

A World Turned Upside-Down

The residents of Burqa's struggle to return to their land where the evacuated Israeli settlement Homesh once stood



September 2020

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Position paper, September 2020

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Cover photo: A farmer from Burqa and his son on village land where the evacuated settlement Homesh once stood, February 28, 2020 (photo courtesy of Sadam Ragheb Salah)

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Introduction

For 42 years Israel has denied residents of the Palestinian village Burqa (برقة), located in the Nablus District, unrestricted access to their privately-owned land where the Israeli settlement Homesh once stood.

This position paper depicts the struggle of Burqa residents to return to their land - a struggle which Yesh Din has accompanied for nearly a decade. This paper focuses on three key and interrelated issues. First, preventing all Palestinians from accessing Burqa land and specifically the landowners. Second, the illegal presence of Israelis in the area of the evacuated settlement Homesh, illegal Israeli construction there and the site as a hub for settler violence. And third, Israeli authorities' policy of not enforcing the law upon settlers who violate the law and harm Palestinians, their land and their property.

In early 1978, the GOC Central Command issued a seizure order for military needs for approximately 700 dunams of land north of Burqa, most of it registered private land¹ owned by residents of Burqa (see map on p. 9). After issuing the order, an army settlement was established on the land. Two years later, the army settlement became the civilian settlement Homesh. And so, for 25 years, several dozen Israeli families lived in the settlement until Israel evacuated Homesh in 2005 as part of the disengagement plan² and prohibited Israelis from entering the area - a prohibition that is still in effect.

After evacuating the Israeli settlement, Israel did not revoke the military seizure order for the land. While the Palestinians landowners were prohibited from going to their land, dozens of Israeli citizens have maintained a regular presence at the site of the evacuated settlement, and many others join them for mass gatherings and political rallies. Although the Disengagement Plan Implementation Law prohibits Israeli citizens from entering the area, a public campaign, Knesset members and government ministers support the persistent presence of Israelis on private land owned by residents of Burqa.

After the landowners petitioned the Israeli High Court of Justice (HCJ) with the assistance of Yesh Din, the seizure order was revoked in 2013 and the Palestinians were permitted to return to their land. While there is no longer any legal impediment, Palestinians still cannot reach their private land and farm it because Israeli settlers are constantly present there, in violation of the law.

1 **Registered private Palestinian land** – land registered by Palestinians in the land registry (known as the Tabu) managed by the Israeli army in the Occupied Palestinian Territories.

2 **The disengagement plan** – in the summer of 2005, the Israeli government, headed by the late Ariel Sharon, unilaterally evacuated Israeli residents from Israeli settlements and withdrew Israeli forces from the Gaza Strip. Four secluded settlements were also evacuated from the northern West Bank: Homesh, Ganim, Kadim and Sa-Nur.

This paradox is possible only because Israel, which has controlled the West Bank through military occupation for over 53 years, does not prevent Israelis from entering the area of the evacuated settlement. In what appears to be a deliberate strategy, Israel also does not bring to justice those who trespass on private Palestinian land in violation of its own orders.

Worse still, violent Israeli settlers frequently come from the site of the evacuated settlement Homesh to perpetrate violence against Palestinian farmers and residents of the neighboring villages, including Burqa, Silat a-Dhahr (سيلة الظهر), al-Fandaqumiyah (الفندقومية) and Bizzariya (بزارية). The Israeli settlers' systematic and ideologically motivated violence spreads fear and terror among Palestinian residents and deters farmers from cultivating their land.

Israeli law enforcement authorities – the police, army and state attorney's office - have steadily failed to undertake effective and deterring law enforcement measures upon Israeli settlers. The consistent failure of law enforcement encourages more such violence and blatant disregard of the law, and exacerbates infringements on Palestinians' right to property, right to freedom of movement, freedom of occupation and right to earn a living.

For over forty years, Israel has prevented Burqa residents from accessing their private property and farming their land. First, through the military seizure order that took away their land, then by building the Israeli settlement Homesh on their land. Finally, after a lengthy legal struggle which successfully removed the legal impediments imposed by Israel, in recent years Israeli settlers have perpetrated violence against Palestinian residents of Burqa while trespassing on their land, with support from Israel.

Revoking the military seizure order

International humanitarian law allows the occupying force to temporarily hold land owned privately by residents of the occupied territory. A requisition order does not terminate ownership of the land and is temporary in nature; it can be issued and used only for essential and urgent military needs.³

Despite the clear restrictions set forth in international law, from 1967 to 1979 Israel used military seizure orders to establish Israeli settlements in the occupied Palestinian territory (OPT).⁴ The practice ceased in 1979 after the HCJ's ruling in the case of Elon Moreh, in which the Court forbade seizing private Palestinian land for establishing Israeli settlements.⁵

Burqa land was seized in 1978, just before the HCJ's judgement, and Israel established the settlement Homesh on private Palestinian land. As noted, in 2005 Israel evacuated the settlement Homesh as part of the disengagement plan yet did not revoke the military seizure order and the Palestinian landowners continued to be barred from accessing their land.

In December 2011, Palestinian landowners from Burqa petitioned the HCJ with the assistance of Yesh Din demanding the military seizure order be revoked and their land in the area where the settlement Homesh once stood be returned to them.⁶ Prior to 1978, the petitioners farmed their land as a source of income. In their petition, they claimed that the Israeli army continues to hold their private land without any security need, if ever there was such need.

The petition stated that the alleged military need of establishing the army settlement,⁷ a ploy for issuing the requisition order, shifted to become a need that was significantly and exclusively political two years later when the land was used for the civilian settlement of

3 For more information regarding the laws of occupation and the occupier's authority over the private property of protected persons, see HCJ 9389/11 **Burqa council head et al v Commander of IDF forces in the West Bank**, sections 37-49, (Hebrew) December 19, 2011 (henceforth: **HCJ 9389/11**).

4 According to Peace Now, approximately 44 Israeli settlements were established, to various extents, based on military seizure orders (**Peace Now**, [The Bluff behind Land Takeovers as a Military Necessity Revealed](#), July 2016).

5 HCJ 390/79 **Duweikat et al. v. Government of Israel et al**, judgement, October 22, 1979. For an English translation, see http://www.hamoked.org/files/2010/1670_eng.pdf

6 **HCJ 9389/11**, [petition for an order nisi](#), December 19, 2011.

7 It is noteworthy that the army settlements were openly designed to "promote Jewish settlement throughout the Land of Israel" by using soldiers (according to the website for the **Association for commemorating Nahal Brigade soldiers**) (Hebrew). Therefore, from the onset the seizure order was not issued for essential and urgent military need, as required by international law.

Homesh. The land in question was not used for military purposes during the settlement's 25 years, nor after its evacuation, when Israel did not use the land at all.

In May 2013, a year and a half after the petition was filed and just days prior to the scheduled hearing, the State announced it was revoking the seizure order for the land.⁸

However, even after the seizure order was revoked, the land remained inaccessible to its Palestinian landowners. The State's response to the petition explained that although the settlement Homesh ceased to exist in 2005, it was still on the list of Israeli West Bank settlements. Therefore, Palestinians were prohibited by law from entering the land where Homesh once stood pursuant to the military Proclamation Concerning the Closure of a Territory (Israeli Settlements), which prohibits Palestinians from entering Israeli settlements in the OPT.⁹

Several months later, following Yesh Din's legal correspondence with state representatives on behalf of the landowners, in September 2013 Israel removed Homesh from the list of Israeli settlements in the West Bank. This revoked the closure order and the landowners were finally allowed to return to their land for the first time.

In early October 2013, Burqa residents were finally able reach their land 35 years after it was taken from them. In hindsight, it was too soon to celebrate.



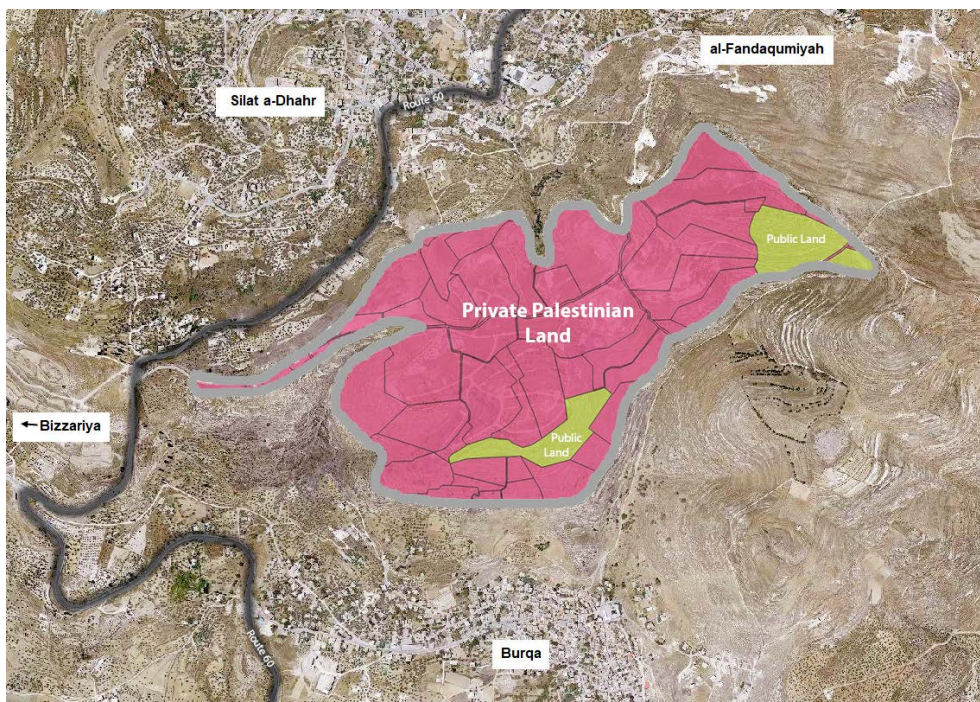
Burqa residents return to their land, October 3, 2013 (photo: ActiveStills)

⁸ To the best of Yesh Din's knowledge, this was the first instance in which the State announced it would revoke military seizure orders issued for Palestinian land. The petition was deleted and the Court ruled legal expenses of NIS 10,000 in favor of the petitioners.

⁹ **HCJ 9389/11**, response on behalf of the respondents, October 30, 2012; Order regarding Security Provisions (Judea and Samaria Area) (No. 378) 5730-1970 Proclamation regarding Closure of an Area (Israeli Settlements) 5762-2002 .

