



November 6th, 2012

To: The UN Fact Finding Mission on the Israeli Settlements in the Occupied Palestinian Territory including East Jerusalem

Re: Submission by the Israeli Human Rights Organization

Yesh Din: Volunteers for Human Rights

A. Introduction

I. The Mission's Mandate

1. In its decision dated April 10, 2012, the UN Human Rights Council adopted the following definition of the mandate of the UN Fact Finding Mission on Israeli Settlements in the Occupied Palestinian Territory:

“[T]o investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, with a mandate ending on submission of a report to the Council.”

(Item 9 of the decision)

2. The Mission has thus been empowered to examine an issue of the utmost importance, and one that has been the subject of investigation by Israeli, Palestinian and international human rights and peace organizations for many years.
3. The Israeli settlements are distributed throughout the length and width of the West Bank. Israeli settlement has changed the West Bank; its influence extends over all areas of life and touches on all aspects of the basic rights of the Palestinian residents of the area.

4. Each settlement forms the kernel of a sphere of influence that creates restrictions of various types and degrees on the exercise of the basic rights of Palestinians living in the surrounding area. Some of these restrictions are based on security considerations, given the ongoing conflict, which has on more than one occasion included violent attacks on residents of the settlements, including murder; others have been excused on security grounds, although we argue that they have no genuine connection with such grounds; and others still are unquestionably the product of political considerations.
5. Yesh Din's opinion is that all the Israeli settlements in the West Bank are illegal, and that their establishment constitutes a grave violation of international humanitarian law, which establishes an explicit prohibition against the transfer of the population of the occupying power to the occupied territory (Article 49(6) of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, 1949). Yesh Din also believes that, in the case of the Israeli settlements in the West Bank, the dangers that the above-mentioned prohibition seeks to prevent are evident on the ground every moment of every day.
6. On the basis of our profound and protracted familiarity with the reality in the West Bank, **Yesh Din unequivocally asserts that the presence of the Israeli settlements is a key source of the grave violation of the human rights of the Palestinian residents of the area. This violation is multidimensional, relating to almost every basic human right and liberty recognized in international human rights law.**
7. In this document, however, we will confine our review of the ramifications of the Israeli settlements in the West Bank to those human rights of the Palestinian civilians that are relevant to Yesh Din's activities and which we have investigated over the years.
8. Accordingly, we will begin with a brief description of Yesh Din's operations. We will then present our insights and positions regarding the impact of the settlements on those basic rights of Palestinian civilians whose protection forms the focus of Yesh Din's activities.

II. Review of the Activities of the Human Rights Organization Yesh Din and Their Relevance to the Mission's Mandate

9. **Yesh Din – Volunteer Organization for Human Rights** was established in March 2005 with the goal of promoting a substantive and sustainable improvement to the human rights situation in the territories occupied by the State of Israel.
10. Yesh Din is an independent, non-partisan Israeli organization. Yesh Din believes that the protracted Israeli military occupation of the territories inherently leads to extensive and grave violations of the rights of protected civilians in the occupied territories, and, for this reason, this occupation must be ended. However, the organization does not take any position regarding the specific political processes or arrangements through which this should happen.
11. As an independent and non-partisan organization, Yesh Din does not accept donations from Israeli or Palestinian governmental bodies. Yesh Din is supported by donations from private citizens and from private and public donations, including donations from foreign governmental bodies that support the protection of human rights in our region and around the world. For a full list of our donors, please see the organization's website at the address www.yesh-din.org.
12. Yesh Din is a volunteer organization. The work of the volunteers is supported by professionals: attorneys, field investigators, researchers, spokespeople, and so forth. After receiving specific training, the volunteers go into the field, collect testimonies from the victims of offenses, and assist them in submitting complaints to the relevant investigative bodies. The professionals work in their fields of expertise to promote the organization's activities. Yesh Din is headed by an executive director, who is accountable to a board composed of five volunteers in the organization, elected to their position by the members of the organization.
13. Yesh Din currently operates in three principle fields:

Law enforcement on Israeli civilians: Since its establishment in 2005, Yesh Din has worked to enhance the law enforcement proceedings on Israeli civilians involved in criminal offenses against Palestinian persons and property in the West Bank. As part of these activities, the organization's volunteers help the victims of offenses to submit a complaint. Attorneys on behalf of Yesh Din represent the complainants and monitor the

course of the investigation of the complaint until its conclusion – in most cases, the closure of the investigation file, and in instances when an indictment is served against suspects: a final ruling. In cases when the investigation files are closed without indictment of suspects, Yesh Din examines the content of the investigation file (in accordance with a power of attorney granted by the victims of the offense to the attorneys that act of the organization) in order to consider whether grounds are present justifying the submission of an appeal of the decision to close the investigation. In suitable cases, Yesh Din appeals the decision to close the investigation file on the victims' behalf.

In the framework of this project, Yesh Din has to date processed **over 869 investigations** relating to complaints by Palestinians of alleged offenses committed against them by Israeli civilians.

14. **Land:** A growing phenomenon in the West Bank is the seizure of Palestinian-owned land by Israeli civilians, whether by means of invasion and use (construction, planting, etc.) or by way of denying access to the owner. In response, Yesh Din helps landowners to endeavor to regain their property. Yesh Din represents the Palestinian owners of plots in the West Bank that have been seized by Israeli civilians by means of the erection of buildings and/or fences and/or the planting of crops in a manner that prevents the Palestinian owners from using their land. In order to obtain information and documentation, Yesh Din's field researchers maintain ongoing contact with the owners of land that has been usurped. The organization's legal team represents the land owners in correspondence with the law enforcement agencies and the administrative authorities in the West Bank. In appropriate cases, Yesh Din demands the implementation of stop work orders and eviction orders issued in response to illegal works and invasions. When all other possibilities have been exhausted, Yesh Din helps the landowners to appeal to various judicial bodies in order to demand that the authorities enforce the orders they themselves issued and restore the plots of land to their owners.
15. To date, Yesh Din has assisted Palestinian landowners in 54 legal proceedings. Most of these involved Supreme Court petitions demanding that the enforcement agencies be ordered to enforce demolition orders against buildings constructed by Israeli citizens on privately-owned Palestinian land. Other legal proceedings under the scope of this project seek to ensure access by Palestinian landowners to their land, to evict trespassers who

have seized land by planting saplings, and to secure compensation for landowners from the State due to its failure to enforce the law against those who invade their land.

16. **Law enforcement on Israeli security force personnel in the territories:** In this sphere, as in the project for law enforcement on Israeli civilians, Yesh Din volunteers and professional staff act on behalf of Palestinian victims who are the alleged victims of criminal offenses committed by soldiers and police officers. Yesh Din helps the victims to submit complaints to the appropriate investigative bodies. This sphere of our work is not directly relevant to the Mission's mandate.
17. **In light of the above, Yesh Din has accumulated extensive information and expertise concerning the impact of the Israeli settlements on the West Bank on the following rights of the Palestinian residents of the area, which will form the focus of this document:**
 - A. The right to life, liberty and security of person;
 - B. The right to property, with an emphasis on land ownership;
 - C. Freedom of movement;
 - D. The right to equality;
 - E. The collective right to sovereignty over natural resources.
18. Although we will not devote a separate section to this issue in the current document, we wish to draw the attention of the members of the Mission to the fact that the injury to property, freedom of movement and the collective right to sovereignty over natural resources combine to violate an additional basic right: the right to earn a living.
19. We should also note that, with a few exceptions, Yesh Din is not active in East Jerusalem. Accordingly, this document relates solely to the West Bank.

B. The Right to Life, Liberty and Security of Person

I. Yesh Din Data concerning Offenses by Israeli Civilians against Palestinian Persons and Property in the West Bank

A. Overview

20. Since its establishment, Yesh Din has monitored cases in which Israeli civilians have allegedly committed offenses against Palestinian persons and property in the West Bank. After seven years of operations, Yesh Din can categorically state that:

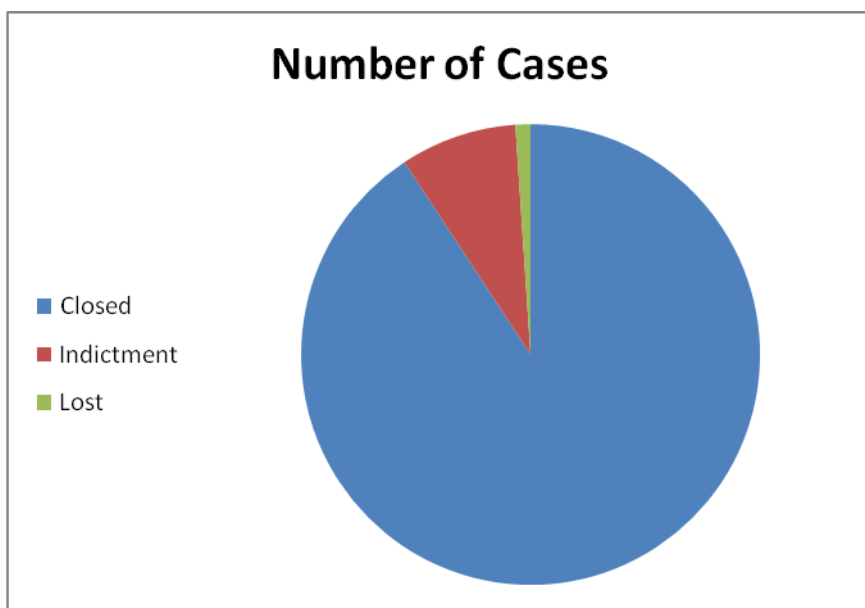
- A. In the West Bank there is a grave phenomenon, on a substantial and dangerous scale, of ideological crimes by settlers against Palestinian persons and property. These crimes occur on a daily basis;
- B. The State of Israel is violating its obligation to protect Palestinian civilians, in light of the protracted failure to provide real-time protection and to thwart attacks by settlers, and in light of the colossal failure to investigate offenses and prosecute those responsible.

B. The Scope of the Phenomenon: Data on Offenses by Israelis against Palestinians

21. Yesh Din monitors the long-term outcome of the investigative files processed by the Samaria and Judea [West Bank] District of the Israel Police concerning the involvement of Israeli civilians (settlers and others) in criminal offenses against Palestinian persons and property in the occupied territories. The data presented below reflect the outcome of **869 complaints** submitted by Palestinians to the units of the Samaria and Judea District Police, as monitored by Yesh Din from 2005 to date.
22. Yesh Din does not monitor all the investigations by the investigative and prosecution bodies concerning incidents in which Israeli civilians are involved in offenses against Palestinians. However, the data are based on an extensive and constantly-growing sample of investigation files that enables a representative examination of the outcome of investigations concerning the said offenses.

