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# Access Denied

Israeli measures to deny Palestinians access to  
land around settlements

September 2008

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**September 2008**



*"Imagine what a person feels, seeing his property and land being stolen right before his eyes, while his hands are tied and he can do nothing. The land is right before my eyes. It's only a few dozen meters away, and I see it every day, morning and night, but I can't enter it whenever I want."*

*'Abbas Alwan, farmer, resident of 'Ein Yabrud Village, Ramallah District*

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## Executive Summary

For years, Israeli authorities have both barred Palestinian access to rings of land surrounding settlements, and have not acted to eliminate settlers' piratical closing of lands adjacent to settlements and blocking of Palestinian access to them. Denying access is one of the many ways used to expand settlements. In recent years, Israel has institutionalized the closing of such lands in an attempt to retroactively sanction the unauthorized placement of barriers far from the houses at the edge of the settlements.

Settlers pave patrol roads and place physical obstructions on Palestinian lands adjacent to settlements, at times with the authorities' approval, at others not. Settlers also forcibly drive Palestinians, primarily farmers, out of lands. B'Tselem has documented, among others, cases of shooting, threats of shooting and killing, beatings with various instruments, stone throwing, use of attack dogs, attempts to run over Palestinians, vandalizing of farming equipment and crops, theft of crops, killing and theft of livestock and animals used for labor, unauthorized demands to see identification cards, and theft of documents.

Not only do the authorities fail to take sufficient action to end the violence and prosecute lawbreakers, they also join the lawbreakers and deny Palestinian access themselves. Soldiers regularly expel Palestinians from their farmland, often under the direction of settlers. Israel has also established a physical system of barriers – barbed-wire fences, patrol roads, illumination devices and electronic sensors – far from the homes at the edge of the settlements, in effect annexing large swaths of land to the settlements.

Especially blatant in this context is the "special security area" (SSA) plan, in which framework Israel has surrounded 12 settlements east of the Separation Barrier with rings of land that are closed as a rule to Palestinian entry. As a result of the plan, the overall area of these settlements is now 2.4 times larger, having increased from 3,235 dunams (approx. 800 acres) to 7,794 dunams (approx. 1,925 acres). More than half of this ring land is under private Palestinian ownership. The amount of land attached to settlements other than through the SSA plan is much larger, given that there are no official limitations on, and less supervision over, piratical closing of land by settlers. B'Tselem estimates that overall, the land to which Palestinian entry has been blocked, and which has been de facto annexed to settlements, amounts to tens of thousands of dunams. Experience shows that this land grab will be perpetuated and become part of official policy to the extent that the plan is implemented around additional settlements.

Palestinian farmers seeking access to these lands must cope with a complex bureaucracy and meet a number of conditions. First and foremost, they must prove ownership of the land and "pressure" the Civil Administration time and again to set times for them to enter. Also, the defense establishment subjects

Palestinian access to the good will and caprice of settlers. On this background, many farmers give up and stop trying to enter and work their land.

Official spokespersons justify some of the closing of land, primarily the land closed as a result of the SSA plan, with security needs. They contend that, after the Separation Barrier was built in the West Bank, settlements east of it were left exposed to violent attacks by Palestinians, and that fenced-off rings of land could provide a warning zone. Indeed, in 2002-2004, Palestinians killed 31 Israeli citizens and injured many others inside settlements in the West Bank. But Israel allows settlers free, unsupervised entry to these lands, which ostensibly were meant to serve as a warning zone free of people, but are, in effect, closed only to Palestinians. As a result, settlers move about regularly on the Palestinian lands, steal their crops, and even live on and work the lands. This practice breaches both the logic of a "warning zone" and the military orders closing the areas.

The lands adjacent to settlements are part of a long list of areas that Israel closes to Palestinians in the West Bank: the Jordan Valley, East Jerusalem, military-training areas, the settlement areas themselves, and others. Every piece of land that Israel closes to Palestinians joins those areas previously taken, and together they limit the possibilities of millions of persons. In this case, the principal harm is suffered by farmers and those who rely on farming for a living. In this context, it should be recalled that the poverty level of Palestinians in the West Bank is extremely high, and that agriculture is the largest sector of the Palestinian economy. Denying access also impedes urban development and limits recreation in the form of nature hikes and enjoyment of land resources.

Denying Palestinian access to lands adjacent to settlements is the direct result, and an integral part, of the illegal settlement enterprise. This enterprise continuously violates the absolute prohibition specified in international humanitarian law on settlements in occupied territory. This prohibition obliges Israel to evacuate the settlers and return them to sovereign Israeli soil. If the settlers are not evacuated, there are ways, which are presented in the report, to protect them that will harm Palestinians to a lesser extent. But the government of Israel is obligated to evacuate them in any case, and evacuation is the only legal way to meet the security need that stands, according to official spokespersons, at the basis of the regulated closing of the land.



# Introduction

Before the fence was built around the settlement, the settlers used to throw stones at residents and fire into the air, sometimes close to us. This happened a few times... [After the fence was built,] I saw soldiers fire into the air to frighten residents trying to approach the fence. When my family and I tried to come near, soldiers in the lookout tower fired live ammunition into the air. Sometimes, soldiers in an army jeep pull up and force the residents to move away.<sup>1</sup>

This report deals with the denial of Palestinian access to areas adjacent to settlements in the West Bank by closing lands and, in effect, attaching them to the settlement. The report describes the phenomenon, its magnitude, its particular attributes and the grave human rights violations that come in its wake – all in their historical, security, political, and legal contexts.

Two main patterns of activity are evident: 1) violence and harassment, primarily by settlers and security forces, aimed at expelling Palestinians from areas close to settlements, and 2) building a secondary fence around settlements that is far from the houses at the edge of the settlement, and from the fence that had been built close to these houses, thus attaching a ring of land to the settlement. Discussion of this pattern of activity will include an overview and critique of the “special security area” (SSA) plan of the Ministry of Defense.<sup>2</sup>

The land adjacent to settlements has two principal features that motivate interested Israeli parties to prohibit, or restrict, the entry of Palestinians. First, from the perspective of persons wanting to promote the settlement enterprise, the land is useful for settlement expansion. Second, both the army and settlers are interested in making it difficult for Palestinians to reach Israeli-populated areas in the West Bank and in making it easier to protect of settlers from attacks.

Palestinians are prohibited, or restricted, from entering other lands in the West Bank, and B’Tselem has surveyed Israel’s policy in this regard.<sup>3</sup> First and

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1. From the testimony of Nahid Abu 'Abadah, resident of Sebastia, given to Salma a-Deba'i on 14 November 2007. The Shavey Shomeron settlement was built next to his family's olive grove. For the full versions of testimonies cited in this report and video material relevant to the subject, see [http://www.btselem.org/english/publications/summaries/200809\\_access\\_denied.asp](http://www.btselem.org/english/publications/summaries/200809_access_denied.asp).

2. In this report, the use of the terms “blocking access” and “closing land” relates to land next to which a settlement was built, unless otherwise noted. The closing is achieved by placement of physical barriers and other means.

3. See, for example, B’Tselem, *Ground to a Halt: Denial of Palestinians’ Freedom of Movement in the West Bank*, August 2007; B’Tselem and Bimkom, *Under the Guise of Security: Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank*, December 2005; B’Tselem, *Forbidden Roads: Israel’s Discriminatory Road Regime in the West Bank*, August 2004; B’Tselem, *Land Grab: Israel’s Settlement Policy in the West Bank*, May 2002. All B’Tselem reports are available at <http://www.btselem.org/english/publications>.

foremost, there is the land on which the settlements themselves were built. Also, there are the lands that lie west of the Separation Barrier, roads on which only Israelis are allowed to travel, lands that were expropriated to build army bases or were classified as army training areas,<sup>4</sup> the land in and around East Jerusalem, which was annexed to Israel, and other large sections of land, such as the Jordan Valley.

Therefore, the blocking of access surveyed in this report is not an isolated phenomenon: it is to be viewed as part of a body of prohibitions, restrictions, oppressive means, and theft of land imposed on Palestinians in the West Bank, who are under army occupation. Along with this, the closing of land around settlements and blocking of Palestinian access to this land are not minor phenomena: the resultant harm to Palestinians is great, in particular with respect to farmland, as restricting or blocking access to it effectively destroys the livelihood of many families.

The report gives detailed descriptions of how both settlers and the defense establishment block Palestinian access to land around settlements. In many cases, the closing is piratical: while it is not formally sanctioned, the authorities know of it but turn a blind eye, or rather wink, and systematically fail to enforce the law. Such unauthorized closing of land – carried out by settlers, and sometimes also soldiers, at times by placing physical barriers and using violence – has been going on for more than three decades.

In recent years, however, Israel has begun to formalize the closing of land by means of military orders. Particularly noteworthy in this regard is the plan the defense establishment terms “special security areas” (SSA’s), in which context 12 settlements have been surrounded by new fences. Each new fence runs far from the old fence and from the last houses of the settlement, resulting in de facto annexation of land to the settlement.<sup>5</sup> In these cases, the closing is explained on security grounds, the proclaimed objective being to create a “warning area” to help protect settlers from Palestinians wanting to harm them. Other settlements

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4. Some one-quarter of the West Bank is classified army-training area, according to the research of Dr. Zalman Shiffer and Dr. Amiram Oren of the Neeman Institute for Advanced Studies in Science and Technology, published in *Economic National Security* 2 under the title “The Economic Consequences of the Use and Control of Land Resources by the Defense Sector in Israel”. Motti Bassok, “The IDF’s Real Estate Potential – about a Million Shekels a Year,” *TheMarker*, 21 February 2008.

5. The defense establishment distinguishes between an “engineering SSA,” which is demarcated by a fence and other physical means blocking entry, and an “electronic SSA,” a technological system of visual and sensory devices that enables supervision of Palestinian entry, but does not physically block it. Around some of the settlements, there is a “combined SSA,” a system that includes physical barriers around part of the settlement and electronic warning devices around the rest. Each of the 12 mentioned here has an engineering SSA or a combined SSA. Mention of SSAs in this report does not include electronic SSAs, unless explicitly stated.

have been surrounded by a secondary fence without the de facto annexed land being classified an SSA.



Sketch of the Hermesh settlement drawn on an aerial photo. Continuous line: the old fence around the settlement's houses. Broken line: the new fence demarcating the SSA. The settlement's overall area is twice as big as its built-up area.

Israel has so far declared 4,558 dunams [approx. 1,126 acres] around these 12 settlements SSAs. Approximately half of this land is under private Palestinian ownership. The enclosed rings of land increase the area of these settlements by a factor of 2.4. This figure does not include land beyond the SSA that settlers grabbed unofficially, nor does it include land onto which the army prohibits Palestinian entry separately from the SSA plan. It was recently reported that the army is considering declaring an SSA around another settlement, where Palestinian entry has already been prohibited for some time.<sup>6</sup> The total area of land to which Palestinian entry is forbidden, both as part of the SSA plan or otherwise, and which has been annexed in practice to settlements, is estimated at tens of thousands of dunams.

The security threat that the SSAs were intended to counter was real when the plan was formulated: in 2002-2004, Palestinians killed 31 Israeli citizens, and wounded many others, inside settlements in the West Bank. Attacks aimed at civilians are war crimes that cannot be justified, and Israel must protect its citizens against them. However, the protection must be carried out by lawful means, and as we shall see below, the SSA plan fails in this regard. Israel manipulates its duty to protect settlers to justify its forbidden taking control of Palestinian land.

Furthermore, the plan has created an absurd situation. While Palestinian landowners wanting to reach their land to work it are required to arrange their access through demanding and prolonged coordination with the authorities, which is sometimes not possible, settlers can enter the Palestinian-owned land and do as they wish. This is the situation despite Israel's obligation to enable Palestinian

6. The report refers to the Ofra settlement, in Ramallah District. Amos Harel, "Amona Outpost Annexed Land in Area B," *Ha'aretz*, 9 July 2008.

landowners to access the land and to prevent settlers from entering there. Furthermore, settler presence on the land violates the logic of a "warning area."

The various methods for blocking access are employed together. For example, closing rings of land around settlements by military orders has not stopped settlers from attempting to expel Palestinians from lands beyond the ring areas. Similarly, settlers continue to drive Palestinians away from areas that have been defined SSAs, even when the latter hold permits to work these lands. Also, Palestinians must often coordinate their entry with the authorities in advance to land not classified an SSA, and the army has placed physical barriers around some of these lands. In some cases, the declaration of an SSA was based on the route of barriers placed by settlers years before, and only serve to retroactively formalize the blocking of access.

Over the years, B'Tselem and others have shown that the government's actions relating to land in the Occupied Territories have been carried out in bad faith, including those that the government has sought to justify on security grounds.<sup>7</sup> This is also apparently the case in our matter. The need to protect settlers may be legitimately cited to justify some instances of blocking access. Overall, however, this practice appears to serve the unlawful expansion of settlements, and security claims appear to be used here, too, to facilitate forbidden taking control of more and more land.

The report surveys the blocking of Palestinian access to all kinds of land, including public lands, and does not solely focus on private lands. The entire occupied territory of the West Bank is supposed to serve the Palestinian public: for recreation and relaxation, development, making a livelihood, construction and so forth. The occupier does have the legal right to use parts of occupied territories, including the right to seize and expropriate privately-owned land, but only to benefit the residents of the territory or for proven military needs. Denial of access to land in the case at hand is both harmful and illegal. Naturally, however, this practice results in greater harm when the land is privately owned, given that in most cases, these lands are used for farming and provide a source of income.

The Israeli settlement enterprise in the occupied West Bank blatantly breaches international humanitarian law and is the basis for most human rights violations taking place there. The State of Israel is obligated to evacuate the settlers

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7. See, for example, *Under the Guise of Security*, Ch. 1; *Land Grab*, Ch. 3-6; Talia Sasson, (*Interim*) *Report on Unauthorized Outposts*, March 2005, Ch. 6; HCJ 8414/05, *Ahmad 'Issa 'Abdallah Yassin, Head of the Ni'lin Village Council v. Government of Israel et al.*, Judgment, 4 September 2007. For a recent example, see Akiva Eldar, "Senior Officials in the Civil Administration Accused of Aiding in Taking Control of Land in the West Bank," *Ha'aretz*, 18 June 2008.

and resettle them in Israel. This was the point at which *Land Grab*, B'Tselem's report from 2002, ended, and is the point of departure of the present report.<sup>8</sup> The constant expansion of settlements causes grave and ongoing infringement, directly and indirectly, of the rights of all West Bank Palestinians. As we shall see below, closing lands around settlements and preventing Palestinians access to them are the direct result, and an integral part, of the illegal settlement enterprise.

The report's findings are based on dozens of testimonies, interviews, and local and regional investigations that B'Tselem's researchers held in West Bank communities, on tours they made around settlements, on information received from state authorities, on conversations with defense establishment officials, and on a computerized analysis of the borders of the closed lands, as they appear on maps attached to military orders and in aerial photos. A substantial portion of the testimonies and examples presented in the report relate to land seized around the 12 settlements included in the SSA plan.

### **Structure of the report**

Chapter 1 provides the history of the land closure policy. Chapters 2 to 6 survey the various aspects and components of the harmful practices that constitute this policy: using physical obstructions to block access; settlers blocking access and the authorities refraining from enforcing the law on them; turning the closing of land around settlements into an official, active Israeli policy; governmental authorities creating difficulties for Palestinian landowners wanting to enter closed lands; and granting settlers free access to closed lands contrary to the "warning area" logic that supposedly underlies the SSA plan. Chapter 7 describes the harm to Palestinians resulting from Israel's policy, and the final chapter presents a legal analysis. The report ends with conclusions.

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8. *Land Grab*, 134 and Chapter Two.





## **Historical Background: Land Grab in the West Bank**

This chapter presents the origin and historical context of the practices discussed in the report.<sup>9</sup>

### **A. Establishment of settlements and transfer of Israelis to populate them**

Since 1967, 132 Israeli settlements recognized by the Ministry of the Interior have been built in the occupied West Bank (including East Jerusalem),<sup>10</sup> as well as a similar number of unrecognized settlements ('outposts' in Israeli parlance).

The Israeli authorities have taken advantage of the settlements and the need to protect their residents to justify infringement of Palestinian rights, among them fundamental rights such as the rights to housing, to gain a livelihood, and to freedom of movement.

Israel has created in the Occupied Territories a regime of separation by discrimination, in which it runs separate legal systems, one for Israelis and the other for Palestinians, and under which the scope and nature of human-rights violations vary based on nationality. This system has led to the theft of hundreds of thousands of dunams of land to benefit the settlements and their residents. The jurisdictional areas of the settlements are defined in military orders as "closed military areas," to which Palestinian entry is forbidden without the military commander's permission. Israelis, Jews from around the world, and tourists do not need a permit to enter this area.

Unlike Palestinians, settlers benefit from all rights given to Israelis living inside the Green Line, and in some instances receive extra privileges. Israel's great investment in the settlement enterprise – from the monetary, legal, and bureaucratic perspectives – has turned the settlements into civilian enclaves within the area administered by the military government, and gives the settlers a preferred status. To perpetuate this situation, which is illegal from the start, Israel has repeatedly infringed Palestinians' human rights.<sup>11</sup>

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9. For a comprehensive discussion of these subjects, see Land Grab.

10. Twelve were built on land annexed to Israel and attached to the Jerusalem Municipality. The figure does not include the settlements built in the Gaza Strip and four settlements built in the northern West Bank, all of which were evacuated in 2005.

11. With respect to the illegality of transferring a population of the occupying power to occupied territory, see Chapter 8.

## **B. Mechanisms for taking over land to benefit settlements**

Using a complex legal-bureaucratic system, Israel has set aside about one-half of the West Bank for settlements, primarily to build them and to reserve land for their expansion. This has mostly been achieved by issuing military requisition orders and declaring land as "state land."<sup>12</sup> The Supreme Court has generally cooperated with these two methods, thus endowing them with a semblance of legality.

It should be mentioned that the bureaucratic mechanisms for taking control of land for the settlements are complemented by informal practices, in which the authorities turn a blind eye or support the activity from behind the scenes. Examples include settlers building unauthorized outposts, taking control of farmland, and other methods discussed further on in this report.