No settlement, but the settlers are still there

According to the Disengagement Plan Implementation Law, which administered the evacuation of the settlement Homesh, “As of the day of the evacuation of the evacuated area, no Israeli shall enter the evacuated area or stay there without a permit granted by the commander and according to the conditions stipulated in the permit.” The law determines it is a criminal offense for an Israeli citizen to enter the evacuated area without a permit, punishable by incarceration.¹⁰ In order to apply the law, the military commander, who is the only one with the authority to legislate upon the West Bank, signed a similarly worded military order.¹¹ In other words, according to the Knesset’s legislation and the GOC Central Command’s military order still in force **Israeli citizens have been prohibited from entering the area of the evacuated settlement Homesh since August 2005.**



Area of the evacuated Israeli settlement Homesh

- Private Palestinian land
- Public land (state land)¹²

¹⁰ Disengagement Implementation Law (5765-2005), sections 24 and 27.

¹¹ Proclamation regarding the Disengagement Plan (Judea and Samaria) (No. 1565) 5765-2005.

¹² **Public land (state land)** – land that is not privately owned, administered by the military government and which is supposed to serve for public use.

The renewed Homesh Yeshiva

Despite the order and in violation of the law, Homesh HaMehudeshet (Renewed Homesh) Yeshiva has operated on the site of the evacuated settlement - on residents of Burqa's private land - since 2007. Its head is Rabbi Elishama Cohen, and one of the Yeshiva's publicized goals is to establish a permanent presence in the area where the settlement Homesh once stood. Yeshiva teachers and students occupy Burqa land illegally, using a large number of illegal structures established on the site without the landowners' consent and without construction permits. Members of the Yeshiva, who deliberately and openly violate the law, frequently provide interviews, are photographed and filmed by the media, and also receive visits and support from many public figures.¹³

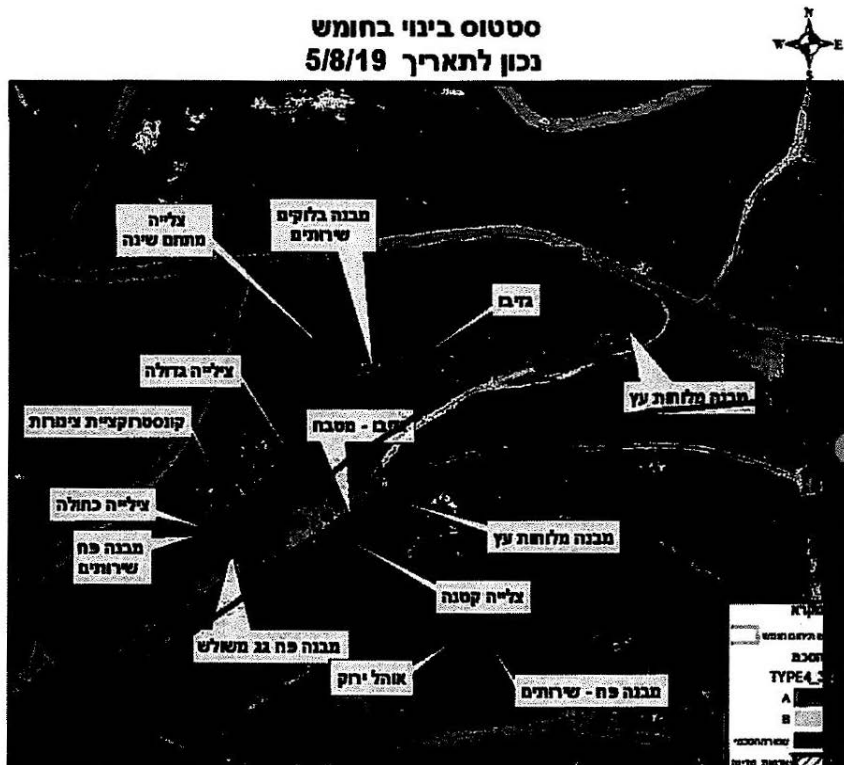
The Hassidic weekly pamphlet "Close to you" published a lengthy article in June 2019 featuring photographs on reporter Motti Alon's visit to the "renewed Homesh Yeshiva". The reporter noted passing a sign reading: "Israelis prohibited from entering" and met with the Yeshiva head and his students. According to Rabbi Elishama Cohen, the Yeshiva has "a group of nearly 40 students". Avi, a Homesh Yeshiva student is quoted as saying: "I came to the Yeshiva eight years ago [...] I settled in [the settlement] Shavei Shomron, that way I can go to the Yeshiva every day and study [...] part of the issue here is that Yeshiva students come here in the morning and stay until evening." If the Yeshiva students' daily violation of the law were not enough, another student notes that "We have a permanent presence here, and young men and families help out by coming out on weekends and holidays to protect Homesh."¹⁴

Homesh Yeshiva and its visitors constitute an illegal Israeli presence on Burqa land. On July 1, 2019, Yesh Din addressed the Attorney General and the State Attorney, demanding an investigation against Rabbi Elishama Cohen and others for violating military orders, trespassing and illegal construction.¹⁵ As of July 2020, the State has not responded to the complaint, despite multiple reminders.

13 See for example: Hagit Rosenbaum, Homesh Yeshiva – a permanent yeshiva", **Israel National News**, (Hebrew) 4 April, 2014; "Thirteen years since the expulsion: the public rallies to assist Homesh Yeshiva", **HaKol Hayehudi**, (Hebrew) March 19, 2019; "View: Homesh Yeshiva Students Continue to Hear Torah", **HaKol Hayehudi** Youtube channel, March 19, 2019.

14 Motti Alon, "Very Very", **Close to You – Worshipping Hashem in the Spirit of Hassidism**, Issue 276, p. 18-20, (Hebrew) June 21, 2019.

15 Yesh Din to the Attorney General and the State Attorney, "Complaint against Rabbi Elishama Cohen et al for violating military orders, trespassing and additional offenses", July 1, 2019.



Aerial photo with the State's data on 14 illegal Israeli structures on Burqa land, which also serve Homesh Yeshiva¹⁶

A single road leads to the area where the evacuated settlement Homesh once stood, where the Yeshiva now operates. According to the Yeshiva students, they travel this road every day to the Yeshiva and back even though doing so constitutes a criminal offense for Israelis. Clearly, Israeli authorities are aware of the settlers' persistent and illegal occupation of Burqa residents' private land and are certainly capable of halting this illegal activity and bringing offenders to justice.

According to data provided by the State, the army and police identified Israeli settlers in the area closed to Israelis at least 40 times between 2015-2018; some of these incidents included dozens and hundreds of people trespassing on a given day (the full document is attached as an annex (Hebrew), see p. 39-41). While countless Israeli citizens were witnessed trespassing in the area of the evacuated settlement Homesh, between 2015-2017 the police opened just four investigation files for suspected "presence in a forbidden

¹⁶ HCJ 2821/19 **Saif et al. v. Commander of IDF Forces in the West Bank et al**, preliminary response to the petition on behalf of the respondents, annex 10, August 15, 2019 (henceforth: **HCJ 2821**).

area". One investigation file against a minor was closed without criminal processing, two files were closed due to lack of evidence, and in one case, "a judgement was given without a conviction".¹⁷

Israel is the occupying power in the West Bank and is therefore obligated to maintain public order, enforce the law and protect civilians in the occupied territory. These duties are anchored both in the provisions of international law and in Israeli administrative law, and they include preventing offenses and enforcing the law by investigating and indicting suspected offenders.¹⁸

The data presented by the State prove that with regards to Israelis violating the law on Burqa land, Israel does not uphold its duties. Enforcement authorities do not pursue the criminal process for Israeli offenders, which is designed in part to deter individuals and the public and prevent repeated offenses. The failure of Israeli law enforcement authorities, or their policy of deliberate lack of enforcement has enabled the Yeshiva students to invade private Palestinian land time and again for the past 13 years while violating military orders.

The settlers' regular presence in the area of the evacuated settlement Homesh on Burqa residents' private land does not only involve trespassing, violate military orders and involve illegal construction. Since Homesh was evacuated and especially during recent years, violence committed by settlers coming from Homesh has increased against Palestinians and their property. These are not random acts, but rather systematic and ideologically motivated violence intended to forcefully keep the rightful landowners away and take over private Palestinian land (for more about settler violence coming from Homesh, see p. 18).



Israeli settlers on Burqa land (Homesh), March 2020 (photo: Saddam Ragheb Salah)

17 **HCJ 2821/19**, preliminary response to the petition on behalf of the respondents, annexes 3-4, August 15, 2019.

18 For further information on the duty of the occupying power to protect civilians living in the occupied territory, see **Yesh Din**, [Mock Enforcement – the failure to enforce the law upon Israeli civilians in the West Bank](#), May 2015

Homesh First - an Israeli campaign on Burqa land

In addition to Homesh Yeshiva's teachers, students and guests' routine invasion of private Burqa land and despite the clear legal prohibition, in 2006 the evacuated settlement Homesh became a pilgrimage site for Israelis.

The group Homesh First was founded around the time of the evacuation of Homesh. Later, additional groups joined in order to organize public gatherings, mass marches and public events at the site of the evacuated settlement. The public campaign calling to "make pilgrimage to Homesh" inherently involves illegal activity, violation of military orders and trespassing on private Palestinian land.

And yet, both the Shomron Regional Council and a Knesset caucus (which included government ministers) have assisted and supported the campaign. These parties are also working to revoke the Disengagement Plan Implementation Law and rebuild the four settlements Israel evacuated from the northern West Bank during the disengagement plan: Homesh, Ganim, Kadim and Sa-Nur.¹⁹



Israelis congregating on Burqa land (where the evacuated settlement Homesh once stood)
(photo: [Ventura Daniel](#), [Wikimedia Commons](#), CC BY-SA 4.0)

19 In February 2017, Knesset members Shuli Moalem-Refael, David Bitan, Bezalel Smotrich, Yoav Kisch, Yakov Margi, Mordechai Yogeve, Amir Ohana, Avraham Neguise, Nurit Koren, Nissan Slomiansky and Michael Malchieli privately proposed a bill to revoke the prohibition on entering the area of the four settlements evacuated from the northern West Bank (P/20/3913). Knesset members Shuli Moalem-Refael and Bezalel Smotrich submitted an additional, similarly worded proposal that same month (P/3883/20). Neither proposals reached the preliminary voting stage in the plenum (**Knesset website**, national database of legislation - Hebrew). In May 2020, Yossi Dagan, Head of the Samaria Regional Council called on PM Netanyahu to extend Israeli sovereignty to the four evacuated settlement in the northern West Bank as part of his plan to annex areas of the West Bank to Israel ("Apply Sovereignty on Uprooted settlements Too", **Israel National News**, (Hebrew) May 31, 2020). In August 2020, coalition chair MK Miki Zohar and MK Bezalel Smotrich submitted an addition proposal to repeal the Disengagement Plan Implementation Law (Yoni Gabai, "Bill proposed to revoke the Disengagement Law", **Kikar Hashabat**, (Hebrew) August 4, 2020).