23. In its monitoring of the processing of complaints by the investigative and prosecution authorities, Yesh Din divides the investigation files into four principle categories:
- A. Violent offenses: 304 of the 869 investigation files Yesh Din is monitoring (approximately 35 percent) involve incidents of physical violence, including shootings, intimidation using firearms, assault by means of beating, stone throwing, batons and knives, threats and additional offenses.
 - B. Property offenses: 402 of the investigation files that Yesh Din is monitoring (approximately 46 percent of the total) entail offenses involving damage to property. These include arson, damage to property, damage to crops or the theft of crops, and other offenses.
 - **Damage to Palestinian orchards** – of the 402 investigation files involving property offenses, 162 concern damage to orchards owned by Palestinians in the West Bank. These incidents include the cutting down, uprooting, theft or damage of fruit trees¹ - mainly olive trees, but also almonds, lemons, figs, and other fruits.
 - C. Seizure of Palestinian land: 118 of the investigation files monitored by Yesh Din (almost 14 percent of the total) involve offenses concerning the seizure of Palestinian land. The offenses include fencing, farming, placement of buildings, trailers or hothouses, the expulsion of Palestinians from their plots, denial of access by Palestinians to their land, trespassing, and so forth.
 - D. Other offenses: 45 investigation files involve offenses that do not fall under the above-mentioned categories. These include the killing of livestock, the desecration of mosques and cemeteries, the spillage of sewage from factories onto Palestinian agricultural land, the dumping of waste on Palestinian land, and other offenses.

¹ This category does not include attacks on olive harvesters, the theft of fruit (except in cases when this also included damage to the trees), and damage to fields of wheat and vegetables.



24. Breakdown by locale: In Appendix A to this document, we attach a list of Palestinian locales in the West Bank, together with the number of complaints Yesh Din has received concerning offenses by settlers against the residents of each locale. As the list shows, the phenomenon encompasses all parts of the West Bank, with the exception of the centers of most of the large Palestinian cities, where Israeli civilians are not usually present (excluding Hebron, where there is an Israeli settlement within the city).

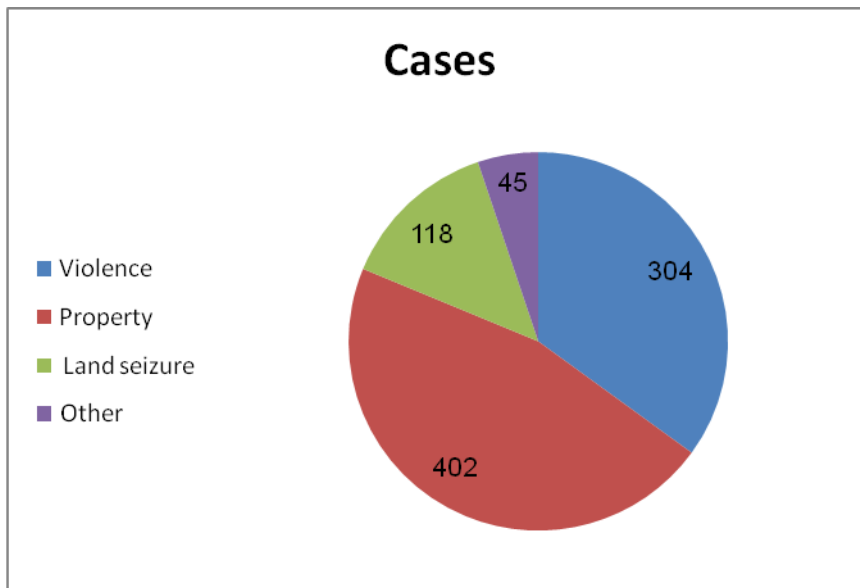
II. Outcome of Investigations by the Israel Police into Complaints Submitted by Palestinians with the Assistance of Yesh Din

A. Overview

25. Since 2005, as noted above, Yesh Din has monitored 869 investigation files processed by the Samaria and Judea District Police. The processing by the investigative and prosecution authorities has been completed with regard to 749 of these cases, in which a final decision has been made:
- In 62 of the investigation files (constituting **less than nine percent** of all the cases in which a final decision has been taken), indictments have been served against suspects;²
 - Eight investigation files were lost and were never investigated;

² Six indictments were served relating to Givat Or, an outpost established on private land belonging to residents of the Palestinian village of Beitin (Yesh Din Cases 1394/08 and 1395/08).

- 687 investigation files (constituting **over 91 percent** of all files in which a final decision has been taken) were closed without indictment being served against suspects.



B. Grounds for Closure of Investigation Files

26. Most of the cases were closed due to investigative failures. The units of the Samaria and Judea Police District have not yet informed Yesh Din of the grounds for the closure of 51 of the 687 cases closed.³ The remaining 639 cases were closed on the following grounds:
 - 422 cases were closed on the grounds of “offender unknown,” testifying to the failure of the police to locate and identify persons suspected of committing the offenses;
 - 148 cases were closed on the grounds of “insufficient evidence,” reflecting the failure of the investigators to collect and consolidate sufficient evidence to prosecute suspects who were located;
 - 54 cases were closed on the grounds of “absence of criminal culpability,” Yesh Din appealed the decision in 22 of these cases, since it believed that it was inappropriate to close the case on these grounds;

³ The Israel Police Ordinance details nine grounds for closure on account of which the police prosecutor may order the closure of an investigative file: absence of guilt, offender unknown, insufficient evidence, lack of public interest in a trial, death of the suspect or defendant, obsolescence of the offense, the offender is a minor, the offender is insane, or another authority is empowered to investigate (Israel Police Ordinance, National Headquarters Ordinance 14.01.50: Authority of a Police Prosecutor to Close an Investigative File).

- 12 cases were closed on grounds that do not indicate the success or failure of the investigation: 10 cases were closed on the grounds of “lack of public interest,” and two on the grounds of “absence of criminal culpability.”

C. Outcome of Investigations into Violent Offenses

27. Of the 304 cases involving violent offenses, 38 concern shooting incidents. The remainder of these cases involve assault by various means, including beating, stone throwing, batons, knives, and rifle butts, as well as threats and additional offenses.
28. Of the 38 investigations into shooting incidents Yesh Din is monitoring, the incident lead to fatality in six files, while 13 cases entailed injury. Of the six cases involving a fatality, two are still being investigated. In two cases indictments have been served against suspects, while the remaining two cases were closed without indictment.
29. Processing has been completed in 268 of the cases involving violence. Indictments were served in 37 of these cases (13.8 percent), 227 cases were closed (84.7 percent), and four cases were lost. Of the cases where processing has been completed, and in which Yesh Din is aware of the outcome, approximately 90 percent were closed in circumstances implying investigational failure: 195 cases were closed on the grounds of “offender unknown” and “insufficient evidence,” four cases were lost, and six were closed on the allegedly unjustified grounds of “absence of criminal culpability.”

D. Outcome of Investigations into Damage to Orchards

30. Of the 162 cases involving damage to Palestinian orchards, only one led to the indictment of a suspected offender, while 142 cases (88 percent) were closed in circumstances implying investigational failure: 124 cases were closed on the grounds of “offender unknown,” reflecting the investigators’ failure to locate and identify persons suspected of the offenses; 16 cases were closed on the grounds of “insufficient evidence,” reflecting the investigators’ failure to collect and consolidate sufficient evidence for prosecution of the suspects who were identified; and two cases were lost and were never investigated.

III. The Normative Legal Framework Required for Investigations in the Occupied Territories

31. The duty to investigate alleged violations of the law of armed conflict derives from common Article 3 of the four Geneva Conventions, Article 27 of the Fourth Geneva Convention and Regulation 46 of the regulations annexed to the Fourth Hague Convention Regarding the Laws and Customs of War on Land, 1907. These clauses establish the duty of the combatant force to protect civilians and they set out specifically the duty to respect rights and protect the persons and property of civilians in an occupied area.
32. The duty to investigate established in international humanitarian law (or derived from it) does not specify the principles guiding its implementation. Therefore, additional legal sources must be consulted in order to give substance to this duty. The provisions of international human rights law apply directly to the duty to investigate and specify its standards: Independence; impartiality; effectiveness and professionalism; promptness; and public scrutiny.
33. The requirement of impartiality is a mandatory condition for the satisfaction of the duty to investigate, and is found in many sources of international human rights laws (see for example: The International Covenant on Civil and Political Rights, Articles 2, 7; Convention against Torture, Article 12).
34. The requirement that the investigation be professional and effective holds that the investigating body must have the ability to collect evidence that will expose the truth and be able to give proper redress to the victims of the unlawful conduct that was revealed (see, for example: The Covenant on Civil and Political Rights, Articles 2(2) and 2(3) – “*competent authorities*,” “*effective remedy*.”)
35. The requirement of a prompt investigation means that the pace of the investigation should be such that it does not affect its effectiveness and its ability to provide relief to the victims and a deterrent to potential perpetrators (see for example: General Comment 31 of the Human Rights Commission relating to investigation of breaches of the International Covenant on Civil and Political Rights, section 15 – “*promptly*,” General Comment 20 of the Human Rights Commission concerning prohibition of torture and cruel treatment or

punishment, paragraph 14 – “*complaints must be investigated promptly . . . so as to make the remedy effective.*”)

36. Finally, the requirement of public scrutiny of the investigation asks that the investigation proceeding must be one that enables the public to follow the decision making process, allows public monitoring, and would allow the victims, their families, attorneys and representatives to inspect the quality of the investigation and the reasonableness of its findings. This requirement is an inextricable and integral part of the effective and professional requirements of investigations. Without public involvement, without (real) input from the victims and their representatives, without supervision of the investigative processes – these proceedings are fated for failure and distortion (see for example: United Nations Resolution: Principle 16 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. 1989/65, annex, 1989 U.N. ESCOR Supp. (No. 1) at 52, U.N. Doc. E/1989/89 (1989).

IV. Yesh Din’s Position concerning the Impact of the Settlements on the Right to Life, Liberty and Security of Person

37. The Yesh Din data show that in over 90 percent of complaints submitted by Palestinians to the Samaria and Judea [West Bank] Police District concerning injury to themselves or damage to their property, and in which the processing has been completed and the outcome is known, the offenders were not prosecuted or penalized. Over 89 percent of these complaints were closed due to investigational failures: 570 cases were closed on the grounds of “offender unknown” and “insufficient evidence,” two cases were lost and were never investigated, and 22 cases were closed on the allegedly unjustified grounds of “absence of criminal culpability” (as mentioned, Yesh Din has appealed the closure of these cases). In fewer than nine percent of the investigation files, the complaint led to indictment.
38. Yesh Din’s acquaintance with the law enforcement proceedings, and its analysis of the reasons for failure, show that the State of Israel fails to meet the standards established in international human rights law and required in an occupied territory in accordance with international humanitarian law. The investigations are unprofessional and ineffective; in many cases, they fail to meet additional requirements. For a full analysis of the

investigative failings, see the Yesh Din report *A Semblance of Law* (<http://www.yesh-din.org/userfiles/file/Reports-English/SemblanceofLawfullreportEng.pdf>).