### **Taking over land by means of military requisition orders**

Until 1979, the common means for taking control of land was by military requisition orders that, in effect, expropriated privately-owned Palestinian land and set it aside for building settlements on grounds of military necessity. Recently, the army admitted that more than one third of the recognized settlements in the West Bank have been sitting for dozens of years on lands that even the Civil Administration recognizes as being under private Palestinian ownership. The army further stated that these lands were taken pursuant to military orders, ostensibly temporary, for "security needs."<sup>13</sup>

In most cases, the Supreme Court accepted the state's argument that the settlements serve urgent military needs and allowed it to seize private land to build them. This cooperation ended in 1979, following the case of the Elon Moreh settlement, in which the Court ruled that land that the army had requisitioned to allocate to the settlement be returned to its Palestinian owners.<sup>14</sup> Consequently, Israel ceased making extensive use of military orders to take control of land in the Occupied Territories, but did not return land it had previously taken.

In 1994, following the signing of the Declaration of Principles (Oslo 1), Israel returned to making wide use of military orders to take control of land in the Occupied Territories. This time, the lands were used to pave bypass roads as part of the redeployment of forces and to serve Israeli settlers, and not to build or expand settlements.

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12. Other methods Israel used, each with a different legal basis, are declaration of land as "abandoned property" and expropriation of land for public purposes. Also, Israel aided private citizens in purchasing land on the "open market."

13. Meron Rappoport, "Civil Administration: Third of Settlements Sit on Land Taken for Security Needs," *Ha'aretz*, 17 February 2008.

14. HCJ 390/79, *Dweikat et al. v. Government of Israel et al.*, P. D. 34 (1) 1.

## **Taking control of land by declaring it “state land”**

Following the Supreme Court’s decision in the Elon Moreh case, political elements from among the settlers pressured the government to find an alternative way to take control of land in the West Bank. The way was found in the Ottoman Land Law of 1858, which was in force on the eve of the occupation. By manipulative use of the law, some 40 percent of West Bank land was declared state land. Originally, the term “state land” meant land that did not belong to a certain person, but to the general public, in this case to the Palestinian population under Israeli occupation. Clearly, it was not intended for allocation to communities of citizens of the occupying country. Despite this, since then, Israel has used the term to justify forbidden use of Palestinian land, such as for the establishment of settlements.<sup>15</sup>

Since the end of the 1970s, the declaration and registration of “state land” has been the primary means for taking control of land in the Occupied Territories. The procedure violates fundamental principles of due process and natural justice. Often, the Palestinian residents did not know their land had been registered in the state’s name, and when they realized it, the time had passed to appeal the registration. Also, Palestinians claiming ownership had the burden of proving it was their land. Even if they met this burden, in some cases the land was registered on the name of the state based on the argument that it was handed over to the settlement in good faith.

The use of the state-land rubric to build and expand settlements, unlike requisitioning private property for military needs, enabled the Supreme Court to refrain from intervening. The Court held the process legal and rejected petitions of Palestinians objecting to the declaration.<sup>16</sup> Once the Court ruled Israel’s claim to the land to be legal, it refused to recognize the right of Palestinians to object to the process, on the grounds that it did not cause them individual harm.

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15. For additional information on declaration of “state land,” see *Under the Guise of Security*, Appendix 1.

16. See, for example, HCJ 285/81, *Fadil Muhammad al Nizar et al. v. Commander of Judea and Samaria et al.*, P. D. 36 (1) 701.



## Chapter 2

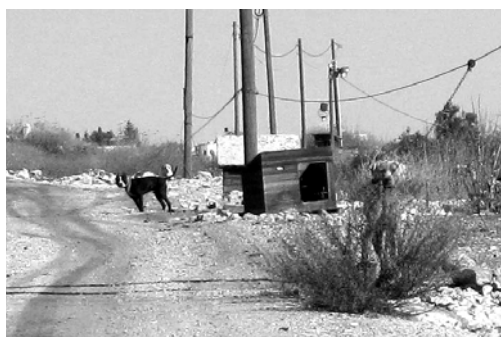
# Physical Barriers around Settlements

Most of the settlements in the West Bank are surrounded by physical barriers of different kinds that are intended to prevent Palestinian entry into the settlement and to the land around it. However, as other means are also used to close the area, such as violence and expulsion, the border along which Palestinian entry is restricted is often far from the physical barriers and invisible.

Some of the physical barriers demarcating the settlements were placed by the army, and some by settlers.



A barrier system under construction around the Ma'aleh Levona settlement, far from its houses, January 2008. The system now includes a barbed-wire fence with an electronic-warning mechanism, a patrol road, and illumination devices.



Attack dogs tied along the patrol road around the Rehelim settlement. Israel did not declare the land that the patrol road attaches to the settlement an SSA.



Fenced patrol road surrounding the Rehelim settlement, far from the houses at the edge of the settlement. The road attaches to the settlement farmland belonging to residents of the village of a-Sawiya.

The physical border, too, is often set far from the settlement's houses. It is marked on the ground in various ways, the most common being by a patrol road. Usually, the patrol road has poles with lights pointing away from the settlement. Alongside it runs a two-meter high barbed-wire fence, which cannot be crossed except through several designated gates. In many instances, the barbed-wire fence has electronic components to warn the army of attempts to damage or breach it. In some cases, rolls of barbed wire are placed on the ground some distance from the fence. In some settlements, between the poles along the patrol road, on the far side, dozens of metal cables have been placed, to which attack dogs are tied.<sup>17</sup> In addition, electronic sensory devices are placed around some of the settlements. Also, there are lookouts and patrols of soldiers, Border Police, and settlers acting on orders by the security forces. According to the army, the maximum width of the physical-barrier system is 15 meters.<sup>18</sup> In fact, some barriers exceed 20 meters in width; in one place, the barrier extends for 45 meters.<sup>19</sup>

Around some settlements, two or three circles of physical barriers can be identified, one inside the other; these usually consist of a patrol road, fence, and other means. In most cases, it appears that the patrol road and fence closest to the houses were built first, and each circle was added to expand the area prohibited or restricted to Palestinians around the settlement. The barrier farthest from the settlement is generally the newest, indicating a trend of settlement expansion. In some cases, the new barrier expands the restricted area along part of the route, while the rest of the route follows the old barrier system. In most

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17. In response to B'Tselem's inquiry on this subject, the army replied that, "In the past, an experiment was made... to protect particular communities in Judea and Samaria by using dogs, as part of the defense system against terrorists." At the end of the experiment, the army decided that "the decision whether to continue placing dogs around communities will be made by the local authorities." The army admits, however, that today as well, "there remains cooperation on this matter between the IDF and the Binyamin Regional Council." The army hints that attack dogs have been placed around some settlements "without receiving IDF assistance", based on "a local decision of the residents of the community or community leaders." Letter from Rinat Hameiri, Human Rights Section Officer, IDF Spokesperson's Office, 13 February 2008.

18. HCJ 140/04, *Hajazi Jabber et al v. Commander of Military Forces in the West Bank et al.*, Response of the State Attorney's Office, 20 January 2004.

19. Forty-Five meters is the maximum width of the barrier system around the Nahliel settlement. The figure does not include the area stretching between the barrier and the settlement, which is several times greater. See Land Requisition Order No. T/70/05, 30 May 2005.

cases, once the new barriers were placed, sections of the old ones were removed to enable the settlers to move freely in the wide area between their houses and the most external fence.

<b>Type of means for blocking access</b>	<b>Description of the means</b>	<b>Sample settlement</b>
Engineering SSA	System of physical obstructions around the settlement, located far from the fence that runs by the houses	Mevo Dotan
Electronic SSA	Electronic warning system around the settlement, established in addition to the fence that runs by the houses, which enables monitoring of Palestinians approaching the settlement	Yitzhar
Combined SSA	A combination of the engineering and electronic means	Carmeit Tzur
Area closed by the army (without declaring it an SSA)*	Land not declared an SSA into which the army prohibits Palestinian entry	Susiya
Area closed by settlers*	Land from which settlers expel Palestinians by attacking them	Susiya

\* The distinction between land closed by settlers and land closed by the army without declaring it an SSA is often eliminated in practice, as settlers and the army often block Palestinian access to the same land, either jointly or simultaneously.





## Lawbreaking Settlers and the Authorities' Failure to Enforce the Law

Ever since these settlements were built on our lands, we can't even get to the lands close to them. Every time we come near, settlers attack us... When we approach, they draw their weapons and aim them at us. They throw stones at us and beat us with clubs, all in front of the eyes of the soldiers guarding the settlements.<sup>20</sup>

Since the early days of the settlement enterprise, in the 1970s, Israeli settlers have closed rings of land around their communities to deny Palestinians access to these lands and to enable expansion of the settlements. These "off limits" swaths of land have been added to the settlement's built-up area, to which Palestinian access was already prohibited by military orders, increasing the breadth of the settlement. Settlers enforce the prohibition on entering these rings of land by placing physical obstructions and by repeatedly driving away Palestinians who enter lands not physically blocked to them.

The physical obstructions – usually fences and patrol roads – are sometimes built with official approval, sometimes not.<sup>21</sup> Other patterns of activity include, for example, settlers using farmland outside the settlement's borders, in some cases farmland that is recognized as privately-owned Palestinian land. Over the years, the acts of expulsion have included threats, harassment, destruction of property, and violent attacks on Palestinians present on the land or trying to access it for farming, recreation, relaxation, or any other reason.

These acts to deny Palestinians access to land have always been backed by the settlers' power advantage as citizens of the occupying state. As we shall see below, this superiority manifests itself, amongst others, in the law-enforcement authorities' refraining from ending illegal activity perpetrated by settlers. The systematic nature, and frequency, of the acts described below indicate serious failings of the army, the Civil Administration, and the police in defending Palestinians from settlers.<sup>22</sup>

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20. From the testimony of Fawzi Jabarin, resident of Tuqu', Bethlehem District, relating to the settlements Tekoa' and Nokdim. The testimony was given to Suha Zeid on 29 October 2006.

21. For a detailed description of the physical obstructions, see Chapter 2. On physical obstructions placed by the authorities, see Chapter 4.

22. In some cases, security forces joined lawbreaking settlers and took part, without due authority, in expelling Palestinians. This phenomenon is discussed at the end of the next chapter.

## A. Creeping annexation and the silent consent of the authorities

Settlers' attempts to expel Palestinians from land next to settlements, deny them access to the land, and control the land often appear systematic. In a court hearing, the "land coordinator" of the Kedumim settlement council testified regarding one of the common methods of taking control of land around settlements, which was intended, he alleged, to prevent Palestinian access to that land and thereby "prevent terrorist attacks." According to the witness, the settlers' regional councils began, in the mid-1990s, "to allocate" to residents of the settlements lands classified as "neglected territory," including land outside the settlements' borders and jurisdictional area. All that was required of the settlers was that they sign a form stating that they do not claim ownership of the land given them, and that the regional council may remove them upon payment of compensation for their investment in working the land. He admitted that the land allocation was carried out without Civil Administration approval.<sup>23</sup>

According to a former security officer of the Kedumim settlement, once the lands were taken, settlers would then go to the military commander and demand that he declare the land "state land," based on the law applying in the West Bank, whereby, with regards to privately-owned land that is not formalized, a person who does not work his land for three years loses his ownership rights.<sup>24</sup> According to the officer, "most of the land currently within the jurisdiction of the [Kedumim Regional] Council did not belong to the Council in the past."<sup>25</sup> According to Daniella Weiss, who headed the regional council, "we encouraged people who wanted to grab land," even if the land was outside the Council's jurisdictional area.<sup>26</sup>

Although the authorities did not approve these practices, they are certainly well acquainted with them. The military commander and policy-makers also know that such methods are not limited to one area or another, but are commonplace throughout the West Bank. There are two reasons for this.

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23. Meron Rappoport, "The Method: Work the Land, Deny Access, and Transfer it to the Settlement's Control," *Ha'aretz*, 17 March 2008.

24. Under the Ottoman Land Law, it is possible to acquire ownership of land adjacent to settled areas that is used for farming, known as *Miri* land, by working the land for ten consecutive years. However, if a *Miri* landowner fails to work the land for three consecutive years for a reason not recognized by the law (such as being drafted into the army or not working the land for agricultural reasons), the land becomes *Mahlul* and the sovereign may seize possession of it or transfer the rights over it to another person. This rule was initially established to give an incentive to work the land and generate agricultural output, on which taxes would be collected. Section 78 of the Ottoman Land Law, in *Planning, Building, and Land Laws in Judea and Samaria*, edited by Aharon Mishnayot (Judge Advocate General's Office and the Civil Administration for Judea and Samaria), 528. Raja Shehadeh, *The Law of the Land – Settlements and Land Issues under Israeli Military Occupation* (PASSIA, Jerusalem, 1993), 22-23.

25. Meron Rappoport, "The Method," *supra*.

26. *Ibid.* According to Weiss too, the theft and seizing of land, including planting, marking paths and grazing, were carried out "without the authorities' approval."

First, the activity is open; those involved are not ashamed of what they are doing. The restrictions are there for all to see, and many settlers view keeping Palestinians away an achievement to brag about. This is seen, for example, in a eulogy written for a resident of the Susiya settlement, who was killed by Palestinians in 2001. The eulogist mentioned that the deceased had made it a habit to graze sheep far from the settlement and thereby “created with his own feet and sheep a kilometer-wide security belt around the houses of Susiya.”<sup>27</sup>

Second, over the years, this activity has been documented. For example, Idith Zertal and Akiva Eldar reported on an official internal document distributed to higher Civil Administration officials in March 2000, stating that, from 1996-1999, settlers paved, without authorization, 179 kilometers of roads throughout the West Bank.<sup>28</sup> According to the authors, the document shows that “the settlers systematically transformed ‘security elements,’ and particularly the security roads, into a means of territorial expansion.”<sup>29</sup> The authors added that the document revealed that the Civil Administration itself had, during the years of the Netanyahu government, “detected many cases in which they [the settlers] built settlements and security elements that deviated from plans that were approved by the proper authorities.”<sup>30</sup>

With respect to one such case, a military commission of inquiry held, in 2004, that the army was responsible for turning a blind eye and not supervising the council’s work: “The silence of the military authorities with respect to the infrastructure work carried out by the [settlement’s] local council gave a green light to the council to continue the illegal work.”<sup>31</sup> The State Comptroller addressed the issue as well, noting that:

Firm action should be taken to prevent a situation in which Israeli communities in Judea and Samaria build fences, ostensibly for security purposes, along a route that they decide on alone, in some instances on private Palestinian land.<sup>32</sup>

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27. Nadav Shragai, “Har-Sinai Wrote to the Commanding Officer that his Life was in Danger,” *Ha’aretz*, 4 July 2001. Yair Har-Sinai was killed by Palestinians on 2 July 2001. The article attributes the eulogy to his friend Moshe Deutsch.

28. Idith Zertal and Akiva Eldar, *Lords of the Land: The War for Israel’s Settlements in the Occupied Territories, 1967-2007*, 307.

29. Ibid.

30. Ibid.

31. Quoted in State Comptroller, “Protection of Communities in Judea and Samaria,” *Annual Report 56A*, 15.

32. Ibid.

## B. Settler violence, abuse, and harassment

Settler violence against Palestinians and the authorities' choice to refrain from preventing the violence and bringing the assailants to justice are not new, nor are they limited to the theft of land around settlements. Over the years, settler violence has grown to immense proportions, primarily, it seems, as a result of such inaction.<sup>33</sup> In the context of the matters discussed in this report, violent attacks have become a real means to expel Palestinians from their land, on which, or alongside which, settlements have been built.

The Supreme Court acknowledged this in 2006, following a petition filed by heads of Palestinian local councils to enable the annual olive harvest to take place in areas near settlements. The justices held that Israel must "take all means necessary to ensure the safety of Palestinian farmers in these areas. Protection of the Palestinians must be done in a suitable manner, clear directives must be given to military forces and the police as to how to act, and effective restrictions must be placed on persons who harass Palestinians in breach of the law," and that land is not to be closed to Palestinians for the purpose of protecting them.<sup>34</sup>

Until the decision in this case (henceforth: Murar), in many cases, the army prohibited Palestinians access to their farmland when it anticipated that settlers would attack them, and even expelled them from their land during settler attacks. Following the court's ruling, the army generally permits Palestinians access to their farmland also (although not always) when there is fear that settlers will harm them, as shown below in Chapter 4. Even when the army does permit Palestinians access to their land, as we shall see in Chapter 5, it continues to restrict access and to place obstacles in the path of Palestinians.

In many cases, violent settlers are members of the security department of the settlement, or are settlers on guard duty, who carry weapons on behalf of the army. Over the years, settlers have used various means of violence to keep Palestinians off the latter's land. Many of the attacks take place during regular

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33. Another expression of the policy not to enforce the law on settlers is the soldiers' lack of knowledge that they are responsible for enforcing the law on settler lawbreakers, and the many difficulties that Israel places before Palestinian complainants. When a complaint is filed, the police department's flawed handling leads to settlers not being brought to justice. The human rights organization Yesh Din found that some 90 percent of files regarding settler attacks on Palestinians and Palestinian property that the police opened in 2005 and completed their investigation (or did not investigate because, the police contend, the complaint was lost), were closed without an indictment being filed. Yesh Din, *A Semblance of Law – Law Enforcement upon Israeli Civilians in the West Bank*, June 2006, 123. For this reason, many Palestinians do not file complaints. Updated figures, published in July 2008, note that the scope of police investigators in the SHAI [Samaria and Judea] District failing to investigate offenses by Israeli civilians against Palestinians has not improved since 2005. Yesh Din, *Enforcement of the Law on Israeli Civilians in the West Bank, Follow-up Statistics*, July 2008.

34. HCJ 9593/04, *Rashed Murar v. Commander of Military Forces in the West Bank*, 26 June 2006, section 28.

patrols on the land around the settlement. The abuse takes place next to settlements surrounded by a fence arranged by the army, next to settlements closed without authorization, and next to settlements that are not closed by any physical means.

Testimonies given to B'Tselem by Palestinians indicate that the harassment and attacks have a threatening and deterrent effect over time. Many witnesses testified about settler attacks that left their mark, in individual and collective memory, and deterred many from approaching the "danger zones" near the settlements. In many areas, Palestinian do not dare stay on such land, or even cross it, and the few who risk their lives are the most daring of the farmers, whose land is the source of their and their family's livelihood. In other areas, Palestinians cross the land only when they are accompanied by Israeli or foreign human rights activists, or when the army is prepared to escort them.

