2005, p. 240. The report found that between 77% and 92% of acts of illegal construction by Israelis in the West Bank between 2000 and 2004, which were known to the Civil Administration, were not dealt with. “Judea and Samaria” refers to what is also known as the West Bank.
 2. This report refers to 16 petitions submitted through Yesh Din and another three petitions submitted by Peace Now.

required to protect the property rights of Palestinian residents of the West Bank.³ This activity is conducted by helping Palestinian civilians defend their rights to their land that was illegally stolen to build settlements and outposts without any real enforcement response by the authorities. Meanwhile, Yesh Din initiates a variety of legal actions whose purpose is to force the authorities to fulfill their duty to protect the Palestinian residents and their property and to enforce the law in the West Bank. Twenty-eight cases in which Yesh Din assisted Palestinian residents are currently in different stages of legal proceedings, most of which are petitions to the HCJ about the absence of law enforcement concerning illegal construction.⁴

Israel's obligation to enforce the law in the occupied Palestinian territories is anchored both in the rules of international law and in the provisions of Israeli administrative law, and includes the duty to take positive action to protect the property of the protected civilians against third parties and to take action that guarantees those civilians' ability to enjoy their property and exercise their other basic rights.

The Commanding Officer of the Central Command, as the Military Commander who filled the shoes of the sovereign in the occupied West Bank, is in charge of law enforcement in that area in all of its aspects, including enforcement of the planning and building laws. As part of that overall responsibility the Military Commander and all of the enforcement bodies that act by virtue of his power – the military, the Israel Police and the Civil Administration – are supposed to enforce the law against illegal construction in the area.

Planning activity in the West Bank is administered by the Civil Administration through the Jordanian planning and building laws that were valid in the area in 1967, and which were adjusted over the years (through military orders issued by the area commander –

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3. In recent years additional claims have been made about failures to enforce the law concerning building offenses in the Palestinian sector. Inasmuch as there is a significant phenomenon of illegal construction by Palestinians, Yesh Din views it as a completely different phenomenon, whose extent, nature and motives do not resemble illegal construction by Israelis. As opposed to the illegal construction by Israelis, which is in most cases ideologically motivated and is often conducted on private Palestinian land (thereby violating the property rights of the protected Palestinian population), the illegal construction in the Palestinian sector usually stems from the "planning strangulation" from which that population suffers and does not violate the property rights of others (we do not know of a single case of Palestinian construction on the private land of Israeli citizens). Illegal construction by Palestinians usually means building without a permit on their own land or on public land that belongs to the natural bloc of Palestinian villages. As a human rights organization, we choose to examine mainly violations of the law whose result is not only planning excesses but also violation of property rights, and we also focus on offenses whose victims are the protected civilians of the occupied territory.
 4. Additional petitions concern the denial of Palestinian farmers' access to their land and other lateral issues.



the command chief), to the reality of the Israeli occupation of the West Bank territories. The planning powers for Jewish construction in the West Bank are granted to the Higher Planning Council in the Civil Administration headquarters near Beit El, which is comprised of military officers and civilian Israeli Defense Forces (IDF) employees.⁵ The Civil Administration's inspection unit is in charge of inspecting construction in the occupied Palestinian territories, except in the areas of approved outline plans in the Israeli local councils, as well as the actual enforcement of the law concerning illegal construction. The unit is in charge of detecting building violations, and collecting information regarding illegal construction and the enforcement of the "illegal construction procedure," according to which a committee on behalf of the unit issues stop work and demolition orders against illegal buildings.⁶ In practice, however, enforcement of the orders depends on instructions from the Minister of Defense, who rarely orders evacuation and demolition. The framework for treating "agricultural infiltrations" onto land privately owned by Palestinians (which is to say, planting agricultural crops on another person's privately owned land without his permission) is set forth by the "order concerning disruptive use of private land,"⁷ according to which eviction orders are issued against land infiltrations. The Civil Administration's inspection subcommittee is also responsible for the enforcement of these orders, with the assistance of army and police forces, as needed.

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5. **Order concerning Towns, Villages and Buildings Planning Law (Judea and Samaria) (Order No. 418)**, 1971. The order provides that the power granted in Jordanian law (Towns, Villages and Buildings Planning Law, No. 79, 1966) to the district towns, villages and buildings planning committee be granted to the higher planning council. For more details see lecture by Shmuel Groag on planning and lack of planning in the West Bank as a political tool to appropriate the space, November 2002, on Bimkom website: <http://www.bimkom.org/publicationView.asp?publicationId=36>.
 6. The procedure for handling illegal construction according to the Jordanian planning and building law. The stages for confronting illegal construction according to the procedure are the following: issuing a stop work order and summoning the owner to appear before the inspection subcommittee (of the higher building council); a hearing in the committee allowing the owner to bring claims against the stop work order; if the owner's arguments are rejected, the committee issues a demolition order and gives the owners a 30-day extension to submit an appeal. If the appeal is rejected, or if no appeal was submitted, the inspection subcommittee is permitted to take action (through inspection personnel) to demolish the illegal building. According to the law, violation of the stop work or demolition order is a criminal offense punishable by a fine. Talia Sasson, **Opinion on Unauthorized Outposts**, Jerusalem, February 2005, p. 17; State Comptroller, **Annual Report 56a**, 2005, p. 240.
 7. **Order Concerning Land (Disruptive Use of Private Land) (Judea and Samaria) (Order no. 1586)**, 2007.

A particular complication concerns enforcement within the borders of valid plans in settlements. Some of the Israeli local committees in the occupied Palestinian territories were authorized to establish local planning committees (for example: Maale Adumim, Karnei Shomron, Modi'in Illit, Shilo and others). These local planning committees are responsible for enforcement of the planning and building laws within the boundaries of the authorized outline plans in their jurisdictions. Therefore, if the leaders of a settlement are responsible for the illegal construction within its boundaries, it is their own inspection unit that is supposedly responsible for preventing the violation.

As part of a petition by Peace Now concerning illegal construction in the outposts of Hayovel and Haresha, built north of Ramallah next to the settlements of Eli and Talmon respectively, in October 2008, on the orders of the HCJ justices, the State presented a list of its priorities for the enforcement of demolition orders issued against illegal construction in the West Bank in the Israeli sector. The document includes eight items in a declining order of priority. The first priority is demolition orders based on judicial decisions; they are followed by demolition orders against buildings in the earliest stages of construction, under circumstances where it is necessary to provide a prompt response before the completion of construction and inhabitation; after which come demolition orders against buildings on privately owned Palestinian land whose title has been settled.⁸

Despite the State's recurrent declarations to the court as to its priorities, experience collected as part of the petitions Yesh Din has helped to submit shows that in practice the State refrains from enforcing orders and evacuating buildings, even when they are at the top of the list of priorities the State itself declared.

8. State response from October 28, 2008 as part of petition HCJ 9051/05 **Peace Now – S.A.L. Educational Enterprises et al v Minister of Defense et al**. They are followed by the following orders, in a declining order of priority: demolition orders against buildings on land whose title has not been settled and which are not defined as state land; demolition orders against buildings in unauthorized outposts built after March 2001; demolition orders against buildings outside of detailed and authorized planning plans; other buildings.



CHAPTER 1

PETITIONS THROUGH YESH DIN AGAINST THE NON-ENFORCEMENT OF DEMOLITION ORDERS AND INFILTRATOR EVICTION ORDERS

As part of the assistance Yesh Din provides Palestinians who approach it for help in dealing with illegal construction on their land or on public land, **16⁹ petitions have been submitted so far to the HCJ, requesting the court to order the State to enforce orders issued by the Civil Administration that it had not yet implemented itself.**

- Thirteen petitions requested the court to order the State to implement demolition and stop work orders issued against illegal construction (of residential houses, public buildings and roads) on private Palestinian land and public land.
- Three petitions asked the court to order the State to enforce eviction orders issued under the “order concerning disruptive use of private land,” following agricultural infiltrations and the erecting of fences on privately owned Palestinian land.

The petitions describe a grave practice by the authorities of consistently turning a blind eye and granting tacit approval of building offenses and agricultural seizure intended to expand settlements and outposts by stealing private and public Palestinian land. The court was asked in the petitions to instruct the authorities to take action to enforce the stop work, demolition and eviction orders they had issued themselves.