39. At the same time, the State of Israel fails to meet its obligation to provide Palestinians with security and protection on a real-time basis against attacks by settlers.
40. In conclusion, the data in our possession indicate the abject failure of the State of Israel to maintain an effective law enforcement mechanism in the West Bank. This failure encourages settlers, who can continue to harm Palestinians and their property with the knowledge that they will not be prosecuted or penalized. Palestinians who live close to settlements and outposts live in daily fear of injury to their life and security.
41. The law enforcement failure in the West Bank constitutes a gross violation of the obligation to investigate as enshrined in the rules of international humanitarian law. The findings suggest that the investigative system fails to meet the binding standards required by the fields of international law as described above, particularly the demand for professional and effectiveness. The violation of the obligation to investigate implies a gross violation by Israel of its obligation to protect the Palestinian civilians in the area.

C. The Right to Property – Realizing Land Ownership

I. General Background

1. Yesh Din’s Conclusions concerning the Right to Property

42. The property rights of numerous Palestinians are violated on a daily and hourly basis in the West Bank. This violation occurs in numerous ways, of which the following are the most significant:
 - A. Damage to Palestinian property by settlers by way of denying Palestinians access to their land; damaging Palestinian orchards and property; agricultural invasions; and the usurping of land by means of construction and occupancy.
 - B. Damage to Palestinian property by the authorities. This includes: the allocation of land to Israeli settlements; failure to enforce the law on settlers who usurp land as noted in section A above; and the use of private land seized for security needs for the settlements.

43. Yesh Din believes that these phenomena affect almost every village in the West Bank.
44. The following sections detail the facts in Yesh Din's possession on the basis of which we reached the above conclusions.

2. The Obligation to Safeguard the Property of the Protected Population

45. International humanitarian law imposes on the military bodies in the field the active obligation to safeguard the property of protected civilians against third parties, and to take action to ensure their ability to enjoy their property and to realize their other basic rights. Article 46 of the Hague Convention imposes on the occupying power the obligation to safeguard the private property of the protected population: "Family honour and rights, the lives of persons, and private property [...] must be respected."
46. The Fourth Geneva Convention includes a parallel provision obliging the occupying power to safeguard the property of the protected population and prohibiting the demolition of private and public property, except in cases of absolute military necessity.⁴
47. Accordingly, the right to property is enshrined in customary humanitarian law, and the authorities bear an obligation to ensure that it is maintained, to refrain from impinging on this right, and to protect it against violation by others. The force of this obligation is intensified in the case of a weak population that lacks the tools and means to defend itself.⁵ In addition, of course, international human rights laws also apply in an occupied territory, including the right to property. Since its inception, international human rights law has recognized the right to property, which is based on two pillars. The first, positive layer guarantees that every person has the right to hold property, by himself or with others; the second, negative layer establishes that a person's right to property will not be arbitrarily denied. The 1948 Universal Declaration of Human Rights established as follows:

"Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property."

⁴ Fourth Geneva Convention, Article 53.

⁵ HCJ 8887/06, *Yusuf Musa Abdulraziq al-Nabut et al. v Minister of Defense et al.*, 2011 ruling, para. 16.

48. These two layers, the positive and the negative, impose on the authorities the principal obligations, essentially the obligation to protect an individual's right to his property (whether this is his personal property or jointly-owned property). The recognition that this is a basic right is due, among other reasons, to the awareness that this right embodies the ability to realize other rights (such as the right to a vocation, the right to shelter, and so forth).

3. The Number and Area of the Settlements and Outposts

49. In the West Bank, there are 120 official settlements and some 99 unauthorized outposts (settlements whose establishment was not approved by the Government of Israel), covering a total of some 549,278 dunams. The total area of the settlements (municipal boundaries) is 534,136 dunams; and the cumulative area of the outposts is approximately 15,142 dunams.⁶
50. Since the establishment of these locales constitutes a violation of the international laws of occupation, the allocation of extensive areas of land for illegal use is a gross violation of the collective right of the Palestinian residents of the area to enjoy a limited resource such as land.

4. What are Private Land, Survey Land and Public Land?

51. The complex legal regime in the West Bank includes various types of divisions of the land in the area. The following is the division encountered on the ground:

Private land – during the British Mandate period, a land settlement procedure was initiated within the Mandate territories (including the West Bank). The Jordanian authorities continued this process, which was intended to enable the registration of land rights in an official registry (known as the Tabu). Shortly after it occupied the West Bank in 1967, Israel froze the land registration process by means of a military order⁷ establishing that the land in the territories would not undergo a land settlement process. As of the time this

⁶ The figures were produced by the Peace Now movement by means of a geographical information system.

⁷ "Order Regarding the Arrangement of Land and Water (Judea and Samaria) (5729-1968), No. 291," in: *Selected Legislation in Land Law in the Judea and Samaria Area*, edited by the Attorney General for the Judea and Samaria Area, The Civil Administration for the Judea and Samaria Area, 2009 (Hebrew).

freeze was imposed, only some 30 percent of land in the West Bank had been registered;⁸ accordingly, most of the land farmed by Palestinians in the West Bank is not registered in their name. The relevant types of private land for our purposes are:⁹

Registered private land – land registered in the name of Palestinians at the Land Registry Office in the territories;

Unregistered private land – private land held and farmed by Palestinians, but where the ownership is not registered.¹⁰

Public land (also known as state land) – land that is government property, registered in the name of Jordan or one of its authorities during the period of Jordanian rule in the West Bank, as well as land declared state land during the period of Israeli rule in the West Bank, and land managed by the Jordanian Custodian of Enemy Properties (such as land purchased by Jews prior to 1948), or land registered in the name of the Custodian of Government Property in the Judea and Samaria Area after 1967.¹¹

Land declared public land – as noted, when Israel froze the land settlement process in the territories, approximately 70 percent of the land in the West Bank was not registered. The declaration of land as public land¹² was possible due to a restrictive interpretation of Ottoman land law and the creation of a mechanism for classifying land as state land. The purpose of the mechanism has always been to create a reserve of land for the establishment of expansion of Israeli settlements in the West Bank.¹³ The mechanism was

⁸ Attorney Talia Sasson, *(Interim) Opinion on the Subject of the Unauthorized Outposts*, Jerusalem, February 2005 (Hebrew), p. 61. Attorney Sasson served as the head of the Special Functions Department in the State Attorney's Office and is a member of the Public Council of Yesh Din.

⁹ Other types of land classified as private land include: Absentee land managed by the Custodian of Government and Abandoned Property, land held by the Custodian of Government and Abandoned Property in accordance with exchange contracts, and private Palestinian land seized for military needs.

¹⁰ Attorney Talia Sasson, Attorney Talia Sasson, *(Interim) Opinion on the Subject of the Unauthorized Outposts*, pp. 13-14.

¹¹ Ibid.

¹² The declaration of public land for the purpose of establishing the settlements began following the Elon Moreh Supreme Court petition, which obliged Israel to find an alternative to the method employed until then – the establishment of the settlements on land seized for military needs.

¹³ Attorney Talia Sasson, Attorney Talia Sasson, *(Interim) Opinion on the Subject of the Unauthorized Outposts*, p. 14.

designed to ensure that, in the case of non-registered land, only protracted farming in the past and present will maintain the right of Palestinians to the land.¹⁴

Between 1967 and 1979, almost 172,000 acres of land in the West Bank were declared public land under the terms of the Order concerning Government Property.¹⁵ Between 1979 and 1992, Israel declared a further 227,000 acres of land public land.¹⁶ Over this period, Israel increased the scope of public land to some 400,000 acres, constituting almost 30 percent of the total area of the West Bank. Most of the declarations were made on the eastern slopes of the central mountain ridge, an area earmarked for Jewish settlement by the State of Israel.¹⁷

II. The Course of Expropriation – The Injury Caused by the Settlements to Palestinian Property Rights

52. Though the techniques used to expropriate Palestinian land in the West Bank are diverse, most of them relate to the Israeli settlements. We focus here on the most significant techniques: denying Palestinians access to their land; agricultural invasions; and building and occupancy on private Palestinian land.

¹⁴ Palestinians whose land was declared state land were entitled to submit objections to a Military Appeals Committee, but the vast majority of these appeals were rejected. Moreover, many Palestinians were unaware that their land had been declared state land, and therefore missed the deadline for the submission of an appeal.

¹⁵ Order Regarding Government Property (Judea and Samaria), No. 59, 5727-1967, in: *Selected Legislation in Land Law in the Judea and Samaria Area*, edited by the Attorney General for the Judea and Samaria Area, The Civil Administration for the Judea and Samaria Area, 2009. The order empowers the Custodian of Government Property to seize possession of assets belonging to an enemy state and to manage them as he sees fit.

¹⁶ In addition to some 175,000 acres of *mawat* land classified as state land during the period of Jordanian rule.

¹⁷ *The Prohibited Zone: Israeli planning policy in the Palestinian villages in Area C*, Bimkom, June 2008, p. 24. (Land where the rights are unclear is referred to as “survey land.” The Custodian of Government and Abandoned Property undertakes a survey in such land to clarify its status, by means of examining aerial photographs from previous years, touring the area, and publishing his intention to declare the area “state land.” In 1997, this examination was formalized in the Survey Lands Procedure, which sought to create a suitable legal framework for examining the status of land that had not undergone registration processes and had not been declared state land, and to enable the seizure of such land and its use as government property. State Ombudsman, *Annual Report 56A*, 2005, pp. 206-207).

1. Denying Palestinians Access to Their Land

53. Since the outbreak of the Second Intifada, a significant increase has been seen in the use by settlers of various practices intended to deny Palestinians access to their land, thereby effectively extending the “zone of control” of the Israeli settlements. The forceful expansion of the areas of settlements and outposts is achieved by various methods: violence, the creation of physical obstacles, and the use of the security authorities granted by the Israeli army to the “security coordinators” in the settlements and outposts. In the following section, we discuss each of these practices in detail.

A. Settler Violence – Offenses Committed by Israeli Civilians against Palestinians and Their Land

54. Since 2005, as noted in Chapter B of this document, Yesh Din has monitored the investigations into some 869 criminal incidents. Many of these incidents occur on farmland cultivated by Palestinians in the vicinity of outposts and settlements. The criminal actions of Israeli civilians against Palestinians can be categorized as “ideological crimes,” in light of the motives and political objectives that underlie these actions.

