

THE LAWLESS ZONE

THE TRANSFER OF POLICING AND SECURITY
POWERS TO THE CIVILIAN SECURITY COORDINATORS
IN THE SETTLEMENTS AND OUTPOSTS



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Yesh Din bears full responsibility to the contents of this publication.

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INTRODUCTION

A protracted territorial struggle has been waged in recent years in many parts of the West Bank between settlers seeking to expand the areas under their control and annexing as much land as possible and Palestinian landowners interested in farming their land. The civilian security coordinators (CSCs) and the civilian guarding squads that operate in the Israeli settlements on the West Bank are among the most influential parties in this struggle. The CSCs are agents of the army, in that they are subject to the Military Justice Law and hold policing powers, but they are appointed by the settlements and see themselves as representing the settlements' interests. This conflict of interests, combined with the absence of a clear definition of their powers and weak supervision of their actions, creates daily friction and clashes between the CSCs and settlement civilian guard usquads, on the one hand, and Palestinians farmers, on the other. In many cases the end result is that Palestinian landowners are unable to farm their land.

The CSCs and the guarding squads that operate in the Israeli settlements in the West Bank are quasi-military civilian forces composed of residents of the settlements and outposts in the area. They are equipped with IDF weapons, undergo military training, and are empowered to undertake policing actions, such as searches and detentions, and to use force. Their activities are ostensibly supervised and monitored by the IDF. The use of these forces in the settlements is based on a military doctrine called "regional defense," which predates the establishment of the State of Israel, when such forces based in Israeli frontline communities were charged with supporting army forces during military confrontations or invasions by foreign armies. In the West Bank, the "regional defense" approach has come to be confined to the protection of the settlements and outposts against intrusion, without the additional aspect of contributing to the overall security situation.

This report reviews the powers granted to these quasi-military forces in the fields of law enforcement and authority over soldiers stationed in the settlements and in the extensive areas placed under their control – areas referred to as "guarding zones." In 1971 the State of Israel began to operate quasi-military forces in the settlements and outposts, yet over forty years later key aspects of their operations have yet to be formally defined. By way of example, no rules have been established regarding IDF supervision of the appointment and operations of CSCs and guarding squads. Neither have rules been defined regarding the relations between these forces and IDF soldiers stationed in the settlements, or other army units, nor regarding the geographical boundaries within which these quasi-military forces are permitted to operate. Moreover, the operational responsibility for these forces



is currently diffused between three bodies: The Ministry of Defense, which finances their operations; the IDF, which is supposed to supervise their work; and the settlements themselves, which appoint the CSCs and guards from among their residents and serve as their direct employers.

This diffusion of authority creates a conflict of interests manifested in two key areas. Firstly, the CSCs and the members of the guarding squads, who bear weapons and hold policing and law enforcement powers, are supposed to represent neutral interests for the respect for the law and maintenance of public order. Yet they also belong to one of the two mutually hostile groups in the West Bank – i.e. the settler population – and, as such, they clearly support the territorial interests of the settlements in a manner that frequently clashes with their function as representatives of the law and public order. There is no dispute that the settlements in the West Bank seek to expand the territorial areas under their control, in most cases at the expense of the land of Palestinian residents. In their struggle to this end, many settlements use means including the violation of military orders (which enjoy the status of law in the West Bank), through means such as illegal construction and the criminal seizure of Palestinian land. This conflict of interests is clearly illustrated in the application of the authority granted to CSCs to define what constitutes a security threat as the foundation for the deployment of guarding squads and army forces. This authority enables the CSCs to define events in a manner that prevents Palestinians from accessing their land adjacent to settlements and outposts, thereby realizing the settlements' aspirations to expand their sphere of territorial control.

Secondly, although the CSCs are accountable to the IDF in professional terms, their salaries are paid by the settlements (with funds from the Ministry of Defense), and in most cases they are residents of the settlements. This situation creates tension between their commitment to army orders and their commitment to their place of residence and to the leaders of the settlements.

It is also important to note that the use of these quasi-military forces is part of a broader trend. Since the mid-1980s, executive powers in the field of law enforcement, including the state's core powers relating to the use of force, have been increasingly privatized and transferred to interest groups. As in the case of the privatization processes inside Israel, this transfer has taken place without meaningful supervision and without adequate examination of its ramifications. No consideration has been given to the manner in which the transfer of powers to elements within the settlements influences the rule of law in the

West Bank or the rights of Palestinians – the protected residents of the area in accordance with the provisions of international law.

The transfer of policing and law enforcement powers to an ideological interest group has a particularly pernicious impact when it takes place in an occupied territory, in which the settlements themselves were established in gross violation of international law and entail the usurping of land on a massive and protracted basis. The granting of such sweeping powers to an interest group that openly and declaratively rejects the provisions of international law is indicative of the chaos that characterizes the official Israeli attitude toward law enforcement in the West Bank.

Yesh Din believes the activity of the CSCs and guarding squads not only fails to uphold public order and the rule of law in the West Bank, it also undermines them and weakens Israel's ability to fulfill its duty under international law to protect the Palestinians and their property.



CHAPTER 1:

THE REGIONAL DEFENSE DOCTRINE

The Israeli “regional defense” doctrine, including the roles of civilian security coordinator (CSC), deputy coordinator, acting coordinator, and the civilian guarding squads, was developed in frontline communities within the State of Israel and later replicated in the settlements and outposts in the West Bank (and, in the past, in the settlements established in the Gaza Strip). This security doctrine developed prior to the establishment of the State of Israel, when frontline communities played a function in delineating the borders of the future state. This approach assumes that frontline communities form part of a comprehensive logistical and military system whose function is to support military forces in times of conflict. On the day of reckoning, the residents of these communities are expected to join the army forces and to assist and support them in repelling and subduing invading enemy forces.¹

Following the establishment of the state, this approach was formalized in the Local Authorities Law (Regulation of Guarding) (1961).² The law, in its various permutations, stipulated which communities would have forces assigned with defending them at times of emergency and routine, defined the functions and powers of the “supervisor of the guards” (i.e. the civilian security coordinator) and the guarding squads in frontline communities, stipulated who bore the duty of guarding, and established the accountability of this position to the IDF or the Israel Police and the Border Police.³

In 1971 the regional defense approach was adopted in the settlements in the occupied West Bank by means of a military order. This approach continues to be applied to this day in all military orders pertaining to the distribution of army weapons to Israeli civilians who live in the settlements, and concerning the powers of CSCs and guarding squads in the settlements. The Home Front Command procedures require the deployment of CSCs in any community defined as “classified for security purposes,” even if it has a local

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- 1 See Yigal Elam, “Settlement and Security,” *Ma’arachot* 279-280 (May 1981), 62-63 (Hebrew); Brig.-Gen. Yitzhak Zaid, “Regional defense and Civil Defense in Tomorrow’s War,” *Ma’arachot* 270-271 (October 1979), 81-84 (in Hebrew).
 - 2 For the full text of the law (in Hebrew), see: www.nevo.co.il/law_html/law01/p213_023.htm
 - 3 Appendix A of “Authorization to commanders of Israel Police, attached to General Staff Order 2.0107, “Delivery of army weapons to civilians,” valid from September 26, 2006.

police station.⁴ According to press reports, there are currently 265 CSCs “along all the confrontation lines.” An annual budget of NIS 38 million is allocated for the employment of the coordinators.⁵

In the late 1970s, during Supreme Court hearings relating to the seizure of private Palestinian land for the establishment of settlements, the regional defense doctrine was used by supporters of the settlement movement to justify the supposed security importance of establishing the settlements in the West Bank. For example, during a hearing in a Supreme Court petition against the establishment of the settlement of Elon Moreh on the private land of the Palestinian village of Rujeib, IDF Chief of Staff Rafael Eitan emphasized in an affidavit on his behalf “his resolute opinion regarding the importance of regional defense” and “the important contribution of civilian settlements to the defense of the Jewish settlement in the Land since before the establishment of the state and during the (1948) War of Independence.”⁶

According to Eitan’s approach, “the regional defense settlements are armed, fortified, and properly equipped for their task, which is to defend the area in which they live and reside, and their location on the ground is determined with consideration to their contribution to regional control and to assisting the IDF in its various tasks.” He argued that civilian settlement is more important than a military base, “since in wartime the force on the base leaves to perform mobile and assault functions, while the civilian settlement remains intact

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- 4 **Prime Minister’s Remarks on State Comptroller’s Report 62**, Part Two (May 2012), 49. The Home Front Command procedure concerning the establishment of new communities details the security classifications of frontline, “border seam,” and “sensitive” communities. In “enhanced frontline” and “border seam frontline” communities, a CSC is to be appointed and army equipment allocated to a 12-person emergency unit. See **Procedure for the Establishment of New Communities**, Home Front Command, updated in 2011.
 - 5 Gili Cohen, “Order to Soldiers Guarding on a Settlement: No Entry for Non-Jews,” **Ha’aretz**, September 19, 2012; Gili Cohen, “State Spends NIS 30 Million a Year on Security for Settlements that are Not at Risk,” **Ha’aretz**, November 7, 2013. The Ministry of Defense forwards funding totaling NIS 12,000 a month to settlements defined as “frontline” by the Home Front Command toward the cost of employing a CSC, while settlements classified by the Home Front Command as “border seam” and “sensitive” receive NIS 5,000 a month. See: Agreements regarding Funding of Security Components in a Community with Security Classification from the Home Front Command as a Frontline Community and a Community with Security Classification as a Border Seam/Sensitive Community, dated July 3, 2012 and November 15, 2012. Provided by Major Zohar Halevy, Head of the Public Inquiries Desk, IDF Spokesperson, to Noa Cohen, Yesh Din Information Coordinator, December 24, 2013.
 - 6 HCJ 390/79, **Izzat Muhammad Mustafa Dweikat et al. v Government of Israel et al.**, October 22, 1979. The full text of the ruling is available (in Hebrew) on the website of HaMoked: Center for the Defence of the Individual: www.hamoked.org.il/items/1670.htm

and, since it is properly armed and equipped, it controls its surroundings for the purpose of observation and protecting the adjacent transportation routes in order to prevent enemy seizure thereof.”⁷

The state also expressed a similar position in an affidavit submitted by the Coordinator of Government Actions in the Territories, General Avraham Orly, during a hearing in a Supreme Court petition regarding the establishment of the settlements of Beit El and Beka’ot:

*According to this doctrine, all the Israeli settlements in the territories administered by the IDF constitute part of the IDF’s regional defense system. Moreover, these settlements are classified at the highest ranking in the framework of the said regional defense system, as reflected in the allocation of staff positions and means. During times of calm these settlements serve mainly for the purpose of presence and control of vital areas, for the undertaking of observations, and so forth. The importance of these settlements increases particularly in times of war, when regular army forces are generally transferred from their bases for the purpose of operational employment, and the said settlements constitute the primary component of security presence and control in the areas in which they are situated.*⁸

The Supreme Court rulings in these two cases took for granted the importance of implementing the regional defense approach in the settlements established in the West Bank, although the ruling in the Elon Moreh petition established that a military order cannot be used to seize private Palestinian land for the purpose of establishing a settlement. Moreover, during the legal discussion of the petition against the establishment of the settlements of Beit El and Beka’ot, Justice Alfred Vitkon, who wrote the ruling, supported the implementation of the regional defense doctrine in the West Bank. Vitkon emphasized that “in terms of pure security considerations, it cannot be doubted that the presence in an administered territory of settlements – even ‘civilian’ ones – of the citizens of the administering power contributes considerably to the security situation in that area and facilitates the army’s performance of its functions.” Justices Moshe Landau and Miriam Ben-Porat concurred.⁹

7 Ibid.

8 HCJ 606/78 and 610/78, **Suliman Tawfiq Ayoub et al. and Jamil Arsam Mataugh et al. v Minister of Defense**, ruling from 1979. The full text of the ruling is available (in Hebrew) on the website of HaMoked: Center for the Defence of the Individual: www.hamoked.org.il/items/1670.htm

9 Ibid.

The regional defense approach is still used to justify the employment of the CSCs and guarding squads on the settlements. All military orders relating to guarding on the settlements mention this doctrine, including those defining the powers of the CSCs and the IDF General Staff orders concerning the delivery of weapons to civilians. Allusion is still made to this doctrine despite the fact that its application no longer entails assistance to the army in defending the borders of the state against invasion by hostile forces during war or control by the settlements of the surrounding area, but has been restricted to defending the settlements themselves against penetration by terrorists.¹⁰

Accordingly, the IDF regards the CSCs and guarding squads as an ancillary force that can assist it in protecting the settlements alone. As part of this approach, the CSCs were recently integrated in a new communications system installed in the West Bank and used by the IDF, the Israel Police, and rescue services.¹¹ The head of the Regional Defense Desk in the Judea and Samaria Division told the IDF journal *Bamachaneh*: “The CSCs are sufficiently capable of providing the initial operational response, and the guarding squads are also at a very high standard. A terrorist must pass numerous hurdles before reaching a settlement, but if this happens, the civilians are capable of coping with him until the army force arrives.”¹² An operations sergeant in the Judea and Samaria Division commented in his testimony to the organization *Breaking the Silence*:

*A nearby civil military coordinator is one of the forces we alert first, since in the final analysis they are the people on the ground and they function in a way as our eyes in the field, and that's how they are regarded. So I call the civil military coordinator and tell him to go to the site of the incident and he gets their first, with his weapon, so he can secure the scene. Sometimes he keeps the arena sterile until another force arrives... They are an active force on the ground in terms of the war room and in terms of routine functioning.*¹³

10 Gili Cohen, “State Spends NIS 30 Million a Year on Security for Settlements that are Not at Risk,” *Ha’aretz*, November 7, 2013. The Home Front Command regards the settlements as “frontline” communities threatened “on an ongoing basis by penetration and shooting.” See also: **State Comptroller’s Report 62** (May 1, 2012), 1715; Chaim Levinson, “IDF Training Settlers to Prepare for Palestinian Marches to the Settlements in September,” *Ha’aretz*, August 30, 2011.

11 Dasha Tess, “Lightening Comes to Judea and Samaria,” *Bamachaneh*, February 2, 2014.

12 Oren Rosner and Or Boutboul, “Insecurity,” *Bamachaneh*, March 25, 2011, 32. The page Powers of the CSCs on the website of the Military Advocate General’s Corps emphasizes that “the powers vested in the CSCs in accordance with the Guarding Order are intended to assist them in realizing their responsibility to protect the security of the settlement for which they are responsible” (December 5, 2013).

13 Testimony of a sergeant to the organization *Breaking the Silence*, operations sergeant in the Judea and Samaria Division in 2006-2008 (December 2010).

CHAPTER 2:

THE CIVILIAN SECURITY COORDINATORS' POWERS

Four years after the occupation of the West Bank, the IDF began to issue military orders and standing commands regulating the activities of the civilian security coordinators (CSCs) and civilian guarding squads in the Israeli settlements. Although many years have elapsed, many aspects of their work are still not properly defined.

The Israeli approach views the settlements in the West Bank as full-fledged and permanent Israeli communities. Accordingly, Israeli legislation regulating the guarding of frontline communities inside the State of Israel was replicated in the West Bank by means of a military order – the Order concerning Guarding in Communities (Judea and Samaria) (No. 432), 1971.¹⁴ At the time the order was issued in 1971, Israel had established just 12 settlements in the West Bank: eight in the Jordan Valley close to the border between the West Bank and Jordan, and three in Gush Etzion close to the “Green Line” border between Israel and the West Bank.¹⁵

Order No. 432 defines the role of settlements guards (a “guard” is a permanent guard who is a permanent resident of the settlement, and who guards the settlement “on behalf of the army;”), who is required to carry out guarding duties in a settlement (a permanent resident of the settlement, i.e. a person whose permanent place of accommodation is in the settlement, “a male aged 18-60 years,” is required to guard for up to six hours a week, to carry a guard’s certificate on his person, and to present this “to any relevant person;”), and the function of the CSC, who is the “supervisor of the guards.” Israeli legislation, which does not apply in the West Bank, states that the CSCs in frontline communities are accountable to the Israel Police and the Border Police.