As with the Yeshiva's activity, mass events and gatherings are not organized in secret, nor are these events attended by a few rogue individuals. Rather, they are political rallies and public gatherings held unhindered and illegally on Burqa land, at times with the army's backing. Hundreds and thousands of Israelis participate in these events: public officials, religious leaders, heads of local councils and even Knesset members and high-ranking government ministers.²⁰

The evacuees lit Hanukkah candles in Homesh
(Walla!NEWS, December 18, 2006)

**Approximately 15,000
Jews went to Homesh
with permission and a
security escort**
(Yesha Council,
June 12, 2007)

**Four ministers visited
Homesh: "Consider
returning here"**
(ynet, August 17, 2009)

**Knesset members at Homesh:
Rebuild the evacuated settlement**
(Walla!NEWS, April 11, 2012)

**Thousands went to Homesh today,
including the Minister of Agriculture**
(Israel National News, March 27, 2013)

**Hundreds stayed in Homesh
for Shabbat**
(Israel National News, May 19, 2019)

**Knesset Speaker in Homesh:
"Time to return and settle here"**
(Kipa, September 16, 2019)

This illegal activity is not limited to invading private property and violating the military commander's order. Mass pilgrimages to Homesh lead to harm to Palestinian farmers, and sometimes even to severe violence perpetrated against residents of the neighboring Palestinian villages and their property.

²⁰ "The evacuees lit Hanukkah candles in Homesh", **Walla!NEWS**, (Hebrew) December 18, 2006; "Approximately 15,000 Jews went to Homesh with permission and security escort", **Yesha Council**, (Hebrew) June 6, 2007; Four ministers visited Homesh: "Consider returning here", **ynet**, (Hebrew) August 17, 2009; Pinchas Wolf, "Knesset members at Homesh: Rebuild the evacuated settlement", **Walla!NEWS**, (Hebrew) April 11, 2012; Hizki Baruch, "Minister Shamir: 'Homesh is our land. Period'", **Israel National News**, (Hebrew) March 27, 2013; Yoni Kampanski, "Hundreds stayed in Homesh for Shabbat", **Israel National News**, (Hebrew) May 19, 2019; Knesset Speaker in Homesh: "Time to return and settle here", **Kipa**, (Hebrew) September 16, 2019.

For example, in July 2007, “Approximately 1,500 came to the ruins of the evacuated settlement Homesh.”²¹ Several days after the event, Nizar Abu Odeh, a 53 year old farmer from Burqa told Yesh Din the following:

On Sunday morning, July 22, 2007 at 6 or 6:30 am we noticed a large crowd, about 400 settlers, coming up the Jenin-Nablus road to the settlement Homesh. They passed between the villagers’ olive trees and destroyed my neighbors’ goat pen, which held eight goats, and they took the goats.

They threw rocks at my son’s house, which is next door to mine. A neighbor who saw them yelled, “what are you doing?” In response, they threw rocks at his house and broke four windows and the water heater solar panels.

After that, they started uprooting trees and saplings on my land. They uprooted and destroyed the olives and the vegetables, about 1,500 tomato, okra and cabbage plants, they also destroyed irrigation pipes.

There was a lot of commotion, shouting, chaos and curses of “death to Arabs”. I didn’t dare leave my house to go near or confront the attackers. The damage to my land was about NIS 40,000.

[On July 28, 2008 the police closed the investigation file on grounds of “offender unknown”]

Mass pilgrimages to the evacuated settlement harm the ability of Palestinian farmers and landowners to reach their land. Yesh Din addressed the State Attorney, the Legal Advisor to the West Bank Area and the Israel Police three times in 2014, demanding authorities prosecute the participants – or at least the organizers of these events - and take action to prevent similar gatherings in future. Despite correspondence with enforcement authorities, mass pilgrimage to Homesh has continued, at times with an army escort.

In 2015, Burqa’s village council head and Yesh Din petitioned to demand the army and police prevent an event in celebration of 40 years for Gush Emunim planned on Burqa residents’ private land.²² Following the petition, the State told the Court that entering the land in question indeed constitutes trespassing and violation of a military order, and that therefore the army and police would work to prevent the planned event. It also stated that the police opened an investigation file to locate those responsible for the event and summon them for questioning.²³

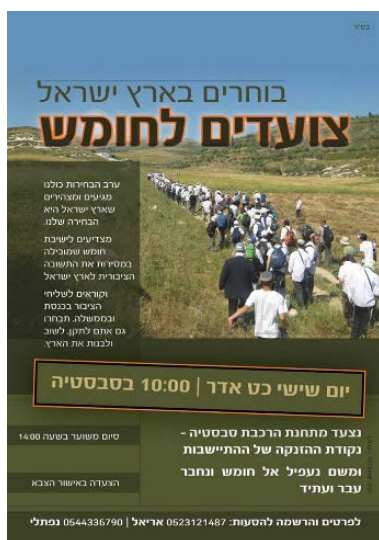
21 Ruti Avraham, “Returning to the ruins of Homesh and encountering implicit refusal”, News1.co.il (Hebrew) July 22, 2007.

22 HCJ 2417/15, **Burqa council head et al v. Commander of IDF forces in the West Bank et al**, emergency petition for an order nisi, April 5, 2015 (henceforth: **HCJ 2417/15**).

23 **HCJ 2417/15**, preliminary response on behalf of the respondent, April 6, 2015.

Thanks to the petition, the event was not held and the petition was deleted. And yet, during the past five years many similar mass gatherings did take place on Burqa land: meetings, marches and public celebrations. These events were held illegally with the participation of high-ranking officials and were reported on by the media.

For example, on Friday April 5, 2019, hundreds of Israelis came to Homesh in support of the students of the renewed Homesh Yeshiva and called on the government to repeal the Disengagement Law. They invaded private Palestinian land and violated orders prohibiting Israelis from entering the area.²⁴ Not only did Israeli authorities fail to prevent this mass violation of the law, according to the organizers the march was held “with the army’s permission”.



Invitation to the event of April 5, 2019²⁵

In May 2019, while the petition was being heard by the HCJ (see p. 30), **Knesset Speaker Yuli Edelstein** (now the minister of health), **MK Amir Ohana** (who was later the minister of justice and currently serves as minister of public security), **Head of the Shomron Regional Council, Meir Dagan** and ten Knesset members visited the site of the evacuated settlement Homesh.²⁶ Yesh Din addressed the Legal Advisor to the West Bank in order to determine whether the army had approved the event, which was held on

24 "Hundreds marched to Homesh: 'Choosing the Land of Israel'", **HaKol Hayehudi**, (Hebrew) April 6, 2019.

25 The invitation was published in April 2019 in several places including Facebook pages (Hebrew) "Returning to Gush Katif", "Northern Samaria Committee", Netzach – Soul, Zionism, Vision", and on Hakol Hayehudi website (Hebrew).

26 Carmel Dangor and Ze'ev Kam, "Edelstein at the settlement Homesh: We must repeal the Disengagement Law and settle here", **Kan News**, (Hebrew) May 16, 2019.

residents of Burqa's private property. The army's response stated that "No permit was issued to enter the area" and that "During the tour, the area was secured by IDF forces."²⁷

The large number of illegal events planned as part of a public campaign, coupled with the fact that high-ranking officials participate in these events – officials who use public funds and who flagrantly break the law – sends settlers the message that their illegal presence on Burqa land is legitimate, encouraging them to persevere in this unlawful activity.

And yet the Israeli law enforcement system does absolutely nothing to prevent such illegal events. To the best of Yesh Din's knowledge, the State's announcement that police would investigate parties responsible for such events was never substantiated.

Thus, the State of Israel, Israeli public representatives and Israeli enforcement authorities all support the ongoing violation of the law. They encourage the settlers at the site of the evacuated settlement Homesh to widen the scope of their violence and severely harm the rights of Palestinians.

27 From Yesh Din to the Legal Advisor to the West Bank Area, "MKs tour of Burqa land where the settlement Homesh stood", May 16, 2019; From the office of the Legal Advisor to Yesh Din, "Your letter regarding MKs tour of Burqa land where the evacuated settlement Homesh stood", July 24, 2019.

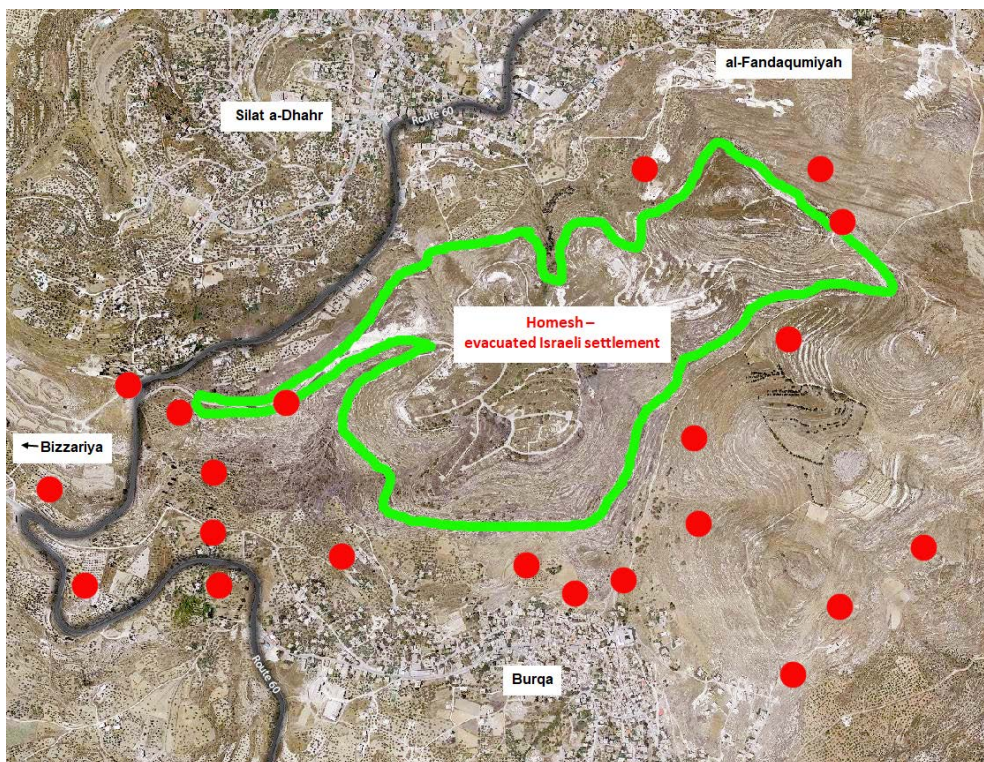
Homesh as the site of ongoing settler violence