55. Yesh Din’s monitoring shows that, in many cases, the purpose of the offense is to expel Palestinian farmers from their land, as part of a process that ultimately seeks to seize control of the land and maximize the area of control of the settlers and the settlements. Our perception is that the acts of harassment are intended to terrorize the Palestinian farmers and to create a tangible threat that will persuade them to stay away from their land and to stop farming it.

56. Many Palestinians indeed refrain from working land they have farmed in the past, due to acts of harassment they have experienced. Some fear acts of violence, threats and intimidation by settlers, while others do not find it worthwhile to tend for a crop that will only be destroyed or stolen by settlers. Moreover, some areas have been closed to entry by Palestinians by order of the Israeli army, on the grounds that the closure is intended to prevent friction between Israelis and Palestinians following multiple acts of violence and harassment.

B. Creating Physical Obstacles

(1) The Conduct of the Israeli Army

57. Israeli policy dictates that any Israeli locale in the West Bank, whether a settlement or an outpost, requires security arrangements to protect its residents. Even in the case of outposts that were not authorized by the Government, and which are therefore unlawful even according to the State of Israel, the State – through the army – nevertheless takes steps to ensure their well-being. Protection of the Israeli locales includes guarding the built-up area of the locale, even in the case of a locale constructed entirely or partially on private Palestinian land, and creating a buffer zone around the locale. Accordingly to the army, the purpose of such buffer zones is to prevent friction between the two populations. The army has defined extensive agricultural areas that were previously farmed by Palestinians as areas where entry by Palestinians is forbidden.
58. In other areas, entry is permitted only with the army's authorization and after coordinating army accompaniment. The army permits are intended to enable accompaniment and guarding for farmers who wish to work their land. The farmers submit a request to the Palestinian District Coordination Office (DCO). The request is then forwarded to the Israeli DCO, which is authorized to approve or reject the request. This is often a protracted process and, in many cases, the permits that are eventually provided are inadequate. In most cases, the landowners are effectively allowed to access their land twice a year (in spring and fall), while for the remainder of the year they are not permitted to enter. As a result, damage – whether caused by humans or by nature – is often discovered long after it was caused. The denial of access to the plots also prevents the ongoing tending of crops, impairing the quality of the crop. Testimonies collected by Yesh Din suggest that Palestinian farmers and landowners were informed of at least some of these restrictions on access by word of mouth by soldiers, and did not receive a written order for the closure of the areas.

(2) Security Coordinators

59. Yesh Din monitors dozens of investigation files involving the “security coordinators” appointed in settlements. Israeli army orders state that the security coordinator serves as the commander of the locale in normal times and is responsible for guarding. In practice, the security coordinators are responsible for managing the security of the locale. In emergencies, they are charged with managing the incident pending the arrival of the army. As part of their function, the security coordinators command the security patrols staffed by

volunteers from the settlement. In professional terms, the security coordinators are accountable to the Israeli army, but they are not army employees. Their salary is paid by the locale from funds forwarded for this purpose by the Ministry of Defense.

60. Yesh Din's data suggest that, in many cases, the security coordinators abuse their powers in order to deny Palestinians access to their land or expel them from it. The following is an example of an incident in which a security coordinator used live fire to expel shepherds, injuring one man:

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Around noon on February 9, 2010, A. and D., brothers from the village of 'Iraq Burin, were tending their flocks, as they are accustomed to doing on a daily basis. The security coordinator from the Har Bracha settlement arrived in his vehicle; the shepherds report that he often chases them. When he was approximately 100 meters from them, the security coordinator got out of his vehicle and began to fire toward them from an M-16 rifle. The brothers began to flee together with their flock, while the security coordinator continued to shoot toward them. They claim that the security coordinator "was shooting at us in order to kill, he was not firing in the air." While they were fleeing, a bullet struck and injured A.

(3) Physical Obstacles

61. One of the techniques used by settlers in order to deny Palestinians access to their land is to place physical obstacles blocking access. This denial of access creates a new reality that the army and police accept as an accomplished fact; they then proceed to defend this new and unlawful status quo. In many cases, the law enforcement agencies actually assist the residents of the settlements in removing Palestinians who attempt to reach their land within the area that has been blocked and enclosed. Yesh Din does not have data regarding the full scope of blocked access, but we are aware that this is a widespread phenomenon that has occurred in different parts of the West Bank. To date, Yesh Din has submitted five petitions¹⁸ relating to the blockage of Palestinians' access to their land, and we have documented additional cases. The following are some examples:

¹⁸ HCJ 9512/10, submitted by the head of the council of Kafr Yusuf and 12 residents of the village; HCJ 6061/11, submitted by the head of the council of Beit Furik and four residents of the village; HCJ 7034/10, submitted by three residents of the village of Ein Yabrud; HCJ 9061/09, submitted by the village council of Jaba; and HCJ 1078/09, submitted by eight residents of the village of Silwad.

62. An illegal fence enclosing land belonging to the village of Jaba (HCJ 9061/09): In 2003, settlers from Adam erected an illegal fence (without a building permit or authorization from the authorities) on farmland belonging to the village of Jaba. The fence prevented access and effectively annexed extensive plots of land to the Geva Binyamin settlement. Since the erection of the fence, farmers from Jaba have been unable to access and work land they have farmed for many years. The total area enclosed by the fence is approximately 100 acres. The village council estimates that some 80 percent of the families in the village have rights to land enclosed by the illegal fence and inside the settlement. Much of the income of the village residents comes from farming this land, particularly from seasonal crops and grazing areas.
63. In the framework of a petition submitted by Yesh Din to the Supreme Court, the State admitted that the fences were constructed illegally and in violation of demolition orders. However, it added that the process of removing the fences would be protracted, and would only be completed after new security arrangements were made regarding the settlements. Rather than removing the fences and executing the demolition orders issued against them, pending the completion of the above-mentioned plans, the State decided to introduce a system of coordination and permits allowing access to the areas trapped inside the fences.
64. Illegal fencing around the Ofra settlement (petitions by residents of the villages of Silwad and Ein Yabrud, HCJ 7043/10, 10078/09): The Ofra settlement, large sections of which are built on private Palestinian land, and many of whose buildings are the subject of final demolition orders, lacks any orderly outline plan, partly due to the fact that most of the construction in the settlement cannot be formalized. Over the years, as the settlement and some of its satellite outposts (Amonah and Ofra East) have grown, various fences have been erected by the settlement and the neighboring regional council with the goal of denying Palestinians access to their land.
65. In the framework of petitions submitted to the court on this matter in 2009 and 2010, the State announced that the issue of the protection of the settlements is one that requires a solution. Pending the completion of a spatial defense system, the fences will remain intact, despite the fact that they are illegal and impede the access of the residents of the Palestinian villages of Ein Yabrud and Silwad by enclosing their private land.
66. A system of obstacles prevents residents of the village of Beit Furik, adjacent to the Itamar settlement, from reaching their land (HCJ 6061/11): For over a decade, residents of the

village of Beit Furik have been denied access to their land adjacent to the Itamar settlement and the neighboring outposts. Physical obstacles have illegally been placed on the village land, preventing free and safe access by residents to their land. The denial of access was achieved by a combination of illegal physical obstacles and forced expulsion by Israeli citizens. The size of the area that has been rendered inaccessible is estimated to be hundreds of acres. It includes numerous plots, all privately owned, that have been used by villagers for generations to grow crops as a source of income.

67. In many instances, as in the case of Beit Furik, denial of access is achieved by restricting the ability of Palestinians to enter their land by means of army orders closing the area, whether on a temporary or permanent basis. In some cases, the orders state that any entry to the area requires prior coordination with the security forces in the area. In Beit Furik, and in other instances, some of the area closures and military orders given by word of mouth are illegal, but they cannot be changed without judicial intervention. After residents of Beit Furik petitioned the Supreme Court, the restrictions imposed on the residents were relaxed considerably, although they were not completely removed.
68. Obstacles blocking the access of residents of Kafr Yasuf to hundreds of acres of farmland under their ownership (HCJ 9512/10): For a decade, residents of Kafr Yusuf have been denied access to their land adjacent to the Kfar Tapuach settlement, close to the intersection of the Trans-Samaria Highway and Road No. 60. The villagers are denied access to an area totaling many hundreds of acres, including many plots – all privately owned – that have been used for generations for agricultural crops, including olives and figs.
69. The obstacles denying the villagers access to their land are earth embankments preventing access to the area. On occasions, the residents of the Tapuach settlement and the adjacent Tapuach South outpost also draw on the services of forces acting on behalf of the Commander of IDF Forces in the West Bank, who establish gates in the area preventing access to the land, or issue orders restricting access.

2. Agricultural Trespassing

70. Many of the offenses documented by Yesh Din involve the seizure of Palestinian land, by such means as fencing, plowing, sowing, planting, leveling soil, erecting agricultural buildings and hothouses, and so forth. Alongside the denial of access and construction on

Palestinian land, agricultural seizure is a central technique in the expropriation of Palestinian land. Yesh Din has documented dozens of agricultural invasions in various parts of the West Bank.

71. In three cases, Yesh Din helped Palestinian landowners to petition the Supreme Court following the protracted seizure of their land by settlers. In these cases, following the imposition of restrictions on access by Palestinians and repeated acts of harassment, settlers invaded Palestinian land and treated it as their own. Yesh Din documented preparatory work, farming and planting in these plots, and demanded that the authorities enforce the law and remove the squatters. In the petitions, the court was asked to order the execution of the eviction orders for the agricultural invasions as issued by the head of the Civil Administration.
72. The Order Concerning the Disruptive Use of Private Land is intended to enable a rapid and immediate response to the invasion of land, as a substitute for protracted legal proceedings, thereby restoring order as quickly as possible. In the case of Palestinians and their property, this protection is not only required in view of the harsh circumstances existing in the West Bank, but it is also mandated by the obligation incumbent on the military commander in the area, in accordance with the laws of occupation as formulated in the Fourth Hague Convention Respecting the Laws and Customs of Wars on Land, and the Regulations annexed thereto (The Hague Regulations, 1907), to maintain public order and to safeguard the property of a protected population under its authority.
73. In the past, the invasion of agricultural land and its farming by settlers led to the height of injustice and expropriation. Exploiting Ottoman Law, which applies in the area and which enables the creation of property rights by virtue of long-term farming and possession of land, the settlers attempted to register the plots in their name. Following a recent ruling in a petition submitted with the assistance of Yesh Din and its legal team, this method, which rewards those who invade private land, has been disqualified, and the conditions for the registration of plots on the virtue of farming have been tightened (see HCJ 5439/08, Abdulkader et al. v. Military Appeals Committee in Accordance with Order No. 172 et al. (<http://elyon1.court.gov.il/files/09/390/054/n25/09054390.n25.htm>, Hebrew).
74. Nevertheless, the phenomenon of the invasion of private farmland continues in all its severity. Yesh Din estimates that many hundreds of acres of land that, a decade or two

ago, were used by Palestinian residents are now farmed by Israeli civilians who invaded the land without holding any right to it.

