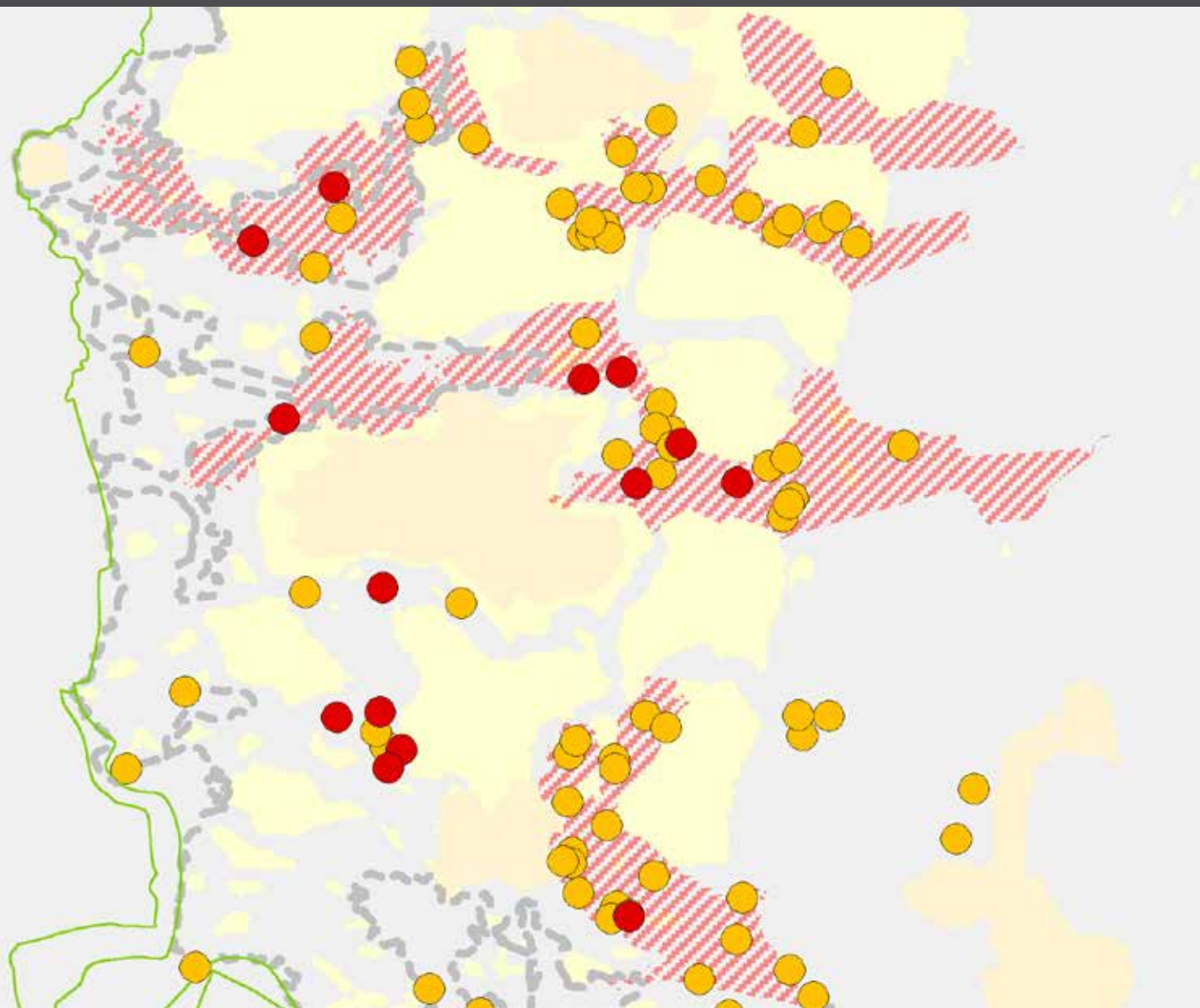


UNDER THE RADAR

Israel's silent policy of transforming unauthorized outposts into official settlements



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EXECUTIVE SUMMARY

In recent years, alongside the official, visible track for government approval and advancement of building plans in the settlements, there has been a silent, parallel track for creating new settlements and expanding areas under the control of existing ones by retroactively approving dozens of unauthorized outposts. Approximately a quarter of the 100 outposts that currently exist have been approved or are at various stages of the approval process.

This report points to a dramatic shift in Israel's official policy regarding new settlements and outposts. Successive Israeli governments have enabled the building of outposts and provided support and funding for their establishment and ongoing existence. The Government of Israel (GOI) continues to do so to this day. Simultaneously, the GOI consistently denies the status of these outposts, established without official permission and in violation of Israeli (as well as international) law, as settlements, and continues to claim that, in keeping with its international undertakings, it does not create new settlements. In fact, it does.

Over the years, Israel has made commitments to halt settlement construction in the Occupied Palestinian Territories (OPT) and dismantle illegal outposts, most notably under the Road Map for Peace, sponsored by the Middle East Quartet and presented in April 2003. One of the main obligations this plan imposed on Israel was the dismantling of all outposts built after March 2001. However, Israel has failed to fulfill this commitment.

In 2008, the GOI declared, before the Israeli Supreme Court, that it was planning to enforce the law and remove the outposts according to a list of priorities it presented. Though this position was put into practice in very few cases only, it did, at least at a declaratory level, reflect a policy that sees the outposts as an ongoing breach of Israeli law that must be stopped, and evinced a recognition of Israel's duty to protect the property rights of the Palestinians on whose lands the outposts had been built.

Beginning in 2011, Israel's official position shifted significantly, with the GOI now seeking for avenues to formalize the outposts, and turn them into what, under Israeli law, would be considered legitimate settlements.

The formalization of the outposts is comprised of three elements that act as stages on the way to their authorization:

Political element: A government level decision and instructions to examine and advance the formalization of an outpost, including guidance on the manner in which the formalization would take place, either as a new settlement or as a new neighborhood in an existing settlement. The practical manifestation of this element is establishing jurisdiction for a new settlement, or expanding an existing jurisdiction such that the outpost undergoing authorization is included within it.

Proprietary element: The land must not be privately owned. In other words, the land must be

registered as state land, or be declared as such. To declare state land, a land survey must be conducted in order to ascertain the status of the land.

Planning element: Advancement of planning procedures to the final stage of validating a master plan and issuing building permits under it. Plans are reviewed and approved by the Civil Administration's Supreme Planning Committee. Each planning stage requires the approval of the Minister of Defense.

Since May 2011, approximately a quarter of the 100 unauthorized outposts in the West Bank have either been retroactively approved, in the process following government level instructions to advance their retroactive approval:

- **13 unauthorized outposts have been formalized and construction in them was retroactively approved** – Four of these outposts were turned into three independent settlements, and nine others were formalized as neighborhoods in existing settlements, despite the fact that, in practice, they continue to function as independent communities.
- **12 outposts are at various stages of the formalization process, after having passed the first stage, i.e., the government ordered to advance their retroactive approval** – Six of these outposts are at the proprietary stage, in which land surveys to determine the status of the land ahead of state land declarations are conducted, or are in the process of being declared as state land. Six other outposts are at various stages of the planning process, which is the final step of retroactive formalization. Once completed, these outposts will become legal under the Israeli law.

Settlements and outposts cause multi-dimensional violations of the human rights of Palestinians living in the West Bank, particularly those living in nearby villages. As part of its ongoing work, Yesh Din has handled and documented more than a thousand cases involving violations of the right to life, security and bodily integrity, as well as violations of property rights. Tolerating the outposts and authorizing them means giving approval to continued, large scale harm to thousands of Palestinians, including both physical injury and damage to property caused by settler attacks. A large part of these attacks take place near unauthorized outposts.

As the figures show, in recent years the State of Israel has adopted a secret policy aimed at establishing new settlements or expanding existing ones by retroactively approving outposts. Thousands of settlers who engaged in the illegal establishment of communities and illegal construction inside them, in a process that often involves violations of the rights of Palestinians, land grab and other crimes, are 'rewarded' with the retroactive formalization of these communities. Moreover, they benefit from lack of enforcement against their illegal construction. In other words, Israel's policy in the West Bank is to 'legalize' crime and reward the perpetrators.

A. BACKGROUND

1. CONTEXT UNDER INTERNATIONAL LAW

International law prohibits the establishment of Israeli communities in the West Bank, which is under Israeli occupation.

ADMINISTRATION OF AN OCCUPIED TERRITORY IN TRUST FOR THE BENEFIT OF THE LOCAL, PROTECTED, POPULATION

Article 43 of the Hague Regulations (1907), which is considered a fundamental tenet of the laws of occupation, a constitution of sorts, provides the framework for the operation of the occupying power and the relationship between the regime and the individual in the occupied territory. It also grants the occupying force governmental powers and authorities and stipulates the main considerations that should guide their use: the good of the local population of the occupied territory and the preservation of the status quo.¹ The accepted interpretation of this regulation is that the local population is the beneficiary of the occupying regime, and that the occupying power must administer the territory as a trustee, balancing security interests against the civilian life of the local population.² The duty of trusteeship precludes the occupying power from using the territories under its control for its own needs, with the exception of security needs (also, under certain restrictions).³ Therefore, in terms of land use, the occupying power faces restrictions intended to uphold the principle that the occupation is temporary. The occupying power may not expropriate private land in the service of its own needs, and may only seize such land temporarily for military purposes. State land is also held in trusteeship, and the occupying power may not change its character. Long term changes in an occupied territory are permitted only if they are intended to serve the good of the local population, or are justified by military necessity.⁴

Article 55 of the Hague Regulations (1907) stipulates that the occupying power acts as a trustee of the occupied territory, managing it and holding it on a temporary basis only. It prohibits the occupier from making long term changes to the public assets it holds in trust, if these changes are not meant to benefit the occupied population. The article establishes the occupier's duty to safeguard and maintain public property and stipulates restrictions that prohibit it from any actions with respect to public property and assets that would permanently alter the status quo. This accepted interpretation has been recognized in the jurisprudence of

1 [Hague Regulations concerning the Laws and Customs of War on Land \(1907\), art. 43.](#)

2 See Orna Ben-Naftali, Aeyal Gross and Keren Michaeli, "Illegal Occupation: The Framing of the Occupied Palestinian Territory", *Berkley Journal of International Law*, Vol. 23, p. 551, 2005.

3 See: HCJ 393/82 **Jam'iyat Iskan al-Mu'allimin v. Commander of the IDF Forces in Judea and Samaria**, judgment issued in 1983, para. 13.