Today the CSCs are responsible not only for the civilian guard squads (which usually comprises some 20 residents of the settlement) and for regulating and inspecting guarding “by day and night,” but also for all aspects of security in the settlement or outpost. Among other functions the CSCs are responsible for furnishing residents of the settlement or

14 The order was issued on June 1, 1971 and signed by Brigadier-General Raphael Vardi, Commander of the Judea and Samaria Area.

15 See: **Dispossession and Exploitation - Israel's Policy in the Jordan Valley and Northern Dead Sea** (May 2011), p. 58; B'Tselem, **By Hook and by Crook: Israeli Settlement Policy in the West Bank** (July 2010), p. 9.

outpost with army weapons, even if they are not members of the civil guarding squad. They must ensure that the guards are trained in operating their weapons in accordance with the orders of the regional command. Their duties also include the inspection of patrols, PA systems, guard booths, and the settlement fence; examining security arrangements in educational institutions; recruiting and equipping regional defense soldiers during periods of fighting or alert; and supervising civilian guards or security companies, if these have been posted in the settlement.¹⁶

According to the military order, a resident of a settlement who refuses to perform guard duty is liable to a fine of up to NIS 490. In accordance with a decision of the Attorney General, guards in the settlements who are injured during or as a result of operational activity are entitled to identical rights to those granted to IDF soldiers injured in the course of their service.¹⁷ On the basis of a parallel law in Israel, the military order permits the establishment of a “guarding authority” in West Bank settlements. However, the order does not define the character of this “guarding authority” nor the powers it enjoys.¹⁸

THE POWERS OF THE CIVILIAN SECURITY COORDINATORS AND THEIR AREA OF OPERATION

The civilian security coordinators’ powers

The military order regulating guarding was signed in 1971 and has since been amended several times. The first substantive amendment was made in April 1992, when guards were for the first time granted powers analogous to those of police officers, including powers to detain, search, and arrest. Guards were also empowered to use force in performing their duties. The granting of policing powers to quasi-military forces in the settlements has far-reaching ramifications in light of the inefficiency of the police in the West Bank and the

16 Operations Division Standing Order, OSO 07/01 – Guarding in Communities, September 2003, section 6. Letter from Attorney Shai Nitzan, Deputy Attorney General (Special Assignments) to Attorney Limor Yehuda of the Association for Civil Rights in Israel, December 20, 2005. See also: Orin Rosner and Or Boutboul, “Insecurity,” **Bamachaneh**, March 25, 2011, p. 31.

17 Attorney General Decision dated December 18, 2012.

18 See FN 14 in this report. Regulation of Guarding, 3(b) and 3(c). Regarding the guarding authority, Deputy Attorney General (Special assignments) Attorney Shai Nitzan informed Attorney Limor Yehuda of the Association for Civil Rights in Israel that “to the best of my knowledge, an empowered authority for the purposes of section 3a(8) of the order has not been defined.” Shai Nitzan’s letter to Attorney Limor Yehuda dated December 20, 2005.

general impotence of the Israeli authorities in enforcing the law on settlers. Army and police forces require a considerable period of time to reach the site of an event to which they are called and to intervene in violent incidents occurring close to settlements or perpetrated by Israeli civilians.

The amendment to the order granted the following powers to guards:

- To require any person to accompany the guard to the police station or to remain on the scene pending the arrival of a police officer or soldier;
- To search of a person's body, property, or vehicle if the guard has "reasonable suspicion" that the person is carrying a knife, firearm, or explosives, and if the search "is required in order to prevent danger to human life;"
- To seize an object if the guard has "reasonable grounds to assume" that the said object was or will be used to commit an offense or is liable to serve as evidence in a legal proceeding;
- To arrest a person without an arrest warrant, if the arrest is intended to assist a soldier or police officer or if the individual is committing – or the guard has "reasonable grounds to assume" that the person has "just" committed – an offense incurring a penalty of over three years' imprisonment, provided that the said person previously refused to accompany the guard to the police station or to remain on the scene pending the arrival of a police officer or soldier.

The amendment adds that "in circumstances in which a guard has been empowered in this order to arrest a person, he is entitled to use any reasonable means to execute the arrest."¹⁹

Although the military order grants the "guards" substantive policing powers, it does not require them to wear a tag identifying them by name, as required of Israel Police personnel (including Border Police) or other officials in Israel enjoying policing rights. Instead, it merely requires the "guards" to carry a "guard's certificate" and an identity card.²⁰ Attorney Shai Nitzan, Deputy Attorney General (Special Assignments), later promised that the CSCs would be required to wear identifying uniforms (vests and caps) bearing the legend "civilian

19 Amendment to Section 3a(c)(2)-(7) of Order no. 1365, Order concerning the Regulation of Guarding in Communities (Amendment No.10) from April 8, 1992. In: Communiqués, Orders and Appointments, Booklet No .137, April 1992, Legal Advisor for the Judea and Samaria Area.

20 Section 3a of Order No. 1448, Order concerning the Regulation of Guarding in Communities (Amendment No.15) dated January 12, 1997, in: Communiqués, Orders and Appointments, Booklet No .172, Legal Advisor for the Judea and Samaria Area.

security coordinator,” though not identification tags.²¹ This requirement was never formalized in a military order. The exemption granted to CSCs and guards from the requirement to wear tags impedes their identification by persons injured by their actions – Palestinians, activists or aid workers. Yesh Din’s experience over the years shows that most CSCs ignore the requirement to wear an identifying uniform.

By way of comparison, more restricted policing powers were only granted to the guards in frontline communities inside the State of Israel a decade later, in 2002. According to the amendment to the relevant Israeli legislation, a search “involving bodily contact” is to be conducted only by a person of the same sex as the person being searched, unless this is not possible in the circumstances of the case and a delay in the search would cause an “unreasonable risk to public security.” The power of arrest in the military order was replaced by the power to detain persons “pending the arrival of a police officer,” while the authorization to use force was restricted to the use of “reasonable force,” rather than “any reasonable means” as in the military order. In contrast to the military order, the Israeli legislation also requires the guard to wear “visibly a tag identifying him and his position.”²²

In 1992 the order was again amended and the guards in the settlements were brought under the purview of the Military Justice Law, “as it is valid in Israel.” The amendment explicitly referred to Article 8(3) of the Military Justice Law, which establishes the applicability of the law to a person who is not a soldier but who “is working on the army’s behalf.” This provision was established despite the fact that only the CSCs, and not their deputies, acting coordinators, or the members of the civilian guarding squad, receive a salary for their work.²³ The CSCs, deputy, and acting coordinators are also required to sign a declaration on their appointment stating that they are aware that they work “on the army’s behalf,” are subject to the Military Justice Law, and accept the “authority of the IDF and its authorized institutions.”²⁴ Despite this amendment to the military order, Yesh Din is not aware of even a

21 Letter from Attorney Shai Nitzan, Deputy Attorney General (Special Assignments), to Attorney Limor Yehuda of Association for Civil Rights in Israel dated December 11, 2006.

22 Powers of a Guard in the Local Authorities Established by Order (Amendment No. 4), 2002. Articles 6a(c) and (f) in the full and revised version of the Local Authorities Law (Regulation of Guarding), 1961.

23 Section 2b(f) of Order No.1516, Order concerning the Regulation of Communities (Amendment No. 17) dated September 19, 2002, in: Communiqués, Orders and Appointments, Booklet No. 200, (May 2003), Legal Advisor for the Judea and Samaria Area. This section refers to Article 8(3) of the Military Justice Law, 1955, which discusses the applicability of the law to persons in military custody or who are employed by the army.

24 Appendices H, J, and L to OSO 07/01 Guarding in Communities; letter from Major Zohar Halevy, Head of the Public Contacts Desk in the IDF Spokesperson, to Noa Cohen, Yesh Din Information Coordinator, dated October 13, 2011.

single instance in which a CSC, deputy, or acting coordinator has been subject to military prosecution, despite numerous instances of substantial and documented deviations by CSCs from their powers, as will be detailed below.

The geographical area in which the civilian security coordinators' powers apply

The most recent substantive amendment to the military order regulating guarding of settlements was enacted in 2009. It was preceded by the adoption of the Israeli law that defines the area in which the guards enjoy their powers as “the area of the community only,” i.e. according to the municipal area of the settlement or the boundaries of an Israeli industrial zone in the West Bank.²⁵

In July 2009, however, the military order concerning guarding in the settlements was amended, and a series of additional military orders established different borders for the “guarding area” of guards in the settlements and outposts that are not necessarily identical to the municipal boundaries. According to this amendment to the military order, the “guarding zone” would be determined by the “heads of the guarding” – the commanders of the district brigades in the West Bank or the Border Police Greater Jerusalem District – after consultation with the attorney general, and as documented on a signed map. According to this order, the “guarding zone” may include an area “that is not an area of a community,” i.e. areas situated outside the municipal boundaries of the settlements as defined in separate military orders, and the areas of unauthorized outposts situated outside the areas of jurisdiction of the settlements and established without a formal government decision to establish a new settlement, allocate an area for the establishment of a new settlement, or approve an urban building plan permitting construction therein.²⁶ In the areas that lie beyond settlement boundaries but are nonetheless included in the “guarding zones,” it

25 The Israeli legislation is the Powers for the Protection of Public Security Law, 2005. Military Order No. 1628, the Order concerning Powers for the Protection of Public Security, dated January 20, 2009. The area of the settlement or the industrial zone is as defined in the Addendum to the Order concerning the Management of Local Councils (Judea and Samaria) (No. 892), 1981 and the area of the settlement as stipulated in the Addendum to the Order concerning the Management of Regional Councils (Judea and Samaria) (No. 1979).

26 See the prerequisites for establishing a settlement in the Judea and Samaria Area in: **(Interim) Opinion concerning the Unauthorized Outposts**, submitted to Prime Minister Ariel Sharon by Attorney Talia Sasson in March 2005, pp. 19-20. An additional condition Sasson mentions requires that a new settlement be established solely on state land, following the 1979 Supreme Court ruling regarding the establishment of the settlement of Elon Moreh.

was established that guards would have the same powers as those granted within the municipal boundaries of settlements.²⁷

This was the first time that the army officially defined the territorial borders of the unauthorized outposts, including maps signed by the commanders of the district brigades in the West Bank. In so doing, the army defined an official guarding area for illegal settlements.

The Definition of the “guarding zones”

The guarding zones of the civil military coordinators in the West Bank were defined during the period July through September 2009. The boundaries were defined by the six district brigade commanders in the West Bank and the commander of the Greater Jerusalem District in the Border Police by means of military orders under the terms of the 1971 Order Concerning the Regulation of Guarding in Communities. The orders defined 136 “guarding zones” in the West Bank as a territorial area within which (and only within which) the CSCs and guarding squads in the settlements are permitted to operate. The “guarding zones” include 124 settlements within whose municipal boundaries, and 35 unauthorized outposts. These “zones” also defined for the first time the boundaries of three settlements – Ovnat, Rotem, and Psagot – and 48 outposts situated outside the municipal boundaries of the adjacent settlements. In total, the orders defined the boundaries of 207 settlements and six industrial zones.²⁸ The boundaries of the “guarding zones,” as provided to Yesh

27 Order No. 1643, Order concerning the Regulation of Guarding in Communities (Amendment No. 23) dated July 29, 2009. Communiqués, Orders and Appointments, Booklet No. 232, October 2009, Legal Advisor for the Judea and Samaria Area.

28 Copies of the orders defining the guarding areas were forwarded to Yesh Din in April 2011 by the Legal Advisor for the Judea and Samaria Area Department under the Freedom of Information Act. The district brigades concerned are 417 (Jordan Valley), Ephraim, Binyamin, Yehuda, Menashe, and Etzion.

The following are the 48 outposts and three settlements whose borders were established for the first time (by way of borders of the guarding areas): **Ovnat** (settlement, North Dead Sea, established without a government decision); **Mevo'ot Jericho** (outpost, built area deviates from the jurisdiction of the acclimatization farm in which the outpost was established); **Giv'at Sal'it** (outpost, deviates from the jurisdiction of the settlement of Mehola); **Rotem** (settlement, the guarding area extends far beyond the built area, including hills to the north, west, and south of the settlement dominating the area); **Bruchin + Alei Zahav East** (outposts, the two outposts share a guarding area); **Givat Hadegel** (outpost, deviates from the area of jurisdiction of Karnei Shomron); **Jabal Artis** (outpost, deviates from the jurisdiction of Beit El); **Beit El East** (outpost, deviates from the jurisdiction of Beit El, the entire outpost is situated on private Palestinian land); **Bnei Adam** (outpost, distant from the jurisdiction of Geva Binyamin); **Givat Assaf** (outpost, built on private Palestinian land); **Kochav Ya'akov West** (outpost, Kochav Ya'akov); **Haresha** (outpost, close to Talmon,

Din, do not include the borders of the settlement of Ofra and 12 additional outposts.²⁹ Four years earlier, in 2005, according to the State Comptroller's Report, the IDF had allocated security components to 186 settlements in the West Bank – including outposts – under the responsibility of the district brigades. These included fences, security roads, perimeter lighting, and communications and PA systems.³⁰

The definition of the “guarding zones” was supposed to prevent what Deputy Attorney General (Special Assignments) Shai Nitzan termed the “lack of clarity” regarding the territorial delineation of the CSCs’ powers. In the military order regulating guarding in the

situated entirely in private Palestinian land); **Horesh Yaron** (outpost, partly within the area of jurisdiction of Talmon); **Mitzpe Kramim** (outpost, close to Kochav Hashachar, situated mainly on private Palestinian land); **Ma'ale Shlomo** (outpost, close to Kochav Hashachar); **Ahavat Chaim** (outpost, close to Kochav Hashachar, situated entirely on private Palestinian land); **Mitzpeh Danny** (outpost, deviates from the jurisdiction of Ma'ale Mikhmas, situated mainly on private Palestinian land); **Zayit Ra'anana** (deviates partially from the jurisdiction of Nerya); **Palgey Maim/Eli J** (outpost, close to Eli, situated mainly on private Palestinian land); **Hayovel /Eli I** (outpost, close to Eli); **Givat Haro'eh** (outpost, distant from the guarding area of Eli); **Psagot** (settlement); **Mitzpe Ha'i/Mitzpe Ro'i** (outpost, close to Psagot, situated mainly on private Palestinian land); **Mitzpe Ahiya** (outpost, close to Eli); **Esh Kodesh** (outpost, close to Eli); **Kida + Mitchem Habayit Ha'adom /Havat Yeshuv Hada'at** (outposts, within a shared guarding area, close to Eli; Mitchem Habayit Ha'adom is situated on private Palestinian land); **Adei Ad** (outpost, close to Eli); **Avigayil** (outpost, close to Ma'on); **Ma'on Farm** (outpost, close to Ma'on); **Negohot** (outpost, South Hebron Hills); **Mitzpe Lachish** (outpost, South Hebron Hills, close to Negohot); **Mitzpe Yair/ Magen David** (outpost, including road leading to outpost, close to Susiya); **Sansana** (outpost, close to Eshkolot); **Ramat Mamre North/ Plot 26** (outpost, close to Kiryat Arba, mainly on private Palestinian land); **Gal neighborhood/Kiryat Arba South** (outpost, close to Kiryat Arba, mainly on private Palestinian land); **Asa'el** (outpost, South Hebron Hills); **Derech HaAvot** (outpost, close to Elazar, almost entirely on private Palestinian land); **Tzur Shalem** (outpost, close to Carmei Tzur); **Yeshivat Hamivtar** (outpost, close to Efrat); **Sde Boaz/Neve Daniel North** (outpost, distant from Neve Daniel, including the road connecting the outpost to Neve Daniel, mainly on private Palestinian land); **Tko'a D** (outpost, close to Tko'a); **Hanekuda** (outpost, close to Itamar); **Hill 836** (outpost, close to Itamar, almost entirely on private Palestinian land); **Gva'ot Olam/The Avri Ran Farm** (outpost, half within the jurisdiction of Itamar); **Hill 777/Givat Arnon** (outpost, close to Itamar); **Skali's Farm** (outpost, close to Elon Moreh); **Kfar Tapuah West** (outpost, close to Kfar Tapuah); **Rehelim** (outpost); **Nofei Nehemia** (outpost).