With their violence, they've managed to make a lot of farmers stop going to their land. And that's exactly what they want: they want to take away our land. They've turned our lives into a nightmare. We are afraid to go to our land. Most of the Palestinian farmers in the area don't dare go close. It's become life-threatening. (Ali Zoabi, 55, married father of 6, al-Fandaqumiyah)²⁸

Between January 2017 – March 2020, Yesh Din documented 21 violent incidents perpetrated by Israelis who came from the site of the evacuated settlement Homesh against Palestinians on nearby land and in neighboring villages. These violent incidents included: physical assault, at times with sticks and rocks; throwing rocks at persons, vehicles and houses; shooting inside villages and backyards; uprooting and torching crops and damaging trees; theft of equipment; damage to buildings and spraying offensive slogans (“price tag”); theft of herd and farm animals; and harm to animals (these are just the incidents documented by Yesh Din and not all settler violence incidents recorded in the area).

Locating these incidents on the map shows that most violent incidents occurred outside the area of the evacuated settlement: on farmland, roads and even village residences. The violence, harassment and intimidation that comes from Homesh is designed to terrorize the Palestinians, take over their land and forcefully expand the area subject to the settlers' control.

²⁸ Unless otherwise noted, the quotes in this document were edited from interviews conducted by Yesh Din field researchers and volunteers with the Palestinian residents in 2018-2020.



● Locations of settler violence against Palestinians as documented by Yesh Din, January 2017 - March 2020

■ Boundary of the military demarcation order

The Palestinian landowners and farmers fear going to their land in or nearby the area of the evacuated settlement because they know that anyone approaching his or her land could be attacked. Also, settlers cut down, uproot or torch many of the trees and crops in this area. As a result, some Palestinian farmers prefer not to go and cultivate their land in the area near the former settlement, although their private property is located there. Instead, farmers must bear the financial consequences and suffer severe loss of income.

Mufid Abu Hussein, 72, married father of eight, Burqa

In December 2018 I left the house with my flock at 8 am. I was alone in an open pasture. I'm the only one who herds there. At around 10 am I saw a group of several settlers coming down from Homesh. I tried to run with my flock, but I couldn't.

Three of them reached me, and the rest stayed back on a hill about 15 meters away. The three men had sticks. Their faces were visible. One had sidelocks, I don't remember whether they were wearing kippas. They were young, around 25 years old. They said, "Go away", and the guys in the group farther off yelled, "Beat him up".

I always carry a stick when I'm herding. The guys up on the hill yelled, "Throw down your stick". I didn't. Otherwise I'd be dead now. They tried beating me with sticks, but I defended myself with my stick. They backed off. I wanted to run away, I ran 20 meters and then I felt a blow to my head, I fell forward face down and lost consciousness.

I was evacuated to Rafidia Hospital in Nablus. They took me to the emergency room and to an operating room. I fractured my skull.

[In January 2019, less than 3 weeks after the assault, the police closed the investigation file on grounds of "offender unknown"]

Bassem Daghlal, married father of five, 49, Burqa

On Thursday August 15, 2019, I was on holiday, it was Eid al Adha, I was visiting family in Nablus. At about 2 pm, my neighbor called me and said that settlers had gone to my land and set everything on fire. All the cypress trees planted during Jordanian rule were burned down in an area owned by the local council. The entire area around that also burned down, 50-100 dunam, east of my land. The trees [almond and apricot] I planted 15 years ago had been bearing fruit for the past ten years, so the settlers started damaging them. I intend on going back and replanting everything. I don't have other land.

[No police complaint filed]

Hassin Al-Qadi, 70, Silat a-Dhahr

I live in Silat a-Dhahr. We own farmland around what is called Homesh. We avoided going to this land for many years because of settlers who control the area. A lot of farmers from Burqa - the next village over - and from our village were badly attacked by violent settlers who stay in Homesh.

[March 2020] at around noon, my brother and I took my car and drove from our village towards our land. Unfortunately, the settlers must have seen us coming and they ambushed us. When we arrived and got out of the car, about 18 settlers with clubs and rocks came out from the trees. We saw them coming closer, we left the car behind and ran towards Burqa. My brother got hit in the hand by a rock, but we kept running. I looked back and saw the settlers shatter the car windows.

[The day after the incident [!], the police closed the investigation file, with no reason provided]

Mohannad Yassin, 46, Burqa

I own farmland north-east of the village. A few months ago, I started building a house in that area.

[March 2020] At around noon, while I was with the builders at the construction site for my house, about 15 settlers came down from the direction of Homesh, some were armed, there was a rabbi with them.

They started throwing rocks. The builders and I ran towards the village. I stopped in a spot far enough away but where I could see what was going on. I saw the settlers enter the construction site, they cut the barbed wire fence and started destroying the concrete wall.



Settlers, apparently a rabbi from the renewed Homesh Yeshiva and his students, photographed after the incident on Burqa land (Homesh) near Israeli soldiers, March 2020 (photo: Saddam Ragheb Salah)

I called the Palestinian DCO and told them what had happened. The Palestinian DCO transferred the report to the Israeli DCO and they said they would look into it. A few minutes later, from my lookout I saw soldiers who had come from the direction of Homesh standing by the settlers. They were talking to them and not doing anything to them.

In addition to destroying the barbed wire and the concrete walls, they damaged construction equipment and water tanks. The damage is thousands of shekels.

[In July 2020 the complaint was being investigated by police]

Ali Zoabi, 55, married father of 6, al-Fandaqumiyah

I own farmland by Burqa. My land is near the settlement Homesh. For many years we've suffered from violence from Homesh settlers. I personally have had difficult experiences with them. They attacked me many times. They drove me off my land and threatened me. It's gotten worse over the past few days, almost every day settlers come down to this area, attacking farmers and driving them away violently.

At the end of March 2020 at around 4 pm, while I was on my land six settlers attacked me, they came from the direction of Homesh. A few of them were armed and the others carried clubs. They kicked me all over. I fell to the ground. They kept kicking me. I cried out in pain. Apparently Palestinian farmers who were in the area heard me. The settlers heard the Palestinian farmers shouting from the distance and left me there bleeding, they went back towards Homesh.

I stayed in the hospital for two days. Now I'm home, broken and suffering terrible pain. I still can't grasp what happened to me. I'm in a terrible state. I can't stop thinking about it. I looked death in the eye. I'm a farmer and I make my living farming and I don't have other income, but I feel like my life is in danger whenever I'm in the area.

[In late July 2020, the complaint was being investigated by the police]

The violence of settlers present in the area of the evacuated settlement Homesh is also directed at Israeli security personnel. The Civil Administration's report from March 10, 2019 on the demolition of illegal construction established by settlers in Homesh, which was secured by "An entire battalion of border police and two riot police squads" says:

During operations, violent settlers made several attempts to enter the work area, some were prevented from doing so by personnel. A settler who managed to infiltrate the area threw ninjas (spikes) on the road the vehicles departed on and caused damage to the riot police vehicle and greatly delayed the troops' deployment. Further down the road to [the settlement] Shavei Shomron on the main road (Route 60), there

were several tire barricades, some on fire, and several barricades constructed of boulders and lampposts laid on and across the road. Several Palestinian vehicles on the road were harmed after colliding with the boulder barricades.

It's noteworthy that the activity was delayed by a week because the last time we planned to go up, the information was leaked and dozens of violent settlers waited for us on the hilltop, and according to our information they were armed.²⁹

Despite settler violence directed towards them, soldiers assist the offending settlers. Palestinian farmers, who try to exercise their right to property despite the challenges and continue to farm their private land near the area where the settlement Homesh once stood, face not only violent settlers but also the Israeli army. Instead of protecting the farmers while they are assaulted, the soldiers prevent Palestinians from accessing their land and stand by the settlers when they try to force farmers off their land.

Tareq Abu-Dweik, 42, married father of four, Silat a-Dhahr

I own a plot which is one and a half dunams, just under Homesh. [In March 2019], seven months ago, we put a fence up around the plot. While we were working, three settlers came and threw rocks at us while an army jeep stood by them observing; they didn't intervene.

Ali Zoabi, 55, married father of six, al-Fandaqumiyah

A few days ago [March 2020], settlers physically assaulted me and stole my horse. The settlers of Homesh are very dangerous and they don't answer to anyone. They aren't afraid of the army and they don't respect the court's decisions. What's more, the soldiers back them up most of the times they attack us.

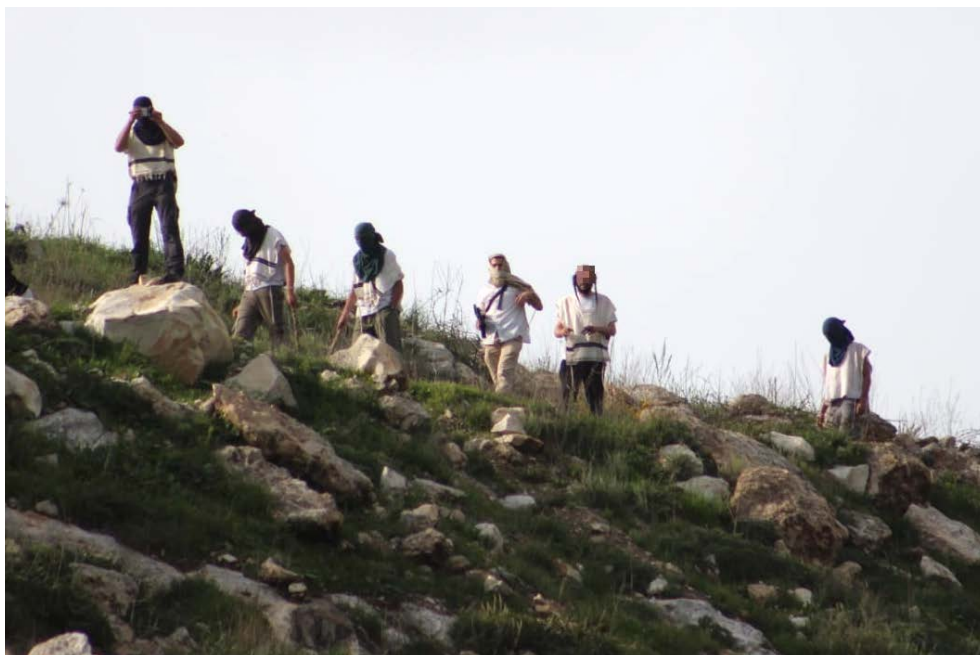
²⁹ HCJ 2821/19, preliminary response to the petition by the respondents, annex 5, August 15, 2019.