The duty to enforce the law may be obvious, but in the absence of enforcement and in the face of the authorities’ inaction, the petitioners are forced to resort to the HCJ and ask it to intervene order the authorities to enforce the law. The petitions were submitted after petitioners’ repeated requests through Yesh Din to the Civil Administration demanding that it enforce the orders, failed to result in the removal of the buildings or the infiltrators and the return of the land to its legal owners.

9. Another petition was dropped at Yesh Din's request shortly after it was submitted when an error was discovered in the identification of the plot of land on which settlers had built illegal buildings in the illegal outpost of Migron. An interim order issued as part of the petition was canceled. Chapter 3 of this report also discusses three petitions submitted by Peace Now.

The petitions are submitted against the state bodies in charge of law enforcement in the West Bank: the Minister of Defense, the Commander of IDF Forces in the West Bank, the Head of the Civil Administration and the Commander of the Judea and Samaria (JS) District of the Israel Police. Because they are parties to the affair, the petitions are also directed at the relevant settlements and Israeli regional councils in the occupied Palestinian territories as additional “respondents” to the petition, but the petitions are primarily aimed at the State, which is responsible for implementing the orders, enforcing the law in the West Bank and protecting the rights of the Palestinian civilians. In Yesh Din’s opinion, the responsibility of the criminals for committing the crimes does not detract from the State’s responsibility, because it is responsible for initiating effective enforcement actions both preventively and punitively.

At the time of the writing of this report, **11 interim orders** had been issued in the petitions ordering the halt of continued construction work and prohibiting the buildings’ connection to infrastructures and inhabitation until a decision was rendered in the petition. **Seven orders nisi** were also obtained, ordering the respondents to show cause as to why they did not act to enforce the demolition and eviction orders they had issued. In three petitions a decision was made and a judgment was rendered.¹⁰ Thirteen petitions are still pending.

10. In HCJ 6642/08 **Abdul Latif et al v Minister of Defense et al** (judgment from November 2, 2009) the judgment rejected the petition but upheld the interim order forbidding the continued construction of a synagogue on the private land of a resident of the village of Jib; in HCJ 4475/09 **Nadmi Hasan Mohamed Salman et al v Minister of Defense et al** it was decided to refrain from processing the petition after the synagogue was sealed in accordance with a commitment by the state (final judgment from August 8, 2010 and complementary decision from January 17, 2011); in HCJ 4457/09 **Mohamed Ahman Yassin Mana et al v Minister of Defense et al** (judgment from July 27, 2011), the judgment turned the interim order into an absolute order and forbade the continued construction and use of a waste treatment facility in Ofra until its legal status was settled.



CHAPTER 2

VIOLATION OF INTERIM ORDERS

Out of 13 petitions concerning illegal construction in which the requested remedy was enforcement of demolition orders issued by the Civil Administration, the HCJ issued 11 interim orders forbidding the continued construction and inhabitation of the buildings. **Five of the interim orders were violated;**¹¹ in four of them, the settlers hurried to complete the construction work or inhabit the houses, despite the explicit HCJ order. In one case the respondents rushed to finish the construction and inhabitation in the few days that passed from the time the petition was submitted until an interim order was issued by the court, and the houses continue to be inhabited in violation of an order forbidding use of the buildings. This may have happened in other cases as well.

HCJ 9669/10: FIVE HOUSES ARE BUILT IN BEIT EL IN AN AREA SEIZED FOR “MILITARY PURPOSES”

On December 29, 2010, Abdul Rahman Qasem petitioned the High Court of Justice with the assistance of Yesh Din's legal team.¹² Qasem, a resident of the village of Dura al-Qara near the settlement of Beit El, is the owner of a plot of land he inherited from his late father, which had served the family for generations until it was seized in the 1970s for military purposes. Even though military seizure is temporary by nature,¹³ and despite the fact that

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11. Another interim order was violated in a petition concerning illegal construction in the settlement of Talmon. The petition was not included in this report, whose subject is petitions to enforce orders. HCJ 8171/09 **Abbas Hassan Yousef Yousef, Head of Council of the Village of Janiya v Higher Planning Council in the Civil Administration et al** (the petition is still pending).
 12. HCJ 9669/10 **Abdul Rahman Qasem Abdul Rahman v Minister of Defense et al** (the petition was submitted on December 29, 2010 against the Minister of Defense, the Commander of IDF forces in the West Bank, the Head of the Civil Administration, the Commander of the JS Police District and the Beit El Regional Council).
 13. HCJ 606/78 **Ayyub et al. v. Minister of Defense et al.**, 33(2) PD 113 [1979], pp. 124-125. In the State Comptroller's report from 2005 it was stated: "The State Comptroller's Office notes that seizure of land through a seizure order is intended for use of the land for vital military needs only. Failure to cancel a seizure order for military needs on land that was not declared state land and is Palestinian-owned is not consistent with the law and proper administrative procedures." State Comptroller, **Annual Report 56a** p. 212.

the plot remains empty and was never used for any military purpose, it was not returned to its owner, who is barred from accessing it and cultivating it.

In early October 2010, Qasem noticed that large residential buildings were being built on his land, and on another part of the land the ground was being developed for the construction of additional houses to expand the settlement of Beit El. The illegal construction did not elude the Civil Administration inspectors, whose headquarters are near the plot, and the latter issued stop work and demolition orders against the buildings. The petition was submitted after it emerged that the Israeli authorities were not enforcing the orders they had issued, and after the submission of requests from the Civil Administration as well as filing a complaint with the Israel Police did not stop the illegal construction on Qasem's land. In the petition, the court was asked to order the authorities to enforce the demolition and stop work orders they had issued. On January 24, 2011, an interim order was issued which obligates all of the respondents in the petition, including and especially those who represent state authorities, to take positive action to prevent the continued construction and inhabitation of the buildings:

"We hereby issue an interim order instructing respondents 1-5 to take all necessary measures to uphold the stop work orders issued by respondent 2 concerning the buildings being erected on plot 142 bloc 4 on the land of the village of Dur al-Qara in the area of the military seizure order. Inasmuch as at the present time the means to immediately exercise the demolition order are not available, as claimed, the stop work order and prevention of connection to infrastructure and prevention of inhabitation should be enforced immediately."¹⁴

Likewise, the court issued an order nisi ordering the enforcement authorities to show cause as to why they were not enforcing the final demolition orders issued against these buildings.

VIOLATION OF THE INTERIM ORDER

Despite the existence of a clear judicial order ordering the cessation of building actions and ordering the authorities to stop the progression of the construction, the construction work at the site continued in blatant violation of the interim order: on March 2, 2011, the petitioner noticed construction workers at the site and progress in the construction compared to

14. Decisions to issue an interim order and an order nisi in HCJ 9669/10 Abdul Rahman Qasem Abdul Rahman v Minister of Defense, January 24, 2011.

its condition before submitting the petition; two days later Hagit Ofran, coordinator of the Peace Now Settlement Watch team, noticed that concrete was being poured on the roof of one of the buildings, and trucks full of construction materials and cement mixers were present at the site. The construction and cement pouring that took place that day were also noted by a relative of Qasem's, who photographed the cement pouring; on March 6, 2011, Yesh Din volunteers documented additional construction work on the roof of another building, including erecting wooden beams as preparation for the construction of a third floor.

The purpose of the vigorous work was apparently to complete the construction and present the authorities and enforcement bodies with established facts to obstruct the realization of the demolition orders issued against the buildings and also prevent the possibility of providing the requested remedy in the petition.



Construction work on Qasem's land despite stop work and demolition orders issued for the buildings. Right: The construction work on January 23, 2011 (a day before the interim order was issued); Left: the construction work on March 6, 2011. Photograph: Yesh Din.