4 The phrase "long term changes" is contentious. However, even those who favor the interpretation that some changes are permissible place clear restrictions on their scope and depth, and agree that the main condition for their legality is that they are designed to benefit protected persons in the occupied territory (the good of the local population). See: HCJ 393/82 supra note 2.

the Supreme Court of Israel, which sees the occupier as a trustee of the public assets of the occupied territories, and forbids exploiting these assets in a manner that fails to preserve them, or permanently alters them.⁵

PROHIBITION ON TRANSFERRING CIVILIANS INTO THE OCCUPIED TERRITORY

Article 49(6) of the Fourth Geneva Convention (1949) prohibits an occupying power from transferring parts of its civilian population into the occupied territory, whether it does so by forcing civilians to move or deports them and whether civilians move voluntarily with the state's support or encouragement.⁶ According to the official commentary of the International Committee of the Red Cross (ICRC), the drafters of the convention intended to preserve the demographic status quo in occupied territories.⁷

According to some legal interpreters, the settlement enterprise is directly at odds with the prohibition on moving parts of the population into an occupied territory. For example, in its advisory opinion on the separation wall,⁸ the International Court of Justice held that the settlements had been built in contravention of article 49(6), as did UN Resolution 446 of March 22, 1979.⁹ The vagueness of the article, which generated a dispute on how to interpret it, led to a rephrasing of this prohibition in the Rome Statute of the International Criminal Court, which criminalizes both direct and indirect population transfers into the occupied territory.¹⁰ Given these developments in legal interpretation, some believe that Israel's policy can be regarded as both direct and indirect population transfer.¹¹ The financial incentives and other benefits offered to settlers living in the Occupied Palestinian Territories (OPT) may be considered indirect population transfer, while the fact that Israel built the settlements and provides them with funding, security, infrastructure and more, may be considered direct transfer of civilians into the occupied territory. While the laws of occupation do acknowledge the legitimate security interests of the occupying power, this recognition does not cover the settlements. The prohibition on transferring civilians into the occupied territory does not contain an exclusion that allows such transfers for security purposes. Therefore, the settlements are not a valid security measure.¹²

5 **Al-Nazar v. IDF Commander**, IsrSC 36(1), 701, p. 704; HCJ 2164/09, **Yesh Din – Volunteers for Human Rights v. Commander of IDF Forces in the West Bank et al.**, petition, pp. 26-29 (the **Quarry Case**)

6 [Fourth Geneva Convention \(1949\), art. 49.](#)

7 **Commentary on Geneva Convention IV of 1949 relative to the Protection Of Civilian Persons in Times Of War** 283 (Jean Pictet ed. 1958).

8 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, International Court of Justice. (July 9, 2004)

9 S/Res/446, U.N. SCOR (March 22, 1979). Additional resolutions passed by the UN Security Council and the UN General Assembly, as well as various committees, have made similar assertions.

10 Rome Statute of the International Criminal Court, art. 8(2)(b)(viii).

11 Orna Ben-Naftali, Aeyal Gross and Keren Michaeli, "Illegal Occupation: The Framing of the Occupied Palestinian Territory", **Berkley Journal of International Law**, Vol. 23, p. 551, 2005, pp. 581-582.

12 Orna Ben-Naftali, Aeyal Gross and Keren Michaeli, "Illegal Occupation: The Framing of the Occupied Palestinian Territory", **Berkley Journal of International Law**, Vol. 23, p. 551, 2005, p. 603.

THE TEMPORARY NATURE OF THE OCCUPATION

Another principle governing a regime of occupation is temporariness. This principle emanates from a number of specific provisions in the laws of occupation, primarily the provisions noted above: Article 43 of the Hague Regulations which gives rise to the principle that the occupier is not a sovereign, but rather holds only temporary administrative powers; Article 49(6) of the Fourth Geneva Convention which centers on the prohibition on transferring civilians into the occupied territory as a means of ensuring the sociological and demographic makeup of the occupied territory remains unchanged. These are augmented by Article 55 of the Hague Regulations which stipulates that the occupying power merely fulfills the role of temporary trustee of the occupied territory.¹³ These legal arrangements are based on the premise that occupation is a temporary situation. Yet, there is no provision that sets a limit on the duration of an occupation, or defines what temporary means. A situation of indefinite occupation flouts the interests that are meant to be protected by the regime of occupation, namely, the interests of the occupied population in gaining control over its own life and exercising its right to self-determination, and the interest of the international political order to restore sovereign equality between states, and correlation between sovereignty and effective control. A situation of occupation is perceived as an exception to the norm, and therefore, indefinite occupation contradicts the very purpose of the occupation regime and its nature as a trusteeship.¹⁴

2. HISTORICAL AND POLITICAL BACKGROUND

As stated, international law prohibits the establishment in occupied territory of Israeli communities, both settlements and outposts. Despite this prohibition, Israeli settlement in the West Bank began almost immediately after the occupation itself began, with the establishment of the settlement of Kfar Etzion in the summer of 1967, following a GOI decision. Under Israeli law, settlements may be built on public land, with government approval.¹⁵ The GOI has always interpreted the prohibition on transferring parts of the population into the occupied territory prescribed in Article 49 of the Fourth Geneva Convention, as applying only to forced population transfers, whereas its citizens move to the settlements voluntarily, and therefore there would be no violation of international law.¹⁶

Throughout the occupation, successive Israeli governments have initiated, approved, planned and funded the establishment of settlements in the West Bank and introduced a variety of

13 Orna Ben-Naftali, Aeyal Gross and Keren Michaeli, "Illegal Occupation: The Framing of the Occupied Palestinian Territory", see supra note 11. In addition to these, the principle that an occupation is temporary is also reflected in arts. 47, 54 and 64 of the Fourth Geneva Convention.

14 Ibid., pp. 599-597.

15 Until 1979, the State of Israel seized privately owned Palestinian land and allocated it for the establishment of settlements citing military needs. The Elon Moreh Case (HCJ 390/79 **Duweikat et al. v. Government of Israel et al.**, IsrSC 34(1)1), was the watershed that forced Israel to desist from establishing settlements pursuant to military seizure orders. In the Elon Moreh case, the settlers argued that the settlement did not constitute a temporary seizure for military needs, but rather a permanent settlement built for ideological-religious reasons. The military also claimed there was no military need to build the settlement, and the court consequently ordered its evacuation and the return to its owners of the land that had been seized.

16 Under this interpretation, art. 49 of the Fourth Geneva Convention, drafted after World War II, was meant to protect the local population from displacement, and therefore does not prohibit voluntary relocation. For Israel's position, see "[Israeli Settlements and International Law](#)", Israel Ministry of Foreign Affairs website, 20 May 2001.

benefits and financial incentives in an effort to encourage Israelis to take up residence in them.¹⁷ The West Bank (excluding East Jerusalem) currently has 24 local governments – municipalities, local councils and regional councils, governing 123 settlements which are home to 341,400 Israeli civilians.¹⁸ In 2013, areas under the official jurisdiction of settlements accounted for 63% of Area C.¹⁹ Some of the settlements were built on privately owned Palestinian land.

In 1996, as a result of international pressure in the context of the Middle East Peace Process, the GOI passed a resolution whereby new settlements could only be built with unanimous government approval, as well as authorization from the Minister of Defense for various planning stages.²⁰ In a bid to circumvent this decision, ever since the late 1990s, new settlements have been established without the official support of the GOI, but with both direct and indirect involvement by and assistance from various state agencies and authorities. These settlements have come to be known as “unauthorized outposts”.

In 2004, Prime Minister Ariel Sharon requested Adv. Talia Sasson to author a report about the involvement of Israeli authorities in the establishment, maintenance and expansion of unauthorized outposts. It was submitted to the Prime Minister in February 2005.²¹

The Sasson Report defines “unauthorized outposts” as communities which fail to comply with one or more of the following four conditions: (1) There is an official government resolution to build the settlement; (2) Land status (title), i.e. the land is state land or Jewish owned; (3) The community is built strictly according to a master plan,²² pursuant to which building permits may be issued;²³ (4) The community’s jurisdiction²⁴ is determined by order of the commander of the area.²⁵ Sasson clarified that an unauthorized outpost means an “illegal” outpost. In other words,

17 For more on this, see: e.g.: [By Hook and by Crook: Israeli Settlement Policy in the West Bank](#), B’Tselem, July 2010; [National Priority Zones and the Settlements](#) (Hebrew), Peace Now, 2009 (updated 2011); Lilach Weisman, “[Government Approves: 90 Settlements on the National Priority Zones Map](#)” (Hebrew), **Globes**, August 4, 2013.

18 The Central Bureau of Statistics, “Communities and Population by County, District and Type of Community (1)”, [Israel Statistical Yearbook 2013](#) (Hebrew).

19 The Interim Agreements between Israel and the PLO divided the West Bank into three types of zones: Area A, currently comprising about 18% of the land in the West Bank, which includes all the Palestinian cities and most of the Palestinian population of the West Bank; the Palestinian Authority (PA) is endowed with most governmental powers in this area. Area B, comprises approximately 22% of the West Bank and encompasses large rural areas; Israel retained security control of the area and transferred control of civil matters to the PA. Area C covers 60% of the West Bank (about 330,000 hectares); Israel has retained almost complete control of this area, including security matters and all civil matters related to land ownership and use. [See B’Tselem website](#).

20 Government Resolution No. 150, August 2, 1996.

21 The GOI endorsed the report’s findings and recommendations in Government [Resolution No. 3376](#) (Hebrew) on March 13, 2005. Attorney General Menny Mazuz recognized the four conditions by which Sasson defined unauthorized outposts.

22 A master plan is a legal document that governs how land is used and includes zoning designations (residential construction, public buildings, commercial construction etc.). Master plans are approved by the Supreme Planning Committee, which is subordinate to the Civil Administration. Its membership includes relevant Civil Administration professionals and military jurists. There are no Palestinians on the committee. Any construction without a master plan or in contravention of one is unlawful.

23 Authorized construction in rural areas in the OPT is subject to a detailed zoning plan and detailed building plans. Construction may begin only after a building permit is issued.

24 Jurisdiction refers to the municipal boundaries of a local authority as determined by order of the military commander in the area (GOC Central Command). Unlike the situation inside Israel, in the West Bank, empty spaces between communities are not part of local councils, but rather administered by the Civil Administration.

25 Adv. Talya Sasson, **Opinion Concerning Unauthorized Outposts**, Jerusalem, February 2005, pp. 20-21 (hereinafter: **Sasson Report**).

if it fails to meet one or more of the four conditions listed above, the settlement is illegal under Israeli law (as stated, under international law, all settlements are illegal).²⁶

Israel does not publish official figures on the number of outposts in the West Bank or the number of Israeli civilians living in them. According to estimates by Peace Now, which monitors settlements and outposts, there are currently 100 outposts in the West Bank, with about 10,000 residents.²⁷ Eighty of the West Bank outposts were partially or entirely built on privately owned Palestinian land.²⁸ The establishment of outposts on privately owned Palestinian land is a severe violation of the right to property, which is a fundamental right, recognized in both Israeli and international law. For this reason, Adv. Sasson asserted in her report that it is impossible to approve outposts built on privately owned Palestinian land, even retroactively.²⁹

The establishment of outposts peaked from the late 1990s until around 2005.³⁰ The establishment of new outposts has significantly dropped since then. The state evacuated a handful, but allowed others to remain. At the same time, the area occupied by the outposts and the settlements continues to expand, as does the area under their effective control.

Over the years, Israel has made commitments to halt settlement construction in the Occupied Palestinian Territories (OPT) and dismantle illegal outposts, most notably under the Road Map for Peace, sponsored by the Middle East Quartet and presented in April 2003.³¹ One of the main obligations this plan imposed on Israel was the dismantling of all outposts built after March 2001. However, Israel has failed to fulfill this commitment.

Another construction moratorium, this time for ten months, went into effect in November 2009, following a decision made by Prime Minister Netanyahu in response to pressure from the US administration.³² However, even during the months in which the moratorium was in effect, construction of new housing units began, and construction of others was completed.