3. Usurping of Land by Construction and Occupancy

75. As part of its operations, Yesh Din assists Palestinians who face illegal construction by Israeli civilians on their land. To date, Yesh Din has submitted 15 petitions to the High Court of Justice demanding the enforcement of demolition orders issued by the Civil Administration against illegal construction on private Palestinian land.
76. Illegal construction by settlers on private Palestinian land and on public land is a widespread phenomenon throughout the West Bank. This construction is sometimes undertaken with the direct or indirect financial support of local or governmental authorities.
77. The law enforcement agencies of the Civil Administration issue demolition and stop work orders against this illegal construction, but these orders are almost never enforced. Once the buildings are occupied, approval must be obtained from the senior political echelon before realizing the demolition order. As a result, the entire law enforcement system in the area is subject of political considerations. In some cases, the political echelon has announced that although the construction on private land is illegal, it does not intend to enforce the law, since this issue should be resolved in the framework of future negotiations with the Palestinians (see 5023/08 *Shehadeh et al. v Minister of Defense et al.*, a petition relating to the construction of nine low-rise homes in the Ofra settlement on private Palestinian land; the petition is pending).
78. The number of instances in which demolition orders issued against illegal construction have actually been implemented is tiny, and this happens only after intervention by the High Court of Justice, which itself occurs only in rare cases (see the case of Migron outpost, CJ 8887/06 *Al-Nabut et al. v Minister of Defense et al.*; and the case of the neighborhood in the Beit El settlement constructed on private Palestinian land in Jabal Artis (the so-called “Ulpana” neighborhood), HCJ 9060/08 *Yassin et al. v Minister of Defense et al.*).
79. The outcome of the situation described above is that there are now thousands of demolition orders issued against buildings constructed by Israelis in the West Bank, not one of which is executed. The orders have become a dead letter.

80. In addition to illegal construction in the outposts, one of the most prominent phenomena is “back-to-back” construction in the settlements, gradually expanding the built-up area. The fact that some of the settlements are surrounded by fences (whether legally or illegally), or are surrounded by an area preventing Palestinians from entering their land due to a special security zone, impedes or even prevents the possibility for Palestinian landowners to be aware of such construction on a real-time basis. This, in turn, prevents effective action at an early stage of the construction process. As will be discussed below, in some cases the acts and omissions of the authorities in the area support these actions. In addition to its activities concerning construction on private land, Yesh Din also assists Palestinians injured by construction on state or public land, in instances when this is illegal. Prominent examples of this phenomenon include the establishment of outposts or buildings in a manner that prevents Palestinians from enjoying public land that should serve solely the occupied population. It should be noted that any new settlement, and any extension of an existing settlement, inevitably leads to the denial of access to Palestinians in the surrounding area. In many cases, farmland situated on the far side of the new area of construction becomes virtually impossible (for example, see: HCJ 8171/09 *Head of Al-Janiya Village Council et al. v the Supreme Planning Council in the Civil Administration*: <http://elyon1.court.gov.il/files/09/710/081/m30/09081710.m30.htm> (Hebrew)).
81. The situation is compounded by the declared policy of the Government of Israel, which has stated that it intends to examine possibilities for granting retroactive approval for construction on land other than state land; this declaration was also reflected in the ruling of the Supreme Court: <http://elyon1.court.gov.il/files/10/690/096/n13/10096690.n13.htm> (Hebrew).
82. This phenomenon is leading to the dissection of the West Bank, preventing any possibility of contiguity not only between different Palestinian villages, but even, in many cases, between Palestinian villages and their own farmland.

III. Active and Passive Involvement of the Authorities in the Expropriation of Land

1. Failure to Execute Demolition Orders

83. Planning powers relating to Jewish construction in the West Bank rest with the Supreme Planning Council, which comprises army officers and civilians employed by the army.¹⁹ The Civil Administration manages planning activities in the West Bank by means of the Jordanian planning and building laws as these applied in the area in 1967. These planning laws have been changed by means of military orders issued by the commander of the area (the General Officer Commanding – GOC) over the years, and have been adapted to meet the reality of the Israeli occupation in the West Bank.
84. As the commander of the area, the GOC serves as the effective sovereign in the area and exercises control of the West Bank. As such, he is responsible for all aspects of law enforcement in the area, including the enforcement of planning and building laws against illegal construction. As part of this overall responsibility, the area commander and all forces acting under his authority – army forces and the Israel Police – should act to enforce the law against illegal construction in the area, including the eviction of illegal outposts.
85. The responsibility for the inspection of illegal building in the West Bank rests with the Inspection Unit of the Israeli army's Civil Administration. The unit's function is to collect information regarding illegal construction in the West Bank and to implement the Illegal Construction Procedure,²⁰ under which a committee on its behalf issues stop work and

¹⁹ *Order Regarding the Town, Village and Building Planning Law (Judea and Samaria) (No. 418)*, 5731-1971. The order establishes that the authority granted under Jordanian law (the Town, Village and Building Planning Law, No. 79, 1966) to the District Committee for Town, Village and Building Planning will be granted to the Supreme Planning Council. For further discussion of this aspect, see the lecture by Shmuel Groeg, "Planning and Non-Planning in the West Bank as a Political Tool for Spatial Expropriation," November 2002, on the website of Bimkom (<http://www.bimkom.org/publicationView.asp?publicationId=36>, Hebrew).

²⁰ Procedure for Processing Illegal Construction in Accordance with the Jordanian Planning and Building Law. According to the procedure, the following stages are to be implemented: Issuing of a stop work order and summons of the owner to appear before a committee; discussion by the committee, including hearing the owner's arguments against the stop work order; if the owner's arguments are rejected, the committee issues a demolition order and gives the owner leave of 30 days to submit an appeal; if no appeal is submitted, or if it is rejected, the committee is entitled to act (through the inspection personnel) to demolish the illegal building. According to law, the violation of a stop work or demolition order constitutes a criminal offense liable to penalization by way of a fine. From: Attorney Talia Sasson, *(Interim) Opinion on the Subject of the Unauthorized Outposts*, Jerusalem, February 2005, p. 17; State Ombudsman, *Annual Report 56A*, 2005.

demolition orders for illegal buildings, while the unit is responsible for executing the orders.²¹

86. The Inspection Unit has issued thousands of demolition orders against illegal construction by Israelis throughout the West Bank, in accordance with the Illegal Construction Procedure. However, the vast majority of these orders have remained pending for many years. In practical terms, the execution of a demolition order is dependent on the decision of the defense minister; with very few exceptions, defense ministers have refrained from ordering their execution.
87. Yesh Din's report *Tailwind*, published in October 2011, examined the conduct of the State Attorney's Office regarding Supreme Court petitions submitted by Palestinians with our assistance in response to illegal construction on their land or on public land. Since the publication of this report, Yesh Din has assisted in the submission of two further petitions. Since its establishment, the organization has helped submit 15 petitions asking the Supreme Court to order the State to enforce the demolition and stop work orders issued due to illegal instruction (of two homes, public buildings and roads) on privately-owned Palestinian land and on public land.
88. The report paints a dismal picture. The most senior legal figures, presumably under heavy political pressure, prevent or delay the enforcement of the law against illegal construction, either by wasting time and refraining from reaching a decision, or by presenting extremely problematic legal positions (see the report on Yesh Din's website: <http://www.yesh-din.org/userfiles/file/Reports-English/Tailwind%20%5BEng%5D.pdf>).

2. Failure to Issue and Execute Eviction Orders against Agricultural Squatters

89. One of the conclusions of the Sasson Report was that, at the time the report was prepared, there was no suitable legal tool available for responding to cases where Israeli civilians squat on Palestinian farmland. In effect, Sasson determined, criminal, civil and administrative law all fail to provide effective protection for Palestinian landowners against Israeli squatters.²² Following Sasson's recommendations, in 2007, the Order

²¹ Attorney Talia Sasson, Attorney Talia Sasson, *(Interim) Opinion on the Subject of the Unauthorized Outposts*, Jerusalem, February 2005, p. 217.

²² *Ibid.*, p. 317.

Regarding Land (Disruptive Use of Private Land)²³ was enacted. This order sought to provide the authorities with statutory tools for protecting Palestinian property and for responding to agricultural invasions. The order has shaped the authorities' response to this subject since its enactment. In accordance with the order, administrative eviction orders are issued in response to the invasion of land, enabling a rapid and immediate response, by way of a substitute for protracted legal proceedings. The Inspections Unit of the Civil Administration is also responsible for enforcing these orders, with the assistance of army and police forces, as required.

90. However, this legal tool has not had any significant impact on the reality on the ground. The small number of orders concerning the disruptive use of private land that are issued and signed by the head of the Civil Administration are not executed. Despite the presence of an effective legal tool for responding to illegal invasions of farmland, landowners continue to be helpless. In practice, the squatters continue to occupy their land, while the State refrains from executing the orders and expelling the offenders.
91. Moreover, it was reported that Motti Almoz, the head of the Civil Administration, announced that he does not intend to continue issuing eviction orders against agricultural squatters, since he lacks the legal training he considers vital to reaching a decision in such matters. He argued that such cases should be clarified in court.²⁴ Responding to the decision by the head of the Civil Administration, the Attorney General in the Judea and Samaria Area [the West Bank] sent a strongly-worded letter stating that "it is essential to continue to use the order and to prevent a situation whereby time will pass, during which the authorities fail to perform their function, leading to the establishment of facts on the ground that it will later be difficult to change." The letter added that Almoz's decision to refrain from exercising his authorities regarding the issuing of eviction orders is "tantamount to the dereliction of your duties accruing from the requirements of international law, and is incompatible with the conduct expected of a reasonable administrative authority."²⁵

²³ *Order Regarding Land (Disruptive Use of Private Land) (Judea and Samaria) (No. 1586), 5767-2007.*

²⁴ Chaim Levinson, "Civil Administration Rejects Responsibility for Evicting Settler Invasions," *Ha'aretz*, March 12, 2012.

²⁵ Letter from Col. Eli Bar-On, Legal Advisor in the Judea and Samaria Area, to Brig.-Gen. Motti Almoz, Head of the Civil Administration, February 29, 2012.

92. In a precedent-setting ruling granted on March 20, 2012, the Supreme Court ruled that the provisions of the order establish the obligation incumbent on the military commander to safeguard public order and the property of protected residents, which constitutes “one of the most basic obligations of the military commander.” The ruling also noted that the head of the Civil Administration not only holds the authority and responsibility to issue the order, but also bears an obligation to do so.²⁶

93. However, Yesh Din believes that insufficient use has been made of the Order Regarding Disruptive Use. From our experience, even when an eviction order is issued, the authorities refrain from executing it.