29 **Ofra + Amona** (settlement/outpost); **Migron** (outpost, in its previous location); **Gilad Farm** (outpost, established on private Palestinian land); **Kochav Ya'akov-East** (outpost, entirely on private Palestinian land); **Neve Erez** (outpost, close to Ma'ale Mikhmas, mainly on private Palestinian land); **Giv'at Harel** (outpost, close to Shilo); **Ma'ale Hagit** (outpost, close to Ma'ale Mikhmas); **Sneh Yaakov** (outpost, close to Har Bracha; Lehavat Yitzhar (outpost, close to Yitzhar); **Mevo Dotan West** (outpost); **Omer Farm** (outpost, close to Yitav, entirely on private Palestinian land); **Mizpe Yeriho North East** (inside the jurisdiction of Mitzpe Yeriho).

30 **State Comptroller's Report 56A for 2005**, August 31, 2005, pp. 264, 268. According to the State Comptroller, the Home Front Command prepared a comprehensive plan for the establishment of a special security area “in 159 settlements in the Judea and Samaria Area.”

settlements, the definition of a “community” was left vague, without any discussion of its municipal or territorial boundaries. This vague approach contrasted with a comment by Nitzan in 2005, four years before the amendment to the order defining the “guarding zones,” that “the logic and context of the matter requires that the powers should be restricted to the area of the community in which the CSC operates.”³¹ The state was aware that this “lack of clarity” required the “strengthening of supervision of the CSCs in the Israeli communities” in the West Bank: this was acknowledged by the Interministerial Team for Law Enforcement in the Territories in the Ministry of Justice and by the Department of the Legal Advisor for the Judea and Samaria Division, which established a “formal mechanism” for examining complaints concerning instances in which CSCs overstepped their powers.³²

Prior to the definition of the “guarding zones,” the CSCs functioned as something akin to regional “sheriffs.” In many cases they operated of their own accord far outside the borders of the settlements, claiming that “the area is close to the settlement” or that they were “protecting state land” – a function that was never officially included in their powers. Their actions also included attacks on Palestinian farmers, searches in Palestinian homes, the arrest of minors, and preventing children from passing on their way to school, in some cases leading to confrontations with soldiers.³³

31 Letter from Attorney Limor Yehuda of the Association for Civil Rights in Israel to Attorney Shai Nitzan, Deputy Attorney General (Special assignments), dated June 28, 2005; Letter from Attorney Shai Nitzan, Deputy Attorney General (Special Assignments) to Attorney Limor Yehuda of the Association for Civil Rights in Israel, December 20, 2005.

32 See section 6 of the ruling in HCJ 9593/04, **Rashed Murar, Head of Yanun Village Council, et al. v Commander of IDF Forces in Judea and Samaria**, dated June 26, 2006. The Interministerial Team for Law Enforcement was established in the early 1980s in the Ministry of Justice (and was initially headed by Attorney Yehudit Karp) in order to enhance law enforcement in the occupied territories. The state commission of inquiry (the Shamgar Commission) established following the massacre committed by Baruch Goldstein against Muslim worshippers in the Cave of the Patriarchs in Hebron, recommended the formalization of the monitoring of police investigative files in the occupied territories by a body to be determined by the attorney general. See: **Too Little, Too Late: the State Attorney's Supervision of Police Investigations into Israeli Civilians' Offenses against Palestinians**, Yesh Din, May 2008, p. 16. See also the page “Civilian Security Coordinators' Powers” on the website of the Military Advocate General's Corps, December 5, 2013.

33 Letter from Attorney Limor Yehuda of the Association for Civil Rights in Israel to Colonel General Yair Lootsteen, Legal Advisor for the Judea and Samaria Area, dated November 4, 2004 regarding series incident at Ma'on Farm on November 3, 2004 involving actions by the CSC and the functioning of army forces; letter from Attorney Limor Yehuda of the Association for Civil Rights in Israel to Military Advocate General Brigadier General Avichai Mandelblit dated June 15, 2005 regarding the CSC of the settlement of Maon; letter from Attorney Limor Yehuda of the Association for Civil Rights in Israel to Attorney Shai Nitzan, Deputy Attorney General (Special Assignments) dated June 28, 2005 documenting 10 instances of criminal actions and the abuse of power by civil military coordinators as mentioned in the testimony of Baruch Feldbaum, CSC of the settlement of Nokdim and the outpost of Sde Bar, who was convicted in a plea bargain of

After his discharge, an operations sergeant in the Judea and Samaria Division gave testimony to the organization Breaking the Silence regarding this phenomenon:

...They would grab people who were passing by the fence, a vehicle they found suspicious. Sometimes I would ask them: Why are you dealing with vehicles traveling on the road, how did you come to be involved in that? But they drive around in the security vehicle and stop at the bus stop, and a car drives past without one of the license plates or with some other problem that he doesn't like the look of, so he thinks it's suspicious, and he stops it. Then he calls me and asks me to check the identity card. I ask him why. I didn't like to legitimize this businesses, because if you start letting them check identity cards they can sit there all day on the computer checking cards.³⁴

As already noted, the “guarding zones” differ considerably from the municipal boundaries established for the settlements (also by way of military orders). The “guarding zones” include the built-up areas of the settlements, the outposts, and six Israeli industrial zones (including industrial and agricultural buildings, as well as a water pumping station run by the Mekorot water company close to the settlement of Beka’ot). These borders de facto annex to the “guarding zones” land controlled by the settlements that lies outside their areas of jurisdiction.³⁵ Thus, for example, the “zones” include perimeter security roads built outside the borders of the settlement of Itamar; main roads used by Palestinian as well as Israeli vehicles, such as a section of Road No. 316 close to the settlement of Susiya, which connects the settlement to the outpost of Mitzpe Yair situated to the east of the road, but

assaulting and injuring Palestinians in aggravated circumstances; see the sentence of the Jerusalem Magistrate’s Court, 3286/03, **State of Israel v Baruch Yitzhak Feldbaum** dated December 14, 2005, and the ruling of the Jerusalem Magistrate’s Court in 4947/04, **State of Israel v Dan Halamish and Yitzhak Halamish** dated July 10, 2006. According to the testimony of Second Lieutenant Dekel Barel, International Organizations Officer in the Nablus District Coordination Office (DCO), the CSC of Elon Moreh attempted to remove Palestinian shepherds from private Palestinian land on the grounds that they were “grazing state land.” See the ruling of the District Military Court in the Northern Jurisdiction District, 266/06, **Military Prosecutor v Sergeant Aharon Malter and Sergeant Yisrael Dror** dated February 11, 2007. See also: Chaim Levenson, “Settlers Angry at Delineation of Area of Responsibility of the civilian security coordinators,” **Ha’aretz**, December 25, 2009.

- 34 Testimony of a soldier who served as an operations sergeant in the Judea and Samaria Division in 2006-2008, as given to the organization Breaking the Silence, December 2010.
- 35 The “guarding areas” of the following settlements annex built areas deviating from their municipal borders, or absorb enclaves of private Palestinian land: Beit El, Einav, Kochav Ya’akov, Carmel, and Anatot. The industrial zones mentioned are Barkan, Karnei Shomron, Ariel, Shahak, Baron, and Mishor Adumim.

is also used by Palestinians from the South Hebron Hills to access the regional centers of Hebron and Yata; cowsheds belonging to the settlements of Carmel and Maon, situated outside their municipal boundaries; enclaves of private Palestinian land within the borders of the settlement of Einav; or areas extending far beyond the municipal boundaries, as in the case of the settlements of Kochav Ya'akov and Anatot.

The military orders defining the “guarding zones” were issued prior to the government’s decision to grant retroactive approval to illegal construction in some of the outposts.³⁶ These orders effectively circumvent and obviate the “essential conditions for the establishment of a community” in the West Bank, including a government decision to establish a new settlement; its establishment on “state land” only; compliance with an approved urban building plan; and the determination of the jurisdiction of the new settlement in an order issued by the regional commander.³⁷ The amendment to the military order regulating the “guarding zones” thus validates the institutional and non-institutional criminality involved in the establishment of these outposts, including the theft of private Palestinian land and illegal construction on a large scale, in some cases contrary to military orders and court orders, including orders of the High Court of Justice.

In the case of 48 outposts, independent “guarding zones” were defined without connection to the areas of the adjacent parent settlements; 35 additional outposts are included in the “guarding areas” of the parent settlement. The inclusion of an outpost in the “guarding zone” of the adjacent parent settlement was sometimes achieved by incorporating the road connecting the parent settlement and the outpost within the “guarding area,” even if this road crosses private Palestinian land not subject to a military seizure order. This is the case for, among other instances, the road connecting the settlement of Neve Daniel and the outpost of Neve Daniel North, and the road linking the settlement of Kedumim to the outpost of Har Hemed to its west, both of which cross private Palestinian land. These “guarding zones” restrict the possibility for Palestinian landowners to access their land.

36 Urban Building Plan 205.2, approving 93 constructed housing units in Shvut Rachel and proposing an additional 450 housing units. See: “Netanyahu government rewards illegal construction – plan for 500 new housing units in Shilo,” on the Peace Now website (in Hebrew): peacenow.org.il/PlanShilo; declaration of 815 dunams as state land in order to approve the outpost of Haresha. See: “In order to legalize illegal outpost government expropriates area ten times its size,” on the Peace Now website: peacenow.org.il/eng/DeclarationHaresha; and declaration of 189 dunams as state land to approve the outpost of Hayovel. See: “For first time since the Road Map: Israeli government confiscates land for establishment of an outpost,” on the Peace Now website (in Hebrew): <http://peacenow.org.il/ConfiscationHayovel>

37 See the prerequisites for establishing a settlement in the Judea and Samaria Area in: **(Interim) Opinion concerning the Unauthorized Outposts** (see FN 26 above), pp. 19-20.

Prior to the issuing of the military order defining the “guarding zones” in the outposts, the security means allocated by the state to new settlements (in accordance with the guidelines of the Deputy Attorney General as described by the State Comptroller) included the appointment of CSCs, the establishment of a perimeter fence, and the placement of mobile buildings (caravans) to accommodate soldiers.³⁸ The State Comptroller noted that the residents of the outposts refused to install security components, including fences, “for various reasons, particularly the desire for a wider course of the fence in some outposts, while in other cases the refusal is ideological.”³⁹

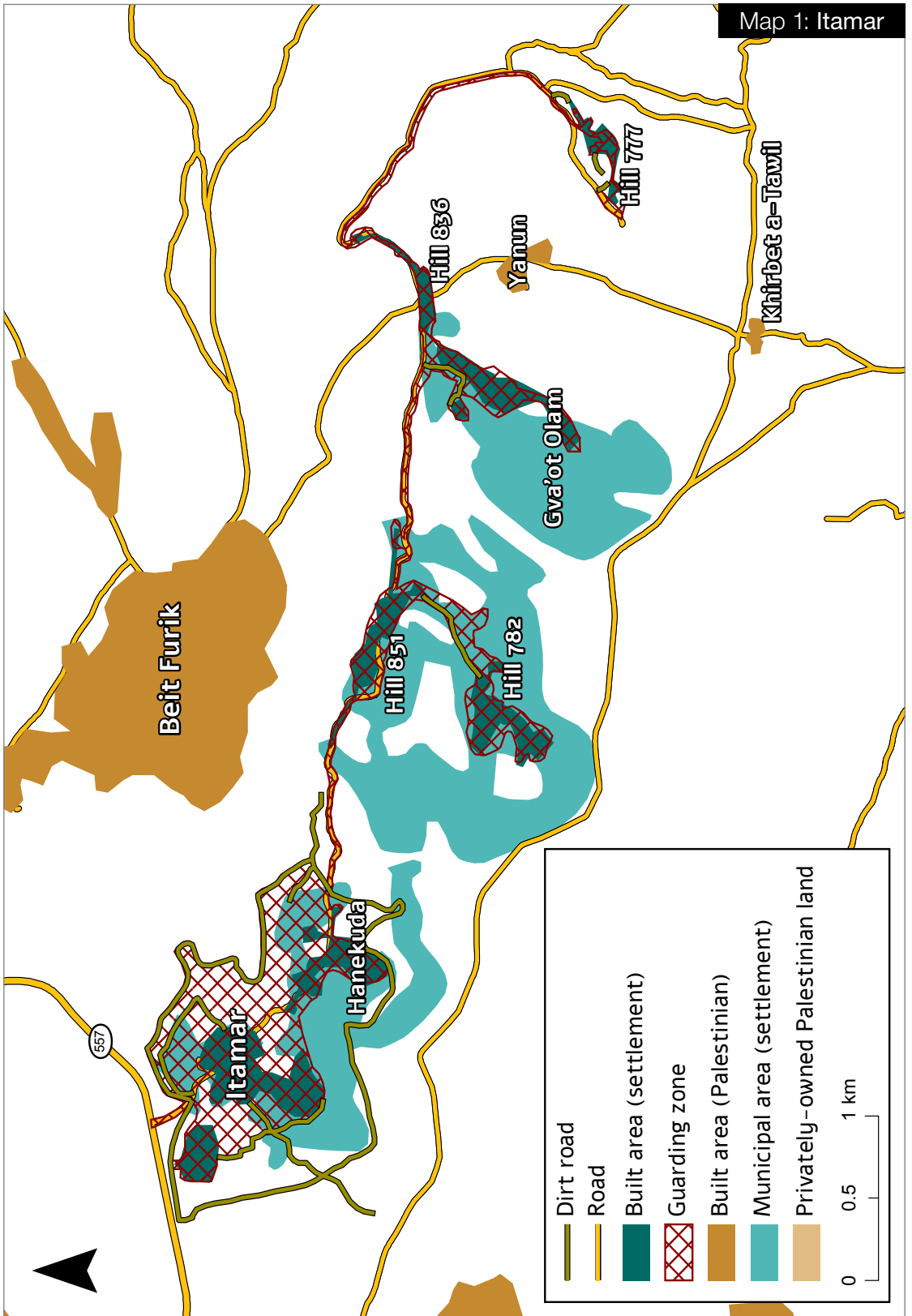
Even since the amendment to the military order defining the “guarding zones” in the settlements and outposts, there have been numerous instances in which CSCs have overstepped the confines of the “guarding zones,” as will be detailed below. There have even been cases in which regional security officers have taken the position that civil military coordinators may act outside the area of their settlement “if there is a tangible security threat.” Such a position is inconsistent with the official position of the army that civil military coordinators “are absolutely prohibited to act outside the borders of their permitted areas of operation as defined in a map signed by the brigade commander, with an emphasis on preventing Palestinian residents from [accessing] their land.”⁴⁰

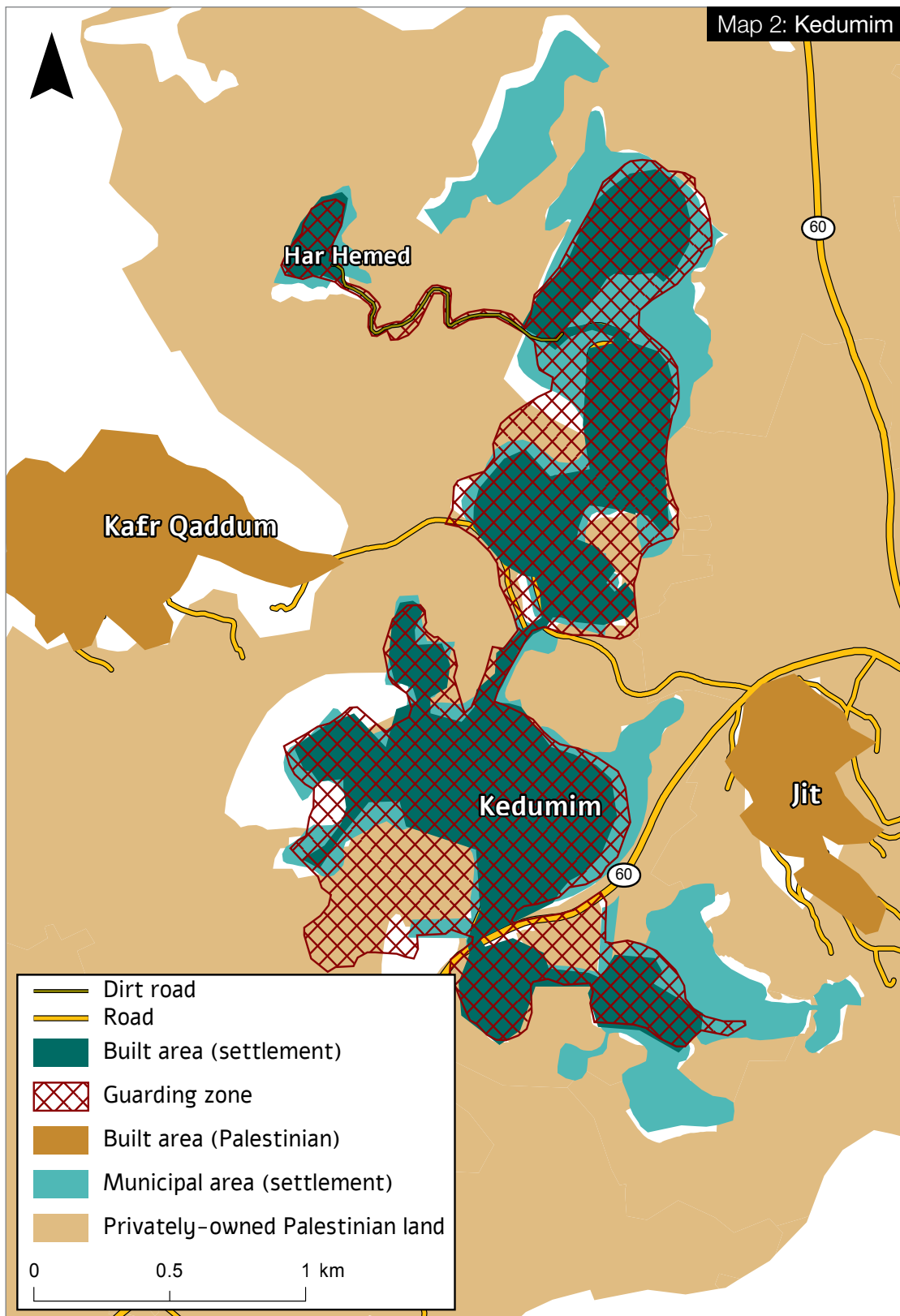
See “guarding zone” maps of the settlements Itamar, Kedumim, Neve Daniel and Susiya of on pages 22-25.