The police does not enforce the law upon Israeli settlers who harm Palestinians

Just eight police complaints were filed after the 21 incidents Yesh Din documented in January 2017 – March 2020, in which Israeli settlers who came from Homesh harmed Palestinians and their property. At the end of July 2020, four cases were still being investigated. In all four files that were concluded, the police failed to locate the offender and closed the files on grounds of “offender unknown”.

While this is not a representative sample for analyzing police efficacy, Yesh Din’s long-term monitoring of Israeli law enforcement agencies’ treatment of Palestinians complaints regarding ideologically motivated offenses committed by Israelis in the OPT reflects similar outcomes. According to Yesh Din’s data, the Israel Police failed in the investigation of 82 percent of investigation files opened in 2005-2019. Just four percent of all files investigated in 2017-2019 led to an indictment.³⁰

Yesh Din’s annual data reflect that Israeli law enforcement authorities abandon their duty to protect Palestinians from harm by Israelis in the West Bank and leave them defenseless during attacks and harassment carried out by Israeli settlers and others.



Armed Israeli settlers on Burqa land (Homesh), March 2020 (photo: Saddam Ragheb Salah)

30 Yesh Din, [Law enforcement on Israeli civilians in the West Bank](#), data sheet, December 2019.

Given such a significant failure rate for investigations, it is not surprising that in 13 of the 21 incidents documented, the Palestinian victims of offenses chose not to file a complaint with Israeli police, the body charged with enforcing the law upon Israeli settlers in the OPT. Palestinians noted that they did not seek to file a police complaint for a variety of reasons which reflect their lack of trust in Israeli authorities. Even worse, some fear that filing a complaint will lead to retaliation by settlers, police, army or Shin Bet (Israel Security Agency).

“I didn’t file a complaint and do not intend to because it’s useless”; “I’ve filed lots of complaints and nothing happened”; “I don’t wish to go to the Israeli police because I’m afraid of the army”; “I don’t wish to file a complaint; I’m afraid; I have a job”; “I don’t want to get in trouble with the police; I’ve been through enough with them”; “I’m afraid they’ll take revenge on me and my family; I prefer to keep quiet. I have a large family to take care of and support and I’m afraid the Shin Bet will prevent me from working if I file a complaint”; “I don’t want to file a complaint so that we don’t get also arrested and I don’t want trouble for my son in prison”.

International law determines that Israeli is responsible for law enforcement in the West Bank. Clearly, Israeli law enforcement systems have the means and the capacity to address settler violence. Systematic lack of law enforcement indicates that Israeli authorities choose not to quell offending activities. In doing so, they fail to uphold with their legal duty and consent to violence that furthers dispossession.

A new decree: demarcation order

In September 2013, when Israel lifted the prohibition on Palestinians from accessing their land where the settlement Homesh stood, the Proclamation regarding the Disengagement Plan changed the legal situation to prohibit only Israelis from entering the area. Yet Israeli settlers continued to maintain a regular presence there and when residents of Burqa attempted to reach their land, they were met with violence by Israelis present in the area illegally.

Prohibited, permitted; prohibited, permitted

In May 2017, Yesh Din addressed the office of the Legal Advisor the West Bank Area in order to coordinate a tour for Burqa landowners to their land. The tour was to include all landowners, agricultural experts and army representatives, and its objective was to explore possibilities for the farmers to return and cultivate their privately owned land and restore their farmland after years of forced absence.

The Legal Advisor's office's response to the request to coordinate a tour was beyond disgraceful and infuriating. Dozens of Yesh Din's letters and phone calls were ignored, doors closed, claims fabricated, and obstacles mounted intentionally. This response appears to be intentional in order to perpetuate support for violent settlers and infringement upon the rights of Palestinians. Ultimately, it took the army 18 months (!) to coordinate a tour for Palestinian landowners to visit their own land.³¹

Even worse, during attempts to spur the army to enable landowners to visit their land, in May 2018, Yesh Din learned that back in October 2017, the military commander had issued a **demarcation order**. The demarcation order was based on the military order concerning unauthorized buildings and forbids any person – Palestinian or Israeli – to enter the area of the evacuated settlement Homesh.³² The explanation for the order was the need to remove illegal structures built by Israeli settlers in the area. The order was not brought to the attention of the landowners, and Yesh Din's attorneys learned about it in passing. The bottom line is that **yet again, Israel prevented the landowners from accessing their private property**.

During those long months, Palestinian landowners absurdly tried to coordinate a visit to their own land while Israeli trespassers continued to violate the military demarcation order and the Disengagement Plan Implementation Law, utilizing the illegal structures they built

31 For the full account, see **HCJ 2821/19** [Petition for an order nisi](#), April 18, 2019, sections 81-136 (Hebrew).

32 Order Concerning Unauthorized Buildings (Judea and Samaria Area) (No. 1539).

there. In June 2018, **government minister Uri Ariel and Head of Samaria Regional Council Yossi Dagan** visited Homesh Yeshiva.³³ It seems superfluous to note that enforcement authorities did not address this flagrant violation of the law and did nothing to prevent trespassing and violation of orders, or prosecute the offenders.

On December 9, 2018, over 18 months after the request, the Palestinian landowners finally managed to visit their land with coordination. But even during the much-anticipated visit, many of its goals were thwarted: the army approved the Palestinian landowners and their lawyers for the tour but denied access to additional Israeli professionals.

During the tour, it became apparent that the illegal structures constructed by the settlers had not been removed in the 14 months since the demarcation order was issued. Therefore, the demarcation order's alleged goal was not carried out; however, Israel's ongoing policy of preventing residents of Burqa from reaching their land was.

The semblance of law enforcement

As stated, Israel's law enforcement authorities do not prevent settlers' violence against Palestinians and fail – or do not seek to – enforce the law and prosecute offenders (see p. 24). Concurrently, authorities fail in their duty to counter the settlers' illegal presence at the site of the evacuated settlement Homesh in violation of the military order and the Disengagement Law Implementation Law, and their illegal construction on private Palestinian land.

Israeli soldiers are Israel's main force in the OPT; they are tasked with maintaining public order there, among other duties. It is they who hold the authority and have the duty to detain and arrest Israelis suspected of a criminal offense until the police arrive. Documents the State presented to the Court reveal that soldiers do not perform their duty, whether deliberately or as a result of unprofessional conduct.

For example, on March 14, 2015, the army apprehended ten Israeli settlers at the site of the evacuated settlement Homesh; the forces "left the settlers unsupervised and they fled". On April 30, 2015, "An Israeli vehicle was identified leaving Homesh [...] it was released by the company commander without informing the brigade command." On June 24, 2015, "Twelve settlers were reported in Homesh, about 20 years old. One of the settlers was identified bearing an object suspected to be a weapon and hid it once he noticed the soldiers. An armored personnel carrier blocked the exit from Homesh, but the force lost contact with the settlers." On February 11, 2017, a military squad identified ten settlers in Homesh and "Made them move away without taking their personal information"; on February 28, 2017 "The DCO reported settlers throwing rocks at a Palestinian in Homesh.

33 Ido Ben Porat, "Ariel at Homesh: Waiting to repeal the disengagement", **Israel National News**, (Hebrew) June 6, 2018.

Forces arrived on site, after which they discovered that a small structure had been erected and ten settlers were studying Torah inside. According to orders from the deputy brigade commander and after a police car did not arrive, the soldiers took photos and left"; on September 12, 2017, "A military force went up to Homesh and identified 15 settlers and three vehicles. The personnel returned to their station and returned half an hour later to document, but the settlers were not present" (excerpts from the annex provided by the State documenting settlers' offenses against Palestinians in the area).³⁴

Unprofessional conduct or the non-enforcement policy is also the response to illegal Israeli construction on Burqa land. On March 10, 2019, Civil Administration and Israel Police personnel evacuated several illegal structures constructed by Israeli settlers on privately owned Palestinian land, which served the students of the renewed Homesh Yeshiva. Settlers responded with severe violence against security forces personnel during the evacuation (See account on p. 22).

Less than a month after the Civil Administration's enforcement action, it became clear that this was yet again a futile action designed to provide a semblance of law enforcement. The website "Hakol Hayehudi" reported on a settlers' mass march to the evacuated settlement Homesh (See account on p. 16) and noted that the illegal structures evacuated by security forces "did not loosen the grip on Homesh and the Yeshiva had continued to operate at the site while receiving wide public support as part of an online fundraising campaign".³⁵

Midreshet Ma'amakim, an Israeli non-profit dedicated to religious-Jewish education for girls launched a crowdfunding campaign on the website FundMe - Israel Gives, entitled "Despite the destruction – holding on to Homesh". Formally the organization, which is funded in part by the Ministry of Education,³⁶ fundraised in order to purchase a mobile structure to be set on the land where the illegal structures were removed the day before. The campaign raised over NIS 97,000.³⁷

On June 4, 2019, Yesh Din called on the Israel Police to investigate Midreshet Ma'amakim. Yesh Din argued that Midreshet Ma'amakim calls on the public to donate to help students of the renewed Homesh Yeshiva invade and trespass on private Palestinian property in violation of a military order and establish structures illegally. The complaint demanded the police investigate the relevant parties at Midreshet

34 **HCJ 2821/19**, preliminary response to the petition on behalf of the respondents, annex 3, (Hebrew) August 15, 2019. The full document is available in Hebrew as an annex to this report, see p. 39-41.