## Sample cases

In recent years, B'Tselem has documented numerous attempts of settlers to forcibly expel Palestinians from land next to settlements. The cases involve shooting, threats to shoot and kill, beatings, stone throwing, unleashing attack dogs, striking with rifle butts and clubs, attempts to run over Palestinians with a vehicle, destruction of farm equipment and crops, theft of crops, killing of livestock and theft of animals used for farming, unauthorized demands to see identity cards, and theft of documents. The scope of means used to expel Palestinians is broad, though its extent cannot be precisely determined. Some examples follow.

- On 24 September 2007, a settler fired at Palestinian shepherds who approached the Shademot Mehola settlement, in the northern Jordan Valley. A bullet struck one of the shepherds, Muhammad Abu Mutawe'a, 22, in the shoulder. The bullet settled in his spine, leaving him paralyzed in his lower extremities. Salah Daraghmeh, Muhammad's uncle and a witness to the shooting, related to B'Tselem what happened that morning:

Jamal approached the settlers and asked them why they were throwing stones at the cows. I yelled at him to come back... Jamal ran away from them and then one of them fired a pistol at his legs... The settlers passed by me. One of them held a pistol. Muhammad asked him what we had done, and then the settler shot him. I looked at Muhammad and saw him slowly fall from the horse onto his back. I shouted at the settler... The settler holding the pistol went over to Muhammad, kicked him, and told him to get up. Muhammad didn't move. The settler turned him over and then saw the blood. At that moment, the settlers ran away toward the settlement, leaving Muhammad, who continued to bleed.<sup>35</sup>

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35. The testimony was given to Atef Abu a-Rub on 26 September 2007. One of the settlers was indicted and is currently on trial.

- On 19 May 2007, a settler attacked Khadrah al-Hazalin, a farmer from Um al-Kheir, in the southern Hebron hills, while she was farming. Al-Hazalin told B'Tselem: "I tied the donkey and began to cut wheat. A few minutes after I began, a young man on a tractor pulled up... He came from the direction of the Ma'on settlement. He came over to me, and I thought he wanted to talk to me. Suddenly, he hit me over the head with a stick. I fell, and my head started to bleed. Shortly after that, I lost consciousness."<sup>36</sup>
- During the 2006 olive harvest, an armed settler assaulted three women and four minors, all members of a family living in Beit Furik. They were working in their olive grove, on land next to which the Itamar settlement was built. Kholud Shhadeh told B'Tselem:

I heard a shot... I heard my mother and Shirin [my sister-in-law] shouting. I quickly got down off the tree and I saw the two of them lying on the ground, and a settler standing by them... The settler was holding a weapon and he aimed it at me. He ordered me, in Arabic, to stop screaming. My mother's face was bleeding, and I thought she had been wounded from the gunshot. I cried and shouted for help, hoping somebody would hear me. The settler kept on shouting at me and telling me to shut up. Whenever I tried to get close to my mother, he hit me in the head with a radio transmitter he was holding.

My mother shouted out in pain. A few times, I asked the settler to let us go, but he shouted and ordered me to shut up. I told him my mother had hurt her hand and that her face was still bleeding. He saw she was wounded, but he didn't seem to care. Shirin, who is eight months' pregnant, also cried out in pain and asked for help. Her back and stomach hurt, apparently from the fall. The children were crying and scared.<sup>37</sup>

- On 8 June 2008, members of the Nawaj'ah family, residents of Khirbet Susiya, in the southern Hebron hills, were grazing their flock on private Palestinian land near the Susiya settlement. When two settlers demanded that they leave, and the family refused, one of the settlers threatened 'Imran a-Nawaj'ah, the father, saying, "If you're a real man, stay where you are," and headed to the settlement. A few minutes later, four masked men, armed with sticks, came from the direction of the settlement and beat the family members badly.<sup>38</sup>

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36. The testimony was given to Musa Abu Hashhash on 27 May 2007.

37. The testimony was given to Salma a-Deba'i on 18 October 2006.

38. Four members of the family suffered hard blows over their entire body and required medical treatment. One member of the family filmed the incident with a camera provided by B'Tselem in the framework of its camera distribution project. A complaint was filed with the police, who were given a copy of the video. The police investigated and arrested three suspects, residents of the Susiya settlement. Efrat Weiss, "Another Suspect Arrested in Attack of Palestinian Family near Susiya," *Ynet*, 20 June 2008. See <http://www.ynet.co.il/articles/0,7340,L-3558140,00.html> (visited on 25 June 2008). For further information on B'Tselem's camera distribution project and to view video clips filmed in the course of the project, see <http://www.btselem.org/english/video>.



A masked man beats 'Imran a-Nawaj'ah with a club. Photo: Muna a-Nawaj'ah, B'Tselem's camera distribution project

- On 12 April 2008, the press reported that settlers had attacked and injured a Palestinian couple working their land in the northern West Bank. Sadiq al-Bari was quoted as follows: "More than twenty-five people came and started throwing stones at me. They said, 'Get out of here.' Where am I to go? I didn't do anything, I was just working my land. They covered their faces with a shirt and threw stones at me and my wife. This was the first time I saw these settlers. They want me to leave the field, but I'll go back to the field tomorrow."<sup>39</sup>



The farmer Sadiq al-Bari after settlers injured him. Photo: Salma a-Deba'i



Muhammad Abu Mutawe'a, Palestinian shepherd who was shot by a settler in the northern Jordan Valley. Photo: Atef Abu a-Rub

39. Efrat Weiss and Roi Nahmias, "Palestinian Farmer: Settlers Pelted Me with Stones," *Ynet*, 12 April 2008. See <http://www.ynet.co.il/articles/0,7340,L-3530749,00.html> (visited on 29 July 2008). Since 2007, B'Tselem has documented four cases in which settlers assaulted al-Bari, alongside whose land "Gilad Farm" was built.

- On 29 August 2007, three settlers assaulted two Palestinian women from Halhul. The women were picking pears on their land, next to which the Carmei Tzur settlement was built. Nura 'Aqel related in her testimony that, "three young settlers arrived... and threw stones at us. They swore at us in Arabic and in Hebrew, and told us to get out. We ran away, leaving dozens of pears we had picked... Around six in the evening, we were sure the settlers were not there... We went with my brother by car to the place where we had left the pears. We found them scattered all over the ground."<sup>40</sup>
- On 23 April 2007, five farmers from Halhul were on their land, next to the SSA that the army had declared around the Carmei Tzur settlement. A guard from the settlement demanded their identity cards, and when they refused, he beat them, took the keys to their tractor, ripped the shirt of one of them, and threw a stone at the leg of another. A second security guard fired a few shots over the heads of the Palestinians.<sup>41</sup>

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40. The testimony was given to Musa Abu Hashhash on 29 August 2007.

41. Letter of 23 April 2007 from the Association for Civil Rights in Israel to the legal advisor for the West Bank and others. ACRI provided B'Tselem with a copy of the letter.



## **The Defense Establishment and the Institutionalization of Denying Palestinian Access**

This chapter discusses the role played by the defense establishment in denying Palestinian access to land around settlements and in institutionalizing and formalizing the closing of such areas.

### **A. Denying access becomes official Israeli policy**

#### **The Oslo period**

During “the Oslo period”, in the second half of the 1990s, representatives of the settlers increased their pressure on the government to adopt a policy to expand settlements by expelling Palestinians from their land. For example, settlement leaders suggested that the settlements’ geographical area “include all the planning areas of the communities and councils, together with a suitable additional land reserve,” that “to create a security belt and control areas around and with respect to the communities, the government seize land, including private land, from outside and inside the communities, for security needs and the community’s needs,” and that the government “prevent Palestinian-Arab building outside the borders of Arab communities.”<sup>42</sup>

During this period, not only did the army refrain from enforcing the law on settlers who closed strips of land or rings of land around settlements without approval, it joined with settlement leaders in pressuring the government to adopt an official policy to surround settlements with patrol roads and obstructions of various kinds.

The pressure worked. It was decided that several formal means of restriction would be put in place, including a fence, patrol road, and lighting. This aggregation of means was termed by the army a “security-components line”. As years passed and pressure increased, the political echelon approved expansion of the land rings around settlements. Initially, the attorney general, Michael Ben-Yair, instructed

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42. *Newsletter from the Heads of the Local and Regional Councils in Yesha, undated, Archive of the Rabin Center of Israel Studies, Sprinzak Collection, Container 1, File 3.* The quote appears in *Lords of the Land*, 144-145.

that the means of restriction be placed at a maximum distance of 25 meters from the outermost house of the settlement.<sup>43</sup> The next attorney general, Elyakim Rubinstein, authorized expansion of the ring to a maximum width of 50 meters without need for special approval, and allowed for expansion beyond that based on receiving special approval.<sup>44</sup>

## **The second intifada and birth of the “special security area” (SSA) plan**

The second intifada, which broke out in 2000, brought with it, among other things, killing and wounding of settlers by Palestinian who entered settlements. As the intensity of the intifada increased, the army issued more and more orders closing rings of land around settlements. However, it is not clear if, in the first two years of the intifada, the closing of land was part of an overall plan.

In 2002, the peak of the intifada, and after the government decided to build the Separation Barrier in the West Bank,<sup>45</sup> the SSA plan was born. The press reported that the army was building SSAs around settlements in the West Bank that remained east of the barrier.<sup>46</sup> It was reported that these areas “are intended to include land covering a radius of about 300 meters around the fences currently running around the settlements” and that “external fences will be erected in an attempt to impede attempts to infiltrate the settlement,” and “in these areas, special open-fire regulations to enable shooting at persons trying to infiltrate will apply.”<sup>47</sup>



Armed settler and army officer in a vineyard, shortly after expelling its owners, residents of Halhul. The houses of the Carmei Tzur settlement are seen in the background. Photo: Ofir Feuerstein, July 2002

43. *Lords of the Land*, 300. Ben-Yair made the statement in a conversation with the authors on 24 April 2004.

44. *Ibid.*

45. Cabinet Decision No. 2077, 23 June 2002.

46. See, for example, Alex Fishman and Yuval Karni, “Forty Settlements to be Surrounded by Electronic Fence,” *Ynet*, 9 July 2002.

47. Amos Harel, “‘Security Areas’ around Settlements will include Lookouts and Patrols,” *Ha’aretz*, 26 December 2002. Recently, it has been argued that the Open-Fire Regulations on land classified an SSA “are relatively lenient, due to the concern that any person entering the area seeks to harm settlers.” Amos Harel, “Amona Outpost Annexes Land in Area B,” *Ha’aretz*, 9 July 2008.

The army emphasized that it did not intend to uproot Palestinian-owned orchards or destroy fields near settlements. It was also reported that the army “made a commitment to the attorney general... to allow Palestinian farmers to work in the security areas around the settlements.”<sup>48</sup> At that time, only a very few settlements had been surrounded by a secondary fence as part of the plan.

Shortly after the plan was declared, army officials demanded that the government authorize expansion of the closed land rings, so they could stretch to 400 meters from the outermost house of the settlement. In 2004, the government authorized this maximum width and also expanded the SSA plan to include additional settlements.<sup>49</sup> On 28 April 2004, the defense and finance ministries agreed on a new budget of 300 million shekels (approx. USD 65 million) outside the defense budget, to close land rings around 41 settlements, which would be classified SSAs, as a complement to the erection of the Separation Barrier.<sup>50</sup> The plan was approved three and a half weeks after a Palestinian entered the Avnei Hefetz settlement, in the northern West Bank, shot to death a resident of the settlement, Ya’akov Zagha, and wounded his daughter.<sup>51</sup> To implement the plan, the Special Security Area Administration was established, in August of that year, in the Home Front Command. The administration was directed to work in cooperation with the Civil Administration and the Ministry of Justice to implement the plan without exceptions and in accord with proper administration.<sup>52</sup> In 2007, it was alleged that 45 settlements were included in the plan.<sup>53</sup> However, in reply to B’Tselem’s inquiry, the Civil Administration presented information regarding only 27 settlements with official SSAs, this number including electronic SSAs without a secondary fence.<sup>54</sup>

‘Abdullah ‘Aqel, a resident of Halhul, told B’Tselem in 2002 about the transition from access blocked by settlers to closing of land by the army:

On Saturday, 8 June 2002, settlers from Carmei Tzur were killed in the settlement. A day or two later, the settlers started building a road south of the settlement...

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48. Ibid.

49. State Comptroller, “Protection of Communities in Judea and Samaria,” 257.

50. *Proposed State Budget for 2008 – Civil Emergency Expenses*, 44. The SSA plan was defined as a “protection plan earmarked for communities in Judea and Samaria that remain east of the seam-line barrier.” *Proposed State Budget for 2008 – Territories*, 43, available at <http://www.mof.gov.il/budget2007/docs/shtahim.pdf> (visited on 27 June 2008).

51. Arnon Regular and *Ha’aretz* Service, “Mofaz and Sharon Approve Expansion of Territory to be Annexed to Efrat,” *Ha’aretz*, 15 June 2004.

52. See, for example, the comments of Mordechai Baruch, head of the army’s Operations Department, Protocol No. 10 of the meeting of the State Control Subcommittee for International Security, Relations, and Trade, 15 October 2007, available at [http://prdupl02.ynet.co.il/Forum\\_Files\\_2/22590360.doc](http://prdupl02.ynet.co.il/Forum_Files_2/22590360.doc) (in Hebrew, visited on 26 August 2008).

53. Ibid.

54. The reason for the disparity appears to be that requisition orders were not issued for some of the electronic devices installed on lands not recognized as privately owned by Palestinians.

About 400 dunams of agricultural land owned by more than 40 families from Halhul, including my own, were trapped between the settlement and the new road. As a result, the farmers can't get to their land and work it. The settlers chase the farmers, shoot in the air, threaten their lives, confiscate their ID cards, and damage the crops. At first, the army saw what was happening and didn't intervene. Then, the soldiers, in cooperation with the settlers, started preventing farmers from reaching their lands. The soldiers claimed it was a military zone. They designated an area spanning 300 meters southeast of the settlement fence. No one is allowed to go near the area or enter it.<sup>55</sup>

The logic of the SSA plan, as presented by army officials as early as 2002, was that the Separation Barrier does not provide protection from Palestinian attacks within settlements lying east of the barrier; therefore, it is necessary to surround them with a secondary fence. According to a senior officer, in an anonymous comment reported in the press, the great distance of the new fence from the settlement's houses is intended for warning purposes, that is, "to increase the amount of time... before the terrorist strikes the residents."<sup>56</sup> According to the army, surrounding the settlements with an additional fence is "part of the defense conception with respect to Israeli settlements," and placement of the fence far from the settlement's houses is intended to create a protective warning space.<sup>57</sup> Criticism of the gap between the logic of the "warning area" and the policy actually implemented is presented in Chapter 6, which discusses the free movement of settlers in the purportedly "closed" lands.

## **B. The scope of the closed areas**

\* 1 acre = approx. 4 dunams

The route of the fences erected in the framework of the SSA plan changed from time to time following petitions Palestinian landowners filed with the Supreme Court; some of the fences were even nullified and replaced with electronic warning means. Following changes in the route and the evacuation of the Kadim settlement, in the northern West Bank, in 2005, there are now 12 settlements that are completely or partially surrounded by rings of land classified as SSAs, which are demarcated by a

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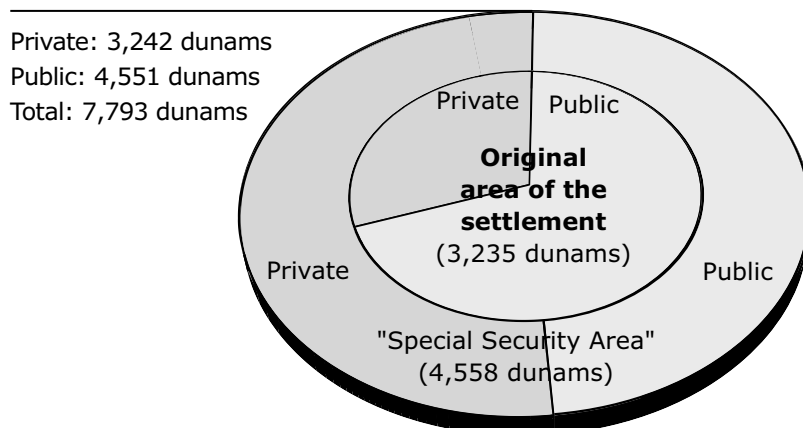
55. The testimony was given to Musa Abu Hashhash on 7 July 2002.

56. Amos Harel, "'Security Areas' in Settlements."

57. In 2005, the IDF Spokesperson's Office stated: "After a number of attacks in which terrorists infiltrated Israeli communities in Judea and Samaria and in the Gaza Strip during the current hostilities, in which many civilians were murdered, it was decided to surround the Israeli communities with an external envelope of security components, creating a protective warning space – a special security area... demarcated by two fences – the fence of the community and the fence of the SSA, which is declared a closed military area, entry into which requires a permit." Letter of 11 January 2005 to B'Tselem from Yaron Pazi, of the IDF Spokesperson's Office.

secondary fence. Some of these are also surrounded by electronic warning devices. Another 15 settlements are classified as electronic SSAs: they are surrounded by electronic warning devices without a secondary fence, in addition to the fence running by the houses on the edge of the settlement.

The overall area of the 12 abovementioned settlements has grown from 3,235 dunams to 7,793, making them 2.4 times larger. Even before the implementation of the plan, at least 881 dunams of the settlements' area were privately owned by Palestinians from nearby villages. Following the SSA plan, the overall area of these settlements now spans 3,242 dunams of privately-owned Palestinian land – 3.7 times greater than before.<sup>58</sup>



58. B'Tselem calculated the figures based on maps attached to the military orders issued in each declaration of an SSA. The Civil Administration provided the maps to B'Tselem. In one case, that of the Pnei Haver settlement, a significant gap was found between the route of the planned secondary fence, based on the requisition order, southeast of the settlement, and the fence that was actually built. In this case, B'Tselem based its calculation on the actual route. Civil Administration maps also provided the source of the figures regarding the listing of land under private Palestinian ownership. These maps were provided to the settlement monitoring staff of Peace Now, which allowed B'Tselem access to a computerized copy to enable the organization to produce the figures. The figures presented here are minimum figures: (1) they do not include land that was attached by settlers without a military order, (2) they do not include land that was damaged in the course of erecting the SSA fence along a route that was nullified or changed, (3) hilly areas were not included in the calculation; land on a slope was calculated as if it were flat, although its actual size is larger (4) the figures regarding privately-owned Palestinian land relate only to land that the Civil Administration recognizes as such, and not "survey land," whose ownership is disputed, or privately-owned land that Israel has declared "state land."