38 **State Comptroller’s Report 56A** (See FN 30 above,) p. 263.







39 *Ibid.*

40 Letter from Captain Sandra Ofinkaru, Security and Criminal Desk Officer in the Office of the Legal Advisor for the Judea and Samaria Area, to Attorney Michael Sfar dated July 29, 2010. The letter was received during the course of an appeal against the decision to close file PLA 344572/09 (Yesh Din file 1892/09), submitted by Attorney Osnat Bartur and Attorney Ido Tamari of the Michael Sfar Law Office to Attorney Eran Ori, Head of the Samaria and Judea Prosecutions Unit. The appeal was submitted following the closure of the investigation into an incident in which the CSC of the outpost of Avigayil assaulted Palestinian shepherds. Letter from Attorney Emily Schaeffer to GOC Central Command Nitzan Alon regarding the throwing of stun grenades and tear gas into the courtyard of the school in the village of Burin, dated February 25, 2014.

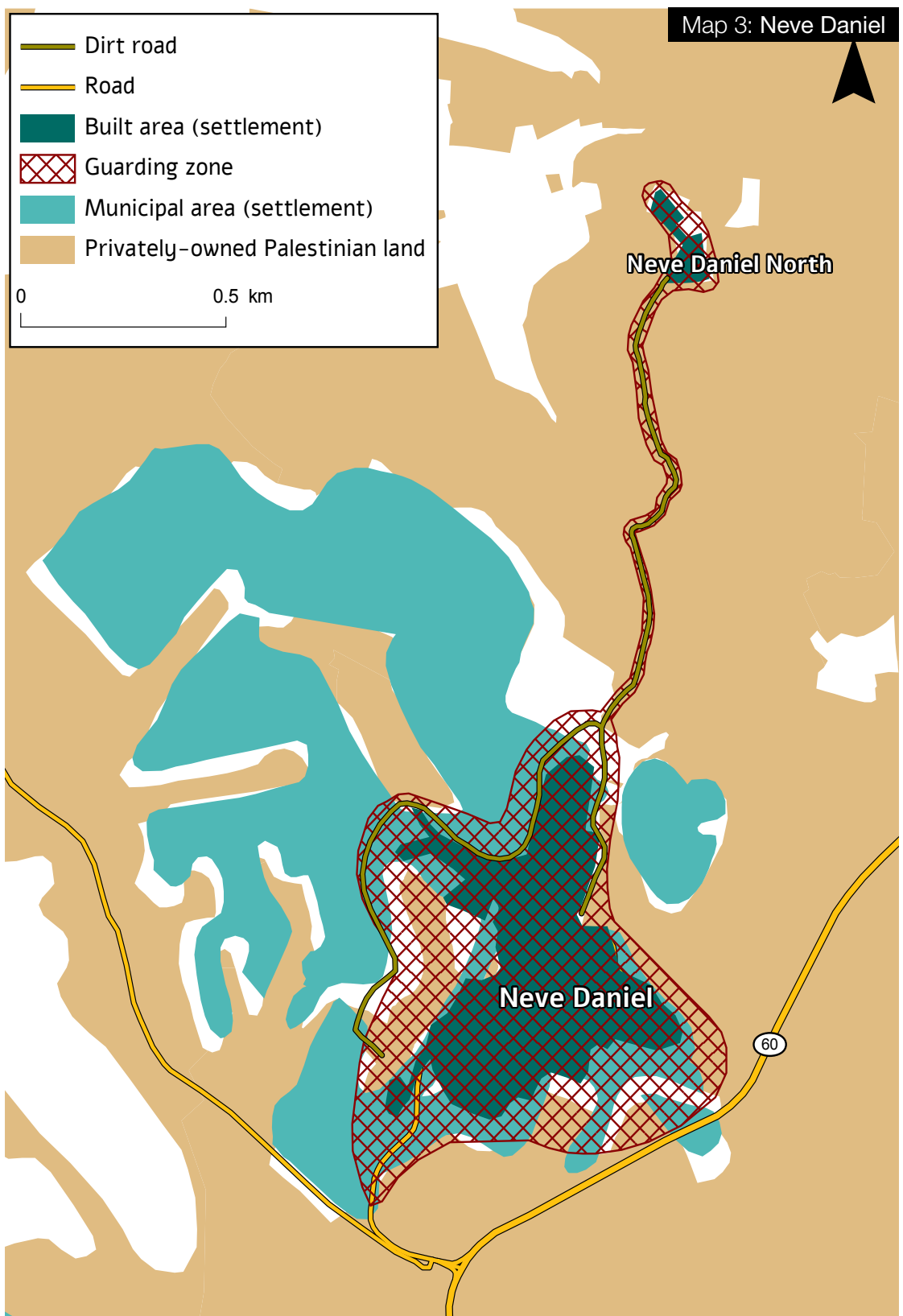


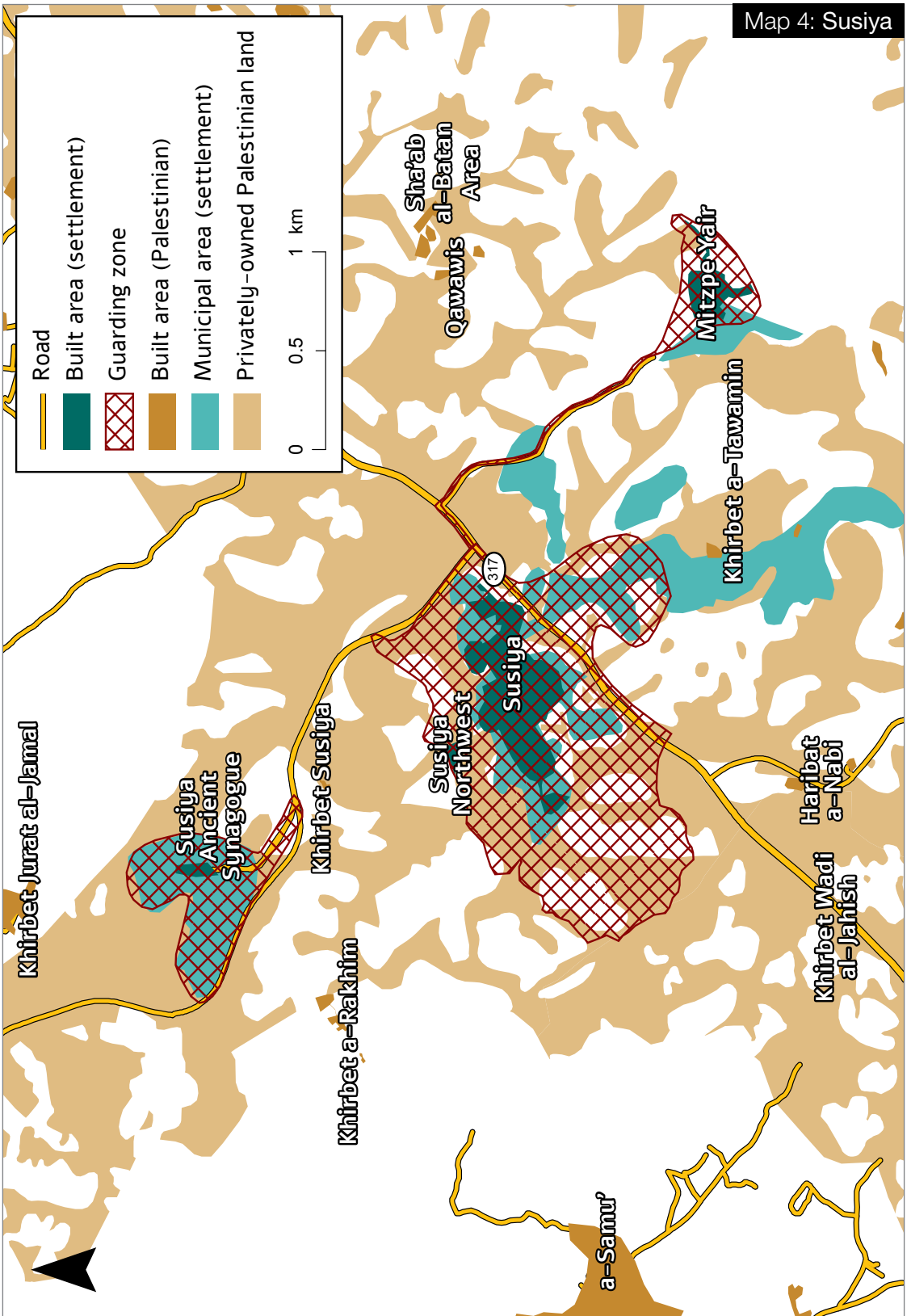




-  Dirt road
-  Road
-  Built area (settlement)
-  Guarding zone
-  Municipal area (settlement)
-  Privately-owned Palestinian land

0 0.5 km





INADEQUATE SUPERVISION OF THE ISSUING OF IDF WEAPONS

All CSCs hold weapons issued by the IDF. The general staff order regarding issuance of military weapons to civilians permits a “resident of a regional defense community” to hold a weapon in accordance with the recommendation of the CSC of that community. The order exempts the army from liability for issuing a permit to carry a military weapon and imposes this function on other bodies.

According to the order, an application to hold an army weapon requires a “personal authorization process.” This process is conducted by the Chief Military Police Officer Command, which examines the civilian’s application with the Israel Police, the Israel Security Agency, the Ministry of Health, the Chief Medical Officer Command, and the Intake and Screening Base. If any of these bodies opposes the issuing of an army weapon to the civilian, it is possible to instigate an “exceptional authorization process,” which includes consultation with the relevant military attorney, the Chief Military Police Officer Command, and the Israel Police.⁴¹

It should be emphasized that this general staff order, and the complementary order regarding the holding and securing of weapons during leave and while outside IDF facilities, do not include provisions regarding the use of army issued weapons. The command merely stresses that the CSC must obey “all the army commands.”⁴²

This lax procedure permits the issuing of weapons to civilians with a criminal record, including civilians serving as CSCs. The IDF Spokesperson informed Yesh Din that the army’s position is that “as a general rule, a person with a criminal record will not be employed as a CSC.”⁴³ However, the Ministry of Justice team headed by the Deputy State Attorney has in the past refrained from ordering the withdrawal of weapons from CSCs who had a criminal record. The team accepted the explanations of the GOC that in light of the “nature of the information” held against seven coordinators, all of whom had criminal records, there was no justification for their dismissal. In 2005 a process of dismissal was instigated

41 General Staff Order 2.0107, “Delivery of army weapons to civilians,” sections 1, 1a, 8d, 10, and 13, March 1, 1981. The order came into effect on September 26, 2006.

42 General Staff Order 2.0101 concerning the Holding and Securing of Weapons during Vacation and while Outside IDF Facilities, June 18, 1986, came into effect on July 21, 2010.

43 Letter from Major Zohar Halevy, Head of the Public Inquiries Desk, IDF Spokesperson to Noa Cohen of Yesh Din, October 13, 2013.

against two CSCs with criminal records.⁴⁴ This procedure does not oblige the police or the State Attorney's Office, which is responsible for monitoring police investigations, to recommend that the army confiscate army weapons from settlers under investigation for suspected reckless or prohibited use of the weapons.⁴⁵ The CSC of the settlement of Itamar was recently arrested on suspicion of holding arms, including hand grenades, in his office without permit.⁴⁶

The reliance on this procedure might have been considered reasonable had the Israel Police, the Israel Security Agency, the IDF, and the Ministry of Defense acted consistently and vigorously to enforce the law on the settlements and on settler offenders since Israel began to establish settlements in the West Bank shortly after its occupation, in September 1967. In reality, however, these bodies have failed over a period of decades in every aspect of law enforcement. They do not conduct debriefings or gather documentation regarding confrontations between settlers and Palestinians; they decline to undertake basic investigative actions; they refrain from prosecuting persons suspected of offenses; and they fail to take any action to prevent support and funding for settlement enterprises entailing the violation of the law. No lesser an authority than the State Comptroller described the reality of law enforcement in the West Bank as one of "every man to himself."⁴⁷ In light

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- 44 Reply from Deputy Defense Minister Zeev Baum to Parliamentary Question No. 1766 tabled by MK Ghaleb Majadla concerning the employment of CSC with a criminal record. Knesset Session No.295, November 29, 2005. Major Wisam Kheir, Head of the Civilian and Economic Desk in the Office of the Legal Advisor to the Judea and Samaria Area Division, informed a meeting of the Knesset Internal Affairs and Environment Committee that if a CSC acquires a new criminal record subsequent to his appointment, the police is supposed to inform the army, and the GOC will then decide whether the said record "is relevant or irrelevant." Protocol No. 346 of a Session of the Knesset Internal Affairs and Environment Committee dated December 21, 2004.
- 45 Letter from Attorneys Osnat Bartur and Adar Grayevsky of Yesh Din's legal team to Attorney Nurit Littman of the Jerusalem District Attorney's Office regarding an appeal against the decision to close file CIP 1558/11 (C2000 40313/10, CC 398/10) (Yesh Din file 2314.11). This appeal relates to a shooting incident on January 28, 2011 when several settlers forming part of a group that departed from Kfar Etzion ostensibly fired shots a Palestinian youths from Beit Ummar, killing one of the youths and injuring another, without their facing danger justifying the shooting. One of the persons involved was a soldier performing compulsory military service and two others also held army weapons. One of the settlers who opened fire refused to identify himself to soldiers and hid his weapon in the ground, while a second settler handed his weapon to another settler in order to avoid its inspection by the police. On July 31, 2013, Prosecutor Jenny Ginsburg of the Jerusalem District Attorney's Office decided to close the investigation file against all those involved in the incident.
- 46 Itamar Fleishman, "Suspected nationalist crime: Itamar civil military coordinator arrested," *NRG*, February 24, 2014.
- 47 **Recommendations for Enhanced Enforcement against Jewish Nationalist Crime in the Territories**, Council for Peace and Security (January 2014); **State Comptroller's Report 63B**, Issues in Coordination between the Law Enforcement Agencies in the Judea and Samaria Area (July 17, 2013), pp. 131-157. The quoted comment by

of this protracted and cumulative failure, it is doubtful whether the Israel Police or the Israel Security Agency are in possession of sufficient information to prevent the issuing of an army weapon to a person unworthy of carrying such a weapon. The procedure of authorization for carrying an army weapon as defined in the general staff order is accordingly lax and ineffective.

the Comptroller appears on p. 134. For details, see Yesh Din position papers: **The impact of the settlements on Palestinian rights in the West Bank: Position paper submitted to the international fact finding mission appointed to investigate the impact of the settlements on Palestinian rights in the West Bank** (November 2012): <http://www.yesh-din.org/userfiles/file/Position%20Papers/Yesh%20Din%20Position%20to%20UN%20FF%20Mission.pdf>

Law Enforcement on Israeli Civilians in the West Bank: Yesh Din Monitoring 2005-2013 (July 2013): <http://www.yesh-din.org/userfiles/file/datasheets/DataSheet%20July%202013%20-%20Law%20Enforcement%20-%20Eng.pdf>

Police investigations of vandalization of Palestinian trees in the West Bank (October 2013): http://www.yesh-din.org/userfiles/file/datasheets/data%20sheet%20oct2013/Yesh%20Din%20-%20Netunim%2010_13%20English.pdf

See also the Yesh Din reports: **Tailwind: Non-enforcement of judicial orders, foot dragging and the retroactive legalization of illegal construction in the occupied Palestinian territories** (October 2011): <http://www.yesh-din.org/userfiles/file/Reports-English/Tailwind%20%5BEng%5D.pdf>

Too Little, Too Late: Supervision by the Office of the State Attorney over the investigation of Offenses committed by Israeli civilians against Palestinians in the Occupied Territories (May 2008): <http://www.yesh-din.org/userfiles/file/Reports-English/TLTLfullreportENG.pdf>

And: **A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank** (September 2006): <http://www.yesh-din.org/userfiles/file/Reports-English/SemblanceofLawfullreportEng.pdf>

See also the B'Tselem report **Dispossession and Exploitation** (see FN 15 above), and B'Tselem, **Foul Play: Neglect of Wastewater Treatment in the West Bank** (June 2009), pp. 7-13.