INSTEAD OF LAW ENFORCEMENT: IGNORING THE VIOLATION OF A JUDICIAL ORDER RIGHT UNDER THE CIVIL ADMINISTRATION'S NOSE

The construction work observed at the site was reported to the State Attorney's Office along with a demand to enforce the judicial order and to stop the work immediately. In response, the State Attorney's Office affirmed that "the bottom floor of one of the structures was covered in tar," but claimed that the Civil Administration's Enforcement Department's site visits "found no indication that construction had been conducted at the site since the

granting of the interim order...” other than this.¹⁵ The State Attorney’s Office guaranteed that the Civil Administration “would continue to enforce the stop work order... in accordance with the interim order granted in the petition.” Despite their commitment, and although the Civil Administration Headquarters is located adjacent to the plot, construction activities continued, and Qasem was forced to file a request for an order under the contempt of court ordinance to compel all of the respondents, by imprisonment or fine, as the law provides, to uphold the judicial order ordering a stop to the construction work. The motion was denied because the head of the Civil Administration in Judea and Samaria, Brig.-Gen. Mordechai Almoz, promised that Civil Administration inspectors would patrol the site at least three times a week.¹⁶

On April 7, 2011, the State announced, as part of its response to the order nisi, its intention to enforce the demolition orders against the buildings within a year (by April 2012).¹⁷ At the last hearing on the petition, on June 20, 2011, it was decided that the State would submit an updated notice as to the situation on the ground by the end of 2011.¹⁸

HCJ 2759/09: A ROAD CONNECTING THE SETTLEMENT OF ELI TO THE OUTPOST OF HAYOVEL ON THE PRIVATE LAND OF RESIDENTS OF THE VILLAGE OF QARYUT

On March 29, 2009, the council head of the Palestinian village of Qaryut petitioned the High Court of Justice with the assistance of Yesh Din, asking the court to order the cease of the excavation and paving of a road connecting the settlement of Eli and the adjacent

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15. Response by State Attorney’s Office to letter from Atty. Shlomy Zachary, March 10, 2011.
 16. Decision on the motion from March 20, 2011, on behalf of the petitioner for an order under the contempt of court ordinance and updated notice from May 26, 2011 on behalf of respondents 1-4 in HCJ 9669/10 **Abdul Rahman Qasem Abdul Rahman v Minister of Defense**, May 31, 2011.
 17. Writ of response by the respondents in HCJ 9669/10 **Abdul Rahman Qasem Abdul Rahman v Minister of Defense**, April 11, 2011. The announcement is based on the decisions reached at a special session convened by Prime Minister Benjamin Netanyahu on February 28, 2011 with the Minister of Defense, the Minister of Domestic Security, the Minister for Strategic Affairs, Minister Benny Begin, the Minister of Justice, the Atty. Gen. and other parties, in order to develop a policy on illegal construction in the West Bank. According to the new policy, as a rule, illegal building on private land is to be removed first, while the planning status of building on public land is legalized.
 18. Decision in HCJ 9669/10 **Abdul Rahman Qasem Abdul Rahman v Minister of Defense**, June 20, 2011.



outpost of Hayovel on the private land of residents of the village of Qaryut.¹⁹ The route for the road had already been excavated in 2002 as a dirt path, and in 2005 vigorous work began ahead of its construction as a wide road, 1400 m long, parts of which are on private Palestinian land. The paving work was carried out on private Palestinian land without a permit, and subsequently the Civil Administration issued a demolition order for the road. The petition was submitted after appeals to the relevant authorities to call their attention to the illegal building of the road failed to stop the work, which continued despite the existence of demolition orders against the road.

On April 5, 2009, a few days after the petition was submitted, an interim order was issued forbidding the Mateh Binyamin Regional Council and the Eli Cooperative Association from carrying out “any construction work themselves or by others on land of the village of Qaryut concerning the road that is the subject of this petition.”²⁰ In its preliminary response to the petition, filed on July 5, 2009, the State reported that it found in an inspection on July 1, 2009, that the work had stopped and that as part of its enforcement measures it had placed obstacles on the road and scarified it in a number of places.

VIOLATION OF THE INTERIM ORDER

On July 6, 2009, a day after the State announced that the work had stopped, Yesh Din personnel documented land development work in preparation for paving with heavy machinery, proceeding undisturbed on the southern end of the road in clear and open violation of the interim order. Subsequently, Yesh Din requested that the State fulfill the provisions of the order and prevent the establishment of facts on the ground. In the response received following the request, a state representative confirmed that “work was done on the route of the road leading to the Hayovel outpost in which a 150 m stretch of road was tarred in the segment near the entrance of the outpost, in apparent violation of the interim order given by the court in this petition.”²¹

19. HCJ 2759/09 **Abdul Nasser Hamed Labum, Head of Council of Village of Qaryut, v Minister of Defense Ehud Barak et al.** The petition was submitted on March 29, 2009, against the Minister of Defense, Commander of IDF forces in the West Bank, Head of the Civil Administration, Commander of Binyamin Police, Regional Council Mateh Binyamin and Eli Cooperative Agricultural Association.

20. Decision (interim order) in HCJ 2759/09 **Abdul Nasser Hamed Labum, Head of Council of Village of Qaryut, v Minister of Defense Ehud Barak** from April 5, 2009.

21. Response by State Attorney's Office to letter from Atty. Shlomy Zachary of Yesh Din's legal team, August 3, 2009.

Following the violation of the judicial order, Supreme Court Chief Justice Dorit Beinisch ruled that “it appears as if the continuation of the road construction near the outpost was completed after the interim order was issued and we view this matter, if that is the case, with extreme gravity.”²² The court ordered the State to submit an update to it within 45 days to “clarify the circumstances of building the road, address the question of the private land, the alleged violation of the interim order and the steps the State took in that regard.”²³ Following the State’s statement of update and the petitioners’ response to it, on April 6, 2011, the court issued an order nisi ordering the respondents to show cause within 45 days as to why the road that was the subject of the petition should not be demolished and why measures should not be taken against the violators of the interim order.²⁴

INSTEAD OF LAW ENFORCEMENT: DECLARING THE LAND STATE LAND IN ORDER TO LEGALIZE THE CONSTRUCTION OF THE ROAD

On June 26, 2011, **the State declared most of the land on the route of the road as “state land” (public land).**²⁵ Usually, such a declaration is a preliminary procedure ahead of the planning and allocation of land for construction. By a series of blatant violations of the law beginning with construction without a permit, continuing with the violation of Civil Administration orders and ending with the violation of a High Court of Justice order, the lawbreakers got what they wanted and even obtained a stamp of approval from the State. Legalizing the crime strengthens the lawbreakers and encourages future violations while further weakening the rule of law.

Furthermore, even in parts of the road that could not be declared state land the State is refraining from fulfilling its commitment to the court to demolish the road. At a hearing on December 12, 2011, Chief Justice Beinisch bound the fate of those segments of the road to the fate of the entire outpost of Hayovel, because if the political echelon decides to legalize it, its residents will need an access road to it.

22. Decision on HCJ 2759/09 **Abdul Nasser Hamed Labum, Head of Council of Village of Qaryut, v Minister of Defense Ehud Barak** from May 26, 2010.

23. *Ibid.*

24. Order nisi in HCJ 2759/09 **Abdul Nasser Hamed Labum, Head of Council of Village of Qaryut, v Minister of Defense Ehud Barak** from April 6, 2011.

25. Certificate according to Order concerning Government Property (Judea and Samaria) (Order Number 59) 1967, signed on June 26, 2011, by Yossi Segal, Director of Abandoned and Government Property in Judea and Samaria.



Construction of the road between Eli and the Hayovel outpost continues after issuing the interim order. Left: the road in early 2009. Right: the paved road after the interim order was issued, October 25, 2009. Photo: Dror Etkes, Yesh Din.