3. STATE INVOLVEMENT IN ESTABLISHING AND SUPPORTING OUTPOSTS

State authorities are actively involved in establishing unauthorized outposts and supporting them. In her report on unauthorized outposts, Adv. Sasson stated that: “My examination has revealed that public authorities and state agencies are involved in building unauthorized outposts, without an official Government of Israel Decision, and not infrequently in violation

26 **Ibid.**

27 See Peace Now website: <http://peacenow.org.il/eng/content/settlements>.

28 This figure is based on information Peace Now received from the Civil Administration. See Peace Now website: <http://peacenow.org.il/eng/content/settlements>.

29 **Sasson Report**, p. 22.

30 The peak years were 1998, 1999, 2001 and 2002. For a full list of outposts, see Peace Now website.

31 “GOI immediately dismantles settlement outposts erected since March 2001”. [A Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict](#), 30 April 2003.

32 Order regarding Suspension of Construction Proceedings (Temporary Order) (Judea and Samaria) (No. 1653), 2009.

of the law”.³³ Sasson identified the following agencies as most prominently involved in the establishment of outposts: the Ministry of Construction and Housing; the Ministry of Defense; the Civil Administration³⁴ and the Settlement Division of the World Zionist Organization.³⁵ These agencies contribute to the establishment of outposts actively or by omission:

DEFENSE AND SECURITY BY THE IDF

The IDF sees itself as obliged to protect Israeli civilians in all areas under its control. As soon as a new outpost is built, IDF troops arrive to secure it. Security includes guarding the built-up part of the outpost and maintaining a buffer zone around it, which, according to the IDF, is intended to prevent friction between the populations. For this purpose, the IDF bars Palestinian access to vast tracts of farmland previously cultivated by Palestinians. Access to other areas is permitted only with IDF approval and a security escort to protect Palestinian farmers who wish to work their land.³⁶ In practice, in most cases, landowners are given access to their lands twice a year (spring and fall), and are barred access during the rest of the year.

LAND ALLOCATION BY THE SUPERVISOR OF GOVERNMENTAL AND ABANDONED PROPERTY, THE CIVIL ADMINISTRATION, AND THE SETTLEMENT DIVISION

The Supervisor of Governmental and Abandoned Property at the Civil Administration allocates land to the Settlement Division of the World Zionist Organization, which builds and supports communities on behalf of the GOI, including in the West Bank. The entire operation of the Settlement Division is funded by the State of Israel, and it answers directly to the Office of the Prime Minister.³⁷ The division has built outposts without government approval and without a valid building plan, in contravention of planning and building laws in the OPT. Many of the outposts built by the division following land allocation were partly built on privately owned Palestinian land or on survey land.³⁸ The division has also allocated the land to third parties (outpost cooperative associations), in contravention of the allocation conditions stipulated by the Supervisor of Governmental and Abandoned Property.³⁹ What this means is that the Civil

33 **Sasson Report**, p. 115.

34 The Civil Administration a body within the Israeli Defense Forces (IDF) responsible for implementation of GOI policy in the West Bank in all civil matters.

35 The Settlement Division operates under the World Zionist Organization. It supports the establishment of new communities on behalf of the GOI, and is entirely state funded. The Settlement Division is monitored by the State Comptroller.

36 Palestinian farmers submit applications to the Palestinian DCO (District Coordination Office), which forwards them to the Israeli DCO, where the decision whether to approve or deny them is made. This process is usually protracted, and in many cases, the permits that are ultimately issued are insufficient.

37 Government Decision No. 3336, June 19, 2011, 32nd Government, Prime Minister Netanyahu, Transfer of Portfolio from Ministry of Agriculture to the Office of the Prime Minister – Settlement Division.

38 Land to which the rights are not clear is called survey land. The Supervisor of Governmental and Abandoned Property makes a survey of such land to clarify its status, by checking aerial photos from previous years, reconnaissance on the ground and publication of the intention to declare the land as “state land.”

39 See **Sasson Report**, pp. 118-124; **The Road to Dispossession: A Case Study – The Outpost of Adei Ad**, Yesh Din,

Administration allocates hundreds of thousands of dunams of land to the Settlement Division, which then allocates them for settlements built in violation of the law. Remarkably, the Supervisor of Governmental and Abandoned Property does not have complete figures on the amount of land it has allocated to the Settlement Division.⁴⁰

AID IN FUNDING, CONSTRUCTION AND INFRASTRUCTURE BY MINISTRIES, PUBLIC AUTHORITIES AND THE SETTLEMENT DIVISION

As stated, the Sasson Report found that ministries, other public authorities and West Bank regional councils were also involved in building outposts. Many of the report's recommendations were never implemented, including ones concerning funding and support for the outposts by public authorities. Almost a decade after the Sasson Report was presented to the government and endorsed by it, ministries and other authorities are still involved in providing funding and support for the outposts, and taxpayer money is still footing the bill for this violation of Israeli law. Funding is provided to settlements and outposts in a non-transparent process, using countless sections that are not specified in the budget and through transfers conducted by the Knesset Finance Committee after the budget is passed.⁴¹

Planning and funding the initial settlement: The Settlement Division has effectively built many of the outposts by providing funding for the initial camp site and preparing master plans and detailed plans. The Ministry of Housing has hired architects for planning and paid for electrical, water, sewage and infrastructure advisors.⁴²

Building and housing: The Ministry of Construction and Housing has provided funding for contracts regional councils undertook with builders for projects in the outposts, and has itself purchased portable homes that were handed over to West Bank regional councils, and ultimately placed in outposts.⁴³ The Defense Minister's Advisor on Settlement Matters helped with the issuance of permits to transport portable homes to outposts,⁴⁴ sometimes in defiance of recommendations made by the Civil Administration.⁴⁵ One of the agencies most conspicuously involved in illegal construction in the outposts is Amana, a cooperative association that was established in 1978 and acts as the settlement branch of the Yesha Council (The Yesha Council

February 2013, pp. 46-51 (hereinafter: Yesh Din, **The Road to Dispossession**).

40 State Comptroller, **Annual Report 56A**, 2005, pp. 215-217.

41 So, for example, every year in recent years, the Settlement Division's budget was increased by hundreds of percentage points compared to the original budget approved by the Knesset thanks to budgetary transfers of hundreds of millions NIS approved by the Finance Committee. See: **Review and Analysis of the Settlement Division Budget**, Knesset Research and Information Center, Budgetary Monitoring Division, November 9, 2014, pp. 4-7.

42 **Sasson Report**, pp. 123-124.

43 **Ibid.**, p. 165. At the relevant time, a single portable home cost 54,900 NIS. Total cost incurred by Ministry of Housing for portable homes: 33,749,180 NIS.

44 Use of portable homes in the OPT is widespread. They are preferred for their portability, versatility (they can be used for both residential and public purposes, such as classrooms, clinics, officers and more), and the fact that they make it possible to erect a new "community" in a very short time. In terms of planning and building laws, portable homes are residential units for all intents and purposes and therefore their placement in a certain location requires a valid, detailed plan pursuant to which a proper building permit is issued. Additionally, transporting portable homes inside the West Bank requires a special permit, see **Sasson Report**, p. 229.

45 **Sasson Report**, p. 227.

comprises of all Israeli municipal level governments in the West Bank, and it is funded by these local governments). Amana plans and initiates construction, while the construction itself is mostly carried out by its subsidiary company Binayanei Bar Amana. Amana has built thousands of homes without permits in the OPT (in both settlements and outposts). Some received permits retroactively, and others remain illegal under Israeli law. Amana also has hundreds of portable homes and dozens of construction sites in the West Bank that have no permits.⁴⁶ The State of Israel contracts Amana for various projects (not necessarily in the OPT), though the profits made in these deals are used for illegal construction in the OPT.

Infrastructure and public buildings: The Rural Construction Administration, a branch of the Construction and Housing Ministry, has provided funding for the construction of public buildings and infrastructure, including: clearing and paving roads, clearing land, connection to sewage, water and electricity, sidewalks and gardens, preparation of infrastructure to connect to portable homes and more.⁴⁷ The Electricity Staff Officer at the Civil Administration is vested with power to issue a permit for connecting an outpost to the electricity grid. According to the Sasson Report, some outposts have been connected to the electricity grid and others have not.⁴⁸ The Defense Minister's Advisor on Settlement Matters has helped outposts connect to the grid, using the argument that perimeter lighting was necessary for protecting the communities, and therefore they must be supplied with electricity. Some of the outposts that have not been connected to the grid "pull" electricity from a nearby settlement. Others use generators purchased for them by the Settlement Division.⁴⁹ Similarly, the authority to approve a connection to the water system is vested in the Civil Administration Water Staff Officer. Mekorot, the Israeli water company, which supplies water in the West Bank, will service communities only under a work order issued by the Water Staff Officer. Mekorot's policy is to supply water only to authorized settlements, and it has, therefore, for the most part, refused to connect outposts to the water system directly. Many outposts "pull" water from nearby settlements using pipes. When the outpost is too far to pull water from an authorized settlement, water is delivered in tanks, or collected in reservoirs.⁵⁰

CRIMINAL AND ADMINISTRATIVE NON-ENFORCEMENT VIS-À-VIS ILLEGAL CONSTRUCTION BY THE GOVERNMENT OF ISRAEL, CIVIL ADMINISTRATION, SAMARIA AND JUDEA DISTRICT OF THE ISRAEL POLICE, STATE ATTORNEY

Since 1992, monitoring of illegal construction by Israelis in the OPT has been the responsibility of the Enforcement Unit in the IDF's Civil Administration. The unit is responsible for uncovering illegal construction and enforcing the "illegal construction procedure".⁵¹ Under this procedure,

46 Chaim Levinson, "The organization behind illegal West Bank outpost construction", **Haaretz English website**, May 13, 2013. Haaretz exposed that even though some of the portable homes Amana has are state owned, it does not pay rent for them.

47 **Sasson Report**, p. 149.

48 Most outpost connections to the electricity grid were done between 1997 and 2002.

49 **Sasson Report**, pp. 196-209.

50 **Ibid.**, pp. 211-261.

51 The Procedure for Handling Illegal Construction according to the Jordanian Planning and Building Law. The stages for handling illegal construction according to the procedure are the following: issuing a cease-and-desist order and summoning the owner to appear before a committee; a hearing before the committee allowing the owner to argue against the cease-and-desist order; if the owner's arguments are rejected, the committee issues a demolition order and gives the owner 30 days' leave to submit an appeal. If the appeal is rejected or if no

a committee issues cease-and-desist and demolition orders against illegal buildings on behalf of the enforcement unit, which is charged with executing them.⁵² The enforcement unit issues thousands of demolition orders against illegal construction by Israelis throughout the West Bank. However, the vast majority of these orders remain pending for years. Practically, executing a demolition order requires a decision by the Minister of Defense. Barring very few exceptions, the Minister refrains from issuing directives to execute such orders.