CHAPTER 3:

THE DIFFUSION OF AUTHORITY FOR THE EMPLOYMENT OF THE CIVILIAN SECURITY COORDINATORS

As a civilian security coordinator, I hardly have any power to do anything. My community defense system has expanded to the current dimensions because the IDF is incapable of coping with the area alone, but many aspects remain unclear. Who is my boss, for example? I am a civilian who receives a salary from my community that comes from the Ministry of Defense, but I am also accountable to the army. There is a security officer above me, and a head of the council, and the brigade commander, and the regional defense officer – but I'm the only one out in the field, so who am I actually supposed to listen to?

(Civilian security coordinator of the settlement of Eli, interviewed for the army journal *Bamachaneh*⁴⁸)

The responsibility for the employment of CSCs is currently divided between the Ministry of Defense, which funds their employment in the settlements and outposts in the West Bank; the regional defense officers in the army brigades deployed in the West Bank, who undertake the professional supervision of the coordinators; and the authorities in the settlements (municipalities, local councils, and secretariats) who appoint and are the direct employers of the CSCs, almost all of whom are themselves residents of the settlements. This diffusion of responsibility prevents the supervision and control of the appointment and ongoing functioning of the CSCs and the members of the guarding squads in the settlements and outposts.

In 2005 the State Comptroller found that “as of the time of reporting, most of the CSCs in the communities in Judea and Samaria were employed through an agreement between themselves and the local authorities, which received funding from the Ministry of Defense for this purpose; a minority were employed through a contract between themselves and the Ministry of Defense.”⁴⁹ However, the Ministry of Defense refuses to accept any direct

48 Orin Rosner and Or Boutboul, “Insecurity,” *Bamachaneh*, March 25, 2011, p. 31.

49 **State Comptroller’s Report 56A for 2005** (see FN 30 above), p. 259. The employment of CSCs in communities was defined in Ministry of Defense Instruction No.43.12 dated November 21, 2010. According to this instruction two types of employment contracts may be used for the CSCs: a contracts signed with the executive of the settlement, without employer-employee relations between the coordinator and the Ministry of Defense (“collective employment,”) and a

responsibility for the employment of CSCs in frontline communities within Israel and in the settlements and outposts. Indeed, a special clause was even included in the agreements between the ministry and the settlements, with the agreement of the latter, stating that the CSC “will not be considered an employee of the ministry, and no employer-employee relations or other relations of employment will pertain between him and the ministry.” The inclusion of this clause has led to the rejection of claims for compensation submitted by CSCs to the Ministry of Defense.⁵⁰

Allocation of funding for the employment of the CSCs is based on Israeli legislation regarding the regulation of guarding in communities, which establishes that “the state will bear the costs incurred by the implementation of this law.”⁵¹ In 1999 the legal advisor to the Ministry of Defense established that “any expense incurred in the implementation of this law will be borne by the state, including the expenses of financing the CSC.”⁵²

The accountability of the CSCs to the army as the professional guide for their work was described in the State Comptroller’s Report:

*The appointment of the CSC will be effected by the GOC or by such person as empowered thereby – the commander of the district brigade. The CSC performs his function on behalf of the IDF and is subject to the district brigade command [...]. The CSC must undergo training in the framework of a CSCs’ course as a condition for his employment. He may be subject to military prosecution for any offense relating to matters placed under his responsibility.*⁵³

personal contract signed with the CSCs establishing employer-employee relations between the coordinator and the ministry (“personal employment”).

50 See sections 3 and 6 in the ruling of the Jerusalem District Labor Court LAB/01/001081, **Ben Sa’adon Shalom v Mikhmas Agricultural Cooperative Society for Community Settlement Ltd.**, May 17, 2005. This ruling relates to an earlier ruling of the National Labor Court, which ruled that “a CSC is to be regarded as an employee of the community, and not as an employee of the Ministry of Defense.” See the ruling of the National Labor Court LCP 44/193-3, **Shavei Shomron, Cooperative Society Ltd. v David Elbaz**, May 3, 1995. See also: See also: **Annual Report of the Public Ombudsman No. 26** (1999), p. 31. Regarding CSCs inside Israel, it was noted that “the ministry will not be considered the employer of the CSC.”

51 Article 19(B) of the full and revised version of the Local Authorities Law (Regulation of Guarding), 1961.

52 **Annual Report of the Public Ombudsman No. 26** (see FN 50 above), p. 31.

53 **State Comptroller’s Report 56A for 2005** (see FN 30 above), p. 259.

Contrary to the description in the State Comptroller's Report, however, in practice the settlements choose and appoint the CSCs and serve as their direct employers. The municipality of the Ariel settlement, for example, published an internal and external tender for the position of CSC in the settlement; the tender was managed by the municipal Human Resources Department.⁵⁴ The council of the settlement of Kiryat Arba and the secretariat of the settlement of Pedu'el asked candidates for the position of CSC to submit their candidacy directly to the settlement secretariat, rather than to the district brigade commands.⁵⁵ In these three instances the settlements did not detail in their publications whether an army representative was involved in the process of appointing the CSC. Neither the army nor the Ministry of Defense restrict the period of service of the coordinators. The Ministry of Defense informed Yesh Din that "in special cases the IDF may request the termination of the work of a CSC, though the Ministry of Defense does not have a comprehensive instruction responding to such cases."⁵⁶

The army and the Ministry of Defense have not established a specific demand that a person with a criminal record not be appointed as a CSC. As mentioned above, however, the IDF spokesman stated that "as a general rule" the army does not permit such a person to be employed in this position. The agreement between the Ministry of Defense and the settlement regarding the funding of security components permits a settlement interested in "employing a CSC with a criminal conviction" to do so, subject to the approval of the GOC Central Command, after the latter has consulted with the Chief Military Police Officer Command and with the Military Advocate General's Command.⁵⁷ The IDF Spokesperson declined to specify whether the army has procedures for responding to instances in which a criminal investigation is opened or an indictment served against a CSC after his appointment.

54 See the tender on the Ariel municipal website:

55 See the website of the council of Kiryat Arba: <http://www.kiryat4.org.il/?CategoryID=270&ArticleID=2174&KeyWords=%D7%92%D7%A8&SearchCategory=&SearchPage=2>

And the website of Samaria Regional Council: <http://www.shomron.org.il/?CategoryID=234&ArticleID=3390>

56 Letter from Shai Lev, Head of the Public Inquiries Desk in the Ministry of Defense, to Noa Cohen, Yesh Din Information Coordinator, dated December 16, 2013; Letter from Major Zohar Halevy, Head of the Public Inquiries Desk, IDF Spokesperson to Noa Cohen of Yesh Din, October 13, 2013.

57 Agreement concerning Funding of Security Components in a Community Classified in Security Terms by the Home Front Command as a Front-Line Community (July 3, 2012). Provided by Major Zohar Halevy, Head of the Public Inquiries Desk, IDF Spokesperson, to Noa Cohen, Yesh Din Information Coordinator, December 24, 2013.

The State Comptroller recognized the problematic situation created by the fact that the CSCs are accountable “in administrative terms” to the settlements. “The CSCs are recommended for their position by the authority in which they live, and this fact creates relations of dependency between the coordinators and the local authority.” The army documents mentioned in the State Comptroller’s report indicate that the army is also aware of this problematic situation and of the difficulties created in the routine functioning of the CSCs due to their “dual accountability.” The essence of the problem is that on occasion “conflicts of interest arise between security needs and the needs of the local authority that is their employer.” The army further informed the State Comptroller that “in most instances the CSC chooses to act in accordance with the interests of the community (the employer), since it is apparent to him that a conflict with the employer may lead to his dismissal.”⁵⁸

As a result of the diffusion of responsibility and the “dual accountability,” neither of the relevant bodies involved (to the best of our knowledge) has to date prepared a document of routine standing orders summarizing the procedures and commands relating to the work of the CSCs and guarding squads. This is true of the Home Front Command (which provides professional supervision for the regional defense officers in the relevant brigades) and of the Greater Jerusalem District in the Border Police. Such standing orders would define all relevant aspects, including training, supervision, and monitoring of the coordinators and guards in the settlement and the division of responsibilities between them in routine and emergency situations.⁵⁹

The standing army orders relating to the powers of the CSCs and the civil guarding squads in the settlements and outposts, as forwarded to Yesh Din by the IDF Spokesperson and the Head of the Public Inquiries Desk in the Ministry of Defense, are Operations Division Standing Order OSO 07/01 dated September 2003 regarding guarding in settlements, and Manpower Division Standing Order 39-01-09, updated on August 3, 2011. Additional general staff standing orders regulate the issuing of weapons to civilians and the carrying and securing of weapons when outside IDF facilities. These orders do not explicitly refer to the powers of the CSCs or members of the guarding squads in the settlements, but they apply to these functions, among others.

The various orders do not regulate the procedures for the appointment of CSCs. According to the Manpower Division standing order, “the CSC is appointed by the GOC” – although in practice the coordinator is appointed by the settlement in a procedure in which the army

58 **State Comptroller’s Report 56A for 2005** (see FN 30 above), p. 259.

59 *Ibid.*, p. 261. The orders defining the guarding areas, including the accompanying maps, were provided to Yesh Din by the IDF Spokesperson.

does not appear to be involved. The IDF Spokesperson refused to discuss the presence of orders, if any exist, relating to instances in which CSCs deviate from the confines of the “guarding zones” as defined in mid-2009, on the grounds that this matter relates to “a question regarding the interpretation of the law.” Neither do the orders clarify the relationships of authority and command between the CSCs and soldiers stationed on routine security missions in the settlement or other army forces. According to the Operations Division Standing Order, the CSC bears a “responsibility to soldiers undertaking a guarding function in the area, including briefing them on their arrival, monitoring the execution of their task, and attending to their welfare.” Meanwhile, Deputy Attorney General (Special Assignments) Shai Nitzan stated that “as a general rule, commander-commandee relations (direct command accountability) do not pertain between the soldiers in the field and the CSC.”⁶⁰

The Military Advocate General’s Corps notes that “the IDF is very strict about the CSC acting by the law.” The IDF Spokesperson’s position is that the supervision of the CSCs’ work and assessment of the performance of their duties, which is within the purview of the brigade commander and the head of regional defense – is carried out by means of reports, exercises, and ongoing in-service training.⁶¹ Yet, the Spokesperson was unable to state how many times, if ever, the army has used disciplinary or other means (dismissal, suspension, reprimand, and warning) against CSCs or members of civil guarding squads who violate the provisions of the Military Justice Law, to which they are subject by virtue of their position. The Spokesperson noted in vague terms that “there are various administrative means used in accordance with the circumstances of the case;” “this relates to a handful of cases;” and “there is no cause to discuss this matter at length.”⁶²

60 Operations Division Standing Order ODO 07/01 (September 2003), sections 4 and 6, K. Provided by Major Zohar Halevy, Head of the Public Inquiries Desk, IDF Spokesperson, to Noa Cohen, Yesh Din Information Coordinator, December 24, 2013. Letter from Attorney Shai Nitzan, Deputy Attorney General (Special Assignments), to Attorney Limor Yehuda of Association for Civil Rights in Israel dated December 20, 2005.

61 “Powers of the civil military coordinators,” website of the Military Advocate General’s Corps, December 5, 2013: www.law.idf.il/163-6449-he/Patzar.aspx Letter from Major Zohar Halevy, Head of the Public Inquiries Desk, IDF Spokesperson to Noa Cohen, Information Coordinator of Yesh Din, November 13, 2013. CSCs are trained for their position by means of a two-week course; see also: Efrat Weiss, “How to Cope with a Terrorist in the Community,” *Ynet*, December 10, 2013.

62 Letter from Noa Cohen, Yesh Din Information Coordinator, to Major Zohar Halevy, Head of the Human Rights and Public Relations Desk, IDF Spokesperson, dated June 24, 2013, and Major Halevy’s reply dated October 13, 2013; Major Halevy’s letter to Cohen dated December 24, 2013.

CHAPTER 4:

THE INHERENT CONFLICT OF INTEREST IN THE EMPLOYMENT OF THE CIVILIAN SECURITY COORDINATORS IN THE SETTLEMENTS

The “dual accountability” of the CSCs as noted in the State Comptroller’s report creates an inherent conflict of interest between the Ministry of Defense and the army, which see the coordinators as agents appointed on their behalf to maintain public order and law enforcement, and the settlements, which are the coordinators’ place of residence and their direct employers. The CSCs operate within this conflict of interest. The settlements seek to expand and control new areas, including areas under private Palestinian ownership or land that has been farmed by Palestinians for many years. In many instances they seek to do so by means of actions that prevent Palestinians from farming their land in areas adjacent to the territory of the settlement, since failure to farm land leads to the loss of land rights. This contrasts with the obligation incumbent on the CSCs to act on the army’s behalf, that is – as representatives of the body responsible for law enforcement and public order in the West Bank.

According to the laws of occupation, the army temporarily stands in the shoes of the sovereign in the occupied territory. In this capacity it bears responsibility for enforcing law and order within the West Bank, and it bears an obligation to protect the local population.⁶³ In numerous rulings the Supreme Court has reiterated the interpretation of international law that the military commander in the occupied territory bears an obligation “to ensure, as far as possible, order and public life” and to “attend to the wellbeing and security of the residents of the area and to public order in the area.”⁶⁴

63 See Regulation 43 of the Regulations Attached to the Hague Convention Concerning the Laws and Customs of War on Land (1907); Regulation 46 of the Regulations Attached to the Hague Convention Concerning the Laws and Customs of War on Land (1907); and Article 27 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949). See also: **The Road to Dispossession, A Case Study – The Outpost of Adei Ad** (February 2013), pp. 15-17.