3. Failure to Enforce Judicial Orders and Retroactive Approval of Illegal Construction

94. In the *Tailwind* report, we documented a new phenomenon that has joined the familiar list of legal violations in the West Bank in recent years. Judicial orders issued by the Supreme Court are violated, and the violations do not meet with an adequate response on the part of the law enforcement agencies. The tendency of the State to turn a blind eye to this grave phenomenon, and its reluctance to act forcefully to prevent violations and punish offenders, are further evidence of the depressing condition of the rule of law in the West Bank.

95. In 17 petitions submitted by Yesh Din, 11 temporary injunctions have been granted preventing the continuation of building work and prohibiting the connection of buildings to the infrastructures or their occupancy pending a decision in the petition. Of these, five injunctions have been violated. In four instances, the settlers rushed to complete the construction work, or to move in residents, despite the Supreme Court’s explicit instructions. In one instance, the respondents quickly completed the construction and occupancy during the few days from the date of submission of the petition and the granting of the temporary injunction by the court; the buildings are still occupied, in violation of the order prohibiting their use. It is possible that this is also the case elsewhere.

96. Not only is the law not enforced, but the offenders sometimes enjoy the effective support of the State, which does not merely refrain from removing illegal construction, but actually seeks to regulate its status and render it legal. This is achieved either by declaring

²⁶ HCJ 5439/09, *Ahmad Abdulkader et al. v Military Appeals Committee in Accordance with*

state land or by granting permits and approving the construction retroactively. This is possible only in cases when the construction is on public land, or land that can be declared public land. When the buildings are constructed on privately-owned Palestinian land, the State declares that it intends to enforce the orders and remove the construction, subject to the priorities as presented to the court. In practice, nothing is done. The illegal construction remains, and the direct consequence is injury to the landowners' property.

97. The combination of the lack of effective enforcement, which is also intended to act as a deterrent, and the retroactive approval of construction fuels the ideological motives underlying these actions, creating a situation where it can only be expected that agricultural invasions and illegal construction will continue to increase.
98. In addition to the mortal injury to the rule of law, this conduct by the State permits an ongoing situation in which the property rights of Palestinians are violated. By omission, the State assists in the expropriation of Palestinian land. Taken together, the different aspects of the failure to enforce the law regarding illegal construction and agricultural invasions in the West Bank show that the State of Israel is reneging on its obligation to protect the property of the Palestinian residents.

4. Recap: The Failure to Enforce the Law following Attacks on Orchards

99. In our discussion of the ramifications of the settlements on Palestinian property rights, it is important to recall the alarming data collected by Yesh Din concerning 162 investigation files processed by the Samaria and Judea Police District relating to attacks on Palestinian orchards in the West Bank. The attacks included incidents in which fruit trees were cut down, uprooted, stolen or damaged²⁷ – mainly olive trees, but also almonds, lemons, figs, and other fruits.
100. As will be recalled, the updated data show that of these 162 cases, **only one investigation has resulted in an indictment** against a defendant suspected of damaging trees, while **142** investigation files were closed under circumstances implying that the investigators failed in their inquiries.
101. Naturally, this phenomenon also entails serious injury to the property rights of Palestinians as a result of the presence of the neighboring Israeli settlements.

²⁷ We have not included here attacks on olive harvesters, the theft of fruit (except in cases when this also included damage to the trees), and damage to fields of wheat and vegetables.

5. The New Legal Position of the State of Israel concerning the Construction of Settlements on Land Seized for Security Needs

102. One of the most sensitive aspects of the settlement enterprise, and its connection to violations of the human rights of the Palestinian residents, is the formal and official establishment of settlements on private land. During the first decade following the entry of Israeli troops into the West Bank, a common practice was the seizure of land for military needs, as permitted by the laws of occupation, followed by the establishment on this land of clearly civilian settlements. This practice was halted following the Supreme Court ruling of 1979, in what is known as the Elon Moreh case (HCJ 390/79 *Dawikat v Government of Israel et al.*, <http://www.hamishpat.com/Courses/99646/646-verdict-dawikat.htm>). The ruling prohibited the seizure of private land for the purpose of the construction or expansion of Israeli settlements.
103. In 2010, Yesh Din submitted a petition on behalf of a resident of the village of Dura al-Qara, adjacent to Beit El. The resident realized that construction was taking place on his land, which is situated within the area of the seizure order issued for the settlement (the entire settlement of Beit El is situated on private land seized in the early 1970s for military purposes). Even the military authorities in the area confirm that the construction on the resident's land is illegal, but despite an undertaking by the State to execute the demolition orders by April 2012, when the deadline arrived the Government of Israel announced that it had reconsidered its policy, and that it had adopted a policy stating that when the seizure orders were issued prior to the Elon Moreh ruling (i.e. prior to 1979), there is no impediment to continued construction in accordance with these orders, even when it is on private land. This policy change was due mainly to the desire to enable "the preservation of the interest that underlay the establishment of the Beit El settlement" (see the report on the Yesh Din website: <http://www.yesh-din.org/infoitem.asp?infocatid=215>).
104. This change of legal policy could potentially cause grave damage to many hundreds of acres of private land seized by the Israeli army before 1979 for military needs. An examination by Yesh Din shows that this includes land situated within the areas of over 30 settlements.

D. Freedom of Movement

I. Introduction

105. The settlements in the West Bank are the source of countless restrictions imposed on the movement of Palestinians who live in adjacent areas. As we will detail below, some of these restrictions are the result of “private initiatives” on the part of the settlers in the area, while others have an “official” character and are imposed by the authorities and enshrined in military orders.

106. Taken together, these restrictions prevent the movement of Palestinians in extremely large areas of the West Bank. Some of the restrictions are intended to protect the settlements, while others are intended to facilitate the expropriation of Palestinian land.

107. The following sections detail the different types of restrictions imposed on the movement of Palestinians in the West Bank. We should emphasize that this discussion relates solely to restrictions Yesh Din has researched and studied in the course of its operations. We will not discuss here means that severely restrict the movement of Palestinians, but which do not fall within Yesh Din’s field of expertise, such as checkpoints and manned or unmanned obstacles placed by the Israeli army at numerous points in the West Bank.

II. “Private” Restrictions on Movement

108. As discussed in the previous chapter on the subject of property rights, and as explained at length in the preceding chapter on criminal offenses by settlers, a reality has emerged around the settlements whereby Palestinians are denied access to their own land. This denial of access is achieved through violence and the placement of physical obstacles, as well as with the assistance of the authorities, which not only fail to prevent these illegal acts, but even perpetuate and preserve them.

109. On this matter, we refer to the previous chapters, which offer a detailed description of the phenomenon of the denial of access to land.

110. On the basis of Yesh Din’s extensive experience, the denial of access is found, in varying degrees, **in areas adjacent to most of the villages in the West Bank**. There are few villages that do not suffer from the loss of freedom of movement in land situated close to the neighboring settlements.

111. We also refer to the two examples we gave in the chapter of this document focusing on property rights, relating to the physical obstacles imposed by private settlers around the Ofra and Adam (Geva-Binyamin) settlements, preventing Palestinians from accessing hundreds of acres of land.

III. “Official” Restrictions on Movement

112. Alongside restrictions on movement resulting from the “private initiatives” of settlers, there are also “official” restrictions, enshrined in law, which have transformed the map of the West Bank into a complex mosaic in which Palestinians are prohibited from movement in large areas. Indeed, the net result is that Palestinians are confined to a series of enclaves within which their movement is permitted.
113. Most of the restrictions on movement ostensibly result from the need to provide security protection for Israeli civilians living in the settlements or using the access roads thereto. It cannot be ignored that the residents of the settlements have been, and still are, the targets of violent and even murderous attacks by Palestinian terrorists. However, in light of the illegality of the settlements and the prohibition against their establishment under international law, and in view of the tremendous and disastrous ramifications these restrictions on movement have for the lives, livelihood and liberty of millions of Palestinians – it seems that these restrictions on movement constitute illegitimate collective punishment. In many cases, the restrictions far exceed any steps required to protect the settlements.
114. The following is a list of some of the official restrictions on movement **due to the existence of the Israeli settlements in the area:**
115. Restriction on entry into the area of settlements: In 1996, the military commander issued a declaration stating that the entire area of all settlements in the West Bank is a military zone closed to Palestinians. According to this declaration, which was renewed in 2002, a Palestinian who wishes to enter or pass through the area of settlement requires a personal permit (Declaration Regarding Closure of Area (Israeli Communities) (Judea and Samaria), 5752-2002). The declaration officially applies to the entire area of jurisdiction of the settlements, which, in most cases, includes a much larger area than the built-up section.

116. Special security zone: The military commander has declared a strip of between 400 and 1000 meters, and in some cases more, around the municipal boundary of many settlements as a special security zone. The significance of this declaration is that in order for Palestinians to enter this zone (which often includes land farmed by Palestinians), they must obtain a special permit from the army. These permits are allocated on a limited scope and only during the harvest seasons. Most of the special security zones are surrounded by fences preventing entry, and the key to the gate is held by the security coordinator of the settlement around which they were declared. These zones have significantly increased the zone of control of the settlements, and cause significant damage to the freedom of movement of Palestinians.
117. Declaration of a closed military zone in areas of friction: The Israeli army makes extensive use of its power to declare an area a closed military zone in order to prevent friction and clashes between Israeli settlers and Palestinians. In the chapter on property rights above, we mentioned the cases of the villages of Beit Furik, Yasuf, Deir Nidham, and A-Nabi Salah. In all these villages, once settlers began to invade the residents' land, the military commander issued a closed military zone order applying to the areas of friction. While the army's aim is to prevent the friction deteriorating into serious clashes, in practice this approach incentivizes the settlers by fulfilling their wish: to prevent Palestinians from accessing their own land. Yesh Din estimates that the area in which the movement of Palestinians is prohibited due to the declaration of closed military zones totals many thousands of acres.
118. The Seam Zone: Over eight percent of the area of the West Bank lies between the separation barrier established by the State of Israel and the Green Line (the border between Israel and Jordan as agreed in the "Rhodes Agreements" of 1949). The area between the separation barrier and the Green Line was planned due to the presence of settlements or "settlement blocs" in this area, and the military commander has declared the entire zone a closed military area. Within this zone, there are over 100 Palestinian villages. The prohibition against the entry of Palestinians (and Palestinians only) into this zone is sweeping. A complex bureaucratic system has been established to provide entry permits for Palestinians with an "interest" in the zone, such as farmers.