Non-enforcement at administrative level is joined by non-enforcement at criminal level. Although illegal construction offenses are criminal offenses for all intents and purposes, and are meant to be treated as such, both the police and the Civil Administration Enforcement Unit refuse to address the criminal aspect of illegal construction and take action against offenders, each claiming the matter is not in its purview. According to a report in 2013 by the State Comptroller: “This means that there is no agency in Judea and Samaria that is charged with investigating the criminal aspect of planning and building offenses. This perpetuates the anarchy in this realm in the Judea and Samaria Area.”⁵³ In 2014, the security establishment began staff work for the purpose of setting up a Civil Administration unit that would look after the criminal aspects of construction offenses. The unit will be in charge of investigating, filing complaints and prosecuting such offenses.⁵⁴

Lack of enforcement is most clearly reflected in the decisions made by top law enforcement officials not to prosecute public figures who have been implicated in offenses of this type. For instance, in May 2014, Attorney General Yehuda Weinstein accepted State Attorney Shai Nitzan’s recommendation to close an investigation into the construction of a sewage treatment facility serving the settlement of Ofra. The file was closed on grounds of “lack of public interest,” with no charges. The sewage treatment facility was built on privately owned Palestinian land belonging to residents of Ein Yabrud, in breach of the area’s master plan and without building permits. Worse still, the Binyamin Regional Council forged a building permit for the construction. After the Civil Administration Enforcement Unit issued cease-and-desist orders against the facility, the Council Engineer instructed the construction company, in writing, to ignore the orders and proceed with the work. Attorney General Yehuda Weinstein’s explanation for his decision to close the file was that since the law had thus far never been enforced with respect to planning and construction offenses, it would not be right to begin enforcement with this particular case “... Had an indictment been served in this case, it would have been a relatively precedential indictment, seeing as there has been hardly any criminal enforcement of planning and building offenses in Judea and Samaria to date, owing to the absence of an investigating agency in charge of the issue.” Weinstein added: “It would not be right to begin criminal enforcement and serve a ground breaking indictment in this sphere in this particular case, which involves construction for public use.”⁵⁵

The Palestinian landowners, and Yesh Din, petitioned the High Court of Justice (HCJ) against Attorney General Weinstein, Binyamin Regional Council Head Avi Roeh and former Council

appeal is submitted, the committee is permitted to take action (using enforcement officers) to demolish the illegal building. According to the law, violation of a cease-and-desist or demolition order is a criminal offense punishable by a fine. From: **Sasson Report**, p. 17; State Comptroller, **Annual Report 56A**, 2005.

52 **Sasson Report**, p. 217.

53 State Comptroller, **Annual Report 63B**, July 17, 2013, p. 132 (Hebrew).

54 Foreign Affairs and Defense Committee Judea and Samaria Subcommittee, Session Transcripts, April 27, 2014, p. 17.

55 Letter from Adv. Adi Menahem, Assistant Attorney General, to Adv. Shlomy Zachary, Yesh Din Legal Team, May 29, 2014.

Head Pinchas Wallerstein. In the petition, the court was asked to instruct the Attorney General to prosecute the present and former Binyamin Regional Council heads for their part in building the sewage treatment facility.⁵⁶

Another example of lack of enforcement against public figures is the decision of then Deputy Attorney General (Special Functions) Shai Nitzan, not to prosecute suspects in illegal construction and trespassing in the Ulpana neighborhood in the settlement of Beit El. The investigation file was initially closed on grounds of “lack of public interest.” It was closed a second time after reopening following a Yesh Din appeal, on grounds of “insufficient evidence.” The landowners, with assistance from Yesh Din, petitioned the HCJ against the decision, and the HCJ issued an order instructing the state to explain why it should not charge Yoel Tzur, Director General of the Beit El Development Company, with these offenses. The state’s response indicated that the main reason for the decision not to prosecute Tzur was the protracted time that had elapsed since the commission of the offense, which weakened the prosecution’s chances of success as well as the public’s interest in the case. The state further claimed that the evacuation of the Ulpana neighborhood also weakened the public’s interest and that Tzur may be entitled to argue abuse of process, as the construction was publically funded. On March 2, 2015, the HCJ dismissed the petition.⁵⁷

56 HCJ 8088/14 **Najah Mubarak Musa Farhat et al. v. Attorney General et al.** The petition is pending.

57 HCJ 686/14 Harbi **Ibrahim Mustafa Mustafa et al. v. State Attorney et al.**, Judgment, March 2, 2015.

B. POLICY SHIFT: FROM REMOVAL TO RETROACTIVE AUTHORIZATION

In petitions against illegal construction in the West Bank filed to the Supreme Court by Palestinians with Yesh Din's assistance, as well as by Peace Now, the GOI was forced to present its policy on this issue to the court. A policy was first presented in October 2008, in a petition filed by Peace Now regarding illegal construction in the outposts of Haresha and HaYovel. Over the years since then, Israel's policy, as presented to the Supreme Court, reflected a consistent shift from a willingness to enforce the law vis-à-vis illegal construction towards clear efforts to find ways to retroactively approve it. This shift occurred in stages:

2008 | Full enforcement | In October 2008, in proceedings held in a Peace Now petition against illegal construction in the outposts of Haresha and HaYovel, the state announced that it intended to remove all illegal construction in the West Bank according to a list of priorities. After three years of delays and extensions, the state listed its evacuation priorities in the response it submitted to the court: demolition orders issued as a result of a judicial decision, demolition orders issued for construction in its early stages (before completion and occupation), demolition orders against structures built on privately owned and registered Palestinian land, demolition orders against structures built on unregistered land which is not considered state land, demolition orders for structures in unauthorized outposts built after March 2001, demolition orders for structures in unauthorized outposts built before March 2001, demolition orders against structures located outside the parameters of detailed and approved building plans, and the remaining structures.⁵⁸ In practice, Israel has taken no action to implement these priorities for removal, and barring a negligible number of structures, has not removed illegal construction, including cases that met the state's top priority criteria for evacuation.

2011 | Partial enforcement – Structures built on privately owned Palestinian land will be demolished, construction on state land will be approved | In March 2011, in court proceedings in a Peace Now petition (commonly referred to as 'the Six Outposts Case') for the evacuation of six outposts against which demarcation orders⁵⁹ had been issued, the state announced that as per its new policy, structures on privately owned Palestinian land will be demolished, but construction on public land (state land) will be considered for approval, which will include the Minister of Defense signing off on the master plan.⁶⁰ This notice was submitted shortly after the end of the construction moratorium declared between November 2009 and September 2010, after years of inaction and in the context of the Attorney General's announcement that he would not defend this inaction to the justices of the Supreme Court.

58 HCJ 7891/07 **Peace Now Shaal Educational Enterprise v HCJ 9051/05 Peace Now Shaal Educational Enterprise v. Minister of Defense et al.**, State response, October 28, 2008 (petition against illegal construction in the outposts of Hayovel and Haresha).

59 Demarcation orders have been used as the main legal tool for evacuating unauthorized outposts since December 2003. The orders, issued by the GOC Central Command, demarcate an area or a place where a structure built without a permit is located. Entry into the demarcated structure or area is prohibited and soldiers and police officers are authorized to use force to evacuate the demarcated area if necessary.

60 HCJ 7891/07 **Peace Now Shaal Educational Enterprise v Minister of Defense et al.**, (the "Six Outposts Case") Complementary response affidavit on behalf of respondents 1-2, March 7, 2011; Chaim Levinson and Barak Ravid, "Israel vows to raze all illegal outposts built on private Palestinian land", **Haaretz English website**, March 1, 2011.

The new policy was formulated just a few days before the hearing in the petition regarding the six outposts, after a consultation Prime Minister Netanyahu held with ministers, lawyers and military officials.⁶¹ In keeping with this announcement, the state launched its efforts to retroactively approve illegal construction on public land. Its pledge to demolish structures built on private land was fulfilled only in a negligible number of cases.⁶²

2012 | The Report of the Committee to Examine the Status of Construction in Judea and Samaria (The Levy Report) | On February 13, 2012, Prime Minister Binyamin Netanyahu and then Minister of Justice Yaakov Neeman decided to appoint a committee, chaired by the late former Supreme Court Justice Edmund Levy, to look into the status of Israeli construction in the West Bank. The background for the committee's appointment was the GOI's desire to find ways to avoid executing demolition and demarcation orders and "legalize" the illegal construction in the outposts. The committee served as a way of sidestepping the Attorney General, who is officially responsible for providing legal counsel to the government. It was tasked with finding legal justification for approval procedures that did not conform to the Attorney General's legal analysis.

The committee submitted its report in the summer of 2012. The first part of the report dealt with the legal status of the West Bank, concluding that this area was not under occupation (in the meaning of the term under international humanitarian law). The second part of the report dealt with the status of construction in the OPT and argued that many of the unauthorized outposts were, in fact, "legal": "[T]he establishment of these communities [some of the unauthorized outposts] was undertaken over the years with the knowledge, encouragement and consent of the most senior political echelon – government ministers and prime ministers, and, accordingly, this conduct is to be considered tantamount to implied consent".⁶³ The Levy Report was not officially endorsed by the GOI, but some of its recommendations are implemented, and its conclusions have had an impact on Israel's policy with respect to the legal feasibility of retroactively approving outposts.

2013 | Without an individual petitioner, state considerations trump enforcement | In October 2013, in proceedings in a petition to evacuate the unauthorized outpost of Amona, filed with Yesh Din's assistance by Palestinians on whose land the outpost had been built, the state declared that enforcement against illegal construction on privately owned land would effectively be considered a priority only if the Palestinian landowners file a High Court petition. According to this policy, political considerations favoring non-enforcement override the need to take action against illegal construction, where there is no specific petitioner with title to the land. "According to government level officials, an evacuation on this scale in a time such as this may interfere with

61 The consultation took place on February 28, 2011, with Prime Minister Binyamin Netanyahu, Minister of Defense Ehud Barak, Ministers Benny Begin, Mosheh Ya'alon, Yaacov Neeman and Yitzhak Aharonovitch, Attorney General Adv. Yehuda Weinstein, Director of State Attorney's Office HCJ Department, Adv. Osnat Mendel and the Coordinator of Government Activities in the Territories, Major General Eitan Dangot in attendance.

62 In 2011 and 2012, a few individual structures were demolished in 19 of the 100 outposts in the West Bank. The publication further reveals that the Civil Administration practices selective enforcement, exempting outposts with close connections to the settler leadership, while not affording similar exemptions to smaller outposts, affiliated with Yesha Council detractors. Chaim Levinson, "State demolished homes in only 19 outposts in two years", **Haaretz**, March 2, 2014.

63 **Report of the Committee to Examine the Status of Building in the Judea and Samaria Area** (hereinafter: **Levy Report**) June 2012, 84-85. See: **Unprecedented: A Legal Analysis of the Report to Examine the Status of Building in the Judea and Samaria Area [the West Bank] ("The Levy Committee") – International and Administrative Aspects**, Yesh Din, January 2014 (hereinafter: **Unprecedented: A Legal Analysis of the Levy Report**).

state interests. Indeed, when it comes to violation of an individual’s property rights, there may be cases in which state considerations will be set aside. However, when on one hand, there are serious state considerations and on the other, there is no specific petitioner asserting individual rights – state considerations will take precedence”.⁶⁴ In December 2014, the HCJ dismissed this policy, holding that “there is no room to distinguish between unlawful construction on private land in respect of which there is a specific petitioner with title, and unlawful construction in an adjacent plot of privately owned land in respect of which there is no specific petitioner”.⁶⁵

2013-2014 | “Special circumstances” prevent enforcement | In December 2013, in proceedings in a petition filed with the assistance of Yesh Din and B’Tselem by residents of Ein Yabrud for the evacuation of nine houses in Ofra settlement which had been built on their land, the state announced that the priorities for enforcement of planning and building laws on Israelis in the West Bank did not apply in special circumstances. The special circumstances the state referred to in its response were that the entire settlement of Ofra had been built on privately owned Palestinian land. In other words, the state’s view is that state considerations preclude enforcement even when there are specific landowners who petition the HCJ and assert their rights to the land.⁶⁶ This position was also dismissed by the HCJ in a February 2015 ruling,⁶⁷ in which the court stated that accepting the state’s position “would have sanctioned severe harm to Palestinian rights and the rule of law, which is unacceptable”.