64 See Article 43 of the Hague Convention Concerning the Laws and Customs of War on Land (1907). See also the ruling in HCJ 2612/97, **Ibrahim Shaer v Commander of IDF Forces in the Judea and Samaria Area** (see FN 32 above); the ruling in HCJ 9593/04, **Rashed Murad, Head of Yanun Village Council v Commander of IDF Forces in Judea and Samaria** (see FN 32 above); the ruling in HCJ 3933/92, **Mustafa Mahmud Mustafa Barakat v GOC Central**

The duties of the army as required in accordance with international law clashes with the essence of the settlement enterprise. The Hague Regulations Concerning the Law and Customs of War on Land restrict the power and discretion of the military commander of the occupied territory to two axes: Ensuring the security interests of the occupying force and the occupying power; and ensuring the needs of the civilian population in the occupied territory.⁶⁵ Since its inception, the Israeli settlements have been a key source of the grave violation of Palestinians' rights in multiple fields, and above all for the violation of the right to property.⁶⁶

The settlements have always sought to expand the areas under their control. The means employed to this end include planning settlements as clusters of built-up zones dispersed over large areas; allocating large municipal areas that extend far beyond the built area of the settlement; establishing outposts that deviate from the municipal boundaries of the settlement; extending the borders of the settlement on the pretext of security needs; the criminal seizure of private Palestinian land and its conversion into farmland; and the seizure of springs.⁶⁷ The State Comptroller also questioned the security pretexts presented by

Command (see FN 64 above); and HCJ 2150/07, **Ali Hussein Mahmud Abu Safya, Head of Beit Sira Village Council, et al. v Minister of Defense et al.**, dated December 29, 2009. See also: "Protection of the occupied population in the occupied territory and the duty to enforce the law," **Road to Dispossession** (see FN 63 above), pp. 16-17.

65 See HCJ 393/82 **Jam'iyat Iskan al-Mu'allimin v Commander of IDF Forces in Judea and Samaria**, December 28, 1983. The Supreme Court has also expressed this position in additional rulings; see HCJ 2150/07 (see FN 64 above).

66 This right is enshrined in Article 17 of the International Declaration of Human Rights, which establishes that every person has the right to own property and prohibits the arbitrary deprivation of property. Protection of property is also enshrined in international humanitarian law, for example in Regulation 46 of the Hague Regulations and Article 53 of the Fourth Geneva Convention. Israeli law recognized this right in Article 3 of the Basic Law: Human Dignity and Liberty, establishing that "there shall be no violation of the property of a person." For further discussion see: B'Tselem, **By Hook and by Crook** (see FN 15 above), p. 51.

67 B'Tselem has calculated on the basis of Civil Administration maps that 10.3 percent of the municipal area of the settlements and 21 percent of the built areas of the settlements are private Palestinian land. In 51 settlements whose municipal boundaries also include outposts, construction took place on private Palestinian land while deviating from the municipal boundaries of the settlements. Fifteen outposts were established on private land, while 39 additional outposts were established in part on private Palestinian land alongside other types of ownership. For further discussion see: B'Tselem, **By Hook and by Crook** (see FN 15 above), p. 26-27. For further discussion see Yesh Din, **The Road to Dispossession** (see FN 63 above), pp. 66-70, 74-89; B'Tselem, **Land Grab – Israel's Settlement Policy in the West Bank** (2002); B'Tselem, **Access Denied: Israeli measures to deny Palestinians access to land around settlements** (September 2008); B'Tselem, **Under the Guise of Legality: Declarations on state land in the West Bank** (March 2012); United Nations Office for the Coordination of Humanitarian Affairs (OCHA), **The humanitarian impact of the takeover of Palestinian water springs by Israeli settlers** (March 2012); Peace Now, **One Violation**

settlers to justify the seizure of land, noting that during the process of establishing “special security areas” for the settlements, the legal advisor to the Civil Administration had already warned that “in many places perimeter roads have already been built by the communities at a great distance from the security fence of the community, and in an illegal manner.” According to the Comptroller, at least six settlements sought to gain approval for the criminal seizure of land by submitting requests to establish a special security area.⁶⁸

As the administrator of sovereign powers, the army is the body charged with law enforcement, including preventing illegal construction within or outside the municipal boundaries of the settlements, and preventing the seizure by settlers and settlements of areas other than those allocated to them by the state, including private Palestinian land. The army is supposed to monitor and prevent illegal construction or the criminal seizure of land by means of its Civil Administration, which is accountable to the Coordinator of Government Actions in the Territories, who in turn is directly accountable to the Minister of Defense). However, these bodies have not merely been negligent in this aspect of law enforcement but have actually participated in criminal actions by act and omission. They have ignored large-scale illegal construction in settlements and outposts over decades and ignored the ongoing theft of private Palestinian land inside or close to the settlements. They have allocated funding for security components to outposts and protected them. Army forces have done nothing to respond to repeated instances of thuggery by settlers designed to remove Palestinian farmers from their land and usurp their property.⁶⁹ The Supreme Court also recently noted the overt disregard of state authorities for law enforcement relating to illegal construction in the outposts, including on private Palestinian land. The Court described this conduct as “unsatisfactory,” “improper,” and characterized by “ongoing procrastination” bordering on “illegality.”⁷⁰

Leads to Another: Israeli Settlement Building on Private Palestinian Property (October 2006); Peace Now, **GUILTY! Construction of Settlements upon Private Land – Official Data** (March 2007); Uri Blau, “Scoop: The Secret Report of the Security Establishment on Illegal Construction in the Settlements,” **Ha’aretz**, January 30, 2009; **(Interim) Opinion concerning the Unauthorized Outposts** (see FN 26 above).

68 **State Comptroller’s Report 56A for 2005** (see FN 30 above), p. 265. The State Comptroller added that a committee of inquiry headed by the Head of the Division Headquarters in the West Bank found that the project to establish special security areas began without any orderly procedure, “thereby enabling several elements to act as they pleased.” *Ibid.*

69 For details, see **By Hook and by Crook** (see FN 15 above), pp. 30-33; **(Interim) Opinion concerning the Unauthorized Outposts** (see FN 26 above), pp. 25-47; and Yesh Din, **The Road to Dispossession** (see FN 63 above), pp. 44-57, 88-118. See also Baruch Spiegel’s database regarding construction in the settlements, in Uri Blau’s article “Scoop” (see FN 67 above).

70 The statements appear in paras. 11, 12, 1nd 16 of the ruling of Supreme Court President Asher Grunis, H CJ 7891/07,

International law makes no mention of the possibility of delegating law enforcement powers, including powers to use force and weapons, to an organized civilian force, and certainly not to an interest group representing an ideology that overtly ignores the provisions of international law, and sometimes those of Israeli law. In the past the army delegated policing powers to the Israel Police and to civilian security companies operating at the checkpoints. However, the police is an arm of governmental law enforcement, while the security companies operating in military compounds are defined by and act in accordance with army orders.

The CSCs are defined as agents working on the army's behalf, but they are appointed by the settlements, act as their representatives, and consider themselves responsible for all the security-related aspects of the settlements and for all the territory under their control. Moreover, and as already noted, they are usually themselves residents of the settlements in which they serve as CSCs. As such, they inherently identify with the goals of the community of which they are members. According to their approach, the areas controlled by the settlement include areas containing illegal construction, even if this was executed on private Palestinian land, outside the municipal boundaries of the settlement, and was annexed to the settlement or to an outpost as the result of criminal action. This loyalty on the coordinators' behalf to the settlement ethos, which constantly seeks to expand the borders of the settlement, has already led to friction between the coordinators and the army on several occasions.⁷¹ According to press reports, for example, the CSC of the settlement of Itamar failed to report the illegal entry of caravans to the settlement and was subsequently dismissed.⁷² During the "construction freeze" in the settlements (November 2009 – September 2010), some CSCs even denied entry to Civil Administration officials who came to examine whether the freeze was being observed.⁷³ The CSC of the

Peace Now for Israel Educational Enterprises et al. v Minister of Defense et al., dated November 18, 2013.

71 See the description of the CSC of the settlement of Nahaliel, Ilan Ben Shabbat, on the website **Eretz Binyamin** (November 2011), describing the relations between the CSC, the army, and the regional council as "unnatural:"

www.binyamin.org.il/?CategoryID=869&ArticleID=2996

See also: Amos Harel and Arnon Regular, "IDF Disperses Settlers from Yitzhar Who Rioted in Palestinian Village," **Ha'aretz**, March 29, 2004. The report states that the army dismissed the CSC of the settlement of Yitzhar after he permitted the illegal entry of caravans to the settlement; and Gili Cohen, "Security Chief from West Bank Outpost Used Military Vehicle for Illegal Construction," **Ha'aretz**, November 4, 2012.

72 "IDF Disperses Settlers from Yitzhar" (see FN 71 above).

73 Chaim Levinson, "The Settlers' Army," **Ha'aretz**, September 24, 2012. The report notes that "the CSCs guard activities such as the seizure of land and water sources;" Chaim Levinson, "Settlers Angry at Limitation of civilian security coordinators' Responsibility," **Ha'aretz**, September 25, 2013, which reports that "the CSCs habitually expel Palestinians

settlement of Beit Arye-Ofarim was subsequently dismissed from his position.⁷⁴ Prior to the eviction of an illegal outpost close to the settlement of Itamar, the army refrained from updating the settlement CSC regarding the planned eviction, fearing that the latter might thwart the action.⁷⁵

To the best of Yesh Din's knowledge, the IDF does not require CSCs to report actions involving illegal construction in the settlements or the criminal seizure of land adjacent to settlements and outposts. Such an obligation is not mentioned in any of the standing army orders relating to the powers and activities of the CSCs as forwarded to Yesh Din by the IDF Spokesperson.⁷⁶

Thus the CSCs, who were granted policing and law enforcement powers, become the defenders of hubs of criminal activity – the ongoing and cumulative seizure of private Palestinian land by the settlements and outposts. This conflict of interests further devoids the concept of the rule of law in the West Bank of all meaning.

Another aspect of the CSCs' conflict of interests is their discretion to assess the security situation, and the subsequently required military response, and the effect this discretion has on denying Palestinian farmers access to their land bordering on settlements. The CSCs function as military commanders of the settlements. They command the guarding squad in routine times, the settlement emergency unit in emergencies, and sometimes also teams from civilian security companies who guard the settlements. According to the military order and the amendment thereto, which granted them policing powers, they are authorized to use "all reasonable means" to detain a person if they have "reasonable suspicion" or "reasonable grounds to assume" that this action will prevent danger to human life.

In most cases the soldiers involved in guarding the settlements are performing regular compulsory service, but in some cases they are reserve duty soldiers stationed in the settlements as part of routine security rounds. The CSCs act as their commanders despite the fact that they have no formal authority to command soldiers; according to army orders

who claim that they are the owners of the land on the grounds that they present a security risk, thereby enabling the settlers to seize the land."

74 Uzi Baruch, "Brigade Commander Not Authorized to Dismiss Civil Military Coordinator," **Arutz 7**, December 22, 2009. See also the letter from Major Zohar Halevy, Head of the Public Inquiries Department, IDF Spokesperson, to Noa Cohen, Yesh Din Information Coordinator, dated October 13, 2013.

75 Benny Toker, "Rabbi Ronetzky: IDF Hoodwinked the CSC of Itamar," **Arutz 7**, December 1, 2011.

76 Letter from Attorney Michael Sfar to Major Issam Hamed, Deputy Legal Advisor (Acting) for the Judea and Samaria Area, regarding a suspected abuse of power by the CSC of Beit Yatir, dated June 24, 2010.

the soldiers should not be subject to the coordinators' instructions. Soldiers stationed in the settlements for short-term periods, usually one week, are less well-acquainted with the area requiring security than the coordinators. Their immediate commander is not physically present in the settlement or outpost, and in most cases they are younger and less experienced than the coordinator.⁷⁷ Due to all these factors, the soldiers generally refrain from confronting the CSC or challenging his authority. In testimony to the organization Breaking the Silence, a soldier who had performed a routine security mission in a settlement stated: "The CSC was the authority regarding what was permitted and what was prohibited."⁷⁸

In practice, therefore, the CSC defines the security threat at his discretion and then alerts the guarding squad, soldiers on security assignments the settlement, and additional army forces. The discretion granted to the CSC is liable to lead to the definition of a routine situation as a security threat requiring a military response in cases an impartial military commander would have regarded as a trivial daily incident not requiring any response.

77 Chaim Levinson, "The Settlers' Army" (see FN 73 above); see also: Hanan Greenberg, "Operational Mission during Reserve Duty: Guarding a Goat," *Ynet*, May 28, 2005 (the CSC is referred to in the article as "the reserve soldiers' civilian commander"); Amira Hass, "Military Police Criminal Investigations Division to investigate claims that soldiers arrested shepherds on settlers' orders," *Ha'aretz*, October 27, 2013.

78 Testimony to Breaking the Silence of a staff sergeant from a Nachal battalion stationed on routine guard duty in the settlement of Itamar (September 2010): www.shovrimshatika.org/testimonies/database/251656;
 Testimony to Breaking the Silence of a staff sergeant from an Armored Corps patrol company also stationed on routine guard duty in the settlement of Itamar in 2004 (February 2012): www.shovrimshatika.org/testimonies/database/338570;
 Testimony of a staff sergeant from the Givati Brigade, Bethlehem area, 2007 (January 2010):

<http://www.shovrimshatika.org/testimonies/database/5904>;

Testimony No. 1 of a staff sergeant in the Nachal, 2004 (March 2007); Testimony No. 10 of a second lieutenant, 2008 (November 2008); Testimony No. 21 of a staff sergeant in the Nachal, 2002 (November 2008); Testimony No. 35 of a sergeant first class in the reserves, 2005 (December 2007), in **Soldiers' Testimonies from the South Hebron Hills** (testimonies of sixty combat soldiers who served in the South Hebron Hills between 2000 and 2008), Breaking the Silence:

http://www.shovrimshatika.org/wp-content/uploads/2011/07/Soldiers_Testimonies_from_the_South_Hebron_Hills_2000_2008_Heb.pdf ; See also a video clip by the organization Ta'ayush showing a security guard from the outpost of Avigayil attacking Palestinian shepherds while soldiers stand by:

http://www.youtube.com/watch?v=o6p6l_qbze0;

An additional video clip by Ta'ayush shows a security guard from the settlement of Otniel entering private Palestinian land while soldiers in the vicinity stand by (July 2013): <https://www.youtube.com/watch?v=WxoFFBklUeI>

By way of illustration, a CSC is liable to interpret the farming of a Palestinian plot close to the settlement, the carrying of tools in order to farm the plot, or the grazing of flocks close to the settlement (the borders of many settlements and outposts are not marked by a fence) as presenting a threat of penetration to the settlement or outpost, or as a potential terrorist attack. A visit by a Palestinian farmer to his land can be interpreted as an attempt to gather intelligence. A CSC may even take the position that an innocent visit by a Palestinian to a nature reserve close to a settlement (such as the Wadi Qelt area, which has been seized by Israel and is managed as the Ein Prat Nature Reserve by the Nature and Parks Authority) constitutes a potential threat to Israeli visitors, and accordingly may detain the Palestinian pending the inspection of his identity card by the Intelligence Operations Room in the regional brigade.⁷⁹

The broad discretion and powers granted to the CSCs can cause routine incidents to deteriorate into violence, including the use of live fire, as has indeed happened on more than one occasion. “According to the security procedures,” the army permits CSCs to fire “warning shots in the air.” However, some CSCs have interpreted this authorization liberally, with grave consequences, as the following examples show:⁸⁰

- In February 2010, a security guard from the settlement of Har Bracha shot and injured Palestinian shepherds grazing hundreds of meters from the settlement fence.⁸¹
- In May 2013 the CSC of the settlement of Eli chased a 14-year-old Palestinian youth who was on his family’s land close to the boundary of the settlement. The youth claimed that the civil military coordinator shot in the air in order to force him to leave his family’s land. While fleeing the youth fell and broke his leg, and the CSC then aimed a pistol at

79 On this subject see also: Tzafrir Rinat, “Nature Authority denies entrance to reserve to Palestinians convicted of security offenses,” **Ha’aretz**, December 18, 2013.

80 Letter from Captain Ofinkaru, Consultation Officer on the Security and Criminal Desk in the Office of the Legal Advisor for the Judea and Samaria Area, to Attorney Neta Patrick dated November 2, 2008. Ofinkaru was responding to a complaint against the civil military coordinator of the settlement of Ma’ale Mikhmas who expelled Palestinian shepherds grazing their flocks by the settlement.