Settlement	Communities whose residents had their land seized	Settlement area in dunams, not including SSA*	Area of SSA in dunams*	Settlement area in dunams, including SSA*	Maximum width of SSA, in meters	Increase in area of settlement, by percentage
Adora	Tarqumya	130 (15)	240 (56)	370 (35)	269	185
Hermesh	Qaffin, a-Nazla a-Sharqiya (formerly Firasin)	149 (47)	297 (80)	446 (69)	256	200
Carmei Tzur**	Halhul, Beit Ummar	129 (29)	170 (89)	229 (63)	239	131
Mevo Dotan	'Araba, Ya'bad	293 (1)	530 (19)	823 (13)	324	181
Ma'ale Levona	al-Lubban a-Sharqiyah, Sinjil	220 (0.1)	310 (22)	530 (13)	233	141
Nahali'el	Beitillu	132 (0)	292 (24)	424 (17)	217	221
'Ateret	'Ajjul, 'Atara, Um Safa	224 (20)	449 (74)	673 (56)	308	200
'Einav **	Ramin, Beit Lid, Kafr al-Labad	221 (8)	368 (28)	589 (20)	518	166
Pene Hever	Bani Na'im	152 (14)	441 (22)	593 (20)	339	291
Kiryat Arba	Hebron	1,039 (56)	765 (77)	1,804 (46)	275	74
Shavey Shomeron	a-Naqura, Deir Sharaf	341 (23)	441 (95)	782 (63)	396	129
Telem	Tarqumya	205 (7)	256 (32)	461 (21)	300	125

\* In parentheses: the percentage of land that is privately owned by Palestinians

\*\* Combined SSA (part of the new fence was substituted by electronic devices); the figures include only the area actually demarcated by the fence.

From the army's perspective, these stolen areas are not the end of the matter. Recently, it has been reported that the army is considering declaring an SSA around the Ofra settlement in Ramallah District. For years, Israel has been working jointly with Ofra's residents and prohibiting Palestinians from approaching it, administering a "coordination of entry" apparatus for Palestinian landowners, although these lands have not been declared an SSA. Making the declaration at

this time is an attempt to approve retroactively the denial of Palestinian access that has been until now regulated, albeit unofficially.

The figures presented in this section relate only to land that was joined to settlements in the framework of the SSA plan and was surrounded by a secondary fence. B'Tselem does not have the overall figure of the amount of land that has been attached to settlements in other ways. Obviously, given the informal nature of blocking access in these cases, its supervision has been minimal, with no restriction on maximum width, as provided in the framework of the plan. Accordingly, some settlements have increased their areas several times over. Thus, the lands closed around settlements separately from the SSA plan are several times larger than the lands closed around settlements as part of the plan.

For example, the prohibition on entry imposed by the army and settlers on Palestinians around the Susiya settlement, which is not part of the SSA plan, increases the settlement's land area by a factor of almost eight, stealing 2,774 dunams of land, in addition to the built-up area of the settlement.<sup>59</sup> Also, the prohibition on entry imposed by the army and settlers on Palestinians around the Ofra settlement and the outposts near it increase the built-up area by a factor of five at least, attaching at least 2,750 dunams to their overall built-up area.<sup>60</sup>

Therefore, it can be estimated that the overall area of the land closed to Palestinians and attached de facto to settlements, both as part of the SSA plan and independently of it, amounts to tens of thousands of dunams. This theft of land will be perpetuated and incorporated in official policy to the extent that the plan is implemented around additional settlements.

## **C. Deviations in implementing the "special security area" plan**

B'Tselem knows of two kinds of deviations in implementing the plan.

### **Planning and implementation beyond the 400 meter maximum for a ring of land**

At the present time, following petitions to the Supreme Court that led to changes in the route in various places, there is one case in which the width of the ring of

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59. The figures do not include the closed area around the nearby army post. The figures are based on a computer analysis of the map of land attached to the Susiya settlement, sketched by activists from Ta'ayush based on the army's enforcement of prohibition on entry. See, <http://www.taayush.org/topics/susia-update-13012007.html> (visited on 28 July 2008).

60. The figures are based on a computerized analysis of aerial photos and on visits to the area by B'Tselem. The southeast boundary of the closed area is not physically marked, so the figure presented here includes only the land to which it is clear that Palestinians are prohibited entry. Land with respect to which it is not possible to determine the extent to which Palestinian entry is forbidden is not included.

land exceeds 400 meters – that of the Einav settlement, where the ring is more than 500 meters wide. In the other settlements, deviations were rectified. However, secondary fences around the settlements that were not included in the plan remain beyond the 400-meter limit. For example, the fence around the Ariel settlement, which demarcates an area that is classified a “kind of special security area,” reaches a distance of up to 1,050 meters from the closest houses of the settlement.<sup>61</sup>

### **Implementation beyond the route approved for each settlement**

In some instances, the secondary fences were built along a route other than the one officially approved. One explanation might be that the army allowed the settlements to build fences, as if in the framework of the plan, and failed to closely supervise the work. However, in some cases, the army itself deviated from the approved route.

With respect to the deviations, the State Comptroller reported that OC Central Command ordered, in July 2004, the immediate cessation of work around one of the settlements.<sup>62</sup> The report of the committee appointed by OC Central Command to investigate the matter in 2004 stated that, with respect to that settlement, the army did not properly supervise the work and that “the army’s initial clearing of the land” was improper in that it was carried out “without approved tools for marking the route precisely and without a professional surveyor marking the route.”<sup>63</sup>

The army admitted that there were deviations and claimed they had been corrected. Mordechai Baruch, head of the army’s Operations Department, stated that, “at first, there were significant deviations, even in establishing the SSAs. The IDF handled the matter.”<sup>64</sup> However, B’Tselem has documented a significant deviation from the route approved for the Pnei Hever settlement in the southern Hebron hills, benefiting the settlement at the expense of adjacent Palestinian land.

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61. On the meaning of the definition of the area demarcated by the fence around Ariel as “a kind of SSA”, see the section on “Orders intended to regulate closing of the land” below in this chapter. The figure is based on analysis of the aerial photo submitted by the state in petitions HCJ 1348/05 and 3290/05, in advance of a hearing held on 14 February 2006.

62. State Comptroller, “Protection of Communities in Judea and Samaria,” 16. The report omitted the name of the settlement in question.

63. Ibid.

64. Protocol No. 10, State Control subcommittee, *supra*.



## D. Retroactive approval of unauthorized closing of land

In some cases, the route of the secondary fence runs along the route of the previous patrol road or of a fence that settlers had erected years earlier. As noted in the previous chapter, the construction of the old patrol roads occasionally expropriated de facto private Palestinian land in unregulated proceedings. While residents of the settlements, and especially the security officers, executed this form of expropriation, the responsibility for permitting it lies with the Israeli authorities. In these cases, declaration of the land as an SSA, or fencing the settlement without such a declaration, aggravated the sin by retroactively approving a forbidden act.<sup>65</sup>

In 2003, the Civil Administration's legal advisor warned OC Central Command and the Civil Administration about this, noting that "in many places, roads surrounding the communities, illegally paved at a great distance from the community's security fence, have been approved," and "the communities wanted 'to make it legal' by submitting requests for an SSA that runs along the same route."<sup>66</sup>

## E. Israel's attempts to fence unauthorized outposts

In particular cases, the defense establishment decided to surround with a fence, along with one settlement or another, unauthorized outposts built near the settlement. In legal proceedings initiated by Palestinian landowners who objected to the action, the army retreated and changed the fence's route or cancelled part of it to avoid running it around unauthorized outposts.

The failure of the attempts to fence unauthorized outposts results from the Supreme Court's finding that such an action would be illegal. For example, in the case of the fence around the Avnei Hefetz settlement along with the adjacent "Hahar" outpost, in Jenin District, the Court's decision came after the work on building the fence, up to a distance of one and a half kilometers from the houses at the edge of the settlement, had already begun. The justices held that army officials "were not allowed to build a fence to the east that surrounds the unauthorized outpost."<sup>67</sup>

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65. For example, in April 2006, some two months after the Civil Administration published requisition orders for land belonging to residents of the villages of al-Janiya and 'Ein Qiniya, in the central West Bank, to build a fence around the Dolev settlement, not in the framework of the plan, a Civil Administration officer who identified himself by the name Mansur said that the orders did not change the situation in the field, but rather reestablished the existing barbed-wire fence and patrol road. The road had been built more than a decade earlier, in part on privately-owned Palestinian land, and on land classified as survey land, whose ownership is unclear to Civil Administration officials.

66. State Comptroller, "Protection of Communities in Judea and Samaria," 15.

67. HCJ 5139/05, *Fallah Shayeb et al. v. State of Israel et al.*, Judgment, 22 February 2007, section 5.

The Supreme Court also nullified the army's plan to run the secondary fence of the Einav settlement around a nearby army outpost, holding that army officials "may act to implement a requisition order around houses of the community itself" but not "to build a fence to the north that surrounds the temporary army outpost."<sup>68</sup>

Nullification of the harmful route of the fence and replacing it with a less harmful route in the framework of legal proceedings initiated by Palestinian landowners saved some of them from grave harm. However, the new routes created serious damage to Palestinians, especially when the case involved removing physical obstructions that had already been placed, and had already caused irreversible damage to farmland. In these cases, the damage resulting from building the new physical obstructions along the amended route was added to that caused by installing the obstructions along the old route.

As far as B'Tselem knows, after changes in the route were made around some of the settlements, no unauthorized outposts are now surrounded with fences as part of the SSA plan. However, many outposts are surrounded by fences and physical obstructions that have not been officially approved.

## **F. Orders intended to regulate closing of land**

In this part, we shall examine the use of military orders to try to lay a legal foundation for closing land around the settlements for so-called security reasons.

Generally, in advance of closing land and classifying it an SSA, the military commander issues three documents: an order regarding requisition of land, a declaration regarding closing of area, and an order regarding prohibition on building. The three orders are accompanied by a map or an aerial photo of the geographic area to which the order applies.

*The order requisitioning land* relates to private land on which the patrol road and the fence will be built. The order seizes the land, and does not formally expropriate it, given that the army does not claim ownership, but only temporary possession. A similar order is given for the purpose of "renewal of security components" around settlements as to which the army does not declare an SSA.<sup>69</sup>

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68. Ibid., Decision of 28 December 2005. Subsequently, the army outpost became the civilian outpost Carmei Doron, in which a few Israeli families now live. For another example, see, with respect to the land of the Palestinian villages Beit Omar and Halhul and the settlement Carmei Tzur, HCJ 5624/06, *Beit Omar Municipality et al. v. The Military Commander in the West Bank et al.*, Judgment, 31 July 2006.

69. This was done, for example, in the case of the Dolev settlement, where Major-General Yair Naveh, commander of IDF forces in the West Bank, issued Order Regarding Seizure of Land No. T/34/06, 8 May 2006.

The declaration regarding closing of land classifies as a “closed military area” the land that will remain between the secondary fence and the old fence of the settlement or the houses of the settlement. The order prohibits the entry of persons into the area between the fences, which, according to the army, is intended to serve as an empty warning area. However, as we shall see in Chapter 6, settlers are freely allowed to enter this space. On the other hand, as we shall see in Chapter 5, Palestinian entry is forbidden, other than in exceptional cases and under stringent conditions. In response to B’Tselem’s inquiry, the army stated that, “despite the fact that the SSA is a closed military area, holders of rights in the land are allowed to enter to work it, in accordance with a designated procedure.”<sup>70</sup>

The order prohibiting building forbids both settlers and Palestinians to build structures in the closed off area – this, too, according to the army, to provide an empty warning space. Under this order, even those holding personal permits to enter the area cannot build there without a separate permit issued by the military commander. The head of the settlement council must undertake in writing that no “unauthorized” construction will take place in the closed area.<sup>71</sup> This order makes it easier for the authorities to prevent the built-up area of the settlements to expand into the SSA. As we shall see in Chapter 6, however, there are cases in which settlers have built and live on such lands, with the prohibition almost never being enforced.

### **Cases in which not all three orders are issued**

As pointed out above, even when the army does not declare an SSA, the physical obstructions enclosing the land are often placed far from the houses of the settlement. Therefore, in these cases, too, a ring of land around the settlement is created into which Palestinians are, in practice, prohibited entry. In such cases, if the army installed the obstructions, only a requisition order is issued.<sup>72</sup>

When an “electronic SSA” is established, the army issues requisition orders only for the particular spots on which the devices are placed, and does not issue the other orders.

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70. Letter of 11 January 2005 from the IDF Spokesperson’s Office to B’Tselem.

71. Ibid.

72. For example, the Dolev settlement was established, in 1983, on Mt. Midrus, Ramallah District. Later, a fence more than 200 meters from the houses on the edge of the settlement was built. The Civil Administration sanitized the closing of the area with requisition orders that were issued in 2006 for what was classified “renewal of security components.” The Ofra settlement and the Amona outpost were both surrounded by a fence and physical obstructions of various kinds, without being declared an SSA, at a distance in certain locations of more than one kilometer from the houses at the edge of the settlement. As far as B’Tselem knows, the great majority of the closed area – the area on which the houses are located and the wide ring of land around them – is privately-owned Palestinian land, and requisition orders were apparently never issued for the strip of land on which the obstructions were built.

In addition, around some settlements in the central West Bank, Israel has built fences with the aim of later connecting them to the Separation Barrier. At this stage, the settlements of Ariel (Salfit District), Beit Arye and Ofarim (Ramallah District), and Immanuel, Kedumim, Ma'ale Shomeron, and Karney Shomeron (Qalqiliya District) have such fences. The army intends to build fences around other settlements in these areas. According to the plan, the connection to the Separation Barrier will be made by means of fences that will span dozens of kilometers, winding from areas near the Green Line, around the settlements, and reaching into the heart of the West Bank. Although the military commander did not issue orders closing areas and prohibiting building in these cases, but only requisition orders, the state argued that the strips of land along which the fences run are an SSA.<sup>73</sup> Another time, the army referred to them as a "kind of SSA."<sup>74</sup> This stratagem was used to get the court to legally sanction the plan to surround the settlements with a long fence, taking into account that once connected to the Separation Barrier, this fence will sever the West Bank and greatly harm Palestinians and infringe their human rights; consequently, the state feared that the plan would not withstand Supreme Court review.

## **G. Permanent temporariness**

The three kinds of orders bear expiration dates, from between several months to three years. However, past experience shows that, with respect to the occupation of the West Bank and the human rights violations committed in its framework, temporary means permanent. Although the requisition orders are defined as temporary, they may be extended again and again, making them permanent to all intents and purposes.

In the past, Israel has used "requisition for military needs" as a means to take control of Palestinian land to build settlements. Although the requisition was defined as temporary, these lands were never returned to their owners. It is now evident that the army never planned to hold the land temporarily, but seized it with the intention of holding on to it permanently.<sup>75</sup> As a result, some settlements, such as Kiryat Arba, were built on land that was seized "temporarily," and now, years later (40 years in the case of Kiryat Arba), Israel is expanding them by additional requisition of land as an SSA – this, too, being defined as "temporary." The same practice occurred with respect to the Separation Barrier, which turned

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73. HCJ 3290/05, *Ahmad Buziyah v. State of Israel*, Preliminary Response of the Respondents and Response to Application for Interlocutory Order, 17 May 2005, sections 7-9.

74. Telephone conversation of 9 April 2008 between B'Tselem and Uri Mendes, head of the Infrastructures Department of the Civil Administration.

75. See Chapter 1.

in recent years, based on statements of policymakers, from a security solution, which can be argued as temporary, to a political line that is supposed to form the border between Israel and a future Palestinian state.<sup>76</sup>

The same is true with respect to the rings of land closed to Palestinians. When orders expire, the army does not make sure to extend them in an orderly manner, and certainly doesn't remove the obstructions in the field. In March 2008, the Civil Administration provided B'Tselem with the most updated orders relating to SSAs around 27 settlements (including "electronic SSAs").<sup>77</sup> A total of 44 requisition, closing, and prohibition on building orders were provided.<sup>78</sup> Only 13 of them (30 percent) are still valid.<sup>79</sup> There are only seven settlements (26 percent) relating to which all three orders are in force. This means that the prohibition on the entry of Palestinians into the SSAs is enforced in most cases without authority and is illegal.

In response to this point, the Civil Administration argued that their "staff is engaged in extending the orders in orderly fashion."<sup>80</sup> This response illustrates the authorities' distorted attitude toward the law, as if it serves only as an auxiliary tool to implement their policy, binding Palestinians but not them. This position is strengthened in light of the leniency of the courts, which do not view enforcement in the absence of orders, that is, without authority, as anything more than a technical problem. Indeed, the Supreme Court has held that, "closing of land must be done upon the issuance of written orders by the military commander, and in the absence of closing orders, Palestinian are not to be denied entry to their land."<sup>81</sup> However, in some cases, the Court is indifferent to the failure to extend the orders in an orderly manner.<sup>82</sup>

The lack of a time restriction on the requisition of land, failure to comply with the time limit set out by the orders, the high cost in placing the obstructions, and past experience make it likely that the closing of the rings of land around the settlements, like the building of the Separation Barrier and some

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76. See, for example, the comments of Chief-of-Staff Gabi Ashkenazi to Defense Minister Amir Peretz. Amos Harel, "Chief-of-Staff Ashkenazi: The Fence's Route – A Political Matter," *Ha'aretz*, 28 July 2008, available at <http://www.haaretz.co.il/hasiste/spages/1006170.html> (visited on 5 August 2008).

77. The Civil Administration also provided copies of orders regarding another settlement, Kadim, which was evacuated in 2005 as part of the "disengagement plan," and we do not relate to it in this section.