E. The Right to Equality

119. As we have noted several times in this document, international humanitarian law prohibits the establishment of settlements by citizens of the occupying power in the occupied area. In the law also requires the occupying authorities to treat all the citizens of the occupied area in an egalitarian manner, regardless of religion, race, sex, nationality, or any similar classification (see Common Article 3(1) of the Geneva Conventions and Article 27 of the Fourth Geneva Convention).
120. Accordingly, of course, the occupying power is certainly prohibited to discriminate against the residents of the occupied area and to favor its civilians present in that area.
121. The differences in the living conditions and the attitude of the authorities toward the settlers and Palestinians in the West Bank make it virtually impossible to speak of equality in this context. One population belongs to the ruling group and enjoys civil rights enabling it to influence decisions and policy; the other lacks rights and is often perceived by the regime as an enemy.
122. Nevertheless, we wish to focus on a particularly reprehensible phenomenon, in the context of the right to equality, that has developed in the Occupied Palestinian Territories over five decades of occupation: **the creation of a double and segregated legal system.**
123. Over this period, two legal systems have been created in the occupied territory: one applies to Palestinians and the other to Israelis. The former is military in character; the latter is civilian.
124. The laws of occupation, which are part of international humanitarian law, determine the authority of a military commander in an occupied territory to change the local legislation, though this authority is very narrowly defined.²⁸
125. In the first pamphlets issued by the Military Commander in the West Bank (as in the Gaza Strip), upon entering the territory, he explicitly proclaimed having taken all legislative

²⁸ Regulation 43 of the *Hague Convention Regarding the Laws and Customs of War on Land Including Regulations Regarding the Laws and Customs of War on Land* (The Hague 1907); Article 64 of the *Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War*, August 12, 1949.

powers into his own hands.²⁹ Over the years, it became apparent that Israel has applied a very wide interpretation to the limited exception permitting the changing of local legislation.³⁰ In effect, the Military Commander now acts as a legislator for all intents and purposes, and his legal advisors do not limit the subject matter or the contents of his acts.

126. Thus, during more than four decades of occupation, the law of the West Bank has been completely changed. Ottoman, Mandatory and Jordanian legislation that applied when Israeli forces entered the territory have been annulled, amended and changed. It should be noted that the law in force in the West Bank is obviously different from the law in force in Israel; neither the Israeli parliament nor the army have applied Israeli law to the West Bank territories (except eastern Jerusalem, which was annexed by an act of the Israeli parliament). The law applying to Israelis residing in the territories conquered by Israel in the 1967 War (the settlers) is therefore, allegedly, different from the law applying to those residing in the State of Israel within the boundaries of the Green Line (including the occupied territories that have been annexed – eastern Jerusalem and the Golan Heights). For that same reason, the same law allegedly applies to Israelis in the West Bank as applies to any other person in that territory (Palestinians, foreigners), viz. the same layered mosaic of Ottoman, Mandatory, Jordanian and Israeli military legislation.
127. However, through military legislation and legislation of the Knesset (the Israeli parliament), the Military Commander and the Israeli legislator have created a reality of national legal segregation in numerous legal fields. In these fields, **a different law was applied to Israelis and Palestinians living in the same territory – the West Bank**. Several techniques served that purpose:
128. **Military law creating enclaves of Israeli law (the “Enclave Law”)** – This method focuses on adopting parts of the Israeli legislation through military orders dealing with the Israeli municipal authorities (settlements) and the application thereof to Israelis residing in the West Bank. These are orders issued by the Military Commander, applying Israeli legislation in existence in Israel to the West Bank territories or parts thereof. This legal technique is called “channelling”: the Military Commander serves as a channel, and through him and the orders issued by him, the law existing in the State of Israel, legislated

²⁹ *Pamphlet Regarding Law and Administration (West Bank Area) (No. 2), 1967* and the *Pamphlet Regarding Law and Administration (the Gaza Strip and Northern Sinai) (No. 2), 1967*.

³⁰ HJC 337/71 *Christian Association for the Holy Places v Minister of Defense*, PD 26 (1) 574; HJC 69/81 *Abu Itta v Minister of Defense*, PD 37 (2) 197.

by the Israeli parliament, is applied. These channelling orders include a number of Israeli laws and provide that these shall apply to the settlement areas, with the required modifications, these modifications being mostly procedural and institutional, necessary under the circumstances. The majority of the legal provisions channelled into West Bank law regulate the status and authority of the Israeli authorities and governmental institutions within the boundaries of the settlements in the West Bank. It is this channelling which grants the Israeli Ministry of Education authority over schools within the boundaries of the settlements, grants the Israeli Ministry of Health authority over medical facilities and so forth. The channelling imports Israeli administrative law into the settlements and creates *de facto* Israeli enclaves within the West Bank (and in the past, within the Gaza Strip).

129. This is achieved in the following manner: according to two military orders, the Military Commander was authorized to regulate the management of the municipal local and regional (Jewish) councils in the West Bank.³¹ By virtue of this authority, the Military Commander instituted regulations for regional councils³² and local councils.³³ These local council regulations provide a list including dozens of Israeli laws, on a variety of issues, to be applied within the boundaries of the settlements.³⁴
130. This, in effect, creates a legal “enclave” in the West Bank, wherein different laws apply than those applying to the rest of the West Bank; these are “islands” of Israeli law.³⁵
131. **Israeli legislation with extraterritorial application** – primary legislation by the Israeli parliament (the Knesset), which provides personal-extraterritorial application over Israelis residing or located in the West Bank (rather than territorial application, as is customary).

³¹ Section 2(a) of the *Order Regarding the Management of Regional Councils (Judea and Samaria)* (No. 783) [1979]; Section 2(a) of the *Order Regarding the Management of Local Councils (Judea and Samaria)* (No. 892) [1981].

³² *Order Regarding the Management of Regional Councils (Judea and Samaria)* (No. 783), 1979 *Regional Councils Regulations*.

³³ *Order Regarding the Management of Local Councils (Judea and Samaria)* (No. 892), 1981, *Local Councils Regulations*.

³⁴ Section 140B of the Local Councils Regulations grants the holders of Israeli statutory powers to act also within the boundaries of the local councils in the West Bank and in accordance with Israeli law. The Appendices to the Regulations include a list of Israeli laws to be applied as aforesaid in the following fields: welfare laws, family laws, statistics laws, education laws, health laws, labor laws, agricultural laws, apartment buildings laws, environmental laws, consumer, industry and trade laws, communications law.

³⁵ HCJ 10104/04 **S.A.L. Educational Enterprises v. Roth Yossef, Supervisor of Jewish Settlements in the Civil Administration**, (not published; judgment dated 14 April, 2006).

Within this category, we shall also include legislation authorizing the Israeli secondary legislator (the executive authority) to institute regulations and issue various orders, the application of which is also personal-extraterritorial, over Israelis in the West Bank.

132. The most prominent and perhaps most important example of this sort of legislation is the law extending the power of the Emergency Regulations (Judea and Samaria and the Gaza Strip – Adjudication of Offences and Legal Aid), 1977³⁶ (hereinafter: the “Extension of Emergency Regulations Law,”), which authorizes the courts and tribunals in Israel to adjudicate in the matters of Israelis and in the matters of events taking place in the West Bank **according to Israeli Law**. Thus, the Law authorizes Israeli criminal courts to try Israelis suspected of committing criminal offences in the West Bank according to the penal code and criminal procedure laws of the State of Israel.
133. **Military legislation with personal application** – throughout the years, the Military Commander has issued hundreds of legislative documents, some of which are territorial and apply to the entire population of the occupied territory, some directed at Palestinians and applying to them alone, and some applying deliberately and explicitly to Israelis in the Occupied Territory. Another kind of order consists of territorial orders whose application is restricted only to the territories of the settlements.
134. An outstanding example of such personal legislation is the “Seam Zone Permit Regime” (see also section 118 above in the chapter on freedom of movement). This is a Closed Military Zone Order, encompassing a substantial percentage of the territory of the West Bank between the Separation Fence and the Green Line, and the establishment of a vast bureaucratic array, the function of which is to allow the submission of applications for entry permits to the Closed Zone. The entire legal structure exempts Israelis from the prohibition on entering the Military Zone and from the need to acquire a permit, while enforcing it only on Palestinians residing in the West Bank.
135. The outcome of all the legal techniques aforementioned is the same: one law applied to a *Palestinian in the West Bank* and another law applied to an *Israeli in the West Bank*.

³⁶ *Extension of Power of Emergency Regulations Act (Judea and Samaria and the Gaza Strip – Adjudication of Offences and Legal Assistance), 1977* [last amendment: August 6, 2003] LSI 1977, at p. 48.

F. Sovereignty over Natural Resources

136. Since the 1950s, international law has developed the “principle of permanent sovereignty of peoples and nations over their natural resources.” This principle forms part of the right to development, which has been recognized as a collective human right of peoples and communities.
137. The first document defining this right was UN Resolution 523 (VI), adopted on January 12, 1952; this was followed by Resolution 626 (VII), adopted on December 21, 1952. In these resolutions, the General Assembly determined that “the right of peoples freely to use their natural resources and natural treasures is an inherent right to the right of self-determination of peoples, and derives from the goal and principles of the UN Charter.”
138. In 1958, the UN established the Commission on Permanent Sovereignty over Natural Resources. Among other activities, the commission has researched and promoted this field. The commission’s work led to the adoption of Resolution 1803 (XVII) by the UN General Assembly on December 14, 1962, also known as the Declaration on Permanent Sovereignty over Natural Resources. The first article of the Declaration establishes:
- “The rights of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned.”
139. Article 7 of the Declaration establishes that the violation of the right of peoples to permanent sovereignty over their natural resources is contrary to the principles of the UN Charter.
140. The principle of permanent sovereignty over natural resources was also included in the two central instruments of international human rights law, signed in 1966 (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights). Article 1, which is identical in both covenants, establishes as follows (emphases added):

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. **All peoples may, for their own ends, freely dispose of their natural wealth and resources** without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. **In no case may a people be deprived of its own means of subsistence.**

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

141. The rationale behind this article is clear: Without economic capacity, peoples will be unable to realize the other rights affirmed in these conventions. The realization of economic resources within the territory of indigenous residents is intended for these residents, and not for colonial exploitation. This will also enable these peoples to shape their economic character, as part of their overall self-determination – a basic right in international law.

142. International human rights law sees the sovereignty of the people living in a territory over its natural resources, and the right to shape its future economic and vocational future, as a permanent and basic right. International law requires a foreign entity holding a territory in trusteeship to respect this right and aid in its realization.