81 Yesh Din file 2016/10, see letter from Attorney Michael Sfard to Lieutenant Colonel Avi Halabi, Deputy Legal Advisor for the Judea and Samaria Area, regarding a complaint against the CSC of the settlement of Har Bracha involving suspected grave injury and deviation from authority, dated February 9, 2010; letter from Attorney Michal Mazor-Koller, a deputy in the Central District Attorney’s Office, to Attorney Michael Sfard dated November 5, 2012; and letter from Attorneys Michael Sfard and Adar Grayevsky to State Attorney Moshe Lador appealing against the closure of the case, dated December 19, 2012. See also: Efrat Weiss and Ali Wakad, “Palestinian apparently shot and injured during confrontation with settlers,” **Ynet**, February 9, 2010.

his head. According to the reply from the Office of the Legal Advisor for the Judea and Samaria Area, the youth routinely visits his family's land and was seen "penetrating the area of the community of Eli in a manner endangering the residents."⁸²

- In April 2005, the CSC of the settlement of Petza'el shot and killed a Palestinian who approached the hothouses of the settlement in order to relieve himself. Following the incident the CSC was convicted of negligent manslaughter and sentenced to 200 hours' community service.⁸³
- In October 2010, the CSC of the settlement of Talmon opened fire on Palestinians who approached the settlement fence. He was subsequently dismissed from his position.⁸⁴
- A shepherd from the village of A-Nasriya in the Jordan Valley told Yesh Din in September 2009 that the CSC of the settlement of Beka'ot had told him that if he found him near the settlement "he would tell the soldiers that he had not apprehended him as a shepherd, but on suspicion of attempting to commit a terrorist attack in the settlement."⁸⁵
- In December 2012 the CSC of the settlement of Carmei Tzur attacked farmers from the village of Beit Ummar who were attempting to farm a plot under their ownership situated approximately one kilometer from the settlement.⁸⁶

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- 82 Yesh Din File 2882/13: See letter from Attorney Noa Amrami to Colonel Doron Ben Barak, Legal Advisor for the Judea and Samaria Area, regarding a request to clarify a suspected instance of assault, threats, and deviation from authority by the CSC of the settlement of Eli, dated June 23, 2013; and the letter from Major Asaf Harel, Head of the Operations and Human Rights Division, Security and Criminal Desk, in the Office of the Legal Advisor for the Judea and Samaria Area, to Attorney Noa Amrami dated October 24, 2013.
- 83 Chaim Levinson, "Settlement to pay compensation to Palestinian family," **Ha'aretz**, April 6, 2011.
- 84 Yehoshua Breiner, "Civil military coordinators in the settlements: IDF fails to support us," **Walla**, November 7, 2010. Letter from Major Zohar Halevy, Head of the Public Inquiries Desk, IDF Spokesperson's Office, to Noa Cohen of Yesh Din, October 13, 2013.
- 85 Yesh Din File 1896/05: See letter from Attorney Adar Grayevsky to Colonel Doron Ben Barak, Legal Advisor for the Judea and Samaria Area, concerning a complaint against Danny Gindin, CSC of Beka'ot, dated February 27, 2013, and the reply from Captain Tamar Bukiya, Consultation Officer – Operations and Human Rights, Security and Criminal Desk, in the Office of the Legal Advisor for the Judea and Samaria Area, April 24, 2013. See also the letter from Attorney Michael Stard to Lieutenant Colonel Avi Halabi, Deputy Legal Advisor for the Judea and Samaria Area, regarding a complaint against the CSC of Beka'ot involving the suspected use of unreasonable force and deviation from the coordinator's authority, dated December 28, 2009.
- 86 Yesh Din file 2643/12: See letter from Attorney Adar Grayevsky to Colonel Doron Ben Barak, Legal Advisor for the Judea and Samaria Area, concerning a complaint against the CSC of Carmei Tzur, Eliahu Amdadi, on suspicion of intentional assault and vandalism of a vehicle in deviation from his authority as CSC, dated December 24, 2012, and response of Advocate Major Udi Sagi of the Security and Criminal Desk in the Office of the Legal Advisor for the Judea and Samaria Area to Attorney Adar Grayevsky, February 6, 2013.

- In February 2010 the CSC of the settlement of Ofra expelled farmers from the village of Silwad who were attempting to farm their land, which is situated outside the area of the settlement. To the best of our knowledge no “guarding zone” has been defined for Ofra.⁸⁷
- In September 2012 the CSC of the settlement of Bat Ayin, at his own discretion and contrary to army orders, ordered soldiers on security assignments to deny entry to the settlement to non-Jewish Israeli citizens. The army confined itself to “emphasizing the guidelines” with the said coordinator.⁸⁸
- In 2005 the CSC of the settlement of Mechora decided to confiscate a goat from a Palestinian goatherd who approached the area of the settlement. “Disciplinary steps” were subsequently taken against him.⁸⁹
- In April 2012 the CSC of the settlement of Yitzhar permitted the construction of a road on private land belonging to a resident of the village of Burin in order to facilitate access by settlers from Yitzhar to an adjacent spring. The army guarded the construction work.⁹⁰

87 Yesh Din file 2043/10, see letter from Attorney Michael Sfarid to Lieutenant Colonel Avi Halabi, Deputy Legal Advisor for the Judea and Samaria Area, regarding a complaint against the CSC of the settlement of Ofra involving suspected abuse of power and deviation from authority (in an incident on February 22, 2010) , dated April 22, 2010.

88 Gili Cohen, “No Entry to Non-Jews” (see FN 5 above); letter from Major Zohar Halevy, Head of Public Inquiries Desk, IDF Spokesperson, to Noa Cohen, Yesh Din Information Coordinator, dated October 13, 2013.

89 Guarding a Goat” (see FN 77 above). See also the testimony to Breaking the Silence of a sergeant in the Binyamin District Brigade posted in the Jericho and Jordan Valley area, 2006-2008 (December 2010):

<http://www.shovrimshatika.org/testimonies/database/64764>

Testimony of a staff sergeant from the Givati Brigade, Bethlehem area, 2007 (January 2010):

<http://www.shovrimshatika.org/testimonies/database/5904>

The testimony of a sergeant first class in the 401 Armored Corps Brigade, Bethlehem area, 2007-2008 (June 2010):

<http://www.shovrimshatika.org/testimonies/database/898155>

The testimony of a sergeant first class in the Nachal, Tulkarm area, 2008-2009 (April 2009):

<http://www.shovrimshatika.org/testimonies/database/452925>

The testimony of a sergeant first class in the 50th Nachal Battalion, Salfit area, 2008-2009 February 2010):

<http://www.shovrimshatika.org/testimonies/database/797381>

90 Yesh Din File 2619/12: See letter from Attorney Noa Amrami to Chief Superintendent Asher Dotan, Samaria District Investigations Officer, regarding an appeal against the decision to close police file no. 171968/12, dated January 1, 2014. The police closed the investigation file without examining whether permits were indeed given to construct the road and without even considering the fact that the works constituted criminal trespassing. In another case, Yesh Din File 2856/13, a resident of the village of Urif complained that the CSC of Yitzhar secured settlers while they threw stones at homes in Urif and uprooted saplings planted in the village. The police did not bother to question the CSC of the settlement, accepting his response that he “did not remember such an incident.” See letter from Attorney Noa Amrami

- In February 2014 the CSC of the settlement of Yitzhar came close to the school in the village of Burin, outside the “guarding zone” defined for Yitzhar, leading to confrontations between soldiers and residents of the village.⁹¹

Only three of these incidents resulted in steps of any kind (criminal or disciplinary) against the CSCs involved.

A petition submitted to the Supreme Court by the Association for Civil Rights in Israel regarding the rights of Palestinian landowners to farm their land claimed that a pattern exists whereby CSCs or members of the guarding squads in settlements “approach farmers working their land and demand that they leave, threatening them and in some instances assaulting them in order to remove them.”⁹² These repeated confrontations initiated by CSCs and members of the guarding squads with Palestinians seeking to farm their land close to the settlements lead to the intervention not only of the soldiers posted on guard duty in the settlements but also of additional army forces. For decades the army has preferred to avoid confrontations with the settlers. In clashes between the settlers and Palestinian farmers, the policy is to separate the two sides by removing the Palestinians, in some cases through the use of violent means such as tear gas. Another tactic is to declare the area in dispute a closed military zone and to prohibit the entry of Palestinians and of Israelis or foreigners who come to assist them.⁹³

to Chief Superintendent Asher Dotan, Samaria District Investigations Officer, regarding an appeal against the decision to close police file no. 179925/2013 (Samaria), dated January 2, 2014.

- 91 Letter from Attorney Emily Schaeffer to GOC Central Command regarding the throwing of stun grenades and tear gas into the courtyard of the village school in Burin, dated February 25, 2014. As of the time of writing no reply has been received from the GOC regarding Yesh Din’s demand to instigate disciplinary proceedings against the CSC of Yitzhar.
- 92 Sections 11, 29, 45, 55, and 58 of the complementary response and principal claims regarding the right of access to agricultural land in HCJ Petition 9593/04 **Rashed Murar et al. v Commander of IDF Forces in Judea and Samaria** (see FN 32 above). The response relates to the CSC of the Gidonim outposts close to the settlement of Itamar, the CSC of the settlement of Maon, and the CSC of the settlement of Susiya. See also: Amos Harel, “IDF Considering Dismissal of civilian security coordinator in Elon Moreh,” **Ha’aretz**, August 13, 2000.
- 93 For example, see a video clip by Ta’ayush from October 2012 showing soldiers standing close to security guards from the settlement of Adora and removing Palestinian farmers and Israeli activists who came to help them harvest olives on land close to the settlement fence:
http://www.youtube.com/v/FbmP-ICfMMW0?version=3&hl=en_US
 Report by Ta’ayush activist Dolev Rahat, “Routine in the South Hebron Hills,” October 10, 2012, on the Haokets website (in Hebrew). “Testimonies: Civil military coordinators of the Ro’i and Beka’ot settlements mistreat shepherds in al-Hadidiyah, backed by security forces,” B’Tselem website:
http://www.btselem.org/hebrew/settler_violence/20100222_settler_assaults_in_al_hadidiyah (Hebrew)

Testimony given to the organization Breaking the Silence by an operations sergeant in the Judea and Samaria Division highlights the attempts by civil military coordinators to escalate routine situations:

...90 percent of the incidents came from them, because they are constantly seeing and identifying all kinds of things... In most cases it turned out to be something trivial or paranoia on their part. In some cases they seized Palestinian children by the fence... They patrol and see kids hanging out there... It's very close. Sometimes it's even on main roads that however you look at it are also used by Palestinians and they are also allowed to travel there. Because it's their home and community and their families, and because they have memories from previous years, they are very tense and jump on anything that moves. In a way you can't blame them because like I said their whole world is inside the settlement. On the other hand it's also a bit problematic in a situation where someone who isn't really objective manages things, I mean declares an incident, calls for forces, manages the handling of the whole event in a very impulsive and emotional manner...⁹⁴

The power granted to the CSCs to define a security event, and accordingly to activate military and quasi-military forces, enables them to escalate and amplify routine situations and leads to the ongoing and cumulative denial of access of Palestinians to their farmland. This is true even in cases when the Palestinian farmers' right to access and work their land has been recognized by the army, and in some cases even by the courts. This power transforms the CSCs into a key tool for the violation of Palestinians' rights to freedom of movement, to farm their land, and to earn a livelihood.

94 Testimony given to Breaking the Silence by an operations sergeant in the Judea and Samaria Division, 2006-2008.

CHAPTER 5:

THE PRIVATIZATION OF LAW ENFORCEMENT POWERS

The transfer of policing and law enforcement powers to an ideological interest group has a particularly pernicious impact when it takes place in an occupied territory, in which the settlements themselves were established in gross violation of international law and entail the usurping of land on a massive and protracted basis. The granting of such sweeping powers to an interest group that openly and declaratively rejects the provisions of international law is indicative of the chaos that characterizes the official Israeli attitude toward law enforcement in the West Bank.

The decision to delegate policing powers to civilian bodies operating quasi-military forces is contrary to international law and promotes the privatization of law enforcement powers.⁹⁵ According to the provisions of international law and numerous rulings of the Israeli Supreme Court, the military commander in the occupied territory is obliged to “take all the measures in his power to restore, and ensure, as far as possible, public order and safety.”⁹⁶ International law does not regulate or even mention the question of the legality of delegating law enforcement powers to any other body or of their privatization; these authorities remain with the occupying power. Accordingly, the privatization of law enforcement powers or their delegation to an organized civilian force or an interest group with a specific ideological identity is liable to be considered as undermining the rule in international law obliging the occupying power to act in the interests of the local population. Moreover, in instances when these bodies fail to assist in law enforcement (and all the more so when they are themselves involved repeatedly in the violation of the law), the army will be considered responsible for the violation and for violating its obligation to enforce the law.

95 For further discussion of the issue of the privatization of law enforcement, see: the Association for Civil Rights in Israel, **Law and Order Ltd. – The Privatization of Law Enforcement in Israel** (August 2013) (Hebrew).

96 See Article 43 of the Hague Convention Concerning the Laws and Customs of War on Land (1907). See also the ruling in HCJ 2612/97, **Ibrahim Shaer v Commander of IDF Forces in the Judea and Samaria Area** (see FN 32 above); HCJ 9593/04, **Rashed Murar, Head of Yanun Village Council, et al. v Commander of IDF Forces in Judea and Samaria, dated** (see FN 32 above); the ruling in HCJ 3933/92, **Mustafa Mahmud Mustafa Barakat et al. v GOC Central Command** (note 64 above); and HCJ 2150/07, **Ali Hussein Mahmud Abu Safya v Minister of Defense**, dated December 29, 2009 (see FN 64 above). See also: “Protection of the occupied population in the occupied territory and the duty to enforce the law,” **Road to Dispossession** (see FN 63 above), pp. 16-17.

As early as 1971, Israel began a gradual process of transferring quasi-military law enforcement and policing powers to the security guards, civil guarding units, and emergency units in the settlements in the West Bank. This process thus significantly predates the adoption in Israel from the mid-1980s onward of the global neo-liberal trend toward the massive privatization of government services, including law enforcement powers.⁹⁷

In contrast to the privatization processes inside the State of Israel,⁹⁸ the transfer of law enforcement powers to the CSCs was not undertaken by means of an orderly privatization process; neither were financial savings and efficiency quoted as reasons for the change. Instead, justification focused on the regional defense approach. After originally referring to the defense of the nation's borders against invasion, this approach has acquired a more restricted meaning over the years and now refers solely to the protection of the settlement themselves.

Substantial differences can certainly be seen between the transfer of law enforcement powers to the CSCs and guarding squads in the settlements and outposts, on the one hand, and the privatization processes that occurred inside Israel some years later, on the other. Nevertheless, the similarities in the outcomes of these processes are striking – particularly in terms of their ramifications and the structural failings that characterize privatization processes.

These failures include the absence of transparency regarding the powers of the CSCs and the members of the guarding squads; a reduction in the effective monitoring, control, and supervision of their operations; the absence of even basic investigations into suspected offenses committed by those holding these functions; the removal of governmental responsibility from the bodies that perform functions that were previously under the purview of governmental authorities; and lack of deterrence against the abuse of governmental power. Moreover, no governmental body has examined the consequences of this ongoing process of privatization.

An inevitable upshot of the privatization process is the autonomous management by the settlements of the defense means stationed within their boundaries. In his report for 2005,

97 For example, see Danny Gottwein, "Ripping off the Mask of Privatization," **Eretz Acheret**, June 17, 2009 (in Hebrew); Asaf Shapira, "Key Privatization Processes in Israel," website of the Israel Democracy Institute; "Who Privatized My Country? Privatization, Regulation, and the Third Sector," **Teoriya uMa'aseh**, issue 64 (March 2010) (in Hebrew).