The situation on the ground indicates that the State of Israel is making concerted efforts to retroactively approve outposts and avoids implementing its own policy on evacuating structures that were built in violation of Israeli law and without permission.

64 State response in a petition filed by landowners from Silwad, Ein Yabrud and Taybah with Yesh Din’s assistance, for the evacuation of the illegal outpost of Amona, built on their lands, Request to Submit Supplementary brief on behalf of Respondents 1-4 in HCJ 9949/08 **Maryam Hassan Abd al-Karim Hamad et al. v. Minister of Defense**, October 14, 2013, para. 8.

65 HCJ 9949/08 **Maryam Hassan Abd al-Karim Hamad et al. v. Minister of Defense**, Judgment, December 25, 2014, para. 15.

66 Supplementary Affidavit on behalf of Respondents 1-4 (the Minister of Defense, GOC Central Command, Head of the Civil Administration, Commander of the Samaria and Judea District of the Israel Police) in a petition filed by residents of the Palestinian village of Ein Yabrud with assistance from Israeli human rights organizations Yesh Din and B’Tselem, demanding the cessation of construction of nine homes in Ofra, built on their private, registered lands. HCJ 5023/08 **Sa’id Zahdi Muhammad Shehadeh et al. v. Minister of Defense**, December 25, 2013, para. 3.

67 HCJ 5023/08 **Sa’id Zahdi Muhammad Shehadeh et al. v. Minister of Defense**, Judgment, February 8, 2015.

C. THE SILENT TRACK: ESTABLISHING NEW SETTLEMENTS BY APPROVING OUTPOSTS

Alongside the official, visible track of GOI approval and advancement of building plans in the settlements, Israel is advancing further building in and expansion of the areas under its control in the West Bank by investing great efforts into retroactively approving dozens of outposts that were built in violation of Israeli law. This process reflects the changes in Israel's position as described above, which can be summarized as a retreat from a policy stance that illegal construction should be removed, and a shift to a policy of retroactively approving illegal outposts and the structures that were built in them illegally. Many of the formalization efforts are directed toward outposts in which construction has been challenged in Supreme Court petitions.

The retroactive formalization of outposts includes three elements which constitute steps on the way to approval:

Political element: A government level decision and instructions to examine and advance the formalization of an outpost, including guidance on the manner in which the legalization would take place, either as a new settlement or as a new neighborhood in an existing settlement. The practical manifestation of this element is establishing jurisdiction for a new settlement, or expanding an existing jurisdiction such that the outpost undergoing authorization is included within it.

Proprietary element: The land must not be privately owned. In other words, the land must be registered as state land, or be declared as such. To declare state land, a land survey must be conducted in order to ascertain the status of the land.

Planning element: Advancement of planning procedures to the final stage of validating a master plan and issuing building permits subject to it. Plans are reviewed and approved by the Civil Administration Supreme Planning Committee. Each planning stage requires the approval of the Minister of Defense.⁶⁸

Blue Line Team: In 1999, the Blue Line Team was set up within the Civil Administration.⁶⁹ It was tasked with reviewing state land declarations conducted throughout the 1970s and the 1980s, when hundreds of thousands of dunams of land were declared state land. The purpose of the review was to ensure that land allocation and planning procedures are advanced only on state land, where Israel maintains it may build settlements. In total, the Blue Line Team found about 195,000 dunams to be state land.⁷⁰ The fact that Israel believes vast amounts of “unused” land exist in the West Bank, raises questions about

68 For more on this see: **Unprecedented: Unprecedented: A Legal Analysis of the Levy Report**, pp. 30-32.

69 See MAG Corps website: Operation of the State Land Demarcation Team (Blue Line Team), http://www.mag.idf.il/602-2265-he/patzar.aspx%20-%20paragraph_12 (Hebrew).

70 About 92,000 dunams out of the 195,000 are located west of the approved separation wall route, and about 103,000 east of it. See: Akiva Eldar, “IDF Civil Administration pushing for land takeover in the West Bank”, **Haaretz English website**, July 22, 2011.

the surveying and land declaration process. The explanation for this is that in recent years, surveys and declarations have been deliberately conducted in areas where the state seeks to retroactively approve illegal construction on unregistered land seized by settlers.⁷¹

FIGURES – APPROXIMATELY A QUARTER OF THE ILLEGAL OUTPOSTS HAVE BEEN FORMALIZED, OR ARE UNDERGOING FORMALIZATION ON THE SILENT TRACK

13 ILLEGAL OUTPOSTS HAVE BEEN FORMALIZED AND CONSTRUCTION IN THEM WAS RETROACTIVELY APPROVED

Since 2011, 13 unauthorized outposts have been formalized through government decision that either turned them into independent settlements or neighborhoods in existing settlements, thus making them "legal" under Israeli law. All 13 went through the political, proprietary and planning formalization steps listed above. Upon completion of the planning stage, with the approval of a master plan, retroactive building permits were issued for the structures in these outposts. The master plans that were approved for the outposts formalized as new settlements significantly increase their area and accommodate infrastructure, public buildings and thousands of new residential units. For detailed figures on construction in outposts and the approved master plans see [Peace Now's report, March 2015](#).

- **Four outposts were formalized and turned into three independent settlements pursuant to a government resolution**

The decision to formalize the outposts of Sansana, Bruchin, Rehelim and Nofei Nehemia was made by the Ministerial Settlement Team on April 23, 2012.⁷² The ministerial team itself was established by government decision just a day before, on April 22, 2012.⁷³ In July 2013, the General Officer Commanding (GOC) Central Command⁷⁴ signed an updated addendum to the Order regarding the Administration of Regional Councils – Regional Council Regulations (Judea and Samaria). This addendum lists the names of regional councils and the current list

71 In November 2014, the Council Heads of the Palestinian villages of a-Sawiyah, a-Lubban a-Sharqiyah and Qaryut, together with human rights organizations Yesh Din and Bimkom, petitioned the HCJ for the revocation of the detailed master plan for the settlement of Eli, which includes 221 dunams that had not been declared state land. The inclusion of this land in the plan constitutes de-facto appropriation, denies the right of appeal and violates the rights of the village residents. The petition demands that any new construction within the parameters of the plan cease and that no building permits be issued for the area included in it. The state argued that the plan does not constitute new state land declarations but simply includes a technical adjustment, following the Blue Line Team's review of a declaration made in 1983. In practice, however, the adjustments the Blue Line Team makes to previous Civil Administration state land declarations effectively result in allocation of state land without declarations, while annexing land that was not previously declared.

72 Tal Shalev and Yehosua Breiner, "Ministerial team approves 3 settlements in one day", [Walla website](#), April 23, 2012.

73 Government Decision No. 4560, April 22, 2012, 32nd Government, Prime Minister Binyamin Netanyahu. The decision set up a ministerial committee chaired by the Prime Minister. The team's other members were the Defense Minister and the Deputy Prime Minister, Mosheh Ya'alon and Minister Zeev B. Begin. The team was empowered to recognize as communities Judea and Samaria Area localities where houses were built years ago on state land with financial or other assistance from state authorities.

74 The Commander of IDF forces in the West Bank.

of communities included in their jurisdictions. It includes the three new, recently approved, settlements:⁷⁵

Bruchin (founded in 1999, Samaria Regional Council) | Following the April 2012 decision of the ministerial team, the GOC Central Command approved jurisdiction for a settlement spanning 714 dunams,⁷⁶ which settled the land status issue and paved the way for the advancement of a master plan and its approval by the Civil Administration. In June 2014, the plan was approved for validation by the Supreme Planning Committee.⁷⁷

Sansana (founded as a civilian community in 2000, Hebron Hills Regional Council) | Following the April 2012 decision of the ministerial team and the allocation of jurisdiction, in April 2013, the Supreme Planning Committee approved for deposit a plan to formalize the outpost as a settlement and build 325 residential units, public buildings, commercial areas, public parks, a cemetery and tourism facilities. The plan covers a number of enclaves of privately owned Palestinian land⁷⁸ and has not been approved for validation yet. Still, in 2013, the community received a community code from the Ministry of Interior.⁷⁹

Rehelim (founded in 1991, Samaria Regional Council) and **Nofei Nehemia** (founded in 2002, evacuated and rebuilt in 2003, Samaria Regional Council) | Following the decision of the ministerial team, the two outposts were approved as one settlement (Rehelim) with a single expansive jurisdiction covering 944 dunams.⁸⁰ In practice, the two function as separate communities, each with its own cooperative association and community secretariat.⁸¹ The two communities are located on opposite sides of Road 60, the largest intercity road in the West Bank. In January 2013, under the instructions of the Minister of Defense, the GOC Central Command signed an order approving the deposit of a master plan for Rehelim, and listing the community as part of the Samaria Regional Council.⁸²

• **Nine outposts were approved as neighborhoods in existing settlements, but continue to function as independent communities**

Nine unauthorized outposts were formalized between 2011 and 2013, by being officially declared as neighborhoods in nearby settlements. In some cases, the declaration became possible after the GOC Central Command signed orders expanding the jurisdiction of a settlement to include the outpost as a neighborhood. In all cases, the formalization process ended after the Supreme

75 Order regarding the Administration of Regional Councils (Judea and Samaria) (No. 783), 1979, Regional Council Regulations (Replacement of Addendum) (Amendment No. 12) (Judea and Samaria), 2013.

76 Chaim Levinson, "Israel's West Bank settlements grew by twice the size of New York's Central Park in 2012", **Haaretz English website**, May 27, 2013.

77 Supreme Planning Committee, Settlement Sub-Committee Session Transcripts No. 2014007, June 11, 2014.

78 Supreme Planning Committee, Settlement Sub-Committee Session Transcripts No. 2013005, April 17, 2013.

79 Central Bureau of Statistics, Changes to List of Communities, http://www.cbs.gov.il/ishuvim/ishuvim_main.htm (Hebrew).

80 Chaim Levinson, "Israel's West Bank settlements grew by twice the size of New York's Central Park in 2012", **Haaretz English website**, May 27, 2013.

81 See on the Samaria Regional Council website, which has a separate page for each community, Nofei Nehemia web page: <http://www.shomron.org.il/?CategoryID=289&ArticleID=219> (Hebrew); Rehelim web page: <http://www.shomron.org.il/?CategoryID=289&ArticleID=180> (Hebrew).

82 Order regarding the Administration of Regional Councils (Judea and Samaria) (No. 783), 1979, Regional Council Regulations (Addition of Community of Rehelim) (Amendment No. 31) (Judea and Samaria), 2012; Updating Notice on behalf of the State in HCJ 2295/09 **Mustafa Ahmad Muhammad Khalil Fadiyah, Head of a-Sawiyah Village Council v. Minister of Defense et al.**, July 18, 2013.

Planning Committee approved a master plan for the neighborhood, and building permits were issued under it to retroactively approve the illegal construction. Though the outposts were officially added as neighborhoods to existing settlements, in practice, some of them continue to function as separate communities for all intents and purposes, with separate community secretariats and institutions.