35 "Hundreds marched to Homesh: 'Choosing the Land of Israel'", **HaKol Hayehudi**, (Hebrew) April 6, 2019.

36 Yotam Berger, "Education Ministry Gave Millions to NGO That Funds Illegal Outpost", **Ha'aretz**, March 21, 2019.

37 An addition crowdfunding campaign in 2018 on the website charidy entitled "There is a Homesh plan". In the explanatory notes to the campaign for supporting the renewed "Homesh Yeshiva" it said: "Every day, yeshiva students go to Homesh to study". Yeshiva members' flagrant violation of the law reaped NIS 1,318,370 in crowdfunding.

Ma'amakim, including allegations of aiding offenses such as trespassing and conspiring to further a forbidden goal and obstructing justice.³⁸

On November 4, 2019, the police closed the investigation file without providing a reason.

After reviewing the investigation file, Yesh Din learned that the police had closed the complaint without carrying out any investigation. The investigation had been transferred from Samaria Area Police to the Binyamin Police, then to Modi'in Illit Police, and after a Kafkaesque ordeal in which the Israel Police managed to lose the complaint no less than three times, it closed the file without performing a single investigative action (!).

On January 16, 2020, Yesh Din appealed to the state attorney's office demanding it reopen the investigation file against Midreshet Ma'amakim, which was closed without an investigation, and investigate allegations. On June 14, 2020, the state attorney's office denied the appeal and stated: "Given the circumstances, a criminal process would be unjustified."³⁹

The documents the State submitted to the Court outline the rest of the ludicrous saga of law enforcement agencies vis-à-vis the settlers. For example, according to the state attorney's office on July 2, 2019 - and only after an additional request by Yesh Din - an illegal structure constructed by settlers was "discovered" at the site of the evacuated settlement Homesh and was removed by police on July 16, 2019. Less than two weeks later, illegal construction at the site was again reported. During a tour of the site, authorities again "discovered" that settlers had re-established no fewer than 14 structures in the area subject to the demarcation order (see aerial photo on p. 11). On August 15, 2019, according to the State, "all construction on the site was destroyed or seized".⁴⁰

Clearly, offending settlers and the enforcement authorities play hide and seek thanks to Israel's policy of not enforcing the law, not preventing Israeli settlers from invading Palestinians' private property and refraining from prosecuting offenders in order to deter others.

The demarcation order the army issued in order to allegedly address Israeli settlers' invasions and illegal construction on private land owned by residents of Burqa was detrimental to the Palestinian landowners because of Israeli enforcement authorities' conduct. Israeli settlers

38 Yesh Din also addressed the Registrar of Non-Profits and demanded it sanction the organization according to his powers. The request was denied until the police's work was concluded.

39 Ministry of Justice to Yesh Din: Decision in appeal file regarding appellant Yesh Din, June 14, 2020.

40 **HCJ 2821/29**. Preliminary response to the petition on behalf of the respondents, August 15, 2019; **HCJ 2821/19** Response on behalf of respondents 1-3, September 4, 2019.

and public officials continued to visit, occupy and build illegally on private Palestinian land without facing any enforcement actions or effective punishment.

The third petition

On April 18, 2019, landowners from Burqa petitioned the HCJ with the assistance of Yesh Din demanding free access to their land.⁴¹ The petition was submitted five years after Israel revoked the military seizure order and declared Burqa residents free to return to their private land and 18 months after the army issued a demarcation order that yet again prevented the landowners from fulfilling their rights to their own property. The petition was filed after countless complaints to the army and law enforcement representatives, demanding they perform their duty and remove Israeli trespassers who invaded private property and who violently dissuade their rightful landowners from going to their land.

The landowners asked the Court to determine that Israel must revoke the demarcation order that applies to them and provide them with free access to their land. They also asked the Court to prevent Israeli settlers from going to private Palestinian land and prosecute Israelis who openly violate the demarcation order and the Proclamation regarding the Disengagement Plan.

The petition details the constant presence of Israeli settlers and others on private Palestinian land, and Israeli law enforcement authorities' inadequate responses to open, mass violation of the law. In addition, the petition demonstrates how Israeli law enforcement agencies' ineffectiveness vis-à-vis settlers' offending activity harms Burqa landowners, who are protected persons in an area under Israeli military occupation. This conduct infringes upon their right to property, freedom of movement, and their right to earn a living and to freedom of occupation.

The petition also argued that in refraining from prosecuting offenders who violate orders, Israel is destroying the element of deterrence in criminal law leading to a regular presence of Israeli settlers in the area. With circular logic, the same false military alleged justifications prevent the Palestinian landowners from freely accessing their land. This Israeli policy harms the rule of law in its entirety and suggests selective enforcement driven by political interests.

The petitioners added that given the State's responses, it is no surprise that the settlers' offending actions transcend offenses such as invasion of private property, illegal construction and violation of military orders, becoming violent and dangerous. In the absence of enforcement, settlers receive the message that they are not subject to the law

41 **HCJ 2821/19** [Petition for an order nisi](#), April 18, 2019

and that they can evade any responsibility for injustices they carry out against Palestinians, including life-threatening acts of violence.

Revoking the demarcation order upon Palestinians

Responding to the petition, the state attorney's office claimed that "authorities undertake – and will continue to undertake – enforcement action according to security considerations, priorities and resources", and that before the demarcation order expires in October 2019, it would consider claims regarding restricting Palestinians from accessing their private land.⁴² As noted, conversely to the State's claim regarding enforcement, the documents attached to the State's response reveal Israel's policy of lack of enforcement and how it leads to the persistence of Israeli settlers' illegal activity on Burqa land.

Again, on May 16, 2019, while the petition was being heard by the HCJ, 12 Knesset members visited the site of the evacuated settlement, headed by **Knesset Speaker Yuli Edelstein** (now minister of transportation) and **MK Amir Ohana** (previously the minister of justice, now minister of public security).⁴³ Besides flagrantly violating the law, the presence of senior public officials on private Palestinian property reinforces and encourages the settlers' offending activity.

During a hearing before the HCJ on September 9, 2019, State representatives repeated their claims asserting past and future law enforcement. Absurdly, the State also updated the Court that on the previous day, 150 Israelis came to the area where the settlement Homesh once stood. During the hearing, Justice Vogelman noted that applying the demarcation order upon the Palestinian landowners is a sign of a "a world turned upside-down", and that the army maintaining order and security should not mean "preventing law-abiding people from accessing their land".⁴⁴

The state attorney's office updated the Court on December 5, 2019, stating that the demarcation order had been extended "due to the need to address illegal Israeli construction in said area". However, the order had been amended so as not to prevent persons from entering the demarcated area and prohibited establishing structures in the area. The State stressed that **"The prohibition on Palestinians entering said area has been revoked" and Israelis are prohibited from entering the area pursuant to the Proclamation regarding the Disengagement Plan.**

42 **HCJ 2821/19**, preliminary response to the petition on behalf of the respondents, August 15, 2019; HCJ 2821/19, response to the petition on behalf of respondents 1-3, September 4, 2019.

43 Carmel Dangor and Ze'ev Kam, "Edelstein at the settlement Homesh: We must repeal the disengagement law and settle here", **Kan News**, (Hebrew) May 16, 2019.

44 **HCJ 2821/19**, protocol, September 9, 2019.

The State also updated the Court on its enforcement actions, during which 19 Israeli suspects were summoned for questioning - suspects observed and documented in the area by police in October-November 2019. Yet the enforcement circus continued: according to the update, just one suspect appeared and was investigated. And, that the very same day, another “enforcement action was taken against illegal construction located in the area”.⁴⁵

The court vs the reality

Approximately one week after the State announced it had lifted the restrictions on Palestinians' access, on Friday December 13, 2019, the landowners and other farmers from Burqa planned to go to their land in order to inspect the soil and farm. Half a kilometer from their land, the farmers encountered a military force of some 15 soldiers and several border police vehicles.

The soldiers informed the farmers they could not continue to their land and instructed them to return home. The Palestinian farmers presented the soldiers with the State's update revoking the prohibition on Palestinians from entering the area pursuant to the demarcation order. The soldiers informed the farmers that they did not care about court documents and that they had not received any order to allow Burqa farmers to go to their land.



Burqa landowners present the soldiers with the State's documents, Burqa, December 13, 2019 (photo: Saddam Ragheb Salah)

⁴⁵ HCJ 2821/19, update on behalf of the respondents, December 5, 2019.

The farmers then noticed two Israeli vehicles approaching Homesh, as well as several Israelis present on the site of the evacuated settlement. The farmers directed the soldiers' attention to the fact that trespassers were on their land, also violating the order prohibiting the entrance of Israelis. The soldiers responded with indifference.

At a certain point, the soldiers began threatening the Palestinian farmers, saying they would be violently dispersed if they did not leave the area. The farmers had no choice but to return without exercising their right to access their land.

Yesh Din addressed the state attorney's office on behalf of the landowners and reported the incident, demanding that soldiers stationed in the area comply with the legal situation. And yet, a week later, on December 20, 2019, residents of Burqa attempted to reach their land for the second time since the order prohibiting their entrance was revoked. Again, soldiers prevented the Palestinian farmers from going to their land and did nothing to remove the Israelis illegally present on residents of Burqa's private land.

Several days later, the army responded that the soldiers who prevented residents of Burqa from entering their land "did so erroneously", and that "the incident would be investigated in order to prevent it from recurring".⁴⁶

On January 1, 2020, Burqa farmers made a third attempt to reach their land. Bassem Daghlas, 49, a farmer from Burqa recounted the events of the day:

I own four dunams of land, 500 meters from where the settlement Homesh once stood. Fifteen years ago, after the settlement was evacuated, I planted 250 almond and apricot trees. I also dug a well.

Five years ago, when I came to farm my land, soldiers who were in the settlement area came and forced me away with cocked weapons. Four years ago, settlers came on ATVs and broke some of the trees. Three years ago, settlers from Homesh came and broke the branches off some of the trees.

On January 1, 2020, at 9 am, I noticed army forces and a bulldozer at the main entrance to Homesh. I saw the bulldozer setting down large concrete cubes onto the road with mounds of dirt on either side, creating a sort of barricade at the entrance to Homesh to let just one car in at a time.

We met at the council offices at 11 am and decided to try to go to our land again. We were a motorcade of about 20 cars. We loaded saplings and tools and started onto the main road. We got to the point where the barrier was. There were four soldiers

46 From the office of the Legal Advisor to Yesh Din, "Your letter regarding prevention of access to private land in the area where the evacuated settlement Homesh once stood", December 26, 2019.

there. I went up to one of them with the documents, including the Court ruling [the State's documents] in our petition.