HCJ 4475/09: A SYNAGOGUE IN THE OUTPOST OF ELMATAN

On May 26, 2009, the council heads of the Palestinian villages Deir Istiya and Thulth petitioned the High Court of Justice with Yesh Din's help to order the stop of the illegal construction of a synagogue in the illegal outpost of Elmatan, which was built on public land classified as the land of the village of Deir Istiya.²⁶ Upon submission of the petition, a temporary order was issued, which later became an interim order,²⁷ directed at all of the respondents in the petition: "... to stop all of the construction work and/or connection to utilities and/or road construction of the building that is the subject of this petition and to refrain from conducting any transaction concerning this building and/or transferring the rights therein until another decision in the petition."²⁸

VIOLATION OF THE TEMPORARY ORDER

Yesh Din personnel who visited the site two days after the order was issued found that construction work on the building continued, and the temporary order was being violated. On another visit to the site two days later, on June 2, 2009, they saw workers, vehicles

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26. HCJ 4475/09 *Nadmi Hassan Mohamed Suleiman et al v Minister of Defense et al*. The petition was submitted on May 26, 2009, against the Minister of Defense, the Commander of IDF forces in the West Bank, Head of the Civil Administration, Commander of the JS Police District and the Samaria Regional Council.
27. On June 16, 2009, the court turned the temporary order into an interim order. The provisions of the order remained intact.
28. Decision (temporary order), HCJ 4475/09 *Nadmi Hassan Mohamed Suleiman et al v Minister of Defense*, May 26, 2009.

and construction materials and documented the work on the building. Yesh Din's legal team reported the violations to the State while demanding that necessary action be taken to enforce the judicial order that had been issued, but the violations continued and the synagogue was furnished and used by the residents of the outpost.²⁹

At the first hearing on the petition on June 7, 2010, the State informed the High Court that the interim order forbidding construction had indeed been violated and that it had therefore decided to seal and fence off the building.



Elmatan synagogue on June 2, 2009, two days after an interim order was issued forbidding construction of the building. Photo: Yesh Din.

29. On February 23, 2010, the "Rotter" website ran an advertisement to raise NIS 25,000 for the synagogue. The announcement also said that following the purchase of new furniture for the synagogue the used furniture was being given away. Clearly, fundraising for future construction of the synagogue and its refurbishing indicate an intention to continue the construction and use of the building, and constitute a blatant violation of the interim order.



INSTEAD OF LAW ENFORCEMENT: ATTEMPT TO LEGALIZE THE BUILDING

Following the State's decision to seal the synagogue, the Samaria Settlers' Committee petitioned the High Court to order the sealing to be forestalled,³⁰ and an interim order was issued forbidding sealing or demolition of the building until a new decision on the petition. Because there were two different petitions about the same building and two contradictory orders, the court decided to consolidate the hearings on the petitions. On August 8, the HCJ rejected the Samaria settlers' petition in limine and in substance, imposing on them the court expenses. The original petition (submitted by Yesh Din) remained intact as well as the decision to seal the building within 60 days.

On October 5, 2010, a day before the State was required to update the court as to the sealing, another petition was submitted by Mr. Yoel Bloch, who argued that he prayed at the synagogue periodically, demanding he be given a hearing before the building was sealed.³¹ The next day the State announced it was going to hold another hearing for Bloch in an act of indulgence. On November 4, the State updated the court that it had decided to reject Bloch's arguments and leave the demolition order intact. Furthermore, the State decided to give the Samaria Regional Council the option of sealing the synagogue independently within 14 days and that if the building were not sealed independently within the allotted time the State would act immediately to seal it. **The State also added that it would consider the possibility of approving a detailed plan that was submitted in order to legalize the construction of the building.**³² In accordance with the State's request, the court ruled it should update it again within 45 days.

On January 13, 2010, the State reported in an update to the court that the synagogue had been sealed by the regional council and that on a visit to the site it was determined that the sealing was sufficient and fulfilled its purpose, namely prevention of use of the building. The State also reported that the detailed plan that was submitted in order to legalize the synagogue was being considered by the Civil Administration.³³ Hence, an illegal construction,

30. HCJ 4790/10 Samaria Settlers' Committee v Minister of Defense.

31. HCJ 7155/10 Yoel Bloch v Minister of Defense.

32. Announcement by respondents 1-4 as part of the petition in HCJ 4475/09 Nadmi Hassan Mohamed Suleiman et al v Minister of Defense, from November 4, 2010.

33. Statement of respondents 1-4 as part of the petition in HCJ 4475/09 Nadmi Hassan Mohamed Suleiman et al v Minister of Defense from January 13, 2011.

which was initiated and completed under total disregard for the law, was granted de facto support from the State, which is currently examining favorably the possibility of retroactively legalizing it.

HCJ 2295/09: NINE ILLEGAL BUILDINGS IN THE OUTPOST OF REHELIM

On March 12, 2009, the council head of the village of al-Sawiya petitioned the High Court with Yesh Din's help to order the enforcement of stop work and demolition orders issued against nine illegal buildings built in the outpost of Rehelim on public land ("state land") near the village of al-Sawiya.³⁴ The petition claimed that the public land, meant to serve the public as a whole, had been stolen for the benefit of the illegal expansion of the outpost, while violating the right of the residents of al-Sawiya to realize the natural relationship of usufruct between the village and its adjacent land. It was also argued that seizing public land restricts access to the private land that has to be accessed through it or near it.

In its response to the petition, the State argued that the continued work on the buildings built without building permits and without a detailed and approved outline plan was a violation of the stop work and demolition orders issued against the buildings by the Civil Administration. After the petition was submitted, on March 18, 2009, the Commanding Officer of the Central Command signed an order declaring the area where the buildings were built as an area closed to Israelis. That order, too, which was issued quite belatedly, was not enforced at all and was violated regularly.

VIOLATION OF THE INTERIM ORDER

On March 22, 2009, the HCJ issued an interim order ordering the Samaria Regional Council and the Cooperative Agricultural Association of Rehelim "to refrain from continuing to build on the land that is the subject of this petition, carrying out any transaction concerning the buildings that are the subject of this petition or continuing to inhabit them."³⁵ Two years later, in March of 2011, Yesh Din personnel noticed on two different occasions that infrastructure

34. HCJ 2295/09 *Mustafa Ahmad Mohamed Khalil Fadiah, Head of the Village Council of al-Sawiya v Minister of Defense et al*, petition from March 12, 2009, submitted against the Minister of Defense, Commander of IDF forces in the West Bank, Head of the Civil Administration, Commander of the JS Police District, Samaria Regional Council and the Cooperative Agricultural Association of Rehelim. The petition is still pending.

35. Interim order in HCJ 2295/09 *Mustafa Ahmad Mohamed Khalil Fadiah v Minister of Defense* from March 22, 2009.

work was being conducted on and around the buildings. Photographed documentation of the work constituting an apparent violation of the interim order was given to the state representative with a demand that, as this was the violation of a judicial order by the Supreme Court, priority be given to law enforcement concerning the buildings.³⁶

During a hearing on the petition it emerged that apparently in the 10 days that passed between submitting the petition and issuing the interim order, three of the buildings that were the subject of the petition had been inhabited in an opportunistic grab, whose purpose appeared to be establishing facts on the ground and obstructing the demolition of the illegal buildings.



Construction work at Rehelim on March 22, 2011 in violation of the interim order given two years earlier. Photo: Firas Alami, Yesh Din.

INSTEAD OF LAW ENFORCEMENT: ATTEMPT TO LEGALIZE THE ILLEGAL CONSTRUCTION

The State's first reaction to the petition was that it was going to enforce the demolition orders, but since it was state land the execution of the demolition orders was not a top priority of the Civil Administration.³⁷ It said as much even though the second item on the list of priorities was realizing demolition orders against construction in its initial stages and before inhabitation. Later, the State retracted its intention to demolish the buildings and

36. Letters from Atty. Shlomy Zachary of Yesh Din to State Attorney's Office, from March 24, 2011, and April 3, 2011.

37. Initial response by respondents 1-4 in HCJ 2295/09 *Mustafa Ahmad Mohamed Khalil Fahih v Minister of Defense* from July 22, 2009.

announced that after reconsideration it intended to explore the possibility of legalizing the construction by legalizing the whole outpost.³⁸

HCJ 5023/08: NINE HOUSES IN OFRA BUILT ON PRIVATE LAND OF THE RESIDENTS OF THE VILLAGE OF EIN YABRUD

Five Palestinian residents of the village of Ein Yabrud petitioned the High Court of Justice on June 4, 2008, with the help of the organizations B'Tselem and Yesh Din, requesting that the court order the authorities to implement demolition orders against nine permanent buildings on land they own.³⁹ At the time the petition was submitted the buildings were at various stages of construction and far from being inhabitable. In the 15 days between submission of the petition and the decision to issue an interim order the construction was significantly accelerated. According to various reports, the Rabbi of Ofra, Avi Gisser, even issued a "special dispensation" allowing construction work on the Sabbath, "due to circumstances that create the need to realize this construction more vigorously," he said.⁴⁰ The short time that passed between submitting the petition and issuing the interim order was used well to complete the construction and inhabit the houses in order to obstruct their demolition as requested in the petition. Subsequently, on June 12, 2008, the petitioners submitted an urgent motion for a temporary order for the immediate halt of construction work until an interim order would be issued. On June 19, 2008, an interim order was issued ordering stoppage of the work and prohibiting any use of the buildings:

"After reviewing the petition and the responses of respondents 1-4 and 6 and 5, an interim order is hereby given prohibiting inhabitation of the buildings that are the subject of this petition and any use thereof. Likewise the respondents are ordered to prevent the continued construction on the land that is the subject of this petition as well as connection of the existing buildings to the water, electricity and sewage systems, all until another court decision is issued."⁴¹

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38. Statements by respondents 1-4 in HCJ 2295/09 **Mustafa Ahmad Mohamed Khalil Fadiah v Minister of Defense** from January 10, 2010, October 10, 2010, and May 2, 2011.
 39. HCJ 5023/08 **Saeed Zuhdi Mohamed Shehadah et al v Minister of Defense et al**, petition from June 4, 2008. The petition was submitted against the Minister of Defense, the Commander of IDF forces in the West Bank, the Head of the Civil Administration, the Commander of the JS Police District, Ofra Cooperative Village for Communal Settlement Ltd. and the Mateh Binyamin Regional Council. The petition is still pending.
 40. Yair Ettinger, Rabbi of Ofra: Work on the Sabbath is permitted in order to build settlements, Ha'aretz, June 12, 2008.
 41. Decision in HCJ 5023/08 **Saeed Zuhdi Mohamed Shehadah et al v Minister of Defense** from June 19, 2008.



VIOLATION OF THE INTERIM ORDER

Following a request by the petitioners to the state representative to enforce the interim order to the letter, including the prohibition on the use of the buildings, the state representatives argued that there was “a lack of clarity” about the extent of the order’s application. In his response, the state representative explained that in the State’s understanding “the interim order refers only to the respondents and forbids them from using and inhabiting the buildings.”⁴² Which is to say, according to the State’s understanding, the prohibition on using the buildings applies to the Minister of Defense, the Commanding Officer of the Central Command, the Head of the Civil Administration and the other respondents personally, and not to the people who live in the buildings. It should be noted that the interpretation according to which the court meant to prohibit use of the houses by the Minister of Defense, the Commanding Officer of the Central Command and the Head of the Civil Administration is obviously fallacious, and by adopting it the State Attorney’s Office betrayed its primary function of being the gatekeeper of the rule of law by the government authorities.

Following the “lack of clarity” about the application of the order, as claimed in the State’s response, on July 21, 2008, the petitioners made a motion to clarify the interim order, in which the court was moved to define the application of the order and clarify its intention in prohibiting the use of the buildings.⁴³ A hearing on the petition took place on March 23, 2009, in which the state representative reported that the houses had in fact been inhabited before the interim order was issued, and that under the circumstances the Minister of Defense decided to refrain, for the moment, from exercising the said demolition orders. On this issue, the judges made the following remarks in their decision:

“We have the impression that actions were taken whose purpose was to establish facts on the ground and to thwart the motion for the interim order. In any case, the present situation, in which houses were recently inhabited, obviates the need to clarify the interim order that was given, and which was thwarted ahead of the hearing on the petition.”⁴⁴

42. Response by State Attorney Office to letter from Atty. Michael Sfar of Yesh Din from July 15, 2008.

43. Motion by the petitioners to clarify the interim order from June 19, 2008, as part of the petition in HCJ 5023/08 **Saeed Zuhdi Mohamed Shehadah et al v Minister of Defense** from July 21, 2008.

44. Decision as part of the petition in HCJ 5023/08 **Saeed Zuhdi Mohamed Shehadah et al v Minister of Defense**, March 24, 2009.

Following these developments an order nisi was issued in the petition, obligating the respondents to show cause within 60 days as to why they were not acting to enforce the demolition and evacuation orders issued against the aforesaid buildings.⁴⁵

LACK OF ENFORCEMENT ACTIONS BY THE STATE

Of the four judicial orders that were violated, two were addressed to the relevant regional council and cooperative association and another two were addressed to all of the respondents, i.e. to the State as well, which was required by the court to see to it that the given order was carried out. **Yesh Din's position is that the State is obligated to take operative steps to enforce all of the orders, whether they are addressed to it specifically or not.** That obligation stems both from the State's general obligation to enforce the law and from its obligation to protect the Palestinian residents of the occupied territory and their property.

Furthermore, the State has declared that its first priority in realizing demolition orders are orders based on judicial decisions. Although that commitment as expressed in the affidavit of the head of the Civil Administration refers to the realization of demolition orders, it stands to reason that the rationale that applies to that order of priorities – giving priority to implementing judicial orders – should also apply to interim orders and other court orders.⁴⁶

The absence of an appropriate enforcement response by the State to prevent the recurrence of the violations described above indicates that the State prefers to shirk its obligation to take positive action to prevent the violation of judicial orders and punish the violators after the fact, even when the orders in question are issued by the Supreme Court.⁴⁷

In August 2010, Attorney General Yehuda Weinstein issued a directive about the State's obligation to carry out court judgments against the State.⁴⁸ The directive was issued

45. Order nisi, HCJ 5023/08 **Saeed Zuhdi Mohamed Shehadah et al v Minister of Defense** (decision from March 24, 2009).

46. On this matter see also judgment in HCJ 8806/10 **Regavim v the Prime Minister**, para. 8; and judgment in HCJ 4475/09 **Nadmi Hasan Mohamed Salman et al v Minister of Defense et al** paras. 11 and 15.

47. As to the violation of the interim orders in Qaryut and Rehelim, the State announced that a police investigation had been started, but that too only after the petitioners inquired about the violations. The State did not initiate any inspection procedures to detect and prevent the violations.

48. Gen. Directive, Civil Law – Legal Proceedings to which the State is a Party, Directive Number 6.1006, **Execution of Court Judgments against the State**, August 1, 2010.



following⁴⁹ a strong letter sent in February 2010 by Atty. Yehudit Karp, former Deputy Attorney General, to the current Attorney General enumerating a series of court judgments rendered by the Supreme Court whose implementation the State had evaded.⁵⁰ In his directive the Attorney General states:

“Carrying out court judgments that obligate the State to perform a certain action, whether as a temporary remedy or a final remedy in the judgment, is an obligation incumbent on the State. Obeying court judgments is an obligation incumbent not only on the residents of the State and anyone who enters it but primarily on the State itself. As the saying says, ‘practice what you preach.’”⁵¹

The directive defines a procedure to guarantee the execution of court judgments against the State, with a special emphasis on measures that ought to be taken to guarantee the execution of judgments whose implementation is complex.⁵²

In April 2011 it was reported that Atty. Yehudit Karp again wrote to the Attorney General, Justice Minister Yaacov Neeman and State Comptroller Michah Lindenstrauss, warning that the state authorities were continuing to serially violate their commitments to the HCJ. Among the many examples she quoted in her letter and upon which Karp relied in her assessment, she mentioned some of the violations of orders reviewed above.⁵³

49. Akiva Eldar, Minister of Defense Ehud Barak couldn't care less, Ha'aretz, October 19, 2010.

50. Letter from Atty. Yehudit Karp to Yehuda Weinstein, the Attorney General, February 2, 2010. The title of the letter was: “The state's failure to obey court judgments: HCJ and administrative courts.” Ms. Karp is a member of Yesh Din's public council.

51. Ibid, section 1.

52. Ibid., section 3.

53. Akiva Eldar, Document: state authorities serially violate their commitments to the HCJ, Ha'aretz, April 1, 2011.

CHAPTER 3

THE STATE'S CONDUCT IN PETITIONS: FOOT DRAGGING AND RETROACTIVE LEGALIZATION

FOOT DRAGGING: AVOIDING PRESENTATION OF THE STATE'S POSITION

In a large number of petitions the State asks the court for repeated postponements in presenting its position. According to the State, it needs these delays in order to consult with the political echelon and formulate its position on the questions that arise from the petitions. The court tends to approve these requests even when they amount to numerous delays that add up to many weeks and months in which no progress is made in the case.