(1) Tal Menashe (founded in 1992, Samaria Regional Council) | In 2013, a master plan was approved for the outpost, which was formalized as a neighborhood in the settlement of Hinnanit, although during the Supreme Planning Committee hearing on the approval of the plan, it was noted that Hinnanit and Tal Menashe were distinct from one another in character and population.⁸³ The Tal Menashe website says that “[s]ince at the time the government was no longer establishing new settlements beyond the Green Line, Tal Menashe was officially established as a neighborhood of Hinnanit, but with separate secretariats and institutions, and a separate representative on the Samaria Regional Council”.⁸⁴

(2) Givat Hadagan neighborhood (founded in 1995, Efrat Local Council) | Approved as a neighborhood in the settlement of Efrat. In late 2011, the GOI issued tenders for the construction of permanent structures in the neighborhood, after receiving approval from the Minister of Defense.

(3) Givat Hatamar neighborhood (founded in 2001, Efrat Local Council) | Approved as a neighborhood in the settlement of Efrat. In January 2013, the GOI issued tenders for the construction of permanent structures in the neighborhood.

(4) Givat Habreicha neighborhood (Binyamin Regional Council) | Approved in 2011 as a neighborhood in the settlement of Talmon. The approval was carried out after the dismissal of petitions filed by residents of the Palestinian village of al-Janiyah with assistance from Yesh Din and Bimkom – Planners for Planning Rights. The petitions challenged the plan to rezone the area from agricultural to residential, to accommodate a neighborhood with 300 residential units (and a smaller scale plan to build a school in the area). The petitions also challenged the restrictions on access to Palestinian land effectuated by the plan, and the fact that when the plan was approved, 56 residential units had already been built in the area without a valid master plan and without building permits.⁸⁵ The plan to build a residential neighborhood was approved for validation by the Settlement Sub-committee (an official body under the Civil Administration’s Supreme Planning Committee) in November 2009, while the petition was still pending. A master plan was approved for the neighborhood and building permits were issued under it, for new structures as well as for most of the structures that had been built in violation of Israeli law.⁸⁶

(5) New Migron – Giv’at Hayekev (Binyamin Regional Council) | Founded in 2012 as a neighborhood in the settlement of Kochav Ya’akov, for residents of the outpost of Migron,

83 Supreme Planning Committee, Settlement Sub-Committee Session Transcripts 10/12, October 17, 2012; [Summary of Year 2012 in Settlements](#), Peace Now; Yehoshua Breiner: “Just before stepping down: Barak advances construction in the settlements”, [Walla website](#), January 28, 2013.

84 Tal Menashe website, <http://www.tal-menashe.info/home/about> (Hebrew).

85 HCJ 8171/09 and 10462/09, **Abbas Hassan Yusef Yusef Head of al-Janiyah Village Council v. Civil Administration Supreme Planning Council et al.**, Judgment, November 20, 2011.

86 See Israel Land Authority website, plan 235/3.

which had been evacuated as a result of a HCJ decision.⁸⁷ Sixty-six dunams were added to the jurisdiction of Kochav Ya'akov, and New Migron was built on this expansion.⁸⁸ To expedite and advance planning procedures, the GOC Central Command, under government instructions, signed a special military order for the establishment of the so-called neighborhood, sidestepping the planning procedures prescribed in law.⁸⁹ The Military Advocate General Corps cautioned that this might open the floodgates in terms of planning and building laws.⁹⁰

(6) Tzofit – Elisha Military Preparatory School (founded in 1999, Binyamin Regional Council) | Approved as part of the settlement of Halamish – Neve Tzuf, after the master plan was approved for validation by the Supreme Planning Committee's Settlement Sub-committee in January 2015.⁹¹

(7) Mitzpe Eshtamoa (founded in 2002, Hebron Hills Regional Council) | Approved as a neighborhood in the settlement of Shim'a, after the master plan was approved for validation by the Supreme Planning Committee's Settlement Sub-committee in January 2013.⁹²

(8) Kfar Eldad (founded in 1994, Gush Etzion Regional Council) | Approved as a neighborhood in the settlement of Nokdim, after a master plan was approved for validation by the Supreme Planning Committee's Settlement Sub-committee in December 2011.⁹³

(9) Sde Bar (founded in 1998, Gush Etzion Regional Council) | Approved as a neighborhood in the settlement of Nokdim, after a master plan was approved for validation by the Supreme Planning Committee's Settlement Sub-committee in January 2011.⁹⁴

87 Government Secretary release following a government session on April 29, 2012, Section D(2) (on PMO website): "to task the Ministry of Construction and Housing, via the competent planning institutions, to advance planning for a permanent neighborhood of the community of Kochav Ya'akov, on the site known as Giv'at Hayekev".

88 Chaim Levinson, "Israel's West Bank settlements grew by twice the size of New York's Central Park in 2012", **Haaretz English website**, May 27, 2013.

89 Order regarding Exceptional Authorization for the Establishment and Use of Regionally Significant Temporary Residential Sites (No. 1965) (Temporary Order) (Judea and Samaria), 2012, May 1, 2012.

90 Chaim Levinson, "Government initiates order for expedited construction in the West Bank without planning", **Haaretz**, April 24, 2012.

91 Supreme Planning Committee, Settlement Sub-Committee Session Transcripts No. 2014013, November 5, 2014; Detailed Plan No. 203/5, Amendment to Detailed Plan No. T/203 and Amendment to Regional Master Plan RJ-5, Halamish Tzofit Educational Institution, Supreme Planning Committee, January 4, 2005.

92 Supreme Planning Committee, Settlement Sub-Committee Session Transcripts No. 1/13, January 16, 2013.

93 Supreme Planning Committee, Settlement Sub-Committee Session Transcripts No. 12/11, December 21, 2011.

94 Supreme Planning Committee, Settlement Sub-Committee Session Transcripts No. 1/11, January 19, 2011.

12 OUTPOSTS ARE AT VARIOUS STAGES OF THE APPROVAL PROCESS AFTER THE GOVERNMENT ISSUED ORDERS TO ADVANCE THEIR APPROVAL

- **Six outposts are in the process of state land declarations or surveys to determine land status ahead of declaration**

(1) Haresha (founded in 1997, Binyamin Regional Council) | The approval process is underway on the instructions of government level officials, following a Peace Now petition to the HCJ,⁹⁵ in the course of which the state declared its intention to leave the outpost intact as it is not located on privately owned Palestinian land. As part of the formalization efforts, on June 26, 2011, 815 dunams of land around the outpost were declared state land. The declaration was done pursuant to an order issued by the Civil Administration's Supervisor of Governmental and Abandoned Property in the Judea and Samaria Area,⁹⁶ and covers land located in the natural blocs surrounding the Palestinian villages of al-Mazra'ah al-Qibliyah and al-Janiyah. Some parts of the land declared as state land are not territorially contiguous and some are far away from the outpost itself.⁹⁷ An appeal challenging the declaration of some plots of the land in question was dismissed. In August 2014, the HCJ rejected the petition for the evacuation of the outpost.

(2) Hayovel (founded in 1998, near Eli, Binyamin Regional Council) | In July 2011 the Civil Administration' Supervisor of Governmental and Abandoned Property declared 189 dunams of land, where Hayovel's homes and access road had been built, as state land. This declaration, the first in the West Bank since 2004, followed government level directives to formalize the outpost, and did not cover two houses that had been built on privately owned Palestinian land.⁹⁸ An appeal against the declaration, filed by residents of the Palestinian village of Qaryut, located in the same natural bloc as the land covered by the declaration, was dismissed. In August 2014, the HCJ dismissed the petition for the evacuation of the outpost and its access road.⁹⁹

(3) Derech HaAvot (founded in 2001, Gush Etzion Regional Council) | In April 2010, in deliberations in a petition filed by residents of al-Khader and Peace Now in 2008, the state announced that it would conduct a survey to determine the status of the land and that once completed, any structures located on state land would be approved, while those located on privately owned Palestinian land would be demolished. In October 2010, the court dismissed the petition, before the survey was completed. The court criticized the state for failing to fulfill its undertakings. In November 2011, the media reported that the MAG Corps was holding back the publication of an internal report showing that most of the outpost had been built on privately owned Palestinian land (60% of the outpost is located on Palestinian farmland).¹⁰⁰ In

95 Affidavit of Head of the Civil Administration, submitted in HCJ 9051/05 **Peace Now Shaal Educational Enterprise v. Minister of Defense et al.**, October 28, 2008.

96 Order regarding Government Property (Judea and Samaria) (No. 59), 1967. June 26, 2011 (signed by Yosi Segal, Supervisor of Governmental and Abandoned Property) (regarding Haresha).

97 **Ibid.**

98 Order regarding Government Property (Judea and Samaria) (No. 59), 1967. June 26, 2011 (signed by Yosi Segal, Supervisor of Governmental and Abandoned Property) (regarding Hayovel).

99 In addition to the petition Peace Now filed for the evacuation of the outposts of Haresha and Hayovel, in 2008, the head of the Qaryut village council also petitioned the HCJ, with Yesh Din's assistance. That petition called for the demolition of a road that had been built illegally to connect the two outposts to the settlement of Eli. The HCJ heard the petitions together, and, as stated, dismissed them in August of 2014, though it did accept the petitioners' stance on the state's obligation to enforce the law on all construction on private land.

100 Chaim Levinson, "State conceals that outpost was built on Palestinian land", **Haaretz**, November 13, 2013.

January 2013, the Office of the Legal Advisor – Judea & Samaria (LA-JS) announced that the Supervisor of Governmental and Abandoned Property intended to declare most of the land in the outpost as state land, effectively advancing its formalization.¹⁰¹ The declaration itself came in April of 2014, and was followed by an appeal filed by Palestinian landowners with Yesh Din’s assistance, which is still pending. In November 2014, the landowners, together with Peace Now, filed another petition for the evacuation of structures located outside the parameters of the declaration, in keeping with the state’s past undertakings. The petition is still pending.¹⁰²

(4) Giv’at Haro’eh (founded in 2002, Binyamin Regional Council) | The entire outpost is in the advanced stages of a survey ahead of being declared as state land with the object of formalizing the outpost and retroactively approving construction in it. The outpost’s access road is located on privately owned Palestinian land and the court issued an injunction for its evacuation within one year. The state said it intended to locate an alternate access road as part of the outpost’s formalization process.¹⁰³

(5) Ma’ale Rehav’am (Built in 2001, Gush Etzion Regional Council) | In May 2014, ten structures in the outpost were evacuated. Three had been occupied. The evacuation came after the HCJ scolded the state for its repeated delays and attempts to avoid fulfilling its commitment to evacuate the outposts addressed in ‘the Six Outposts Case’¹⁰⁴; Justice Miriam Naor wrote in the judgment that, “It is regrettable that it has come to this. It is regrettable that we cannot rely on undertakings made by the state”. The state told the HCJ that the Blue Line Team review was at an advanced stage and that once it was completed, the possibility of formalizing the outpost would be considered.¹⁰⁵

(6) Ramat Gilad (founded in 2002, Karnei Shomron Local Council) | In 2012, residents of the outpost evacuated some of the structures that had been built on privately owned Palestinian land. The evacuation was part of a deal reached with the state, in which the state pledged to pursue the outpost’s formalization. In 2014, some more structures built on privately owned Palestinian land were evacuated. The Supervisor of Governmental and Abandoned Property began the process for initial registration of the land as state land. Objections were filed against this procedure, and a decision whether or not the outpost can be formalized will be made only after this process is completed, and subject to its outcome.¹⁰⁶

• **Six outposts are in various planning stages**

(1) El Matan (founded in 2000, Samaria Regional Council) | Undergoing planning procedures (master plan), as a neighborhood in the settlement of Ma’ale Shomron, following the state’s undertaking before the HCJ that it would take action to formalize the outpost. In November 2012, the media reported the Minister of Defense had approved the advancement of planning procedures to have the outpost formalized as an artist village.¹⁰⁷ The Samaria Regional Council

101 Letter from the LA-JS to Adv. Shlomy Zachary, Yesh Din’s legal team, January 29, 2013.

102 HCJ 7292/14, **Ali Muhammad Issa Musa v. Minister of Defense et al.**, October 30, 2014.

103 Peace Now, **Six Outposts Case**, paras. 9(e), 19.

104 See p. 16 above.

105 **Ibid.**, para. 9 (f).