Bassem Daghlis, Burqa, January 1, 2020 (photo: Saddam Ragheb Salah)

The officer said, "We're allowing you to go on foot only. You can only use the left lane of the road. If anyone swerves into the right lane, we might cock our weapon and put him in jail and the Shin Bet will pay him a visit". We agreed to all these many terms because what was really important to us was being able to reach our land.

We decided not to take all the planting equipment that we had brought with us because it was two-three kilometer walk. We decided it would be enough to go see our land and stay there, even for a short time. We moved empty-handed on the left lane, where we had been allowed to walk, with the soldiers in the right lane and an army jeep in front of us the entire time.

We got 50 meters from the entrance to our land and there were about ten border police officers standing in the middle of the road. The officer said, "you can't continue straight to your land. You can only be on the north-western side of Homesh, on a limited area of around 20 dunams of land", although most of our land is not in this area. While he was talking and announcing these rules and new restrictions for

accessing our land, we saw five settlers on our land, where we were now not allowed to go.

The soldier with his translator came over to me and asked, "What do you want?" I replied, "There are settlers on our land". He said, "Those aren't settlers, those are soldiers". I said, "Those aren't soldiers; they're in plain clothes; those are settlers". The officer replied, "Every Israeli is a soldier".

On January 10, 2020, the army prevented Burqa residents' fourth attempt to reach their land. Absurdly, the commanding officer claimed they could not go to their land because Israelis were present there. Instead of removing the settlers, who were trespassing and violating military orders, the army prevented the Palestinian landowners from going to their private property. On January 17, 2020, Burqa residents were again not allowed to access to their land with their vehicles and had to leave tools and farming equipment behind and walk a long way on foot.

Yesh Din addressed the army and the state attorney's office for the fifth time and reiterated that preventing access to the land, which clearly is not in error, violates the law and constitutes gross insubordination. Repeatedly denying access to landowners carelessly, without any explanation or justification and without those responsible carrying out the necessary steps in order to remedy matters, reflects arbitrary conduct at best, and ill will at worst.⁴⁷

On February 11, 2020, Yesh Din updated the Court on behalf of the landowners regarding the practice, which is contrary to the legal situation. During approximately three and a half months since the demarcation order was revoked, landowners attempted to reach their land five times. Each and every time military personnel anticipated their attempt and prevented them from freely accessing their land with the necessary farming tools and restricted landowners' access to their own property. The court was updated that while the army prevented the Palestinian landowners from going to their land, Israeli settlers were present in the area of the evacuated settlement Homesh illegally, the picture of a perfectly warped reality.

47 From Yesh Din to the Legal Advisor to the West Bank Area and the state attorney's office, "Restrictions on access to residents of Burqa's private land, where the evacuated settlement Homesh stood and lack of law enforcement upon offenders", January 19, 2020



Landowners from Burqa and Yesh Din representative, Burqa, February 2020 (photo: Saddam Ragheb Salah)

Yesh Din noted that contrary to the State's claim to the Court that Burqa farmers could access their land unrestricted, in practice the army prevents or, at the very least, restricts their ability to reach their land, cultivate it and exercise their rights to it. And so, the alleged enforcement the State presented to the Court is at best a semblance of law enforcement. Because in practice authorities fail to undertake effective and deterring steps to enforce the law, the absurd situation persists - if not worsens.⁴⁸

In late February 2020, Burqa farmers managed to reach their private land where the evacuated settlement Homesh stood with their farming equipment. Israeli settlers were again observed in the area of the evacuated settlement Homesh, in violation of the law.

In March 2020, COVID-19 spread throughout the West Bank and Palestinian farmers avoided going to their land. Throughout the pandemic and in late July 2020, Israeli settlers continue to stay at the site of the evacuated settlement Homesh.

The HCJ scheduled an additional hearing in the petition for October 19, 2020.

48 HCJ 2821/19, the petitioners' response to the update provided by the respondents, February 11, 2020.

Summary

Every day, armed Israeli settlers roam close to the houses and on village land, attacking farmers and driving them away violently. Unfortunately, the settlers' attacks have become a difficult daily occurrence. The settlers from Homesh keep attacking us and the army does nothing. I feel helpless. They don't respect the court and they gain strength from the army's support. (Mohannad Yassin, 46, Burqa)

For over 42 years, Israel has barred the residents of the Palestinian village Burqa from freely accessing their private land. A decade of legal proceedings - which are still pending - have led to a legal situation whereby the Palestinians may freely access their land where the evacuated settlement Homesh stood, while Israelis are forbidden from entering this area.

However, the reality is completely different, a "a world turned upside-down" in the words of the Israeli High Court. To this day, settlers from the renewed Homesh Yeshiva and other Israelis continue to enter the area and occupy it without interruption in violation of the law. In contrast, the Palestinians are denied or restricted access to their private property because of arbitrary army restrictions on the Palestinian farmers' movement and because of settler violence, which spreads fear, harms and disrupts the lives of Palestinian residents in the area.

Settler violence that emerges from the evacuated settlement Homesh is designed to take over land and drive the Palestinian farmers off their property. There is context to this violence: it receives support and encouragement from political forces and high-ranking officials, some of whom are publicly funded. By visiting the evacuated settlement in flagrant violation of the law and supporting the settlers who trespass on private Palestinian land, they legitimize illegal actions.

The army or police do not effectively counter the settlers' illegal presence in the area subject to the demarcation order, their illegal construction on private Palestinian land and their violence against Palestinians and their property. Moreover, in the overwhelming majority of cases, law enforcement authorities do not prosecute offending settlers, thereby sending them the message of impunity which in turn allows offenders to continue without fear of consequences.

In recent years, the formal Israeli position has openly expressed its aim to take over land in the West Bank and later annex it to Israel. This mode of action is similar in many areas of the OPT. First the State seizes Palestinian land by issuing military orders or declaring them public land. Then Israeli settlers go to Palestinian land (in many places in the West Bank events took place in reverse order but no less illegally – settlers first established illegal

outposts and the State later retroactively authorized these outposts). The army arrives to guard the Israeli citizens, and in most cases, the State provides infrastructure, funding and legitimacy. In many areas in the OPT, settlers employ violence against Palestinians to intimidate and drive them off their land and increase the amount of land stolen. Law enforcement authorities – the police, army and state attorney's office – all cooperate with the settlers. Instead of enforcing the law upon offending Israelis, authorities aid efforts to drive Palestinians off their land. Israeli settlements and outposts grow, and Israel expands its control over land in the West Bank.

Israel uses this formula with regard to Burqa land: seize private land for military use > issue military demarcation orders > prevent access to Palestinians > assist and legitimize, provide public and political support for settlers > settler violence > army backing > lack of police enforcement - and Israeli control over land in the West Bank expands.

Despite the best efforts of the entire Israeli system and the absurdity of the situation, Palestinian landowners from Burqa persevere in their frustrating struggle. They are attempting to drive a wedge and crack open Israel's colonialist methods so they may return freely and fully to their land which was stolen from them, and exercise their right to property, freedom of movement, their right to earn a living and to freedom of occupation.

The breadth of Israel's actions examined in this document reaffirm and strengthen the conclusion that the crime against humanity of apartheid is being committed in the West Bank. The perpetrators are Israelis, and the victims are Palestinians. The Israeli occupation is a regime of domination and oppression of one national group by another, accompanied by a large-scale colonization project. The crime of apartheid is being committed in the West Bank because Israeli authorities implement policies and practices that constitute "inhuman acts" as the term is defined in international law: Denial of rights from a national group, denial of resources from one group and their transfer to another, physical and legal separation between the two groups and the institution of a different legal system for each of them.⁴⁹

Yesh Din calls on the Israeli authorities, who have the duty to maintain public order in the OPT, to prevent Israelis from illegally entering the area of the evacuated settlement Homesh and allow Burqa residents free access to their private land and provide for their safety. The police and the state attorney's office must prosecute offending settlers who trespass and build illegally on Burqa land and who commit violent offenses against Palestinians and their property.

49 For more information, see **Yesh Din**, [The Occupation of the West Bank and the Crime of Apartheid: Legal Opinion](#), June 2020.

Annex

The Israeli Army Samaria Regional Brigade's "Tables of area history" (from **H CJ 2821/19**, preliminary response to the petition on behalf of the respondents, annex 3, August 15, 2019) (our highlighting).