For example, in a petition submitted by Peace Now in September 2005, in which the court was requested to order the State to implement demolition orders issued for a number of buildings in the outposts of Haresha and Hayovel, the State has repeatedly avoided presenting its positions. In this case, which has been proceeding for six years, the court has accepted **25 requests by the State to extend the time granted it to submit responses** on its behalf. The requests were made based on the argument that the State needs more time to formulate its position. Because of the long delay in presenting the State's position, there have been only three hearings so far in a petition that has been proceeding for six years.⁵⁴

In another petition by Peace Now from September 2007 demanding the enforcement of demarcation orders⁵⁵ issued for six outposts,⁵⁶ **the State has submitted 10 requests to**

54. HCJ 9051/05 Peace Now – S.A.L. Educational Enterprises et al v Minister of Defense et al. The petition is still pending.

55. An Area Demarcation Order is issued on the basis of the Order Concerning Unauthorized Buildings (Temporary Provisions) Order Number 1539. A demarcation order is issued by the commanding officer of a regional command who declares an area or a place within the borders of which an unauthorized building is located as a demarcated area. Entry of the building or the demarcated area is forbidden and a soldier and police officer are authorized to use force to evacuate it if necessary. Such an order has been the main legal tool to handle the evacuation of unauthorized outposts since December 2003. From: Atty. Talia Sasson, **Opinion on Unauthorized Outposts**, Jerusalem, February 2005, p.16.

56. Givat Hadegel, Mitzpe Asaf, Maaleh Rehavam, Mitzpeh Lachish, Givat Apirion and Mitzpeh Yitzhar.



extend the deadline for its submission of responses.

The State acted in a similar manner in the Peace Now petition to evacuate the outpost of Migron, in which **14 different motions to extend the deadline for the State to submit its responses** were made and accepted. The petition was submitted in October 2006, and after more than five and a half years, in August 2011, a judgment was rendered ordering the evacuation of the outpost.⁵⁸

In the petitions submitted by Yesh Din a similar pattern of conduct has also appeared but on a smaller scale.⁵⁹ In the petition Yesh Din submitted in March 2009, demanding the implementation of demolition orders issued in the outpost of Rehelim, **the State made eight motions to delay deadlines for submitting responses**. During the two years in which the petition has been proceeding there has been only one single hearing. In the petition concerning the road to Qaryut, which was also submitted in March 2009, the State made **eight motions for delays in submitting its responses**. In the petition to implement demolition orders in the outpost of Jabel Artis, submitted in October 2008, the State made **seven motions to delay the deadline for submitting its responses**. In the last motion, submitted in April 2011 and granted, Chief Justice Dorit Beinisch added in her decision that "... due to the prolongation of proceedings in this affair, and considering the order nisi issued in the petition, it behooves respondents 1-4 to accelerate their handling of the matter that is the subject of this petition."⁶⁰

While the State drags its feet a decision is delayed, and meanwhile the land owners are denied access to their land. Since the interim orders are not enforced, the foot dragging is often used to establish new facts on the ground with the goal of obstructing the provision of the remedy requested by the petitioners.

57. HCJ 7891/07, Peace Now – S.A.L. Educational Enterprises et al v Minister of Defense Ehud Barak et al. The petition is the sequel of another petition submitted in March 2006: HCJ 3006/06, Peace Now – S.A.L. Educational Enterprises et al v Minister of Defense et al.

58. HCJ 8887/06 Yousef Musa Abdul Razek al-Nabut et al v Minister of Defense et al; the judgment was given on the petition on August 2, 2011.

59. For one reason because the petitions submitted with Yesh Din's help were submitted only after mid 2008.

60. Decision on motion from April 28, 2011 by respondents 1-4 to extend the deadline for submitting their response to the motion for a temporary/interim order in HCJ 9060/08 Abdul Ghani Yasin Khaled Abdallah v Minister of Defense.

EVASION OF ENFORCEMENT OF ORDERS AND LEGALIZATION OF CRIMES

Besides wasting time and dragging its feet, the State does everything it can to avoid the court rendering a judicial decision ordering it to demolish buildings and evacuate their tenants.

→ In its preliminary responses to all of the petitions the State announced that the construction is indeed illegal, and therefore it intends to act to enforce the orders, according to the priorities established by the Civil Administration. However, at the time of the writing of this report not a single order concerning the petitions submitted by Yesh Din had been enforced, including orders issued against new construction and houses that had not yet been inhabited, which are allegedly the top priorities.⁶¹ In a hearing on January 24, 2011, in a petition against the construction of five residential houses in the settlement of Beit El on land belonging to a Palestinian resident of Dura al-Qara, Chief Justice Dorit Beinisch said: “We are hearing a lot of cases like this and with all the declarations of enforcement priorities, in no case have we seen orders implemented. There is no priority because nothing is being done.”⁶² Judge Hanan Meltzer added: “You issue orders and nobody pays any attention to them. Neither do you.”⁶³ Following the petitions and considering the Attorney General’s position that he could not defend the non-enforcement of the orders before the Supreme Court judges, Prime Minister Benjamin Netanyahu announced in early March 2011 that Israel would demolish buildings built on private Palestinian land.⁶⁴

61. On the morning of August 29, 2011, the State acted to uphold its obligation to the court and evacuate the agricultural infiltration at Turmusayya, on the basis of an order concerning disruptive use. But once the forces began the eviction, the infiltrator, a resident of the outpost of Adei Ad, petitioned the HCJ requesting that it stop the eviction. Following the petition an interim order was granted that immediately stopped the eviction until a joint hearing was held on that petition and the petition submitted by Yesh Din. Decision on motion from August 29, 2011, and August 31, 2011, HCJ 6205/11 **Asaf Azulai v Head of the Civil Administration**.

62. Akiva Eldar, Document: state authorities serially violate their commitments to the HCJ, Ha’aretz, April 1, 2011.

63. Ibid.

64. Barak Ravid and Haim Levinson, “Netanyahu decided: the state will demolish outposts built on private Palestinian land,” Haaretz, March 1, 2011.



- In its response to a petition concerning a park built on private Palestinian land in the settlement of Modi'in Illit, the State renounced its responsibility and announced that responsibility for enforcement of the law, namely evacuating the park and returning the land to its legal owners, resides with the local authority – the same local authority which itself built the park illegally on private Palestinian land.⁶⁵

- In its responses to three petitions⁶⁶ the State announced that instead of implementing the orders issued by the Civil Administration as it committed to do previously, and instead of enforcing the law, it intends to legalize the illegal construction by submitting and retroactively approving plans:
 - In the petition concerning illegal construction in the outpost of Rehelim the State announced it would examine the possibility of settling the legal status of the buildings.

 - In the petition against the synagogue in Elmatan the State announced that the Civil Administration was considering a detailed plan submitted with the purpose of settling the status of the building.

 - In a petition submitted against the construction of a waste treatment facility for the settlement of Ofra on land belonging to Palestinian residents, the State decided that instead of implementing the demolition orders issued against the facility, it would work towards making the facility regional. In July of 2010 a judgment was rendered that turned the interim order given in the petition (more than two years earlier) into an absolute order, according to which use of the facility or its connection to infrastructures is prohibited until its legal status is settled. In other words, even though the facility was built in blatant violation of the law, and although the judges stated in the last hearing on the petition that it was particularly grave that the State helped build it on private land without the plans required by the law, the State itself is working to settle the status of the facility. Meanwhile, the legal owners of the land are denied access to it and the ability to enjoy their property.

65. Writ of response by respondents 1-4 as part of the petition in HCJ 3402/09 **Mohamed Shaqer Ahmad al-Hawaja v Minister of Defense** from August 11, 2010.

66. HCJ 2295/09 **Mustafa Ahmad Mohamed Khalil Fadih, Head of the Village Council of Al-Sawiya v Minister of Defense**; HCJ 4475/09 **Nadmi Hasan Mohamed Salman et al v Minister of Defense**; HCJ 4457/09 **Mohamed Ahman Yassin Mana et al v Minister of Defense**.