78. Six other orders were provided incomplete, making it impossible to locate their expiration date.

79. Fourteen of the orders expired in 2007, three in 2006, 12 in 2005, and two in 2003.

80. Letter of 14 April 2008 to B'Tselem from a spokesperson for the Civil Administration.

81. HCJ 9593/04, *Rashed Murar*.

82. For example, Order for Requisition of Land No. T/39A/03, issued in 2003 regarding Palestinian land defined as an SSA near the Kiryat Arba settlement, was not renewed after it expired. The justices held, without criticism: "This order is no longer in force, but as we have been told [by the state], there is an intention to extend it." HCJ 8614/07, *Rivka Tor et al. v. OC Central Command et al.*, Judgment, 30 January 2008.

of the settlements, constitute permanent expropriation in the guise of a temporary measure.

In addition, the judicial system applying in the Occupied Territories enables expropriation of uncultivated land. Therefore, closing the land will increase the possibility that with the passage of time, Israel will finally and officially take control of the closed land and connect it to the settlements.<sup>83</sup>

## **H. Expulsion of Palestinians from land by security forces**

In the previous chapter, we saw that the army and police do not do enough to eliminate settler violence against Palestinians trying to reach land near which a settlement has been built. To aggravate matters, soldiers and Civil Administration personnel often join settlers in expelling the Palestinians. In some cases, it appears that soldiers yield to pressure by settlers and obey their orders to remove Palestinians from the land, as if the settlers were their commanders.

In many cases, to prevent their expulsion, Palestinians showed soldiers or commanders documents and maps indicating their ownership of the land. As appears repeatedly in testimonies given to B'Tselem, the soldiers and commanders were not interested in the documents, and responded that they, and not the documents, determine who is allowed to remain on the land. In other cases, settlers attacked Palestinians to expel them, and soldiers at the site responded by ordering the Palestinians to get off the property. In such cases, the soldiers were obligated to prevent settler harm to Palestinians, and to summon the police if necessary. In any event, they were forbidden to expel Palestinians from their land. This practice also breached the Supreme Court's judgment in the olive-picking case (Murar), mentioned in Chapter 3.

Some cases may be instigated by individual soldiers, but the fact that many such cases occur repeatedly gives the impression that the soldiers' actions are carried out in accordance with an order from the command echelon. Officers, too, take part in some of the expulsions. Responsibility for these cases, whether carried out with the knowledge of the commander or not, lies with the army. It is the army's, and its commanders', responsibility to ensure that such acts do not occur and that action is taken against delinquent soldiers.

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83. See footnote 24.

## Sample cases

Over the years, B'Tselem and other organizations have documented expulsion cases of this kind. The incidents occur near settlements whose surrounding area has been blocked or restricted, officially or unofficially, to Palestinians wishing to enter. A few examples follow.

Muhammad Miqbal, a resident of Qaryut, told B'Tselem how soldiers responded during the 2006 olive harvest, following the Court's ruling in the *Murar* case, to settler violence on his land, next to which the Shilo settlement was built. According to him, officials from the Civil Administration "only let us enter our land for one day. When we arrived, settlers threw stones at us. My son and I fell to the ground and then soldiers expelled all the farmers from the plots of land."<sup>84</sup>

From the testimony of Nahid Abu 'Abadah: "I saw soldiers fire into the air to frighten residents trying to approach the fence. When my family and I tried to approach, the soldiers in the lookout tower fired live ammunition into the air. Sometimes, soldiers in an army jeep pull up and force the residents to go away."<sup>85</sup>

In one case, Palestinians tried to gain access to land next to the Kedumim settlement. A settlement guard told them, "Arabs are not allowed to enter" land next to the settlement, and an army patrol moved them away. In response to their claim that even the Civil Administration recognizes their ownership of the land and that they had documents testifying to their ownership, the patrol commander replied, "documents don't interest me."<sup>86</sup>

Iyad and Bilal 'Awaisa, residents of a-Lubban a-Sharqiyah, in the northern West Bank, were grazing their flock about 500 meters from the Eli settlement. Settlers threatened them with weapons, forced them off the grazing land, made them get into a vehicle, and drove them against their will to an army post nearby. According to their testimonies, soldiers at the post cuffed and blindfolded them and prohibited them to lean backwards or speak with each other. Soldiers kicked them, one soldier slapped Bilal, and a soldier dragged Iyad along the ground by his legs.<sup>87</sup>

In one of the many cases of this kind that were documented near the Carmei Tzur settlement, in Hebron District, a few Palestinian farmers from Halhul entered their land that lies outside the SSA that had been declared by the army. A few soldiers

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84. The testimony was given to Salma a-Deba'i on 17 June 2007.

85. The testimony was given to Salma a-Deba'i on 14 November 2007. Another excerpt from the testimony opens the introduction to this report.

86. Meron Rappoport, "The Method," *supra*.

87. The incident occurred on 23 March 2008. The soldiers only released the two Palestinians several hours after they arrived. The testimonies were given to Salma a-Deba'i on 26 March 2008.

guarding the unauthorized outpost adjacent to the settlement went over to them, and the commander ordered them to go away. The farmers did as ordered. Shortly afterwards, the settlement's security officer demanded that the soldiers arrest the farmers, contending they were terrorists, and called the police. Police detained the farmers for questioning at the police station for no less than nine hours without investigating whether an offense had been committed. The farmers were then released without any charges being filed against them.<sup>88</sup>

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88. The incident occurred on 5 November 2007. The description is based on the eyewitness testimony of members of ACRI, which wrote to the State Attorney's Office about the matter and provided B'Tselem with a copy of the letter.



## Placing Obstacles before Palestinians Wanting to Enter Closed Lands

Very few Palestinians actually manage to enter lands that have been closed off near settlements. Entry of Palestinian landowners into declared SSAs, and often into other lands, is possible in particular, rare instances, and even then is not at all simple. The army admits that, in some cases, private land lies inside the SSA<sup>89</sup>, and, as noted above, asserts that "holders of rights in the land are allowed to enter the land to work it, in accordance with the designated procedure." As we shall see, the reality is very different.

Generally, Palestinians are allowed to enter the closed area if they meet three consecutive conditions. The first is a one-time preliminary requirement, while the other two have to be met afresh each time, their form varying slightly from place to place. With respect to all three conditions, Israel places the burden of meeting them on the Palestinians, thus evading its obligation as the occupying power to ensure the freedom of movement and employment of residents of the occupied territory. The conditions are as follows:

1. Civil Administration recognition of ownership of the land (one-time condition);
2. Obtaining a set date for entry dictated by the Civil Administration;
3. Consent of settlers to enter the land.

The great difficulty in meeting these requirements is one of the reasons that many Palestinians have given up trying to get to their closed-off lands. In conversations B'Tselem's fieldworkers held with farmers throughout the West Bank, many expressed their utter frustration and helplessness in the face of the numerous conditions they must meet to enter their land and the many hardships placed on them. Some farmers noted that they have ceased attempting to access their lands that Israel has block as, in their eyes, having to ask the Israeli authorities and settlers to gain access to their own farmland is degrading and violates their property rights

The state of affairs described in this chapter applies to various kinds of land closed off near settlements, and not only to declared SSAs.

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89. Letter of 11 January 2005 from the IDF Spokesperson's Office.

## A. Recognition of ownership of the land

Approval by the Civil Administration is a prerequisite to entry of Palestinians into the SSAs, and in some instances to other closed-off lands. Although it is charged with the “welfare and best interest of the population,” by closing the land, the Civil Administration refrains from ensuring free entry of Palestinian landowners.<sup>90</sup> Landowners whose ownership of the land is recognized by the Civil Administration may request that their names and the names of their family and workers be placed on the list of persons permitted to enter the closed land. The burden of proving ownership lies on their shoulders.

Obtaining preliminary approval and joining the list of landowners permitted entry is not easy. The Civil Administration reserves the right to reject such requests for a variety of reasons, especially for failure to prove ties to the land. It is important to note that raising sheep and goats is one of the principal agricultural sectors in the West Bank. Although most Palestinian shepherds have grazed their flocks in the same areas for dozens of years, they have never been recognized by the authorities – beginning with Ottoman officials and followed by the British, the Jordanians, and finally the Israelis – as owners of the grazing land. For this reason, among others, many farmers fail to make it onto the Civil Administration’s list. In any event, most of the land in the West Bank is not formally recorded, so farmers who grow fruits and vegetables often have difficulty, too, proving their connection to the land.<sup>91</sup> To prove ownership of land that is not recorded, farmers must provide proof that they have worked the land for ten consecutive years, together with a map of the land prepared by a licensed surveyor – a lengthy and expensive process.<sup>92</sup> In many cases, it is impossible to meet these stringent requirements.

Also, being added to the list sometimes takes time. In one case, farmers told B’Tselem that it took them three to four months to cross the preliminary hurdle at the Civil Administration.<sup>93</sup> In another case, it took three months, during which the Civil Administration made repeated requests for ownership documents.<sup>94</sup>

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90. The obligation is specified in Military Government Order No. 947, of 1981, pursuant to which the Civil Administration was established.

91. On the eve of the occupation, in 1967, some two-thirds of the West Bank land was not recorded in the land registry. Since then, Israel has frozen the land-recording process.

92. For an extensive discussion on this point, see B’Tselem, *Land Grab*, 55 ff.

93. Letter of 27 March 2008 from farmers in ‘Ein Yabrud to B’Tselem.

94. Testimony of Rashed Murar, a resident of Yanun, whose land was attached to the area controlled by the Itamar settlement. His testimony was given to Salma a-Deba’i on 5 February 2008.

## B. Dictating the time of entry

Even those Palestinians who manage to get on the Civil Administration's list are still not certain they will be allowed to enter. They must obtain separate approval for each entry, which requires prolonged effort and entails numerous difficulties. As we shall see below, the permits are not written but are verbal statements by Administration officials of the time that the applicant may gain entry. The military euphemism for this dictation of the time for entry is "recommendation for coordination."

There is a big gap between the rule and the practice. Army orders and signs posted near the fences state that "prior coordination" is required to enter when it is dark or on Saturdays and Jewish holidays; it is explicitly stated that at other times, no advance coordination is necessary. According to the army's official procedure, mentioned above, entry of farmers who are not landowners and are not accompanied by the landowner will only be allowed entry upon the prior approval of the District Coordination and Liaison office (DCO).<sup>95</sup> However, the office of the West Bank legal advisor uses more lenient terminology and requests "to recommend again" that entry of landowners be coordinated with the DCO "to improve the handling of requests and reduce the possibility of friction in the SSA."<sup>96</sup>

While the orders, signs, and the Procedure for Entry make it clear that Palestinian entry to the lands is not free, they also give the impression that the gates in the fences are regularly open, and that at least some Palestinian farmers can supposedly gain free entry. This impression results from the state's commitment to the Supreme Court that it would allow Palestinian access to their land to work it.<sup>97</sup>

Commitment is one thing and reality quite another. Civil Administration personnel ensure that the gates in the fence are usually locked, and they hold the keys. Palestinians who arrive at the locked gate generally find nobody there to open it for them. If they call the Civil Administration, they encounter communication problems and various excuses. To get the gate opened, they have no choice but

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95. "The entry of residents appearing on the list [of names of landowners, members of their nuclear family, and their workers] who are not accompanied by landowners or the entry of residents who do not appear on the list... requires coordination with the DCO at least 24 hours before the time of the planned entry." Procedure for Entry of Landowners to Special Security Areas (SSAs), section 13 (hereafter the procedure is referred to as the "Procedure for Entry").

96. Letter of 12 April 2007 from Harel Weinberg, office of the legal advisor of the West Bank, to ACRI. ACRI provided B'Tselem with a copy of the letter. In this case, the army referred to the prevention of entry of Palestinians from Beit Omar and Halhul to their land that had been attached to the Carmei Tzur settlement. A similar "recommendation" was also provided to attorneys who requested that their clients be permitted entry to their farmland.

97. See, for example, HCJ 140/04, *Hejazi 'Abd a-Rahman et al. v. Commander of IDF Forces in Judea and Samaria et al.*, Response of the Respondents, 20 January 2004, sections 2, 22(c).

to give the Civil Administration advance notice of many days that they wish to enter. In most cases, they have to call again and again, day after day, week after week, to “extract” a time from officials when the gate will be opened for them. Ultimately, the Civil Administration or the army sets the time, based on their reasons, so Palestinian farmers are forced to adjust their plans according to the unpredictable timetable set by the officials.

In the field visits that B’Tselem’s workers made in the preparation of this report, they found many dozens of locked agricultural gates around settlements. Only two were open.<sup>98</sup> Farmers who reach their land without having first managed to “extract” from the Civil Administration a promise that a gate will be opened for them that day find the gate closed and their access to the land denied. Even if they meet soldiers by chance, the fence will not be opened unless the Civil Administration determined in advance that they are allowed entry that day. B’Tselem has received reports from throughout the West Bank that Palestinians were explicitly required, albeit verbally, to go to Civil Administration offices in advance to arrange entry, otherwise their entry would be barred.<sup>99</sup> Furthermore, in particular cases, “coordination” is also required to gain entry to land outside, but near, the settlement’s fence, areas to which the military orders do not apply.<sup>100</sup>



Sign that the army posted in front of a gate blocking Palestinian entry to an SSA around the Ateret settlement, Ramallah District. Photo: Iyad Hadad

98. All the visits were made during the daylight hours of weekdays – during which, according to the signs posted by the fence, access of landowners is supposed to be free.

99. For example, in April 2006, according to farmers’ statements to B’Tselem on 26 July 2006, Civil Administration officials verbally informed residents of the villages of al-Janiya and ‘Ein Qiniya, whose farmland was situated inside the fence surrounding the Dolev settlement, far from the settlement’s houses, that their entry to their lands would be prohibited without “prior coordination.”

100. For example, residents of al-Janiya, a village alongside which the settlement Talmon was built on land between the village and the residents’ farmland, are required to coordinate entry to the farmland, which lies outside the fence around the settlement. The reason is that, to reach the land, they have to enter the area demarcated by the fence on one side and exit from another side. The land around the settlements Dolev and Talmon are not classified SSAs, even though the fences were built a great distance from the houses.

Civil Administration officials have often told farmers that the requirement to set a date of entry in advance stems from the army's decision that soldiers accompany the farmers, and there are not enough soldiers to do this daily. Clearly, this is not a matter of fate, but a decision made by the army and the Civil Administration that makes it difficult for Palestinians to reach their land. If soldiers' presence is required, for one reason or another, every time a Palestinian enters an SSA, the army and the Civil Administration have the obligation to ensure that soldiers staff the gates at all times. In practice, the Civil Administration switches the burden of ensuring soldiers' presence onto the farmers' shoulders and places innumerable obstacles in the way of every attempt to coordinate entry.

The signs and orders promising free entry in at least some cases, and, conversely, the locking of the gates, enable the Civil Administration and the army to make a false representation, as if it is not necessary to have a time of entry that the Civil Administration dictated after repeated requests by the farmers, and as if it is only a "recommendation for coordination." Thus, all the statements and promises to enable Palestinians to enter their land are, in fact, fictions intended to embellish the grim reality, especially before Supreme Court justices. It is these justices who held, in the Murar case, that, "clear and unambiguous orders must be given to the forces in the field on how to act so as not to prevent entitled residents to enter their land, unless the law provides a basis for denial of entry."<sup>101</sup> Furthermore, the army's commitment to the Court regarding free entry to land was the basis on which the justices approved the closing.

The gap between theory and practice is seen in other conditions faced by farmers who want to enter their land. The army's Procedure for Entry states, in section 4, that, "Residents entering closed land may bring with them the work tools and vehicles they require." In practice, entry is often conditioned also on their not using vehicles, and in some instances, not using animals in their work. In addition, some of the secondary fences do not have gates large enough for vehicles to enter, so Palestinian farmers have to drive their tractors through the settlement's gate, depending on the residents' consent.

Israel also limits farmers' stay within the closed lands. Residents of al-Janiya, for example, report that when they coordinate entry to the Talmon settlement to enable them to reach their land, the Civil Administration allows them to enter only at specified times, apparently because seasonal crops are involved. In this case, entry is permitted during the plowing season, between December and April, for seven days only, from 8:00 A.M. to 3:30 P.M. In the harvest season, entry is allowed for about 10 days, from mid-October to early November, from 8:00 A.M. to 4:00 P.M., and is accompanied by Israeli security forces.<sup>102</sup>

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101. HCJ 9593/04, *Rashed Murar*.

102. This arrangement – escorted entry following coordination – was achieved in the *Murar* case (see Chapter 3). Under section 21 of the Procedure for Entry, soldiers are only to enter SSAs in an emergency.

In many cases, there have been reports of foot-dragging and refusal of the Civil Administration to enable entry at all. For example, on 5 August 2007, 'Issa Salibi, a resident of Beit Omar and a representative of the town's farmers, tried to coordinate entry into the SSA around the Carmei Tzur settlement for 15 landowners. Salibi informed ACRI that a Civil Administration official named Amitai refused them entry, contending that a group of 15 people was too large. Later, Amitai retracted and approved their entry. The next day, he called one of the farmers, who also served as a coordinator, and cancelled the approval on the grounds that there were not enough soldiers to escort the farmers.

Even when landowners manage to enter and work their land, they often receive a clear message from Civil Administration officials that they are allowed to enter only to work the land, and that any other activity is prohibited.

### **Submitting requests and handling of requests**

To obtain a time for entering, the owners generally go to one of two entities: the Civil Administration itself or the Palestinian District Coordination and Liaison office.

Direct request to the Civil Administration is only possible in certain areas and at certain times. Some Palestinian farmers regularly call the telephone number of a Civil Administration official in their area. However, it appears that Israel's policy is to refer them to the Palestinian DCO and use the DCO as brokers between the landowners and the Civil Administration. As a rule, Israel seeks to transfer most of the responsibility (the handling of the request) to the Palestinian DCO and reserve for the Israeli side most of the authority (the decision on whether to permit entry).

This indirect process is disadvantageous to landowners and farmers. The bureaucratic complexity and the length of time needed to obtain a time for entry is a major problem. In this context, most Palestinians do not trust the Palestinian DCO, as they believe it does not do enough to achieve what they want, does not challenge the negative responses received from the Israeli side, and sometimes even fails to submit requests to the Israeli side to begin with.<sup>103</sup>

Ghassan Safi, deputy head of the Ramallah DCO, told B'Tselem how Palestinian entry into the areas defined SSAs is coordinated. The landowners go to the Palestinian DCO with a list of names of farmhands whose entry they want to coordinate, and the DCO officials then submit a written request to the Israeli

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103. See Machsom Watch and Physicians for Human Rights, *The Bureaucracy of Occupation: the District Civil Liaison Office*, 41.