143. Yesh Din's position is that the Palestinian people have a collective right to the natural resources in the West Bank. There is no genuine disagreement on this matter among international law experts. We refer, also, to the content of the detailed report of the Secretary-General of the United Nations from 1983 (Implications, under international law, of the United Nations resolutions on permanent sovereignty over natural resources, on the occupied Palestinian and other Arab territories and on the obligations of Israel concerning its conduct in these territories," para. 51, *Report of the Secretary-General*, A/38/265, E/1985/85, 21 June 1983), available at:

<http://domino.un.org/unispal.nsf/db942872b9eae454852560f6005a76fb/6d55c7f840e6da06052567c9004b75de!OpenDocument>

144. This position was presented explicitly in a petition submitted to the Supreme Court by Yesh Din in 2009 challenging the legality of awarding mining licenses to Israeli companies and Israeli settlements that remove the mining products from the West Bank and transfer them to Israel. This petition was submitted after Yesh Din learned of the presence of 10 Israeli-owned quarries in the West Bank, two of which are owned by the settlements. Some 76 percent of the quarrying produce is removed from the West Bank to Israel (the main products involved are gravel and stone used in the construction industry).
145. A document prepared for the Israeli Ministry of the Interior further shows that Israel views the quarrying reserves in the West Bank as a source that is expected to meet Israeli consumption needs of the coming decades. An English translation of the petition is available at: <http://www.yesh-din.org/userfiles/file/Petitions/Quarries/Quarries%20-%20Petition%20ENG.pdf>
146. Yesh Din argued that this practice violated the right of Palestinian people to its own natural resources. As noted above, Yesh Din is aware that two large quarries are owned by two different settlements. The allocation made to these settlements, without a tender and on the basis of the decision of the Civil Administration, was intended to finance these settlements. In the case of the Beit Haggai settlement, documents submitted in the framework of the petition revealed that some 80 percent of the settlement's income comes from the adjacent quarry, which was allocated by the Civil Administration to meet the settlement's needs.
147. The position of the State of Israel was that the mining of resources is legal. Among many other reasons quoted by the State, it argued that the subject of the use of quarries and national resources by Israeli companies was established in the interim agreements between Israel and the Palestinian Authority. Accordingly, it was argued that the political dimension of the petition was dominant, and, accordingly, the court should refrain from discussing the issue. The State further argued that the protracted nature of the occupation requires flexibility and the management of the area in a manner that will enable the operation of these quarries, since, according to the State, the flexible interpretation that should be applied to the rules of belligerent seizure enable – and, in some cases, require – the operation of quarries in this manner. This is necessary in order to enable the military

commander to develop the area. It was further argued that the quarries provide a livelihood for Palestinian residents of the area, and that the quantity quarried is minimal and does not irreversibly affect the minerals in the area.

An English translation of the State's response is available at <http://www.yesh-din.org/userfiles/file/Petitions/Quarries/Quarries%20State%20Response%20May%202010%20ENG.pdf>

148. On December 26, 2011, the Supreme Court rejected the petition, accepting the State's positions and rejecting Yesh Din's arguments. In particular, the court emphasized the political dimension, which is the subject of discussions between Israel and the Palestinian Authority. The court further established that, in substantive terms, the quarrying does not constitute a violation of international human law, which requires a dynamic interpretation of the rules of occupation. We attach a translation of the ruling as granted on December 26, 2011 (the translation was prepared by Yesh Din, since no official translation of the ruling has been published): <http://www.yesh-din.org/userfiles/file/%D7%94%D7%9B%D7%A8%D7%A2%D7%95%D7%AA%20%D7%93%D7%99%D7%9F/psak.pdf>
149. Shortly after the ruling was granted, Yesh Din submitted a request for an additional, *en banc* hearing in the petition. The request was explained both by the far-reaching, difficult and complex nature of the ruling and by the changing of previously-accepted legal perceptions in this field and the innovative nature of the ruling. The request (in Hebrew) may be viewed at the following link: <http://www.yesh-din.org/userfiles/file/Petitions/Quarries/mines-18-DangatzFinal.pdf>
150. An opinion from seven leading Israeli experts in the field of international law was attached to the request. The experts clarified the manner in which the Supreme Court's ruling is contrary to international law and the rules of occupation, due to the failure to protect the assets of the occupied people. A copy of the opinion, translated into English by Yesh Din, may be viewed at the following link: <http://www.yesh-din.org/userfiles/file/%D7%97%D7%95%D7%95%D7%AA%20%D7%93%D7%A2%D7%AA/QuarriesExpertOpinionEnglish.pdf>
151. On July 25, 2012, the Supreme Court rejected the request for an additional hearing on the grounds that the rules established in the ruling were dicta and did not constitute binding

precedent. The court added that the arguments raised in the request for an additional hearing, and in the expert opinion attached to the request, may be raised in other pertinent circumstances in the future. A copy of the ruling rejecting the request for an additional hearing (in Hebrew) may be viewed at the following link:

<http://elyon1.court.gov.il/files/12/160/003/p06/12003160.p06.pdf>

152. In conclusion: international human rights law recognizes the exclusive right of peoples to use their natural resources, and requires that foreign rulers respect this right, which derives from the principle of the permanent sovereignty over natural resources. This is an inherent and collective right. The granting of mining permits to Israeli companies, which remove the mining products outside Palestinian territory, held under trusteeship, negates the collective right of the Palestinian people to hold its natural resources; denies the residents of the area the right to shape its economic character as they see fit; and denies them the profits that may be produced from their territories, which are instead diverted to corporations belonging to the occupying power. To this, of course, we must add the dimension of the long-term planning undertaken by the planning authorities in the State of Israel, which seek to exploit the quarrying potential for the next thirty years, thereby leaving the area for its indigenous residents stripped of the natural resources it contains, which are held by Israel in trusteeship.

153. We should add that, to the best of Yesh Din's knowledge, two settlements in the West Bank received an allocation and authorization to act in these quarries, the income from which is intended to provide profit for the settlements. According to Yesh Din's information, the Civil Administration made this allocation without issuing a tender.

H. Conclusion

154. As noted in the introduction, the settlements in the West Bank are the source of the **multidimensional** violation of the human rights of the Palestinians.
155. As we have shown, Yesh Din's experience and research clearly indicates that actions by settlers, and the support they enjoy from the authorities by way of omission, and sometimes even by act, severely impair Palestinians' right to life, liberty and security of person. Other rights violated include the right to property, freedom of movement, and equality, as well as the Palestinians' collective right to their natural resources.
156. **This review covers only part of the rights violated due to the presence of the settlements.**
157. There is no disagreement among international legal scholars that the settlements are illegal, and that international humanitarian law (in its branch addressing the rules of occupation) prohibits the establishment of settlements. Accordingly, there can be no justification for this extensive violation of basic rights as described above.

Date: November 6, 2011



Mr. Chaim Ehrlich, Executive Director



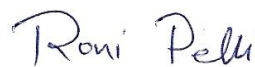
Attorney Michael Sfard, Legal Advisor



Mr. Lior Yavne, Research Director



Attorney Adar Grayevsky



Ms. Roni Pelli, Information Coordinator



Ms. Noa May Amrami, Legal Intern



Ms. Ziv Stahl, Researcher

Appendix A

Complaints Received by Yesh Din concerning Offenses by Israeli Civilians against Palestinians, by Complainant's Village

A-Tawani	15
A-Dhahariya	3
A-Tayba	1
A-Tira	1
A-Luban a-Sharqiya	7
A-Nabi Elias	4
A-Sawaya	3
A-Samua	2
A-Rihiya	1
A-Shuyukh (South)	1
A-Tawani	2
Um al-Kheir	8
Um Salamuna	1
Immatin	23
Iskaka	1
Al-Birah	5
Al-Buweib	1
Al-Janiya	1
Al-Khader	18
Al-Hadidiya	1
Al-Mughayir	25
Al-Mazra'a al-Qibliya	3
Al-Funduq	5
Asfar	1
Burin	63
Burka	5
Bil'in	9
Beit Ummar	12
Deir Sharf	1

Beit Jala	2
Beit Dajan	4
Bethlehem	6
Beit Liqya	1
Beit Fajar	2
Beit Furik	4
Beitillu	5
Beitin	12
Bani Na'im	1
Jordan Valley	2
Jalud	6
Jaba	2
Jib Abu Nasser	1
Jayyus	1
Jiniya	1
Jinsafut	12
Jit	17
Jamma'in	2
Dulab	1
Duma / Nablus	3
Dura	1
Dura al-Qara	6
Deir Istia	14
Deir al-Khatlab	2
Deir Dubwan	4
Deir Nidham	16
Deir Ammar	1
Kifl Haris	4
Kafr a-Dik	1

South Hebron Mt.	2
Derekh Ha'avot	2
Track to Itamar	1
Wadi a-Nis	1
Wadi Qana	1
Wadi al-Maleh	1
Khirbet Deir a-Shams	1
Khallet Sakariya	1
Khirbet Tana	1
Khirbet Atuf	1
Haris	6
Hebron	43
Hajja	1
Huwara	16
Husan	5
Khirbet Samra	1
Halhul	8
Hamam al-Malih	1
Khirbet Sakariya	2
Tuba	5
Tubas	2
Yanun	2
Yasuf	10
Yata	14
Yatma	2
Road No. 5 by Yitzhar	1
Kfar Etzion traffic circle on Road 367	1
Sinariya	1
Salfit	3
Sa'ir	5
'Abda	1
'Ajja	1

Kafr Laqif	4
Kafr Malik	5
Kafr Qaddum	32
Kafr Qalil	1
Kafr Thulth	27
Luban	3
Near Qawawis	1
Madama	12
Mufqara	1
East Jerusalem	1
Mahmas	2
Hawara checkpoint	2
Mikhmas	8
Masha	5
Ma'in (Khirbet Ma'in)	1
Ma'ale Mikhmas	1
Mitzpe Yeriho	1
Mughayer al-'Abid	1
Nu'eima (Duyuk)	1
Nahalin	1
Ni'lin	1
Salem	9
Safa	2
Susiya	18
Silwad	1
Sinjal	13
Qubeiba	1
Qusra	17
Qalqiliya	2
Qarawat Bani Hassan	3
Qaryut	21
Kiryat Arba	2

‘Awarta	5
‘Urif	7
‘Izbat Qatafa	1
‘Azzun	1
‘Azzun ‘Atmah	1
‘Izbat a-Tabib	1
‘Ein al-Qasis (Al-Khader)	1
‘Ein Yabrud	1
‘Einabus	11
‘Anata	6
Anatot	6
‘Asira al-Qibliya	15
‘Asala	1
‘Aqbat Jaber (refugee camp)	1
‘Aqraba	15
‘Iraq Burin	2
Fasayil	3
Far’ata	24
Kochav Ya’aqov – Psagot intersection	1
Kedumim intersection	1
Qiblan	1
Qawawis	1

Ras Karkar	4
Rujeib	1
Rantis	1
Shuweika	6
Shuyukh al-‘Arrub (Khirbet al-‘Arrub)	1
Shilo	1
Tawamin – east of Susiya	1
Turmusaya	22
Tall	10
Tel Rumeida	1