106 **Ibid.**, para 9(c).

107 Yehoshua Breiner, “State legalizes illegal outpost as ‘artist village’”, **Walla website**, December 20, 2012.

website defines El Matan as an autonomous neighborhood and states the “outpost is managed by an internal committee”.

(2) Giv’at Sal’it (founded in 2001, Jordan Valley Regional Council) | In 2012, government officials ordered the advancement of an expansive building plan in the outpost. As a result, on November 2013, a new 168-dunam master plan was approved for validation. The plan accommodates 94 housing units, a commercial area and public structures, and defines Giv’at Sal’it as a neighborhood in the settlement of Mehola.¹⁰⁸

(3) Nehalei Tal (founded in 2012, Binyamin Regional Council) | Undergoing formalization as a neighborhood in the settlement of Talmon. In August 2013, the Supreme Planning Committee of the Civil Administration approved for validation a plan that includes 225 residential units in the neighborhood.¹⁰⁹

(4) Zayit Ra’anana (founded in 2001, Binyamin Regional Council) | Undergoing planning for approval as a neighborhood in the settlement of Talmon. In August 2013, the Civil Administration’s Supreme Planning Committee approved for validation a plan that includes 304 residential units in the neighborhood. The plan reflects a significant expansion of the neighborhood, which now includes only a few dozen structures.¹¹⁰

(5) Mitzpe Lachish (founded in 2002, Hebron Hills Regional Council) | The Blue Line Team review indicated that all structures are located on state land. As a result, the state is pursuing the formalization of the outpost and retroactive approval of the structures in it. In November 2013, the jurisdiction of the settlement of Negohot was expanded to include the outpost. A master plan which includes the settlement in the jurisdiction of Negohot was later submitted to the planning committee.¹¹¹

(6) Shvut Rachel (founded in 1991, Binyamin Regional Council) | After the state notified the HCJ that it intended to pursue the formalization of the outpost,¹¹² the Supreme Planning Committee approved a master plan for the outpost as a neighborhood in the settlement of Shilo. The plan that was approved for validation includes hundreds of residential units, retroactive approval for structures built without permits and a significant expansion of the outpost. The outpost’s formalization process has not yet been completed. Shvut Rachel functions as separate and distinct from the settlement of Shilo, with its own secretariat and administration.

108 Supreme Planning Committee, Settlement Sub-Committee Session Transcripts No. 2013014, November 3, 2013.

109 Supreme Planning Committee, Settlement Sub-Committee Session Transcripts No. 2013010, August 7, 2012.

110 **Ibid.**

111 Peace Now, **Six Outposts Case**, para. 9(a).

112 In March 2011, Peace Now petitioned the HCJ against illegal construction in the outpost of Shvut Rachel. The state pledged to take action to stop the illegal construction and formalize the outpost’s planning status. The pledge was validated as a judgment. See: HCJ 1813/11 **Peace Now Shaal Educational Enterprise v. Minister of Defense et al.**, Judgment, October 5, 2011.

The Israeli media has reported that the state is planning to formalize additional outposts including **Mitzpe Avigayil**,¹¹³ **Sde Bo'az**¹¹⁴ and **Tekoa D**.¹¹⁵

HCJ deliberations regarding two more outposts have been concluded, but declarations made by the state indicate that it plans neither removal nor formalization: **Giv'at Assaf**. The outpost was built on registered privately owned Palestinian land. It was evacuated in May 2014, as pledged by the state to the HCJ, though after many delays. The evacuation did not include structures built on four plots of land that were alleged to have been purchased by settlers. The police later found that there was real cause for concern that the purchase deals had been based on an alleged forgery.¹¹⁶ The HCJ ruled that one of the four plots must be evacuated by March 1, 2015. The state's response, which was incorporated into the judgment, contained no assurances for the evacuation of the structures in these plots, and the settlers claim that they are advancing approval of a master plan for them.¹¹⁷ The other outpost is **Mitzpe Yizhar**. The state told the HCJ it had not decided whether to pursue the formalization of outpost structures built on survey land.¹¹⁸

113 In February 2014, Haaretz newspaper published that the outpost was in the advanced stages of formalization and has received official status in an area of more than 1,000 dunams. See: Amira Hass, "Israel pushing to legalize West Bank outpost slated for demolition", **Haaretz English website**, February 23, 2014.

114 In March 2014, Haaretz reported a top security official had said that the government was "seeking to legalize Sde Boaz". See: Chaim Levinson, "Settlers strike secret deal with Ya'alon to save outpost homes", **Haaretz English website**, March 11, 2014.

115 Defense Minister Mosheh Ya'alon decided to formalize the outpost following negotiations with the head of the Gush Etzion council for the evacuation of the outpost of Tekoa E, founded in July 2014 after the abduction and murder of Gilad Shaar, Naftali Fraenkel and Eyal Yifrah (as part of the negotiations, the council was offered additional construction perks). The formalization enables residents to begin the process of filing master plans for the outpost which is partly located on private land. See: Chaim Levinson, "Israeli settlers offered West Bank homes if they vacate illegal outpost", **Haaretz English website**, August 17, 2014.

116 The State Attorney's Office notified the Supreme Court that "the opinion provided by the Forensics Department indicates suspicions of a forgery in the purchase document for one of the aforesaid three plots". Updating Notice on behalf of the State, given in HCJ 7891/07 (Peace Now, **Six Outposts Case**, see supra note 55), para. 14.

117 Peace Now, **Six Outposts Case**.

118 *Ibid.*, para. 9(d).

D. IMPACT ON THE HUMAN RIGHTS OF PALESTINIANS

Israeli settlements and outposts cause severe violations of the human rights of Palestinians living in the West Bank. These violations are multi-dimensional as they cut across almost every single human right and fundamental liberty recognized under international human rights law.

This report focuses on outposts' most visible impact on Palestinians' right to life, security and bodily integrity, as well as their right to property (which encompasses the right to a livelihood), particularly land ownership, as these form the bulk of Yesh Din's work and have been investigated by the organization over the years.

The right to life, security and bodily integrity

The West Bank is an arena for serious and alarmingly widespread ideologically motivated crime by Israelis, settlers and non-settlers alike, against Palestinians and their property. Yesh Din has been monitoring cases involving alleged offenses of this type, and how the authorities handle them, ever since its establishment in 2005. At the end of 2014, Yesh Din was following more than a thousand police investigation files concerning damage to property, violence, seizure of Palestinian land and other offenses that do not fall under any of these three categories.¹¹⁹

Only 7.4% of the investigations the Samaria and Judea District Police conducted between 2005 and 2014 into crimes committed against Palestinians by Israeli civilians resulted in indictments. About one percent of the files were lost and never investigated, and the rest were closed at the end of the investigation. A review of the closed investigation files reveals that 82.5% of them were closed in circumstances evincing investigative failure, most commonly because investigators failed to name suspects or collect sufficient evidence to indict them.¹²⁰ Previous years' figures were similar.

These figures point to an ongoing failure to investigate offenses, reflecting a breach of the duty to investigate and resulting in lack of accountability for crimes perpetrated by Israelis against Palestinians. The State of Israel is betraying its duty under international law to protect the population of the occupied territory.

The ongoing law enforcement failure and the lack of accountability for these ideologically motivated offenses are inextricably linked to the establishment of outposts and the constant expansion of the areas under their control. Lack of effective law enforcement allows criminals to violently dispossess Palestinians and sends the message that, as far as Israel is concerned, they may continue to do so with impunity.¹²¹

119 Of the cases monitored by Yesh Din, 47.4% concern damage to property, 34.5% concern violence, 13.6% concern seizure of Palestinian land and 4.5% concern other offenses.

120 For full figures see: **Data Sheet: Increase in Rate of Police Investigation Failure in Cases of Ideological Offenses against Palestinians**, Yesh Din, November 2014.

121 The correlation between non-enforcement and the outposts was discussed at length in the Sasson Report. See: **Sasson Report** pp. 252-267.

The right to property – exercising land ownership

Palestinians' property rights are violated on a massive scale throughout the West Bank, with almost every village affected. Apart from illegal construction on privately owned Palestinian land, which constitutes theft and a direct assault on the right to property, additional widespread practices in the West Bank also infringe on Palestinians' right to property. What all of these have in common is that they are designed to deny Palestinians access to their land and keep them away from it, ultimately dispossessing them and expanding the areas under the control of Israeli communities. The following are the major practices:

Denying access to farmland: According to Israeli policy, every Israeli community in the West Bank, whether it is a settlement or an outpost, dictates security arrangements designed to protect the residents. Israel sees to the safety of outposts even if they were founded without government approval and are therefore illegal under Israeli law. As soon as an outpost is founded, IDF troops are sent to guard it and protect its residents. This protection takes the form of declaring the area the settlers had seized illegally and without permission as a closed military zone, and denying Palestinian access to it entirely. An additional area, surrounding the outpost, is also declared a closed zone, to serve as a buffer zone. More land, farther away from the outpost, serves as an extended buffer zone. It is also declared a closed military zone, but in this case, Palestinians may access it if they obtain a special permit from the army to cultivate farmland, and after advance coordination. The permit affords the farmers a military security escort for their protection while they work their plots. As stated, the permits require advance coordination, and are mostly issued for a limited number of days twice a year – during the sowing and harvest seasons. Permits are issued to very few people (only those who can prove a direct connection to the land), in numbers that are not sufficient for the work that needs to be done. Other areas near outposts are not officially closed off to Palestinians, but Palestinian landowners refrain from accessing them for fear of physical violence and vandalism on the part of settlers, after repeated experiences of settler attacks on Palestinians and their crops.

CIRCLES OF INFLUENCE – HOW A SINGLE OUTPOST AFFECTS PALESTINIANS’ ABILITY TO ACCESS THEIR LANDS



There is a direct correlation between the existence of outposts and criminal offenses in their vicinity. The perpetrators’ objective is to entrench and increase the control of the outposts over ever expanding areas, by keeping Palestinian farmers away from their land. In 2013, Yesh Din published a study of the outpost of Adei Ad as a test case for how criminal activity has deprived Palestinian farmers from four nearby villages of their access to their land and their ability to enjoy its fruits. The study found a direct correlation between the expansion of the outpost over the years, and the geographic location of the crimes committed in its vicinity.¹²² Lack of proper enforcement on the part of the military and the police exacerbates the farmers’ fear, as they realize that the offenders are free to do as they please and that no one will take action to punish or deter them. The fear causes some farmers to stay away from their land. Others insist on farming, even at the cost of attacks by settlers and harm to the crops.