DCO. It generally takes about a week for the Israelis to respond, sometimes longer when Israeli officials claim it is necessary to organize an army escort. If the farmers want to use farm vehicles, separate coordination is required.<sup>104</sup>

Landowners also encounter foot-dragging when they make their requests directly to the Civil Administration. Na'im Zalum, who owns farmland that the army declared an SSA of the Kiryat Arba settlement, told B'Tselem that, "we need ten days to two weeks of ongoing arrangements to coordinate entry to the land. They [Civil Administration officials] generally let us [enter] after the season has passed and the crops have already suffered damage."<sup>105</sup> Another farmer in the same area stated: "The DCO delays our entry and drags their feet on this matter."<sup>106</sup> The description of foot-dragging repeats itself in reports obtained by B'Tselem. One common method mentioned in the reports is that the applicants are told to call back later, claiming, for example, that DCO officials are very busy or that the relevant officials are not in the office.

In recent years, following the Court's decision in the Murar case, Israeli authorities have prepared for the olive harvest, and Palestinians have been allowed greater access to their land during the picking season. Soldiers accompanied olive pickers to their fields, and the Civil Administration coordinated entry for the entire harvest period. However, Palestinians still have difficulty gaining access and continue to be harassed by settlers. Moreover, the olive industry can only function fully when the trees can be accessed throughout the year, and not only during the harvest season.

Several weeks before this report was published, after Civil Administration officials in the southern West Bank learned that B'Tselem was investigating their handling of landowners' requests to obtain an entry date, farmers reported that the time for obtaining approval, which was usually two to eight weeks, dropped to between 24 and 48 hours. Although this time does not amount to free access, the improvement is extremely significant. The change may have resulted from B'Tselem's involvement and the knowledge that the organization was about to publish a report on Civil Administration policy. However, in other areas, the foot-dragging appears to have remained as it was. In any event, the change indicates that it is possible to increase freedom of Palestinian access, if the authorities act accordingly. B'Tselem will continue to monitor the handling of entry requests.

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104. The comments were made in a conversation with Iyad Hadad of B'Tselem on 13 January 2008.

105. The comments were made in a conversation with 'Issa 'Amro of B'Tselem in May 2007.

106. From the testimony of Sami Gheith, given to 'Issa 'Amro on 24 June 2007.

## C. Entry subject to settler consent

The third condition for entry is obtaining the consent of residents in the adjacent settlement. These can be residents employed by the local or regional council, usually as security officers, residents who are not official position holders, or a combination thereof. Frequently, without such consent, Civil Administration approval and an army escort are no help to Palestinians wanting to enter their land. In this context, it should be noted that settlement security officers operate pursuant to authority delegated to them by the army.

Although these persons have no authority to deny Palestinian access, and even security officers do not have discretion in this regard, they often refuse entry and expel Palestinians who manage to enter. In some cases, the power of settlement security officers appears to be greater than that of Civil Administration officials. Even though the official entity responsible for ensuring entry of Palestinians is the Civil Administration, in many cases, the entity that determines what happens on the ground is the settlement's security department, which is staffed by residents of the settlement.

This assertion is supported by the comments of the head of the security department of a settlement in the West Bank, in which he resides. In his conversation with B'Tselem, he stated:

We're the ones who make sure that Arabs enter to work their land. We're the ones who take care of that, my friend, not the army. We make sure here that the gates are opened for them... during daytime hours, as long as there is no security risk here... Believe me, look here [shows his cellphone], see how many names of Arabs there are who call me, and don't even call the DCO...<sup>107</sup>

Military coordinators of routine security (MCRS), who staff the security departments on settlements, are not soldiers, but residents of the settlement who are subordinate, to a certain extent, to the army, which supplies them both with weapons and with the Open-Fire Regulations.<sup>108</sup> According to the State Attorney's Office, "the powers need to be limited to the area of the community in which the MCRS operates."<sup>109</sup> This report deals with land that is located outside the formally-declared area of the settlement, and therefore is outside its jurisdiction. In this context, Attorney Shai Nitzan of the State Attorney's Office emphasized that, "outside the area in which the MCRS is authorized to operate – the MCRS and the

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107. The testimony was given on 19 September 2007 to Oren Yakobovich and Ofir Feuerstein.

108. Their activity is regulated in the Order Regarding Arrangement of Security in Communities (Judea and Samaria) (No. 432), 5731 – 1971.

109. Letter of 20 December 2005 from Shai Nitzan, of the State Attorney's Office, to ACRI, which provided B'Tselem with a copy of the letter.



guards are like every other civilian.” As we saw in the previous chapter, ordinary civilians are denied entry, so security personnel who are settlers obviously are forbidden to prohibit Palestinians from entering or staying on their land. The activity of members of settlement security departments on these lands strengthens the claim that the lands have in actual fact been attached to the settlements.

Khalifah D’ana, a farmer from Hebron, owns land that lies within an area classified as an SSA near the Kiryat Arba settlement. Following two months of effort to coordinate entry, he and some of his children managed to enter the land, escorted by an official from the Civil Administration. D’ana related to B’Tselem what happened that day during an afternoon break:

One of the settlement’s security personnel came and told my children, who were sitting on the ground eating lunch, “Get up and work.” They replied: “We are eating lunch,” and he responded, “Eat at home, not on the ground.” I told him it was my land, and he said, “This is not your land.”<sup>110</sup>

Similarly, settlers who are charged with security responsibilities regularly expel Palestinians from areas around the Carmei Tzur settlement, both from lands classified as SSAs, to which the Civil Administration has approved the farmers’ entry, and from lands that are not classified as such. In expelling the Palestinians, the guards act far beyond the area to which they are assigned and often use violence. In the areas around Carmei Tzur, soldiers guarding the land also take part in expulsions, in clear breach of their authority.<sup>111</sup>

In Chapter 3, we presented the testimony of Yusef Abu ‘Ayash, a farmer from Beit Omar, who related that settler security officials from Carmei Tzur expelled him and his family by force while working their land, even though they had received approval from the Civil Administration. The Israeli press reported the version given by settlers from Itamar regarding this practice: “Settlers oppose the olive harvest [by Palestinians] on the grounds that the grove lies in the ‘special security area’ (SSA) that the IDF declared around Itamar – and that penetration into the area endangers them.”<sup>112</sup>

We see, then, that the State of Israel, which is obligated to ensure the rights of Palestinian farmers in territory under its military occupation, leaves them helpless in the face of the capricious behavior of settlers, some of them especially violent, and bestows these settlers with the power to forbid, restrict, or condition Palestinian entry. Furthermore, Palestinians wanting to work their land in safety

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110. The incident occurred on 18 January 2008. The testimony was given to ‘Issa ‘Amro on 10 February 2008.

111. For other examples of expulsion by security forces, see Chapter 4.

112. “Dozens of Settlers Riot in Attempt to Disrupt Olive Harvest in Samaria,” *Ha’aretz*, 18 November 2004.

depend on the consent of settlers who are not part of the settlement's security apparatus. In many cases, residents from the settlement prevent Palestinian farmers from entering or working private Palestinian land that the army classified an SSA, even when the army allows them to enter. In these cases, the army fails to prevent the settlers from blocking the entry of Palestinian farmers. Every year, about the month of October, when the olive harvest is to take place, problems of this kind multiply.

Suliman Daraghmeh, from a-Lubban a-Sharqiyah, told to B'Tselem about one of the times he managed to get to his land, next to which the Eli settlement was built, after the Civil Administration allowed him entry for a limited period of time: "We began to pick olives. At 1:00 P.M., settlers arrived and ordered us to get out and not come back. We gathered the olives we had managed to pick, went home, and couldn't return [there] again."<sup>113</sup>

Israel's obligation to ensure Palestinians farmers free access to their land, which was given official sanction by the Supreme Court in the *Murar* case discussed in Chapter 3, also includes the duty to enforce the law against settler lawbreakers seeking to prevent Palestinians access to their land, even though the competent authorities approved entry. We see, therefore, that, from this perspective as well, Israel shirks its obligation to ensure access.

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113. The testimony was given on 21 January 2008. For other examples of expulsion by settlers, see Chapter 3(b).

## Granting Free Access to Settlers

In the previous chapters, we saw that Palestinian access to blocked land around the settlements is extremely limited, and usually impossible. In this chapter, we shall see that, on the other hand, the settlers have open access to these lands, which strengthens the impression that the official closing of the land is in actual fact expropriation of Palestinian land and attachment of it to the settlements.

In response to B'Tselem's inquiry, the army contended that one consideration taken into account in declaring an SSA is the desire to "create a protective warning space," with the route of the fence being determined after weighing "space and time considerations" and in light of "the need for warning at the time of penetration into the community to enable deployment of the forces."<sup>114</sup> Elsewhere it was written that the means were intended "to increase the time needed for the hostile entity to reach the community from the moment the warning of penetration is received, with the objective of enabling the forces protecting the community to arrive at the site of the incident and thwart it before the terrorist reaches the community."<sup>115</sup>

A protective warning space is supposed to separate the people being protected and the persons against whom the protection is needed – an empty space, where settlers are not located. This is the reason for the orders prohibiting entry into the closed land, as described in Chapter 4. Indeed, the prohibition is enforced against Palestinians with great vigor and efficiency, with only persistent and lucky farmers able to enter from time to time. In contrast, and in total contradiction to the security logic presented as underlying the closing of the land, the army, the police, and security-department personnel in the settlements allow settlers to enter this space freely.

The settlers enter the space directly from the settlement's built-up area. In all the visits B'Tselem made to settlements and their surrounding areas in preparation for this report, Israeli members of the organization encountered no difficulty entering Palestinian-owned fields classified SSAs. Neither physical barriers nor supervision by the authorities prevented their entry. In some cases, part of the old fence, relatively close to the houses, was missing, and no physical barrier stood between the residential area and the land that the army claimed was intended to provide a warning space.

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114. Letter of 11 January 2005 from the IDF Spokesperson's Office.

115. State Comptroller, *Annual Report 56A*, supra, 254.

Allowing settlers free entry to these lands subverts the state's attempts to justify, by classifying the land a warning space, the resulting severe infringement of the Palestinian landowners' human rights.

Furthermore, the free access given settlers has at times resulted in losses to the landowners. Sami Gheith, mentioned previously, told B'Tselem about the free entry of settlers from Kiryat Arba to his closed land: "Several times, I've seen settlers from Kiryat Arba steal my farm crops. They steal it right in front of me, with soldiers watching. They're not concerned about anybody. They also destroyed a few trees and the well that was on the land."<sup>116</sup> B'Tselem has extensive documentation of such activity by settlers from Kiryat Arba. For example, on the morning of 5 February 2008, a settler drove from Givat Haharsinah, the northern neighborhood of Kiryat Arba, to the farmland of Khalifah D'ana, on which the army has built a secondary fence and declared it an SSA. The settler got out of his car, took his power saw and began to cut down fruit trees belonging to D'ana, who stood taken aback on the other side of the fence, unable to intervene. After he finished cutting, the settler put the wood into his car and drove off toward the settlement.<sup>117</sup>

In other cases, it was reported that settlers exploited their free access to Palestinian lands that were declared SSAs, to which the Palestinian landowners have difficulty gaining entry, to use the land themselves, stealing the Palestinians landowners' crops. In yet other cases, settlers use the closed land to graze their livestock.

Furthermore, B'Tselem's examination reveals that in more than a few cases, Israel in effect permitted expansion of settlements into the closed land, or declared a piece of land an SSA even though settlers' houses were located on it. That is, not only can settlers enter the closed Palestinian land without disturbance, in some cases settlers permanently stay on the land and use it as if it were theirs. Among the uses B'Tselem documented with respect to various settlements were patrolling, housing and construction, grazing livestock, cultivating farmland, and theft of crops.

## **Settlers' takeover of closed Palestinian land**

By taking control of closed land, regardless of the use they make of it, settlers expand their settlement. The responsibility to ensure that such a takeover does not occur lies with the law-enforcement authorities: the police, the Civil Administration, and the army and its agents. Below we present a few examples in which the settlers took control of land before the very eyes of the law-enforcement authorities.

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116. The testimony was given to Musa Abu Hashhash on 24 June 2007.

117. The testimony was given to 'Issa 'Amro on 8 February 2008. D'ana filmed the entire incident and filed a complaint with the police, but the complaint was apparently lost. The video is available at [http://www.btselem.org/english/video/200802\\_settler\\_vandalizes\\_trees\\_and\\_steals\\_wood\\_in\\_hebron.asp](http://www.btselem.org/english/video/200802_settler_vandalizes_trees_and_steals_wood_in_hebron.asp).

● **Ramallah District: a-Zaher Mountain, land belonging to residents of 'Atara, Um Safa, and 'Ajjul**

In 1999, settlers built a chicken coop at the edge of the Ateret settlement, on land recognized by the Civil Administration as belonging to Da'ud Mustafa, a resident of 'Ajjul. The coop was declared an illegal structure in the report on outposts submitted in 2005 to Prime Minister Ariel Sharon.<sup>118</sup> In that year, the military commander declared the land around the settlement an SSA, but did not close the land on which the coop was built and did not prohibit building on it. In the maps attached to these orders, the area of the coop is marked as a kind of enclave of the settlement inside the closed area. The orders were issued after the outposts report was submitted, when it was already publicly known that the outpost had not received official government approval.<sup>119</sup> In addition, the area enclosed between the settlement's houses and the fence contains hundreds of olive trees that the settlers planted on privately-owned Palestinian land, and they work this land regularly.



The coop that settlers placed on privately-owned Palestinian land that the army has declared an SSA on a-Zaher Mountain, on which the Ateret settlement was built. The patrol road and fence demarcating the land attached to the settlement are seen on the left. Photo: Hagit Ofra

118. Talia Sasson, *(Interim) Opinion on the Subject of Unauthorized Outposts*, March 2005, Booklet 1 – List of Outposts and Data relating to Them (Appendix), 5.

119. Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970, Declaration Regarding Closing of Land No. S/09/05; Order Regarding Supervision of Building (Judea and Samaria) (No. 393). 5730 – 1970, Declaration Regarding Prohibition on Building No. 9/05.

## ● Hebron District: Land belonging to residents of Hebron and its environs

In 2004, the army fenced off several strips of land just east of Hebron, declaring them SSAs of the Kiryat Arba and Givat Haharsinah settlements.<sup>120</sup> In the strip of land north of Givat Haharsinah, a yeshiva was built on private Palestinian land that had been fenced off. Yeshiva students regularly tend the vineyards there, which appear to have been planted by the Palestinian owners. Settlers also erected, in the middle of the strip, a winery and a residential structure, and placed a few caravans there. In the strip south of Givat Haharsinah, there are a farm and two residential structures used by settlers. An order to demolish a residential shack on the land was issued years ago, but was never executed.<sup>121</sup> In August 2007, a "senior official in the Central Command" told the press that a decision had been made to evacuate the farm and demolish the structures "in the very near future." According to the report, Civil Administration officials posted orders to vacate the premises on the structures in the months before August 2007.<sup>122</sup> The structures, however, are still standing.



A residential shack that Israeli settlers built on Palestinian land declared an SSA on the outskirts of Hebron. Photo: Ofir Feuerstein

In the area near the shack, B'Tselem has documented several cases in which settlers destroyed crops of Palestinian farmers, grazed their flock on privately-owned Palestinian land, damaging the land and crops grown on the land, and

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120. Officially, Givat Haharsinah is defined as a neighborhood of Kiryat Arba, though it lies about one kilometer away from it.

121. Order No. 12715 to Stop Work and Demolish a Structure was posted on the structure on 23 December 2003.

122. Roi Sharon, "IDF: We Will Evacuate Noam Federman's Farm," *Ma'ariv*, 22 August 2007.

threw stones at a Palestinian house that stands just beyond the fence. In addition, west of Givat Haharsinah, settlers at times released their horses to graze on closed land; north of Kiryat Arba, settlers placed a caravan and a tent; and north of Givat Haharsinah, settlers placed a caravan and have even begun to build a house.<sup>123</sup>

### ● Other examples

In 2005, the army declared an SSA around the Shavey Shomeron settlement, in the northern West Bank. In 2006, a new neighborhood containing 14 structures was built in the settlement. At least six of them were erected inside the area declared an SSA, in which building is prohibited.

South of Bani Na'im, a Palestinian town in Hebron District, a fence was built in 2002 or thereabout around the Pnei Hever settlement, closing land. In 2005, the army declared the closed land an SSA. Either in 2004 or 2005, three structures were erected on the southern section of the closed land.<sup>124</sup>

The army closed the land around the Mevo Dotan settlement, Jenin District, part of which is privately owned by residents of the Palestinian villages of Ya'bad and 'Araba. In the closed land, east of the settlement, there are infrastructure facilities (apparently a pool of water and antenna) that serve the settlers. The military commander has refrained from implementing the order prohibiting building and the order closing the area on this particular spot, thus creating a kind of enclave within the closed area to which settlers are allowed entry.<sup>125</sup>

The army closed land belonging to residents of Halhul and Beit Omar, Hebron District, and declared it an SSA of the Carmei Tzur settlement. South of the settlement, inside the closed area, settlers erected a sports field and removed part of the old fence, in 2007.<sup>126</sup>

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123. In late August 2008, in the framework of a petition to the Supreme Court regarding land declared an SSA around Kiryat Arba, the state responded that the Attorney General had asked the Defense Minister to ensure law enforcement in the area, so that Israelis will not enter it or build illegally on it. Aviad Glickman, "State to Supreme Court: SSA Must Be Built Around Kiryat Arba", *Ynet*, 31 August 2008.

124. The map attached to the order prohibiting building shows that the structures are located on the border of the prohibited area, two of them within it and the other outside. However, given that in this case, the actual closing extended beyond the area declared an SSA, all structures are located on closed off land. Order Regarding Supervision of Building (Judea and Samaria) (No. 393), 5760 – 1970, Declaration Regarding Prohibition on Building No. 7/05.

125. Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970, Declaration Regarding Closing of Land No. S/01/02 (Extension and Boundary Changes), Order Regarding Supervision of Building (Judea and Samaria) (No. 393). 5730 – 1970, Declaration Regarding Prohibition on Building No. 01/02, 5763 – 2002.