Ofra's waste treatment facility on the private land of residents of Ein Yabrud. Until its legal status is settled, the facility is not to be used or connected to infrastructure. Photo: Dror Etkes, Yesh Din.

- In the petition against paving the road connecting the settlement of Eli to the outpost of Hayovel on the land of the village of Qaryut, the State declared the land to be public land with the intention of legalizing the construction of the illegal road.⁶⁷

In five petitions the State promised the court it would enforce the orders within a defined time limit. In these petitions there was no dispute between the petitioners and the State that the building in question was illegal and on private Palestinian land, and therefore impossible to legalize retroactively.

- In the three petitions submitted against the failure to realize orders to evict infiltrators, the State undertook to carry out the eviction orders by the end of August 2011; in two of them, following petitions submitted by the infiltrating settlers, interim orders were issued prohibiting execution of the eviction until a decision was made on the petitions;

67. Certificate based on the Order Concerning Government Property (Judea and Samaria) (Order Number 59) 1967, signed on June 26, 2011 by Yossi Segal, Director of Abandoned and Government Property in Judea and Samaria.

68. Updated notice by the respondent as part of the petition in HCJ 9711/10, **Mohamed Shabaneh v Commander of IDF Forces in the West Bank**, from May 12, 2011; preliminary notice by the respondents as part of petition in HCJ 2186/11 **Mahmoud Mohammed Mohsen al-Aaraj v Commander of IDF forces in the West Bank et al** from May 12 2011; response affidavit on behalf of respondent 2 submitted as part of the petition in HCJ 5439/09 **Ahmad Abdul Qader et al v Military Appeals Committee et al** from March 31, 2011.



- In another two petitions submitted demanding realization of demolition orders against illegal construction on private Palestinian land, the State guaranteed it would implement the demolition orders within a year;⁶⁹
- In a petition submitted concerning the illegal construction of three buildings in the illegal outpost of Migron, the State committed to demolish three houses built illegally in Migron by July 24, 2011. The petitioners dropped this petition shortly after they submitted it, when they discovered an error in the location of the illegal construction. Despite the commitment, a few days before the final deadline for the demolition the Minister of Defense decided not to approve execution of the eviction and the State announced its intention to execute it in September 2011. However, on August 2, 2011, a judgment was rendered as part of a petition submitted by Peace Now that determined that the entire outpost of Migron is illegal and has to be evacuated. On September 5, 2011, the State fulfilled its commitment and demolished the three permanent houses in the outpost of Migron.
- In a petition demanding the evacuation of the outpost of Amona, the State was given a six-month extension to submit a timetable to the court for the evacuation of the outpost, subject to its priorities.⁷⁰

This report was written before some of the deadlines to which the State committed in the aforementioned petitions had passed. Yesh Din hopes that the State will fulfill all of its commitments, execute the evictions within the timeframe to which it bound itself and return the land to its owners.

69. Writ of response by respondents 1-4 submitted as part of the petition in 9669/10 **Abdul Rahman Qasem Abdul Rahman v Minister of Defense et al** from April 7, 2011; response on behalf of respondents 1-4 as part of the petition in HCJ 9060/08 **Abdul Ghani Yasin Khaled Abdallah v Minister of Defense** from May 1, 2011. On September 21, 2011 that commitment by the state was anchored as part of a judgment in petition HCJ 9062/08.

70. Decision on objection to issuing order nisi in HCJ 9949/08 **Maryam Hasan Abdul Karim Hamad v Minister of Defense**, May 18, 2011.

CONCLUSION

The law enforcement failures in the occupied Palestinian territories are expressed in many areas, some of which have been reviewed extensively in previous Yesh Din publications.⁷¹ The failures that have persisted since the first day of the Israeli occupation of these territories have a deepening impact on Israel's ability to fulfill its duty to protect the rights of the Palestinian population.

One of the most significant violations of the rights of the Palestinians in the West Bank is the violation of their right to property committed by Israeli civilians taking over their land in order to expand settlements and outposts. Illegal construction and agricultural seizures of land are handled by the Civil Administration, which issues stop work and demolition orders against buildings erected illegally, and eviction orders for agricultural infiltrations. But these orders remain dead letters, and insufficient action is taken to enforce them.

In a judgment rendered recently in a petition submitted by Peace Now concerning the outpost of Migron, Supreme Court Chief Justice Dorit Beinisch severely criticized the State's conduct regarding law enforcement failures that allowed the outpost to be built and expanded:

"... Despite repeated declarations by the State that the existence of the outpost should not be tolerated, five years have gone by since the petition was submitted and the outpost is only growing and expanding. This factual sequence is problematic, to say the least..."

71. See: A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank (June 2006); Too Little, Too Late: the State Attorney's Supervision of Police Investigations into Israeli Civilians' Offenses against Palestinians (May 2008); and Yesh Din update figures: Law Enforcement upon Israeli Civilians in the West Bank, Fact Sheet (February 2011). The reports can be viewed on Yesh Din's website at <http://www.yesh-din.org>.



And she added:

“Needless to say these difficulties would have been spared or considerably reduced had the State taken effective enforcement actions at the site in the first place and prevented the establishment of the outpost and its expansion.”⁷²

In addition to the “recognized” violations of the law in the West Bank, in recent years there has been a pattern of violation of judicial orders issued by the Supreme Court, violations which themselves are not met with an adequate response by the law enforcement authorities. The policy of turning a blind eye by the State in the face of the severity of the actions and its unwillingness to take determined action to prevent the violations and punish the offenders is another expression of the weakness of the rule of law in the West Bank territories.

If it were not enough that the law is not being enforced, the lawbreakers also receive a tailwind by the State, which not only fails to take action to remove the illegal construction but also seeks in some cases to legalize it, either by declaring the land to be state land or by issuing permits and legalizing the construction retroactively. Such legalization is only possible in some of the cases, when the construction is on public land or land that can be made public by way of a declaration. In other cases, when buildings are erected on privately owned Palestinian land, the State announces its intention to enforce the orders and remove the construction subject to the priorities it presented to the court. In practice nothing is done, the illegal construction continues and its direct result is a violation of the land owners’ property.

The combination of the absence of effective enforcement, which also serves as deterrence, and retroactive legalization feeding the ideological motives that are at the basis of the actions, creates a situation in which the extent of agricultural infiltrations and illegal construction can only be expected to grow.

Besides the fatal damage to the rule of law, the State’s conduct, in all of its aspects reviewed in this report, enables the continuous violation of Palestinians’ property rights and assists in the theft of their land by virtue of its inaction. The various aspects of non-enforcement of the law concerning illegal construction in the West Bank add up to a breach by the State of Israel of its duty to protect the property of the Palestinian residents.

72. HCJ 8887/06 Yousef Musa Abdul Razek al-Nabut et al v Minister of Defense et al; the judgment was rendered on August 2, 2011.

APPENDIX

YESH DIN PETITIONS CONCERNING THE NON-ENFORCEMENT OF ORDERS ISSUED BY THE CIVIL ADMINISTRATION AGAINST ILLEGAL CONSTRUCTION OR AGRICULTURAL INFILTRATION

Proceeding	Proceeding Number	Kind of Petition	Description of Petition
Saeed Zuhdi Mohamed Shehadah et al v Minister of Defense et al	5023/08	Implementation of demolition orders	Implementation of stop work and demolition orders issued by the Civil Administration for 9 houses in Ofra ,built illegally on the private land of residents of the village of Ein Yabrud
Rabah al-Latif et al v Minister of Defense et al	6642/08	Implementation of demolition orders	Implementation of demolition orders against a synagogue for the residents of Givat Ze'ev built illegally on the private land of a resident of the village of al-Jib

Date Petition Submitted	Interim Order	Order Nisi	State Position	Status of File
June 4, 2008	June 19, 2008	March 24, 2009	The State does not intend to implement the demolition orders before the fate of the entire settlement is decided in a final settlement agreement.	Waiting for a judgment
July 27, 2008	August 18, 2008		The orders will be implemented based on the order of priorities.	Judgment rendered on November 2, 2009: the petition was rejected. No grounds were found for intervention. The interim order forbidding continuation of the construction remains in force.