98 For further details, see: Erella Shadmi, **Secure Land: Police, Policing, and the Politics of Personal Security in Israel** (Hakibbutz Hameuchad, 2012) (in Hebrew), particularly pp. 61-64.

the State Comptroller noted that several settlements in the West Bank have purchased security components independently with donations and private funding sources. These components include electronic fences and technological defense means, “without the involvement of the Central Command and the Home Front Command.”⁹⁹

Powers relating to the use of force and the execution of authority such as those granted to the civil military coordinators lie at the very core of governmental powers - the executive branch, which according to modern political thought is responsible for law enforcement and for protecting public wellbeing.¹⁰⁰ The Supreme Court justices recognized the dangers inherent in the privatization of law enforcement and its transfer to non-governmental bodies in a ruling disqualifying an amendment to the Prisons Ordinance designed to permit the establishment of privately-managed prisons. The justices ruled that these powers constitute the “hard core” of governmental power, “which the government, as the executive authority of the state, must undertake by itself and may not transfer or delegate to private bodies.”¹⁰¹

Justice Ayala Procaccia discussed at greater length the “potential violation of human rights,” noting state’s coercive power and the balances necessary for its activation do not rest “with another body that emerged outside the governmental authority.” She argued that:

*The private body that is vested with a governmental authority carrying the potential to violate the core of individual rights is not rooted in the framework of rules of action and criteria that dictate the standards of use of the institutional power of authority and guide the actions of the organs of state. It did not grow up and was not educated in this framework; it is alien to its concepts, and it has never internalized the theory of balances in the use of governmental power with all its nuances and aspects.*¹⁰²

Procaccia deduced that it is not possible to separate “the governmental body responsible for creating the rules for the use of power and the body that activates and implements these

99 **State Comptroller’s Report 56A for 2005** (see FN 30 above), p. 261.

100 See the reference to Thomas Hobbes’ essay “**Leviathan**,” written in 1651, and John Locke in his **Second Treatise of Government**, from 1690, in section 23 of the ruling in HCJ 2605/05 (in an extended panel of nine justices, eight of whom supported the ruling), **Academic Center for Law and Business, Human Rights Division, et al. v Minister of Finance et al.**, dated November 19, 2009. See also: Erella Shadmi, **Secured Land** (see FN 98 above), pp. 219-220.

101 Section 63 of the ruling of Supreme Court President, Justice Dorit Beinisch, in HCJ 2605/05 (see FN 100 above).

102 *Ibid.*, paras. 14 and 18 of the ruling of Justice Ayala Procaccia.

rules in practice.” The reason for this is that only the said governmental body internalizes the restraint required when activating the force of authority and its constant balancing with human rights. “The same social contract that charged the state with responsibility for defining norms of conduct in society also charged it with responsibility for the enforcement of these norms, and in accordance with the foundations of the system of government, this contract delineated the limitations of use of institutional power the definition of whose borders draws from the obligation to respect the rights of every human per se.”¹⁰³

Justice Edna Arbel added:

*The state alone is capable of “channeling” the collective aspirations of the community and reflecting the “general will” that embodies protection of the human rights of each and every individual [...]. Transferring these powers to a private body is no longer a matter of realizing the desire of individuals on the basis of their consent to transfer natural rights to the community in order to enable proper life and security, but rather of their transfer to an alien body that does not constitute a party to social consensus, is not bound by the inherent norms of this consensus, and does not necessarily wish to realize its goals.*¹⁰⁴

The transfer of law enforcement and policing powers in the settlements to a quasi-military civilian force, including the possibility to use injurious means, exercise force, deprive liberty, restrict movement, and search and seize property – is liable, firstly, to lead to the violation of the human rights of the Palestinian residents of the West Bank. More seriously still, the establishment of the settlements themselves was undertaken through the violation of explicit provisions of international law, and the Israeli settlements are a key source of the multi-dimensional violation of the human rights of the Palestinian residents of the West Bank – the “protected population,” in terms of international human rights law.¹⁰⁵ As already noted, Israel has for decades refrained from enforcing the law on settlers or on the settlements in the context of a wide range of violations, from violence and illegal construction through the criminal seizure of private Palestinian land and on to labor and environmental laws.¹⁰⁶

103 Ibid., paras. 11 and 12.

104 Ibid., para. 2 of the ruling of Justice Edna Arbel. See also: Erella Shadmi, **Secured Land** (see FN 98 above), pp. 221-225.

105 For further discussion of this aspect, see: Yesh Din, **The impact of the settlements on Palestinian rights** (see FN 47 above). See also: B'Tselem, **By Hook and by Crook** (see FN 15 above), pp. 49-55.

106 See Yesh Din's position papers: **The impact of the settlements on Palestinian rights** (see FN 47 above); **Law Enforcement on Israeli Civilians in the West Bank: Yesh Din Monitoring 2005-2013** (July 24, 2013); **Police investigations of vandalization of Palestinian trees in the West Bank**, datasheet (October 21, 2013); and the Yesh Din reports: **Tailwind** (see FN 47); **Too Little, Too Late** (see FN 47); and **A Semblance of Law** (see FN 47). See also the B'Tselem reports **Dispossession and Exploitation** (see FN 15 above) and **Foul Play** (see FN 47), pp. 7-13.

CONCLUSIONS AND RECOMMENDATIONS

The institution of the civilian security coordinators, civilian guarding squads and emergency units in the settlements and outposts in the West Bank illustrates the biased approach of the Israeli authorities to law enforcement in the occupied Palestinian territories, to the point that the very term “law enforcement” loses any real meaning. This institution further highlights the contradiction between the settlement enterprise and the obligation incumbent on Israel to protect the local Palestinian population in the West Bank, as well as the violation caused to the rights of this population. As this report has shown, the civil military coordinators not only fail to promote the rule of law in the West Bank but actually undermine and violate the law and Israel’s obligation to protect the Palestinian residents of the West Bank.

The settlements and outposts violate the rights of Palestinian residents of the West Bank in numerous areas. They are a source of constant friction and confrontation due to the means Israel has adopted, and continues to adopt, in order to usurp the land of the West Bank for the settlements (leading to the violation of Palestinian property rights). The settlements and outposts create ongoing violations of the Palestinians’ rights to equality, a decent standard of living, freedom of movement, and self-determination.

Even according to Israel’s own standards, its attempt to imbue the settlement enterprise established in violation of the provisions of international law and human rights with a legal façade has been a resounding failure. For decades the Israeli authorities have failed to enforce the law on Israeli civilians in the West Bank. This failure relates to a wide range of offenses, from violence and the criminal seizure of land to the enforcement of labor and environmental laws.

Accordingly, granting law enforcement powers to quasi-military forces representing settler interests, including the use of force and policing powers, is diametrically opposed to the rule of law. Having repeatedly failed to enforce the law in the West Bank, the Israeli authorities grant law enforcement powers to the representatives of an interest group that not only ignores the provisions of international law, but also overtly ignores military legislation in the occupied territories relating to illegal construction, the criminal seizure of land, and the denial of Palestinians’ access to their land.

The obfuscation of basic principles in the rule of law, and particularly the principle of equality before the law, which requires the absence of discrimination and favoritism in law

enforcement, has disastrous results. This process has violated and continues to violate Palestinians' property rights and their right to farm their land and make a livelihood from it.

RECOMMENDATIONS:

The Israeli authorities should act to return security and law enforcement powers to the official bodies responsible for law enforcement and for the imposition of authority. This is vital in order to ensure the necessary measure of restraint and to protect human rights. Israeli civilians living in the settlements and outposts in the West Bank deserve protection, but this must not be provided by an ideological interest group.

Pending the return of security and law enforcement powers to the official bodies responsible for law enforcement in the Occupied Territories (the IDF and the Samaria & Judea District Police), we make the following recommendations:

- The army should draft procedures and orders clearly defining the function of the civilian security coordinators and guarding squads in the settlements. The status of the CSCs in relation to IDF soldiers and commanders must be defined.
- Supervision over the activity of the CSCs and emergency and guarding squads should be tightened.
- Specific disciplinary or penal measures, defined in procedures and orders, should be taken as required by the circumstances of the case in any incident in which a CSC or security guard in a settlement oversteps his powers or violates the law. As part of this process, CSCs who operate beyond the defined boundaries of their "guarding zone," use their weapon otherwise than in accordance with the orders, and so forth, should be prosecuted to the full extent of the law.



APPENDIX: IDF SPOKESPERSON RESPONSE

Israel Defense Forces
IDF Spokesperson Division
Public Relations Branch

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HP-188 March 30, 2014

Ms. Noa Cohen

Yesh Din

RE: RESPONSE TO THE DRAFT REPORT ON CIVILIAN SECURITY COORDINATORS

1. The civilian security coordinators who operate in the Judea and Samaria Area play an extremely important role in protecting the security of the Israeli communities in the area. The essence of this role is to defend the communities against terrorist attacks directed against the citizens of the communities. In many cases, the civilian security coordinators' actions have thwarted terror attacks against civilians. Several civilian security coordinators have been injured or even killed during encounters with terrorists while performing this important role.
2. The legal framework for the operation of the civilian security coordinators is regulated primarily in the Order concerning the Regulation of Guarding in Communities (Judea and Samaria) (No. 432), 1971 (hereinafter "**the Order concerning the Regulation of Guarding**"). This order clearly defines the powers granted to the civilian security coordinators and the restrictions imposed thereon. As reflected in the draft report, the order has been amended over the years with the intention of clarifying these powers and their boundaries. In general, the order applies a parallel legal framework to that pertaining to the State of Israel under which civilians guard in their places of residence under the supervision of civilian security coordinators.
3. In 2009, it was decided to define clearly the geographical zone in which the civilian security coordinators and the guards are empowered to exercise the powers granted to them in the framework of the Order concerning the Regulation of Guarding.¹ Within

1 See section 3/1 of the Order concerning the Regulation of Guarding.

this framework, as noted in the draft report, the district brigade commanders marked the guarding zones for each community, after consulting with a legal advisor. **The marking of the areas was undertaken for operational considerations** relating to the thwarting of terrorist attacks on the community, and in this framework, the minimum area required in order to achieve this security purpose was included in the guarding area, while refraining as far as possible from including land under private Palestinian ownership in the guarding areas.

4. Indeed, buildings established contrary to the law have been included in several guarding zones, in some cases in the framework of unauthorized outposts. This was done in consideration of the obligation incumbent on the military commander to ensure the wellbeing and security of the residents of the area – an obligation that applies to all persons present within the area, including a person unlawfully present in the area (as is well known, this determination has been explicitly enshrined in the rulings of the Supreme Court).² It should be emphasized, however, that restrictions have been imposed on the operations of the guards in areas included in the guarding zone, but outside the boundary of the community. Thus, for example, a guard in such a zone enjoys the powers specified in the Guarding Order solely when he accompanies the civilian security coordinator.³
5. Contrary to the allegation in the report, the determination of the guarding zones does not constitute the determination of the municipal areas of the communities in the area, whatever their status. The guarding zones are determined on the basis of the security needs of the communities, with attention to the threats they face and their specific characteristics. Thus, for example, there is nothing improper in including the security roads of a given community in the community's guarding zone, even if these lie outside the built area of that community or outside its municipal area.
6. In any case, it should be noted that the allegation that appears in the draft report⁴ to the effect that some guarding zones restrict Palestinians' access to land under their ownership is unfamiliar to us. It is worth emphasizing that the mere fact that a given geographical nucleus is defined as a guarding zone does not impose any restriction on the freedom of movement of any person in that geographical nucleus. The significance

2 See, for example: HCJ 10356/02, *Hess v Commander of IDF Forces in the West Bank* (granted March 4, 2004).

3 Order concerning the Regulation of Guarding, section 3/1(e).

4 Pp. 12-13 of the draft report.

of the definition of a geographical nucleus as a guarding area is that a civilian security coordinator and a guard may exercise limited powers in the area to prevent terrorist attacks on the community, subject to the provisions of the Order concerning the Regulation of Guarding.⁵

7. Contrary to the allegation in the draft report, it should be emphasized that the existence of a guarding system in the communities is not tantamount to the “privatization” of security powers or the delegation of law enforcement powers to civilians. The Order concerning the Regulation of Guarding was designed to create an additional layer of security to that provided by the IDF, by means of a mechanism enabling the residents of the Israeli communities in the Judea and Samaria Area to defend their lives against **grave and immediate security threats**. This is achieved by granting limited powers within a predetermined geographical nucleus and subject to the supervision and professional guidance of the military commander. Immediately on the arrival of IDF and police forces in the area, the role of the civilian defense forces ends and the security responsibility for attending to the security threat passes to the army forces.

8. The IDF attaches great importance to ensuring strictly that the civilian security coordinators act in accordance with the law. The civilian security coordinators, who are appointed to their positions by the military commander, are obliged to act solely in accordance with the powers granted to them. Within this framework, the IDF works to supervise the operations of the civilian security coordinators and to ensure that they act solely within the framework of the powers granted to them in accordance with the law. In this context, the IDF works on an ongoing basis to clarify to the civilian security coordinators the limits of the powers granted to them by law, and works to clarify these matters with the commanders. This is reflected in the special training and lectures provided for the civilian security coordinators; in information sheets distributed to the civilian security coordinators and to commanders operating in the area; and so forth. Moreover, civilian security coordinators receive detailed professional instructions in various aspects relating to the performance of their function. As part of this, and contrary to the statement in the draft report,⁶ the civilian security coordinators and guards are given clear instructions regarding the circumstances in which they are permitted to use their weapons.⁷

5 See section 3a of the Order concerning the Regulation of Guarding.

6 P. 13 of the draft report.

7 Instruction No. 3, Open-fire rules for residents of Judea, Samaria and the Gaza Strip filling a guarding function, Operations

9. It should be emphasized that the vast majority of the civilian security coordinators act in accordance with the law and perform their complex function in a highly faithful manner. In the few instances in which allegations are received concerning deviations by a civilian security coordinator from his authority, the matter is examined thoroughly and, in appropriate cases, the appropriate steps are taken, as can indeed be seen from some of the examples quoted in the draft report itself. In any case, the examples quoted in the report cannot, of course, justify the collective maligning of all the civilian security coordinators.
10. The bodies that supervise the work of the civilian security coordinators and the manner in which they execute their function are the brigade commander and the regional defense coordinator. The latter perform this task by means of visits, exercises, and in-service training held on an ongoing basis.
11. A civilian security coordinator against whom an indictment is served will be dismissed. In the event that an investigation has been instigated, the findings of the investigation by the Israel Police are examined and are of relevance in determining the ongoing employment of the civilian security coordinator. It should be noted that in some instances civilian security coordinators have protected the Palestinian population against residents and have alerted the army and police to respond.
12. As a general rule, the absence of a criminal record is a threshold condition for appointment to the position of civilian security coordinator. Moreover, if there is any prohibition on carrying a weapon as a result of a criminal proceeding against him, the candidate cannot be appointed to the position of civilian security coordinator (a criminal record sometimes includes a police investigation not entailing indictment).
13. The above does not exhaust our claims regarding the contents.

We will be glad to be of your assistance in the future.

Public Inquiries Department
Public Relations Branch

The civilian security coordinators (CSCs) and the guarding squads that operate in the Israeli settlements in the West Bank are quasi-military civilian forces composed of residents of the settlements and outposts in the area. Historically, CSCs and guarding squads were expected to support the army in times of conflict or invasion by a foreign army. Today, however, their function has been confined to protecting the settlements and outposts.

The IDF trains the civilian security coordinators and guarding squads and equips them with army weapons. Their salaries are paid by the Ministry of Defense and the IDF provides professional supervision. However, the settlements in which they live and operate are their direct employers and appoint them to the position. A series of military orders grant CSCs policing powers, such as powers of detention, arrest, and the use of force. The orders also define the "guarding areas" within which the coordinators are authorized to act.

Although over 40 years have passed since the first civilian security coordinators were deployed in the settlements, key aspects of their work remain unregulated. Orders and procedures have not been enacted ensuring ongoing supervision of their work or regulating the relations and division of responsibility between the civilian security coordinators and IDF forces stationed in the settlements.

These quasi-military forces face a glaring conflict of interests. Since they are appointed by the settlements (and, in most cases, are themselves settlers), they clearly identify with the territorial aspirations of the settlements. In many cases, this orientation conflicts with their law enforcement powers and their function as agents of the IDF - the body responsible for law enforcement in the West Bank.

This report examines the institution of the civilian security coordinators in the broader context of the biased and chaotic nature of the official Israeli approach to law enforcement in the occupied territories - to the point that the very concept of the rule of law becomes meaningless. The institution of the civilian security coordinators not only fails to promote the rule of law in the occupied territories, but directly undermines the law and impairs Israel's obligation to protect the Palestinian residents of the West Bank and their property.

Yesh Din – Volunteers for Human Rights was established in 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.