126. Order Regarding Defense Regulations (Judea and Samaria) (No. 378), 5730 – 1970, Declaration Regarding Closing of Land No. S/04/05 (Extension and Boundary Changes), Order Regarding Supervision of Building (Judea and Samaria) (No. 393). 5730 – 1970, Declaration Regarding Prohibition on Building No. 04/05.





## The Harm to Palestinians: An Overview

People not only bring forth bread from the earth, they also bring forth rest and relaxation... land and trees are not only a subject for toil, but also for recreation. For two years, children of [the villages of] 'Azzun and Nabi Elyas have not been above to take a walk for pleasure on their land. It has been two years since families from 'Azzun and Nabi Elyas have gone to their land to have a meal under the trees or to play ball in the orchards. Two years since school children have taken a hike in the bosom of nature. Because the bosom of nature has disappeared beyond the fence, where they cannot go.<sup>127</sup>

Over the years, the closing of land around settlements has greatly harmed Palestinian residents of the West Bank. The amount of harm cannot be estimated, both because some of it cannot be quantified, and because the methods described in this report are not distinct from the very establishment of the settlements and other harmful practices that have resulted in the theft of Palestinian land. The harm is certainly extremely grave, to some extent as a result of the ongoing damage due to the land remaining closed.

### A. Economy and agriculture

It appears that the first and primary victims of the closing are the Palestinian families that formerly used the land to gain a livelihood, in the vast majority of instances by farming. In many Palestinian villages, agriculture is a main source of income, so any harm to the agricultural sector creates harsh consequences for the residents. The practices described in this report separate, in many instances, Palestinians' place of residence from the place where they work. Even though the closing of farmland is not absolute in some cases, the closing clearly harms the residents' ability to work and gain a reasonable living and benefit from their land. For every settlement, the number of Palestinian families whose lands have been closed off around it can reach dozens.

Around a single settlement, dozens of Palestinian families own farmland that has been closed to them.

Even when Palestinians do manage to gain access to the land, the obstacles and

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127. From the petition for a show-cause order regarding the separation barrier in HCJ 2732/05, *Head of the 'Azzun Council et al. v. Government of Israel et al.*

restrictions such access entail often make the process financially not worthwhile. We have seen that, in many cases, Palestinian farmers are not allowed to enter their land more than a handful of times a year. When allowed access, they do not dictate the time and length of stay, and are subject to various restrictions, such as not being allowed to bring in machines.

'Abd al Jabar Mustafa, whose plot of land has been closed off, told B'Tselem about the harm he suffers as a result of restriction on entry to his land:

To pick 100 olive trees, for example, you need five or six adults working seven hours a day for 15-20 days... [This year] we got a permit for one day, 16 October 2007, from 8:30 A.M. to 2:00 P.M. This was not enough time. In addition, the amount of olives was poor because we can't care for the trees and land during the year.<sup>128</sup>

In some cases, it was reported that fruit had rotted on the trees because the farmers couldn't arrange entry in time. Also, when farmers manage to gain entry during the harvest season, they rush and pick more than they can sell at a given time, knowing that they won't be allowed to return to their land and pick at a reasonable time. In these cases, a large portion of the fruit rots after being picked. Many times, the majority, even all, of the crop is lost. Another hazard results from the inability to weed the land, which increases the chance of fire and consequent damage to the crops.

Efforts to coordinate entry and the uncertainty involved, along with the stringent conditions imposed on the landowners and their laborers, result in higher costs of production and lower profits. Profits may also fall because of the irregular supply of inputs, such as seeds, fertilizer, machines and spare parts, as well as the difficulty or impossibility of repairing the agricultural infrastructure that has been damaged.

As a result, and having been left no choice, many farmers have given up trying to coordinate entry, in effect losing their land to the settlements and with it their, and their families', principal, and sometimes only, source of income. 'Awwad 'Antari, from Deir Sharaf, a farmer whose land was closed to benefit the Shavey Shomeron settlement, told to B'Tselem that, "I didn't submit a formal request [to enter my land] because I didn't think it was worthwhile. These procedures are only intended to wear out the villagers and waste their time. Even if a permit to enter the land is obtained, it is only for a limited number of days and hours, while the farmland needs daily, constant care."<sup>129</sup>

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128. The testimony was given to Salma a-Deba'i on 14 November 2007.

129. The testimony was given to Salma a-Deba'i on 14 November 2007.

The farmers also suffer from the loss of many fruit trees that were destroyed to enable construction of the fence and patrol road surrounding the closed land. In some instances, the route of the fence was changed following petitions to the High Court of Justice, resulting in more trees being uprooted to construct the new route.

Free entry of settlers to the closed land also severely harms the Palestinian landowners and breaches their human rights. We have seen that in many cases, settlers from the adjacent settlement deliberately damage Palestinian farmland that has in effect been attached to the settlement.

B'Tselem cannot estimate the overall financial damage resulting from the closing of the lands. However, landowners estimated their losses in their testimonies to B'Tselem. For example, Ragheb 'Alwan, 78, a resident of 'Ein Yabrud, who stopped working his farmland under orders of settlers from Ofra and of the army, stated:

The settlers began to forbid us to get to our lands... I remember three times that the Israeli army forced me to leave the land. After that, I didn't return, out of fear they'd harm me. That was how I lost my right to get to four plots of land, a total of about 15 dunams. As a result, I lost about four tons of wheat and 700 kilograms of oil every year.<sup>130</sup>

Another farmer, Fahim Hussein, a resident of Deir al-Khatab, whose land was attached to the Elon Moreh settlement, gave his estimate: "Before the intifada, we sold olives and oil. I made about 500 Jordanian dinars. Now... I've lost my plot. When you don't tend the trees, you get less fruit, and we've lost about 30-40 percent of our crop."<sup>131</sup>

Impeding Palestinian farmers from working their land and harming their ability to gain a livelihood and support their families have especially grave consequences in light of the deep recession the West Bank has faced since the outbreak of the intifada in 2000. In early 2008, unemployment in the West Bank stood at 27.7 percent. This figure does not include persons who have given up looking for work.<sup>132</sup> Now, the majority of families in the West Bank are living under the poverty line – per capita consumption of less than two dollars a day.<sup>133</sup> Further

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130. The testimony was given to Iyad Hadad on 5 June 2007.

131. The testimony was given to Salma a-Deba'i on 29 August 2007

132. OCHA, "Humanitarian Update – The Occupied Palestinian Territories," No. 24, April 2008, 13, available at [http://www.opchaopt.org/documents/Humanitarian\\_Monitor\\_April\\_08\\_English.pdf](http://www.opchaopt.org/documents/Humanitarian_Monitor_April_08_English.pdf) (visited on 10 June 2008).

133. In 2002, 55 percent of the population lived in poverty. UNSCO, "The Impact of Closure and Other Mobility Restrictions on Palestinian Productive Activities, 1 January – 30 June 2002.". In 2005, the poverty figure had dropped to 44 percent, and it was estimated it would rise to 65.8 percent in 2006 and 72 percent in 2007. World Food Programme, "Protracted Relief and Recover Operations – Occupied Palestinian Territory," April 2007, available at [http://www.wfp.org/operations/current\\_operations/project\\_docs/103871.pdf](http://www.wfp.org/operations/current_operations/project_docs/103871.pdf) (visited on 19 August 2008).

harm to sources of employment and income resulting from continuation of the SSA plan and from surrounding settlements with a second or third fence is liable, over time, to greatly increase poverty.

It should be added that for many of these families, the closing of their lands is the second time they are losing land to a settlement, the previous being when the settlement itself was built.

## **B. Demolition of Palestinian houses adjacent to settlements**

One Israeli practice that pertains to this report is the demolition of Palestinian structures on the pretext they were built without a permit. Such demolition is not reserved only for land next to which settlements were built, but in these areas it reinforces and expands the ring of land around the settlements and constitutes an additional level in the attempt to expel Palestinians from the land and effectively allocate it to the settlers.

Except in extraordinary cases, Israel does not grant building permits to Palestinians, so "building without a permit" is a false pretext. According to figures of the Ministry of Defense, more than 94 percent of Palestinian requests for building permits between 2000 and 2007 were denied.<sup>134</sup> For every building permit issued by the Civil Administration for Palestinians, 55 demolition orders are issued and 18 structures are demolished.<sup>135</sup>

By way of illustration, on 14 February 2007, in the southern Hebron hills, Israel demolished three residential structures 250 meters from which the Carmel settlement had been built. Ninety persons were left homeless. On 9 November 2007, in Bethlehem District, Israel demolished two residential structures some one and a half kilometers from which the Nokdim settlement had been built. Seven persons lost their home as a result of the demolition.

## **C. Infringement of the right to be heard**

The right to be heard is one of the principles of natural justice. It is deeply enshrined in Israeli administrative law and the Supreme Court has noted its importance time and again.

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134. Settlements Monitoring Committee of Peace Now, "Area C: Palestinian Construction and Demolition Stats - February 2008," available at <http://www.peacenow.org.il/site/en/peace.asp?pi=61&fld=495&docid=3159> (visited on 13 April 2008).

135. Ibid.

The Supreme Court has ruled that entry of Palestinians to their land is to not be prohibited without an order closing the land: "Closing of land must be done upon the issuance of written orders by the military commander, and in the absence of orders closing land, Palestinian residents are not to be denied access to their land... Closing the land must be done by means of an order, notice of which has been delivered to persons who are harmed by it, giving the residents whose lands are closed to them an opportunity to object to its validity."<sup>136</sup>

Generally, land-requisition orders, declarations of closing of land, and declarations prohibiting building, state that a tour will be made to show the closed land to its owners, and that, "within seven days from the day the tour is conducted... the landowners or persons holding possession thereof may submit their objections."<sup>137</sup> Seven days are insufficient for most landowners to challenge the requisition or closing of land: filing an objection entails contacting an attorney, studying the topic and the legal procedure, preparing documents objecting to the action, and so forth. Farmers cannot predict when such notices will be given, and thus face great difficulty in immediately rearranging their schedules to meet the requirements for legal objection. Even this short period of time is not given a landowner when:

1. the Civil Administration does not recognize his ownership of the land;<sup>138</sup>
2. he did not receive a copy of the orders or notice of the tour;

and, of course, when

3. the requisition is executed without an order.

As a result, Palestinians who are harmed, or liable to be harmed, by the closing of land are not able to object to the decision, except when the decision is carried out in an orderly manner and the land is recognized as privately owned. Even then, their ability to object is extremely limited.

In most instances, the land-requisition orders are not given directly to the landowners, or even to public officials. Instead, Civil Administration officials usually place copies of the order under a boulder or post it on a tree in the area designated for requisition. In many cases, landowners related that they did not receive requisition orders and they learned their land had been destroyed to build a new fence only during or after the act.

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136. HCJ 9593/04, *Rashed Murar*.

137. The quotation, common to such orders, is taken from the Declaration Regarding Closing of Land No. S07/01 (Judea and Samaria), 5767 – 2007.

138. On the conditions for recognizing ownership of land, see Chapter 5.

Breach of the right to be heard creates further problems in cases in which the Civil Administration retroactively sanctions closing of land that had previously been closed without an order. On 27 October 2004, for example, the commander of IDF forces in the West Bank, Moshe Kaplinsky, signed an order closing a ring of land around the Mevo Dotan settlement. The order stated: "This declaration shall be in force from 31 December 2003..." Thus, the order retroactively sanctioned ten months in which entry had been unofficially prohibited.<sup>139</sup> In a conversation with B'Tselem, a senior Civil Administration official admitted that, "sometimes, I issue a retroactive order. IDF forces have already done things, have seized land, even without orders. The military commander is allowed to do this... Let's say that I've seized the land – afterwards I formalize it with a retroactive order."<sup>140</sup> In cases of this kind, the benefit inherent in the right to be heard after the fact is extremely limited. Although it is theoretically possible to return the land to its owners, most of the damage to cultivated land is irreversible. For example, in some cases, scores of fruit trees were uprooted to build the physical barriers demarcating the land.<sup>141</sup>

Retroactive orders are another indication of authorities' lack of concern over enforcement of the prohibition on entry without an order, as if it were only a technical matter that needs to be arranged when they find the time. Clearly, issuing retroactive orders is a crucial matter that affects the ability of Palestinians who have been harmed to exercise their rights.

The Shavey Shomeron settlement was built adjacent to a grove of olive and almond trees owned by the family of Jamal Musa, a resident of Deir Sharaf. Musa related to B'Tselem what happened in the summer of 2006, when he found soldiers on his land uprooting trees to enable construction of a fence around the settlement:

I asked one of the soldiers what he was doing, and he replied that the land had been seized. I told him that we hadn't received any order seizing the land, and he replied that there was an order and they had to execute it. I spoke with the soldiers and asked them to stop uprooting the olive trees that my grandfather had planted more than a hundred years ago. My family and my ten brothers and their children live from these olives. The bulldozers uprooted the olive trees, and I felt as if I was tearing in two... My father is seventy-five. Every time he thinks about the land, he begins to cry.<sup>142</sup>

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139. Declaration Regarding Closing of Land No. S/01/02 (Extension and Boundary Changes) (Judea and Samaria), 5765 – 2004, section 7.

140. The conversation was held on 9 April 2008 with Uri Mendes, head of the Infrastructures Department in the Civil Administration.

141. This practice also breaches the army's commitment to the High Court of Justice that, "requisition orders will be issued for a limited period of no more than one year... to oblige the army to reconsider, after that period of time has passed, whether the considerations underlying the building and establishment of the security space are still relevant..." H CJ 140/04, *Hajazi Jabber et al.*

142. The testimony was given to Salma a-Deba'i on 14 November 2007.

Landowners explained to B'Tselem why they don't object to the decision to seize their land to build a fence around a settlement, even when they have the opportunity. One reason is the lack of significant change in the field following the issuance of the requisition orders: the requisition had been done some time earlier, and the order simply completed the theft. This was the reason given in cases like that of the Dolev settlement, discussed above, where the orders retroactively sanctioned the taking of land years before. In some cases, the landowners said that they refrained from objecting because they did not trust the appeal apparatus. Some landowners also emphasized that they were not given enough time to mount their objection.

## **D. Infringement of the right to usage fees and compensation**

The obligation to compensate residents of occupied territory for harm caused them is well enshrined in international humanitarian law. In its declarations regarding the closing of land around settlements, however, Israel accepts only a very small part of this obligation. In response to B'Tselem's inquiry, the army stated that "holders of rights over land are entitled to usage fees and compensation for the requisition, subject to proof of their rights as required."<sup>143</sup> In some of the requisition orders, the authorities are more reserved regarding the right to compensation and usage fee. For example, one order states that, "Landowners may turn to the Ramallah DCO to clarify whether they are entitled to receive usage fees and compensation."<sup>144</sup> In any event, Israel allows Palestinians claiming ownership of the requisitioned land to demand usage fees and compensation, leaving it to them to prove their ties to the land, as discussed in Chapter 5.

On the other hand, Israel denies the right to compensation and usage fees of landowners whose lands have been declared SSAs. A Palestinian harmed by this practice can claim usage fees and compensation only if the new fence itself runs through his land and only with respect to those plots of land on which the fence and other means to block entry were built. Even if a fence was placed by settlers without authorization and was not retroactively approved, the Palestinian landowner is not allowed to request usage fees or compensation. It is, therefore, Israel's bureaucratic apparatus that results in the inability of landowners of most of the enclosed land to receive usage fees and compensation. This is certainly true in cases in which ownership cannot be proved. As we saw in previous chapters, most of the persons whose land is closed are not recognized as the landowner.

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143. Letter of 11 January 2005 from the IDF Spokesperson's Office.

144. From the Order Regarding Requisition of Land No. T/34/06, signed by Yair Naveh, commander of military forces in the West Bank, on 8 May 2006. A similar phrasing is found in other orders.

Ostensibly, denial of the right to claim compensation and usage fees can be justified for land that is not requisitioned, but is only enclosed behind a fence, if the owners are allowed free entry to the land. However, as we saw in Chapter 4, Israel denies Palestinians free access to their lands, even if they are the recognized owners.

It should be mentioned that most Palestinians who “are allowed to clarify their entitlement” under the provisions of the orders do not claim usage fees and compensation. In reply to B’Tselem’s inquiry, the Ministry of Defense stated that only three claims had been filed for compensation and usage fees for private land taken by military orders in the framework of the SSA plan.<sup>145</sup> Some of the farmers told B’Tselem that they refrained from claiming compensation on principle: they did not want to participate in a false show of consent to the occupier’s use of their land. For example, Muhammad Qafiri, from ‘Atara, whose land was attached to the ‘Ateret settlement, said: “We oppose this as a matter of principle. We did not lease out the land willingly, and we fear that if we receive compensation, it would appear as if we consented to giving up our land.”<sup>146</sup>

## **E. Additional kinds of harm**

The entire body of restrictions and prohibitions that Israel imposes on Palestinians in the West Bank, most of them part of the settlement enterprise or an outcome of it, result in Palestinians not being able to perform simple actions, such as taking a nature hike, that are taken for granted elsewhere. The closing of lands described here further reduces the physical space available for Palestinian tourism and recreation. Around some settlements, Israel has closed forests and archeological sites.<sup>147</sup>

The closing of land joins the settlement enterprise in impeding development and expansion of Palestinian communities. Furthermore, reduction in land available to Palestinians for building infringes the right to housing.

The harm to farmers is not only financial but extends to their very way of life. For example, farmers told B’Tselem that they feel threatened by the presence of soldiers on their land. Fahmeyeh Fakheideh, a resident of al-Janiya, Ramallah District, spoke about this in her testimony:

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145. Letter of 24 July 2008 from Shai Lev, head of the Public Complaints Unit and the Ministry of Defense official in charge of implementation of the Freedom of Information Law.