Proceeding	Proceeding Number	Kind of Petition	Description of Petition
Abdul Ghani Yasin Khaled Abdallah v Minister of Defense	9060/08	Implementation of demolition orders	Implementation of stop work and demolition orders issued by the Civil Administration for a new neighborhood next to Beit El, in the outpost of Jabel Artis in which 5 permanent buildings were built and 5 mobile structures were placed on the private land of Palestinian residents of Dura al-Qara
Maryam Hasan Abdul Karim Hamad et al v Minister of Defense	9949/08	Implementation of demolition orders	Implementation of demolition orders for all of the buildings and the outpost of Amona and removal of the fence denying the Palestinian land owners access to their land
Mustafa Ahmad Mohamed Khalil Fadih, Head of the Village Council of al-Sawiya v Minister of Defense et al	2295/09	Implementation of demolition orders	Implementation of stop work and demolition orders issued by the Civil Administration for 9 illegal buildings in the settlement of Rehelim that disturb the residents of the village of al-Sawiya

Date Petition Submitted	Interim Order	Order Nisi	State Position	Status of File
October 29, 2008	November 12, 2008	September 15, 2010	Commitment to evacuate within one year (by May 1, 2012)	Judgment rendered on September 21, 2011: following the State's commitment to evict, with commitment to deadline, petition was exhausted.
November 25, 2008	May 5, 2010		Six-month extension received to submit timetable for evacuation of the outpost	The petition is pending.
March 12, 2009	March 22, 2009		The possibility of settling the legal status of the buildings is being examined.	The petition is pending.

Proceeding	Proceeding Number	Kind of Petition	Description of Petition
Mohamed Ahmad Yassin Mana et al v Minister of Defense et al	4457/09	Implementation of demolition orders	Implementation of stop work and demolition orders issued by the Civil Administration for a waste treatment facility for the residents of Ofra built illegally on the land of residents of the village of Ein Yabrud
Abdul Nasser Hamed Labum, Head of Council of Village of Qaryut, v Minister of Defense Ehud Barak et al	2759/09	Implementation of demolition orders	Implementation of demolition orders issued by the Civil Administration for the road connecting Eli to the Hayovel outpost on the private land of residents of the village of Qaryut

Date Petition Submitted	Interim Order	Order Nisi	State Position	Status of File
May 25, 2009	June 7, 2009	June 17, 2009	The State wants to settle the legal status of the building retroactively.	Judgment rendered on July 27, 2011: the interim order is turned into an absolute order, according to which use of the facility or its connection to infrastructure are prohibited until the legal status of the facility is settled.
March 29, 2009	April 5, 2009	April 6, 2011	The State declared part of the route of the road "public land"; the state wishes to leave the road paved until a solution is found for the outpost of Hayovel.	The petition is pending.

Proceeding	Proceeding Number	Kind of Petition	Description of Petition
Nadmi Hassan Mohamed Suleiman et al v Minister of Defense et al	4475/09	Implementation of demolition orders	Synagogue built illegally on public lands in the outpost of Elmatan, near the villages of Thulth and Deir Istiya
Ahmad Shama Wajih Abdul Karim v Minister of Defense Ehud Barak et al	5383/09	Implementation of demolition orders	Extension of building on public land in the outpost of Mitzpe Danny
Ali Daoud Ismail Barakat, head of council of Kafr Aqab, v Minister of Defense Ehud Barak et al	6505/09	Implementation of demolition orders	Stop construction of 12 houses and land development for another 12 houses on land of the village of Aqab near the settlement of Kokhav Yaacov
Abdul Rahman Qasem Abdul Rahman v Minister of Defense et al	9669/10	Implementation of demolition orders	Implementation of demolition orders for 5 buildings on land of a resident of the village of Dura al-Qara on the edge of the settlement of Beit El

Date Petition Submitted	Interim Order	Order Nisi	State Position	Status of File
May 25, 2009	May 26, 2009 (a temporary order that later turned into an interim order)		The State wishes to legalize the building.	Judgment rendered on August 8, 2010: hearing of the petition ended after the court determined that the building had been satisfactorily sealed.
June 29, 2009	July 13, 2009			The petition is pending.
	September 3, 2009		A survey will be conducted to establish the status of the land. The orders will be executed based on the priorities set.	The petition is pending.
December 29, 2010	January 24, 2011	January 24, 2011	Commitment to evict within one year (by April 2012)	The petition is pending.

Proceeding	Proceeding Number	Kind of Petition	Description of Petition
Mohamed Shaqer Ahmad al-Hawaja v Minister of Defense et al	3402/09	Implementation of demolition orders	Implementation of demolition orders for park located at the entrance of Modi'in Illit on the private land of residents of the village of Ni'lin
Ahmad Shaban Ahmad Nafe et al v Minister of Defense et al	9410/10	Implementation of demolition orders	Implementation of demolition orders against buildings of a police station and fire station in the emergency services complex of the settlement of Modi'in Illit on the private land of residents of the village of Ni'lin
Mohamed Shabaneh v Commander of IDF Forces in the West Bank et al	9711/10	Implementation of an eviction order	Implementation of an order concerning disruptive use issued against the infiltration of settlers into the land of the village of Sinjil

Date Petition Submitted	Interim Order	Order Nisi	State Position	Status of File
April 22, 2009		April 29, 2010	The building is illegal. Responsibility for eviction rests with the local authority.	The petition awaits a judgment.
December 21, 2010			Not yet submitted	The petition is pending.
December 30, 2010			Commitment to execute the eviction order by the end of August. After reconsideration decision to extend the deadline until the end of September 2011.	The petition is pending.

Proceeding	Proceeding Number	Kind of Petition	Description of Petition
Mahmoud Mohammed Mohsen al-Aaraj v Commander of IDF forces in the West Bank et al	2186/11	Implementation of eviction order	Implementation of order concerning disruptive use issued against the infiltration of settlers into the land of the village of Turmusayya
Ahmad Abdul Qader et al v Military Appeals Committee et al	5439/09	Implementation of eviction order	Demand to cancel the decision of the appeals committee and demand to implement an order concerning disruptive use issued against trespass into the private land of a resident of the village of Qadum

Date Petition Submitted	Interim Order	Order Nisi	State Position	Status of File
March 17, 2011			Commitment to execute the eviction order by the end of August 2011. On August 28, 2011, an eviction attempt began but was stopped following an interim order issued as part of the petition submitted by a resident of Adei Ad who claims to be cultivating the land .	The petition is pending.
June 23, 2009		November 23, 2009	Commitment to execute the eviction order by the beginning of August 2011. The eviction was postponed following an interim order issued as part of a petition submitted by a resident of Kedumim who claims to be cultivating the land.	The petition is pending.

Illegal construction in the settlements and outposts in the West Bank has been compounded in recent years by a pattern of violating judicial orders issued by the Supreme Court to stop it. The orders were issued as part of petitions submitted by Palestinians following illegal construction on their land or on public land. Despite the gravity of the acts and the depth of the contempt they show for the law enforcement system, they are not met with an adequate enforcement response by the enforcement authorities.

Besides ignoring judicial orders, the State repeatedly evades presenting its position on the petitions. These delays, along with the failure to enforce interim orders, are often exploited to establish new facts on the ground with the intention of preventing the requested remedy from being delivered in the petitions. Furthermore, the State does everything it can to avoid demolishing the buildings and tries to legalize the illegal construction retroactively by declaring it to be public land (state land) or by approving plans.

This report outlines the broad trends in the State's conduct, based on the experience Yesh Din has gathered for more than three years in which it has assisted Palestinian civilians in petitioning the Israeli High Court of Justice to order the state authorities to enforce orders they themselves issued to stop the construction and evacuate buildings that settlers have built on land belonging to the petitioners.

Yesh Din - Volunteers for Human Rights was founded in March 2005 and since then its volunteers have been working to achieve long-term structural improvement in the human rights situation in the Occupied Palestinian Territories. The organization works through collection and dissemination of credible and current information about systematic violations of human right in the territories; exerting public and legal pressure on the state authorities to stop such violations; and raising public awareness of human rights violations in the territories. In order to achieve its goals effectively, Yesh Din operates according to a unique model in the field of human rights in Israel: the organization is operated and administered by volunteers and assisted on a daily basis by a professional team of lawyers, human rights experts and strategic and communications consultants.

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