2015

תאריך	אירוע
22/1/15	דיווח מהמתייק על 8 מתיישבים בחומש. כוח עלה לחומש וסרק, ללא ממצאים.
16/2/15	דיווח על מתיישבים שהגיעו לחומש והחלו ליידות אבנים על חקלאים פלסטינים. כוחות קפצו לנקודה וסרקו, ללא ממצאים.
17/2/15	דיווח על מתיישבים בחומש. כוח עלה לנקודה וזיהה 6 מתיישבים בהנחיית מח"ט חוקפץ צוות מג"ב. המתיישבים ברחו כשזיהו את הכוח.
14/3/15	דיווח על מתיישבים בחומש. כוח עלה למקום וזיהה מתיישבים מטפסים על מאגר המים. עם התקרבות הכוחות הגי"ל ברחו. הכוח הצליח לתפוס מתיישב אחד שהועבר למשטרת ישראל. בשעה 16:46 התקבלה הודעה מהגדוד כי נתפסו 10 מתיישבים. הכוח ממתיין לצאת השבת כדי לפנות אותם על גבי ספארון שנקרא למקום. כוח שירד ללוות את הספארון השאיר את המתיישבים ללא השגחה והם ברחו. נמסר ממ"י כי נמצאו במקום שולחנו, כסאות, כבל חשמל, מנורות, מזרנים ושמיכות.
15/4/15	דיווח על 7 תרמילאים במרחב חומש. בהנחיית סמח"ט חפ"ק וסיוור קפצו לנקודה. לאחר הגעת הסיוור לנק' נתפסו מס' מתיישבים אשר מבירור עלה כי אינם קשורים לאירוע (הערה: לא ממש ברור...)
23/4/15	דיווח על 100 תרמילאים בחומש. בהנחיית סמח"ט וק' הגמ"ר הגדוד ליווה 2 אוטובוסים לחומש ע"מ להוריד את התרמילאים.
30/4/15	זוהה רכב ישראלי יוצא מחומש, בוצע חסם בצל. הגז שתפס את הגי"ל. הרכב שוחרר בהחלטת מ"פ ללא יידוע החט" (הערה: ר' פירוט נוסף בטבלאות)
15/5/15	דיווח על ערבי ישראלי שעלה לחומש, ומתיישבים יידו עליו אבנים. כוח שהגיע למקום מצא את המתיישבים אך הם ברחו. טרם הגעת ניידת מ"י לנקודה. מס' הרכב נרשם ע"י הכוח וזוהה ע"י מ"י.
16/5/15	(ראו פירוט אירוע בטבלה)
21/5/15	מרדף רכוב אחר כ-20 בני ישיבה בחומש, אחד המתיישבים נתפס ע"י הכוח, עוכב ונלקח להמשך טיפול מ"י. מ"י והכוח הציגו צו אלוף שאוסר שהייה במקום. (פירוט נוסף ראו בטבלה)
28/5/15	מתיישבים הוצאו מחומש ע"י הכוחות ושוחררו ללא ידיעת החטיבה (ראו פירוט נוסף בטבלה)
24/6/15	דיווח על 12 מתיישבים בחומש, בני 20 לערך. אחד המתיישבים זוהה עם חפץ החשוד כנשק, והחביא אותו כשהבחין בכוח. ספארון של הגדוד חסם את היציאה מחומש אך הכוחות איבדו קשר עין עם המתיישבים. במהלך סיוור פיקוח נמצאו 10 תלמידי ישיבה בחומש. הכוחות הרחיקו את הגי"ל ללא לקיחת פרטיהם.
4/10/15	דיווח על 30 מתיישבים בחומש. סמח"ט, סמ"פ וניידת מ"י הגיעו למקום, ודיווחו על כ-200-150 מתיישבים בשני מוקדים. הגי"ל מסרו כי ברצונם לעזוב את המקום רק בצאת החג. בהנחיית המח"ט הוחלט לפנות את המתיישבים בצאת החג.
26/10/15	אירוע במהלכו פונו 20 מתיישבים מחומש (פירוט נוסף בטבלה)
2/11/15	תלונה מ- DCO על מתיישבים בחומש. כוח שעלה למקום בשעה 16:54 זיהה 10 מתיישבים מתפללים במקום. המתיישבים ביקשו להתפנות עצמאית ב- 18:00. כוח ליווה את המתיישבים אל מחוץ למקום. שוחררו ללא לקיחת פרטים.
23/11/15	אירוע של עליית 15 מתיישבים לחומש. במהלכו בוצע פיגוע דריסה, במהלכו נפגע באורח קל מתיישב אחד, שפונה ע"י תאגי"ד לבית חולים. בעת הפינוי, שניים מ-3 רכבי המתיישבים ברחו מהמקום. המתיישבים הועברו להמשך טיפול מ"י.

2016

תאריך	אירוע
11/2/16	התקבלה טענה מ-DCO על מתיישבים בחומש. כוח הגיע לנקודה זיהה 10 מתיישבים והרחיק אותם ללא לקיחת פרטים
15/3/16	דיווח על רכב עם 15 מתיישבים בחומש. כוח ביצע ציפוסט בשיתוף מ"י בצומת גנות אך הני"ל לא נתפס.
30/3/16	עלית כ-50 מתיישבים לחומש במהלך הלילה. בשעות הבוקר החל הפס"ד של כ-300 פלסטינים שעלו לחומש, במהלכו בוצע ז.א. לעבר הכוח שהגיב באלפ"ה. הועבר מסר למושל, בבקשה להפסיק את הקריאות המעודדות הגעת פלסי לנקודה. המתיישבים פונו מחומש ע"י כוחות מגיבי ע"ג 2 אוטובוסים, בליווי כוחות צבא ומשטרה. (פירוט נוסף בטבלה המלאה)
13/5/16	זיהוי רכב ישראלי עם שני דגלי ישראל עולה לכיוון חומש. כוח עלה למקום לביצוע סריקה ובהמשך נמסר כי הרכב זוהה חוזר לשבי שומרון.
27/6/16	דיווח DCO על מתיישבים שגנבו צאן מרועה פלסטיני ועלו עם הצאן לחומש. כוח הגיע למקום וראה מתיישבים, אך לא היה צאן. לאחר בירור מול הימ"ד עלה כי המתיישבים ברחו מהכוח בחומש. נידת מ"י חיכתה למתיישבים בכניסה לשוב שבי שומרון אך הני"ל לא נתפס. מ"פ צילם את המתיישבים ואת רכביהם וככה"נ הני"ל יוזמו לחקירה. בעל הצאן מסר למת"ק כי הכבשים חזרו אליו ולא מדובר בגניבה.
24/10/16	דיווח על 4 רכבים שעלו לחומש. כוח עלה לחומש, תפס את הרכבים וצילם. נידת מ"י הוקפצה אך לא הגיעה. לאחר דיווח של הגדוד כי המתיישבים סרבו לרדת מחומש, סמח"ט קפץ לנקודה והנחה את הכוח לרדת ולהמתין בצ. 24. התמונות שהכוח צילם הועברו למ"י. בשעה 22:05 נמסר מהסמח"ט כי כלל הרכבים התפנו מחומש, וככה"נ הני"ל שהו שם במהלך החג.
16/11/16	דיווח מגי"ב על רכב ישראלי שהגיע לחומש ונתוכו כ-10 מתיישבים. לאחר שהמתיישבים זיהו את הכוח הם ברחו, ובוצע אחריהם מרדף. הרכב נמצא בשוב אבני חפץ ללא המתיישבים בתוכו.
17/11/16	דיווח מגי"ב על 3 רכבים ישראליים שעלו לחומש. כאשר הנהגים זיהו את צוות מגי"ב, 2 מהם הסתובבו וברחו ואחד עלה לחומש. אחד הרכבים הוא אותו רכב שנהגו ניסה לעלות לחומש ב-16/11/16. בהמשך, הרכב הישראלי שנכנס לחומש ברח ככל הנראה ונכנס לכפר בורקא, והכוחות לא מצאו אותו במרחב.
12/12/16	דיווח על 7 מתיישבים שעלו לחומש וככל הנראה ניסו להקים מאחז. המתיישבים ירדו מחומש טרם הגעת הכוח לנקודה

2017

תאריך	אירוע
8/2/17	מגיב תפסו כ-20 מתיישבים בחומש
28/2/17	דיווח מהמתייק על מתיישבים שביצעו ז.א. לעבר פלסטיני בחומש. כוח הגיע למקום ולאחר הגעתם התברר כי במקום הקימו ביתן ובו כ-10 מתיישבים שלמדו תורה. בהנחיית סמח"ט ולאחר שניידת לא הגיעה לנקודה, הכוח צילם את הנ"ל ועזב את המקום.
15/3/17	טענה מ-DCO על 30 מתיישבים בחומש שגנבו כבשים של פלסי שרעה במקום. סמח"ט הורה להקפיץ ניידת מ"י וכוח לנקי. נמסר מהגדוד על חיכוך בין המתיישבים והפלסי בנקי. מ"פ עלה לחומש וזיהה כ-15 מתיישבים, אך לא זיהה פלסטינים במרחב. סמח"ט הנחה 2 צוותי מג"ב ונציג מתייק לעלות לחומש. הנ"ל סרקו ללא ממצאים. ניידת מ"י חוזלשה.
25/3/17	בהמשך לדיווח הקודם, ניידת מ"י ו-2 צוותי מג"ב עלו לחומש במטרה להוריד את המתיישבים. במרחב נמצאו 21 מתיישבים, 10 מהם התבצרו בצריף. 6 מתיישבים התנגדו לרדת, נהגו באלימות כלפי השוטרים ונלקחו לחקירה במשטרת אריאל. השתלשלות של אירועים נוספים שהתרחשו לאחר מכן – מפורטת בטבלה
2/5/17	הודעה על 50 מתיישבים שעלו לחומש. כוח ותצפיות לא זיהו דבר. בהנחיית סמח"ט כוח לא קפץ לנקודה.
22/5/17	דיווח על 8 מתיישבים בחומש. לאחר הגעת כוח לנקודה המתיישבים ירדו מהמאחז.
3/6/17	דיווח על מסי מתיישבים שעלו לחומש למשך השבת. כאשר רצו לרדת זיהו צמב"ר וחזרו לכיוון חומש. בהנחיית מח"ט כוח עלה למקום והוריד את המתיישבים.
12/9/17	כוח עלה לחומש וזיהה 15 מתיישבים ו-3 רכבים. הכוח חזר למוצב ושם לאחר חצי שעה כדי לצלם, אולם המתיישבים לא נכחו.

2018

תאריך	אירוע
16/4/18	התקבלה טענה מה-DCO על מתיישבים מחומש שביצעו ז.א. לעבר רכבים פלסי מבורקא. כוח הגיע לנקי וסרק ללא ממצאים.
18/4/18	טענה מה-DCO על מתיישבים שביצעו ז.א. לעבר רכבים פלסי באזור חומש. תצפיות וכוח סרקו ללא ממצאים.
2/5/18	טענה מה-DCO אודות רכב עם מתיישבים בחומש. כוח קפץ לנקי וסרק ללא ממצאים.
23/6/18	אבטחת ירידת מתיישבים מחומש בעקבות צפי לזריקת מטענים ובקת"בים לעברם. בעת הפעולה נזרק בקת"ב לעבר מ"פ (עוד פירוט בטבלה המלאה). כלל המתיישבים ירדו בבטחה. בהנחיית סמח"ט הוצבה חסימה הנדסית בציר העלייה לחומש.
17/9/18	זריקת בקת"ב על רכב ישראלי שירד מחומש. הנהג הגיע למחסום גנות ודיווח על האירוע לכוח. כמו כן, מסר כי בחומש יש מתיישבים נוספים. בהנחיית מח"ט כוח עלה לנקודה ואבטח את ירידת המתיישבים הנוספים.
17/10/18	טענת מתייק על 40 מתיישבים במרחב שבין חומש לבורקא; כוח שהיה במהלך סיור זיהה מסי מתיישבים במרחב. בשעה 13:02 התקבלה טענת מתייק נוספת כי המתיישבים היכו פלסטיני ובעקבות כך הנ"ל שבר את ידו ופונה לביה"ח בשכם. כמו כן, המתיישבים לקחו את חמורו של הפלסטיני. כוח עלה לחומש וסרק ללא ממצאים.