Agricultural invasion: Agricultural seizure is a common technique for dispossessing Palestinians. Of the offenses documented by Yesh Din, 13.6% involve seizure of Palestinian land, including fencing, plowing, sowing, planting, razing, erecting agricultural structures or greenhouses and more. It is estimated that thousands of dunams of farmland that were tended by Palestinians a decade or two ago, are now tended by Israelis who invaded the land without entitlement.

¹²² See: **The Road to Dispossession**, pp. 74-143, map on p. 124 in particular.

The Israeli authorities fail to properly address these types of invasions. On the criminal aspect, the results of police investigations into cases of agricultural invasion show that most (63%) are closed due to investigative failure. Indictments were served in only 12.6% of the investigation files, despite the fact that in this type of crime, it is relatively easier to locate suspects and collect evidence against them. On the administrative level, the head of the Civil Administration has made little use of the Order regarding Disruptive Use of Private Land, the main tool used for administratively handling invasions. It allows the authorities to remove the invasions expeditiously and effectively. The few orders that have been issued over the years have largely gone unenforced.¹²³

The consequences of lost access to land

Losing access to farmland has a disastrous impact on Palestinians' ability to cultivate farmland and make a living off its yield. Many residents of villages that historically relied on farming almost exclusively, have been forced to look for alternative sources of income. Some villages have a negative migration balance, and a large percentage of the residents, mostly young adults, leave in pursuit of other sources of income in nearby cities in the West Bank, or abroad. The few who still rely on farming for their livelihood have suffered a significant loss of income due to the (full or partial) restrictions on access to land, the inability to cultivate it and vandalization of crops.¹²⁴

Since most privately owned land in the West Bank is unregistered,¹²⁵ losing the ability to cultivate it continuously over time may ultimately result in loss of title to the land, paving the way for its transfer to the state of Israel, or to invaders.

123 See: Chaim Levinson, "State will make it tough for Palestinians to remove settlers from their land", **Haaretz**, May 27, 2014; Amira Hass, "Continuous invasions by settlers spoil the joy of Palestinians' olive harvest", **Haaretz English website**, October 26, 2014.

124 For more about loss of access to land and its financial and other consequences for farmers, see: e.g. **The Road to Dispossession**, pp. 119-143.

125 Registered land is privately owned land that is registered in the name of Palestinians with the Land Registration Bureau in the OPT. Land registration was stopped in 1967, shortly after the Israeli occupation of the West Bank. Until then, only about 30% of the land in the West Bank had undergone land registration and had been registered in the name of the owners. Most of the land in the West Bank that is cultivated by Palestinians is not registered in their name.

E. IMPACT ON PALESTINIAN COMMUNITIES: CASE STUDY

The village of Jalud¹²⁶

Jalud is a small village 26 km southeast of Nablus. It is an ancient village in the Nablus area, and today one of the poorest.

Following a period of growth and expansion from the mid-1980s, the built-up area of the village grew from 30 dunams to its current surface area of 500 dunams, reaching a population of approximately 1000 by the late 1990s. In addition to the built-up areas, the natural bloc of village land includes more than 15,000 dunams, some of which is rocky terrain. For many years, seasonal agriculture was the exclusive source of livelihood for the residents of Jalud, who grew mainly chickpeas, wheat and olive trees on their land.

The period of prosperity was halted in the mid-1990s by the establishment of five outposts surrounding the village, namely Adei Ad, Shvut Rachel, Ahiya, Esh Kodesh, Kida and Yishuv Hadaat Farm, which were erected on the village's agricultural land.

The establishment of the outposts has resulted in the increasing dispossession of Jalud's residents of their land and thereby from their main source of livelihood. The denial of access occurred gradually: first, access was denied to land on which the outposts' buildings were placed, as well as the land closest to them. By 2000, movement in additional areas was barred by the army, ultimately restricting access to some 10,000 dunams of Jalud land.

The establishment of the nearby outposts also brought on frequent incidents of harassment, violence and property damage by Israeli civilians in the area, with marginal neighborhoods of the village and farmers tending to their land being particularly vulnerable to such attacks. Between 2010 and 2013, Yesh Din documented 17 of these offenses perpetrated by Israeli civilians in the village and lands of Jalud. As a result, Jalud residents feel forced to stay away from a further 319 dunams of land, out of fear of harassment by Israeli civilians, although access is not formally restricted by the army.

As a direct result of the dispossession of farmers from their land, the ability of Jalud's residents to live on agriculture has been severely impaired. While in the past the village's manpower was insufficient to cultivate all of its land, today there is not a single family left in the village that is able to support itself solely on agriculture. The extent of the economic damage to the residents of the village exceeds the direct damage to the landowners and their families. Other families who made a living from working the land in exchange for produce, or laborers who were hired for wages, also lost the source of their livelihood.

¹²⁶ Information detailed in this case study was first published in Yesh Din report 'The Road to Dispossession - A case Study: The Outpost of Adei Ad', February 2013. Information is based on conversations with the village council head Mr. Abdallah Toufik Hajj Mohamed, and area calculations were produced by Geographic Information System (GIS).

Today, Jalud's residents work as laborers or Palestinian Authority employees and struggle to make a living. Many of the residents of the village are supported by UNRWA (the United Nations Relief and Works Agency).

One symptom of Jalud's impoverished economic situation in the last decade is a sharp decline in the village's population, from 1000 residents in the late 1990s to approximately 600 today. According to the head of the village council, most of those who emigrated are young people who moved to nearby West Bank cities in pursuit of employment.

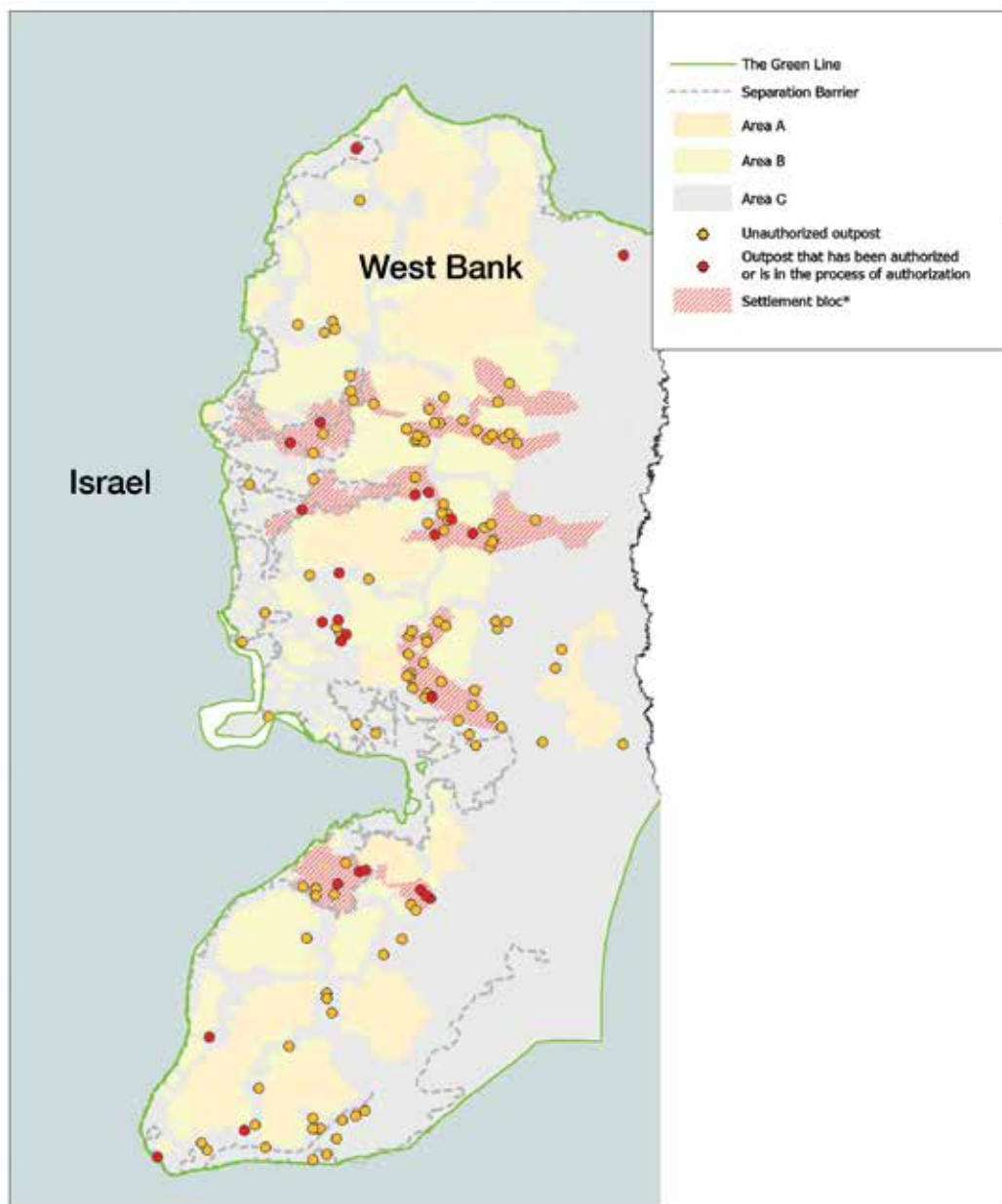


Ahiya outpost as seen from Jalud, January 15, 2015. Photo: © The Rights Forum

F. FRAGMENTATION

One of the goals pursued by the establishment of outposts, and the specific locations chosen for them, is creating contiguous Israeli settlement blocs by connecting isolated communities to larger, existing settlement blocs. The settlements and outposts in Area C form geographically contiguous lines stretching from the Green Line in the west to the Jordan Valley in the east. This results in the fragmentation of the West Bank and severely infringes on the Palestinians' right to self-determination.

Most of the outposts undergoing approval processes are located on these contiguous lines. The maps presented below and on the next pages schematically depict four prominent contiguous settlement lines, demonstrating how they fragment the West Bank.



*Indication of the settlement blocs is for illustration only

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Yesh Din – Volunteers for Human Rights was established in March 2005. Since then, its volunteers and staff have worked to secure a structural and long-term improvement in the human rights situation in the occupied Palestinian territories. Yesh Din collects and disseminates reliable and updated information concerning systematic human rights abuses; applies public and legal pressure on the Israeli authorities to end these abuses; and raises public awareness of human rights violations in the occupied Palestinian territories. In order to realize its goals effectively, Yesh Din has adopted a model that is unique among Israeli human rights organizations. The organization is run by volunteers and receives daily assistance from a team of jurists, human rights experts, and strategic and media professionals.

The Rights Forum was launched on 10 December 2009, the International Day of Human Rights. Based in the Netherlands, The Rights Forum is a network of former Dutch Government Ministers and Professors of International Law who have joined forces to promote a rights-based policy of the Netherlands and the European Union vis-à-vis Israel and Palestine. The Rights Forum engages policymakers and disseminates information about violations of international law that fuel the Israeli-Palestinian conflict and that prevent a just and durable solution to it.