146. The testimony was given to Iyad Hadad on 4 March 2008.

147. This occurred, for example, in the case of Mt. a-Zaher, on whose summit the ‘Ateret settlement was built.



Imagine that we pick the olives with the soldiers right next to us – how can you feel safe? What can we do if we need to pray or go to the bathroom? We go where they can't see us and relieve ourselves under an oak or an olive tree. We don't feel safe and we're scared all the time. We've even stopped making tea and coffee over an open fire, and we bring it prepared from home. We eat fast to get back to picking and finish quickly.<sup>148</sup>

Restricting and prohibiting Palestinian entry to the land also exposes them to extortion attempts. 'Issa Salibi, a farmer from Beit Omar, told B'Tselem of such a case:

On Wednesday, 8 August 2007, we were supposed to enter the land [which has been attached to the Carmei Tzur settlement]. Around 1:00 P.M., the phone rang. It was Amitai [a Civil Administration official]. He asked, "What's going on in the village?" I heard gunshots and said, "You tell me." He replied, "Tell me the names of the children who burned the fence. If you don't, I won't let you enter." What he wanted was to turn me into a spy.<sup>149</sup>

In response to an inquiry from the Association for Civil Rights, the army denied that entry had been conditioned on providing the names of the children.<sup>150</sup>

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148. The testimony was given to Iyad Hadad on 22 July 2008.

149. The testimony was given to Ofir Feuerstein on 19 September 2007.

150. Letter of 9 October 2007 from Harel Weinberg, of the office of the legal advisor for the West Bank, to ACRI. ACRI provided B'Tselem with a copy of the letter.



## **Israeli Policy from a Legal Perspective: Unlawful Infringement of Human Rights**

### **A. The prohibition on settlement in occupied territory and the obligation to evacuate the settlements**

The closing of land around settlements is part of the settlement enterprise, not only but also because defense officials declared that without it, they would be unable to properly protect the residents of settlements lying east of the Separation Barrier. In any event, the closing of land would not have occurred were it not for the settlement enterprise.

The Hague Regulations prohibit permanent changes in occupied territory, unless they are made to benefit the local population or to meet military needs. Article 49 of the Fourth Geneva Convention states, *inter alia*, that, "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." This provision prohibits not only the deportation or transfer of a population by force, as occurred in the Second World War, but also organizing or encouraging the transfer of parts of its population to the occupied territory.<sup>151</sup> This provision expresses a fundamental principle of international law: the denunciation and elimination of colonialism.<sup>152</sup>

Under international humanitarian law, this rule, unlike other provisions, is not subject to exception – neither military constraints nor political pressure nor needs of the occupying state nor any other reason. Settlement of occupied territory is absolutely prohibited.<sup>153</sup> There is good reason for this. Settlement in occupied territory, whatever the political context, leads to – as it has done throughout history – severe violation of the human rights of the persons under occupation. All the human rights violations described in this report are examples of what breaching the prohibition on settling occupied land can bring about.

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151. International Court of Justice in The Hague, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2005 (hereafter – the advisory opinion), para. 120. For further discussion on the illegality of the settlements in the West Bank, see *Land Grab*, Chapter 2.

152. Jean S. Pictet (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva, International Committee of the Red Cross, 1958), 283.

153. For this reason, the judges of the International Court of Justice unanimously held that the parts of the separation barrier built to protect the settlements are illegal. Judge Buergenthal, who voted against the majority opinion, reached the same conclusion. *Advisory Opinion*, para. 135; opinion of Judge Buergenthal, para. 9.

Establishment of settlements in the West Bank was often the product of decisions of Israel's government. In other cases, settlements were the initiative of private individuals, but here, too, the various governments of Israel and other governmental authorities approved, supported, encouraged and took an active part in their development and expansion. Israel's actions in settling its citizens in the occupied territory breached, and continues to breach, international humanitarian law, in that they contradict the prohibition stipulated in the Fourth Geneva Convention.

Furthermore, the breach is ongoing, and not merely the consequence of a forbidden act that took place years ago, when each settlement was first built. For this reason, acts that are part of the settlement enterprise continue, at present, to constitute a breach of international humanitarian law, certainly when they strengthen and perpetuate a settlement. In light of the illegality of the settlement enterprise, especially given the reasonable assumption that, under existing circumstances, the settlements will expand into the adjacent lands closed to Palestinians, the closing of lands discussed in this report also breaches the absolute prohibition on settlements in occupied territory.

Israel is absolutely and unequivocally obliged, therefore, to dismantle the settlements. Returning the settlers to Israel's sovereign soil after so many years also entails infringement of human rights, in this case the rights of the settlers and their children. Therefore, Israel must evacuate them in a way that causes minimum harm, including resettling them, assisting them in finding educational and employment solutions, and providing them with suitable compensation.

## **B. Denying Palestinians access to land and infringement of human rights**

The Israeli policy on blocking Palestinian access to lands, as described in the previous chapters, severely infringes the rights of West Bank Palestinians, particularly as regards the owners of the closed lands and their families. Israel's obligation to actively protect and ensure the rights of Palestinian residents of the occupied territory is enshrined in international humanitarian law, international human rights law, and Israeli constitutional and administrative law.

In denying Palestinians' access to land around settlements, Israel infringes, first and foremost, the right to work,<sup>154</sup> the right of property,<sup>155</sup> and the right to freedom of

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154. The right to work and to freely choose employment is noted in article 23 of the Universal Declaration of Human Rights, of 1948. The right to work and the obligation to safeguard this right is enshrined in article 6 of the International Covenant on Economic, Social and Cultural Rights, of 1966. This right is also enshrined in Israel's Basic Law: Freedom of Occupation, of 1992.

155. Article 17 of the Universal Declaration of Human Rights stipulates that, "Everyone has the right to own property..." and that it is forbidden to deprive a person of his property arbitrarily. Accordingly, the Israeli Basic Law: Human Dignity and Liberty, of 1992, states, in section 3, that, "There shall be no violation of the property of a person." Article 46 of the Hague Regulations requires the occupying power to respect the private property of residents of occupied territory, and article 53 of the Fourth Geneva Convention of 1949, which protects civilians at times of war, prohibits, inter alia, "destruction of real or personal property" by the occupying power.

movement.<sup>156</sup> Israel's breach of the right to freedom of movement around settlements is especially grave because it restricts and prohibits access by persons to their own land.<sup>157</sup> In certain cases, when settlers or security forces use violent means to enforce the prohibition on entry, the right to personal security and the right not to be subjected to violence are also violated.<sup>158</sup>

Infringement of rights cannot be lawfully justified when the infringing act is a breach of an absolute prohibition, which allows no derogation. As we have seen above, the settlement enterprise is absolutely forbidden, and inasmuch as the infringement of rights in this case is an integral part of this enterprise, no derogation can be found under law to justify them.

### **C. Obligation to protect settlers, proportionality, and their manipulation**

Israel contends that denying Palestinians access to their lands, in particular in the framework of the SSA plan, is intended to protect the settlers from attacks, and thus justify the subsequent infringement of Palestinian rights. Indeed, the obligation of the occupying state to protect residents of the occupied territory applies also to persons residing there unlawfully.<sup>159</sup> Israel must protect settlers in the West Bank regardless of the question of the legality of their presence there.

However, the means used to protect them must be legal. As we have seen, expanding and perpetuating the illegal settlement enterprise is not such a means. In this context, a distinction must be made between protecting settlers, which is required, and preserving the settlements, which is absolutely prohibited. Thus, the defense establishment must protect settlers while fulfilling its obligation to

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156. Explicit mention of the right to freedom of movement within the country of residence appears in article 13 of the Universal Declaration of Human Rights and in article 12 of the International Covenant on Civil and Political Rights, of 1966. Israel's legal obligation to ensure, to the extent possible, the freedom of movement of residents of the Occupied Territories is derived also from article 43 of the Hague Regulations, which requires the occupying state to ensure public order and safety. The Supreme Court has held that this obligation relates to every aspect of life in modern society, including ensuring movement from place to place. HCJ 393/82, *Jam'iyyat Iskan al-Mu'alimuv. Commander of IDF Forces in Judea and Samaria et al.*, P. D. 37 (4) 785, 798; HCJ 3933/92, *Barakat v. OC Central Command*, P. D. 46 (5) 1, 6.

157. The Supreme Court agrees. See HCJ 2481/ 93, *Dayan v. Commander of Jerusalem District et al.*, P. D. 48 (2) 456, 475.

158. Article 3 of the Universal Declaration of Human Rights stipulates that, "Everyone has the right to life, liberty and security of person." Article 27 of the Fourth Geneva Convention states, inter alia, that protected persons "shall be protected especially against all acts of violence or threats thereof." Section 2 of the Israeli Basic Law: Human Dignity and Liberty stipulates that there shall be no violation of the life, body or dignity of any person, and, in section 4, that all persons are entitled to protection of their life, body and dignity. In the olive-picking case (*Murar*), the justices expressly held that the military commander must protect Palestinian farmers from settler attacks to enable them to work their land in security. HCJ 9593/04, *Rashed Murar* (see Chapter 3).

159. See article 43 of the Hague Regulations.

evacuate them. In the process of evacuation, Israel is allowed to protect the settlers by a variety of means, and in certain circumstances also to legally restrict Palestinian rights, but only in the framework of this process.

This, as we know, is not the position of the government and the army, nor is it the position that the Supreme Court upholds in practice. These bodies do not assume that the settlements are illegal, and certainly do not presuppose an obligation to evacuate them. So, to their way of thinking, protection of settlers in their communities, without evacuating them, is consistent with military necessity that justifies infringement of the human rights of Palestinians under occupation. The balance to be weighed, as they see it, ostensibly in the spirit of the principle of proportionality, is between protection of the right to life of settlers, on one hand, and lesser rights – to work, freedom of movement, property, and so forth – on the other.

Israeli governments have always denied their legal obligation to evacuate the settlements, and have conditioned evacuation on political negotiations or other political decisions not connected to this obligation. In light of this, the army's high commanders do not perceive evacuation of the settlements as part of the mandate given them by the government. Moreover, the solutions they propose to protect settlers do not include evacuation, even when the security advantage of evacuation is blatantly obvious. Supreme Court justices tend to rely in their decisions on the fact that the obligation to protect settlers does not depend on their legal status, and refuse time and again to examine claims regarding the illegality of the settlements.

However, the court's position is mistaken given the clarity of the obligation to evacuate the settlements and the possibility to protect settlers inside the State of Israel. The test of proportionality was originally introduced in order to determine if a certain action is balanced, and therefore lawful, only when the action is not forbidden from the start. For example, the test of proportionality cannot be applied to the legality of intentional killing of civilians, because intentional killing is forbidden *ab initio* and is prohibited outright. For this reason, too, the attempt to balance the right to life of settlers against the rights of Palestinians, in order to justify the closing of land, ignores the absolute prohibition on settlements in occupied territory and the obligation of evacuation.

The manipulative use of the principle of proportionality in this context is especially blatant given the reasonable option of protecting settlers inside Israel, as required by law. This option makes it ridiculous to place the right to life on one side of the scales of the test of proportionality, as if refraining from grabbing land of Palestinians necessarily means that settlers will be killed.

## Conclusions

The practices described in this report do not stand alone. Surrounding settlements with rings of land that prohibit or restrict Palestinians from entering, whether by declaring the land an SSA or not, is one of many practices used for stealing land. Over the years, Israel and Israeli citizens supported by state authorities have stolen land from communities and individuals in the West Bank by various methods, with the intent to build, preserve, and expand the settlement enterprise. As we have seen, this enterprise is utterly illegal, and the settlements must be evacuated and the land returned to their lawful owners. In reality, and as regards infringement of human rights, no real separation can be made between the practices reported above and other methods used to steal land.

More than 100 settlements are strewn between Palestinian communities throughout the West Bank. The jurisdictional areas of Israeli local and regional councils exceed 40 percent of the West Bank. The settlements are linked to Israel and to each other by a complex network of roads earmarked almost solely for residents of the settlements. Palestinian roads, on the other hand, are blocked by hundreds of physical obstructions and checkpoints. Israel in effect expropriated extensive areas of land from the Palestinian public not only for settlers' use, but also for the army and for Israeli vacationers. Israel prohibits free access of West Bank Palestinians to extremely large pieces of territory: the Gaza Strip, East Jerusalem, the Jordan Valley, the area closed off between the Separation Barrier and the Green Line, army training areas, nature reserves, and, of course, the areas of the settlements themselves.

The cumulative effect of the prohibitions and restrictions is grave: the vast majority of Palestinian families would not consider taking a nature hike outside their town or village, and thereby subject themselves to possible settler violence, and sometimes even violence by soldiers. Expansion of Palestinian communities and agricultural and industrial development on public land is almost impossible, inasmuch as Palestinian residential areas are detached from each other by dozens of strips of land to which Palestinian entry is prohibited, and which are under the direct control of settlers or soldiers.

Past experience shows that the settlement enterprise constantly aims to spread. To achieve this objective, throughout the occupation of the West Bank, land has been seized, sometimes under the cloak of military needs, sometimes by declaring territory "state land," sometimes by expanding existing settlements, and sometimes by building outposts. Settlements continue to spread in the West Bank even during periods in which Israel declares a "freeze on construction," and certainly when no such declaration is made.<sup>160</sup> The land grab described in this

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160. Even though some outposts and settlements were evacuated, the rest of the Israeli communities in the West Bank beyond the Green Line continued to expand meanwhile.

report is the result of the settlement enterprise and an integral part of it. In light of this, there is room for concern that the external borders of the rings of land that have, in effect, been attached to the settlements' areas will be used in the future as starting points for further expansion, whether piratical or institutional. As we have seen, Palestinians are already being expelled from lands that are located outside the fenced rings of land.

The harm caused to Palestinians by these patterns of activity is especially grave, given that the land that is closed, whether officially or without official approval, includes much privately-owned farm land that used to provide a source of livelihood for many Palestinian families. These families have suffered grave harm by the closing of the land, in addition to the extensive harm described above, and in particular to the damage previously caused to these families as a result of the building of the settlements, which were often built on privately-owned Palestinian land.

The defense establishment's SSA plan plays an important role in causing this harm, in that it effectively expropriates land both from Palestinian owners and from the Palestinian public in general, and attaches it in practice to the settlement's land. Furthermore, the attachment has an element of "whitewashing" the theft and of retroactively sanctioning acts of theft by Israeli citizens, who benefited at the crucial time from the authorities turning a blind eye, to say the least. We saw that, in the framework of this plan, Israel demands landowners to meet a long list of conditions to enter their land, and forces them to undergo an exhausting and humiliating bureaucratic process to this end. This approach testifies to the distorted conception that enabling entry to land is an act of compassion of an enlightened government, and not fulfillment of an obligation of the occupying state, which must acknowledge with the fundamental rights granted to the Palestinians who own the land.

Recently, Deputy Minister of Defense Matan Vilnai told the Knesset plenum that, "the IDF takes especial care to grant farmers free access to their land."<sup>161</sup> In light of the findings of this report, this claim appears baseless, or at the very least exaggerated. The denial of access leaves Palestinian farmers with very few means to cope with the army, police, Civil Administration, and settlers, who act in concert to expand the area of settlements and reduce the area accessible to Palestinians.

All the infringement of Palestinians' human rights described in this report could have been prevented had Israel not transferred its population into the territory of the occupied West Bank, in complete violation of its obligations under international humanitarian law. These obligations were purposely included in this body of law in order to prevent serious infringements of this kind. Any attempt made to balance the rights of settlers with the rights of Palestinians without assuming that Israel

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161. The comment was made in response to a parliamentary query on 18 June 2008 regarding soldiers' expulsion of Palestinian Farmers from their land.



must first dismantle the settlements and return its population to its sovereign territory, would facilitate efforts by Israeli governments and their agents to avoid carrying out their obligations to the residents of the occupied territory.

The obligation of Israel to defend its citizens continues to apply, and applies also to civilians who were transferred to the occupied territory. However, fulfillment of this obligation must be done lawfully, that is, by returning the settlers to Israeli territory. Clearly, Israel is forbidden to defend its citizens by reinforcing and expanding settler communities. The authorities' refusal over the years to eliminate settler violence amounts to encouraging it and even supporting it, and is especially grave in light of the obligation to evacuate the settlers.

It may be that the source of Israel's harmful policy lies in the insensitivity that has developed over time among decision-makers regarding the severity of the infringement of fundamental human rights of Palestinians. In this aspect, as regarding other issues in the Occupied Territories, Israel makes excessive use of the magic word "security" and reduces, more and more, Palestinian freedoms, while the means of oppression it uses continue to multiply. This practice conveys a profound disregard by Israeli decision-makers for the rights of Palestinians, blatant and discriminatory preference for the interests of Israeli settlers, and fear of a confrontation with settlers and of enforcement of law and order on them. The authorities do not hesitate to charge Palestinians the price for protecting the settlements, and ignore their legal obligation to evacuate the latter.

Even given the existence of the settlements, the extensive infringement of Palestinian rights discussed in this report is not a force majeure, and the government of Israel can do much to reduce it by taking the following actions:

### **Unauthorized actions by settlers**

- Order the enforcement bodies – the army, police, and Civil Administration – to rigidly enforce the law on settlers, with respect both to taking control of land without authorization and to violently expelling Palestinians from land adjacent to settlements. The enforcement must be carried out both in the field and in bringing the lawbreakers to justice, and the necessary resources must be allocated to achieve these objectives.
- Instruct security bodies to dismantle fences and other physical obstructions that were placed without official approval.
- Provide solutions to protect Palestinians in areas where the risk of settler violence is high.

## **Unauthorized actions by soldiers**

- Order army commanders to make it clear to soldiers that the function of the occupying power is to ensure proper living conditions of residents of the occupied territory, which includes enabling them to gain access to their land and to work it freely.
- Instruct the relevant enforcement officials – commanders, the Military Police Investigation Unit, and the Judge Advocate General’s Office – to prosecute soldiers who harm Palestinians in an attempt to expel them from land adjacent to settlements.

## **Formalized land closure**

- Cancel the engineering components of the SSA plan and remove secondary fences that were not built in the framework of the plan. Israel can prevent terrorist attacks inside the settlements by other means, for example, by increasing the number of forces and adding electronic warning devices.
- Order the army and the Civil Administration to ensure free access of Palestinians to their land, without any need for advance coordination.

These possible modes of action are not new. Unfortunately, Israel has systematically chosen to use means that were discussed in this report, which cause much greater infringement of human rights. In addition, even if Israel were to adopt each of these actions, the ongoing and extensive infringement of Palestinians’ human rights would continue because of the very existence of the settlements. As stated, such harm is utterly forbidden, and as a result, Israel has the legal duty to evacuate the settlements. B’Tselem, therefore, reiterates the demand it has made in previous reports: in light of the infringement of human rights derived from their existence, and given their illegality from the start, the government of Israel must evacuate all the West Bank settlements and return the settlers to Israeli territory.

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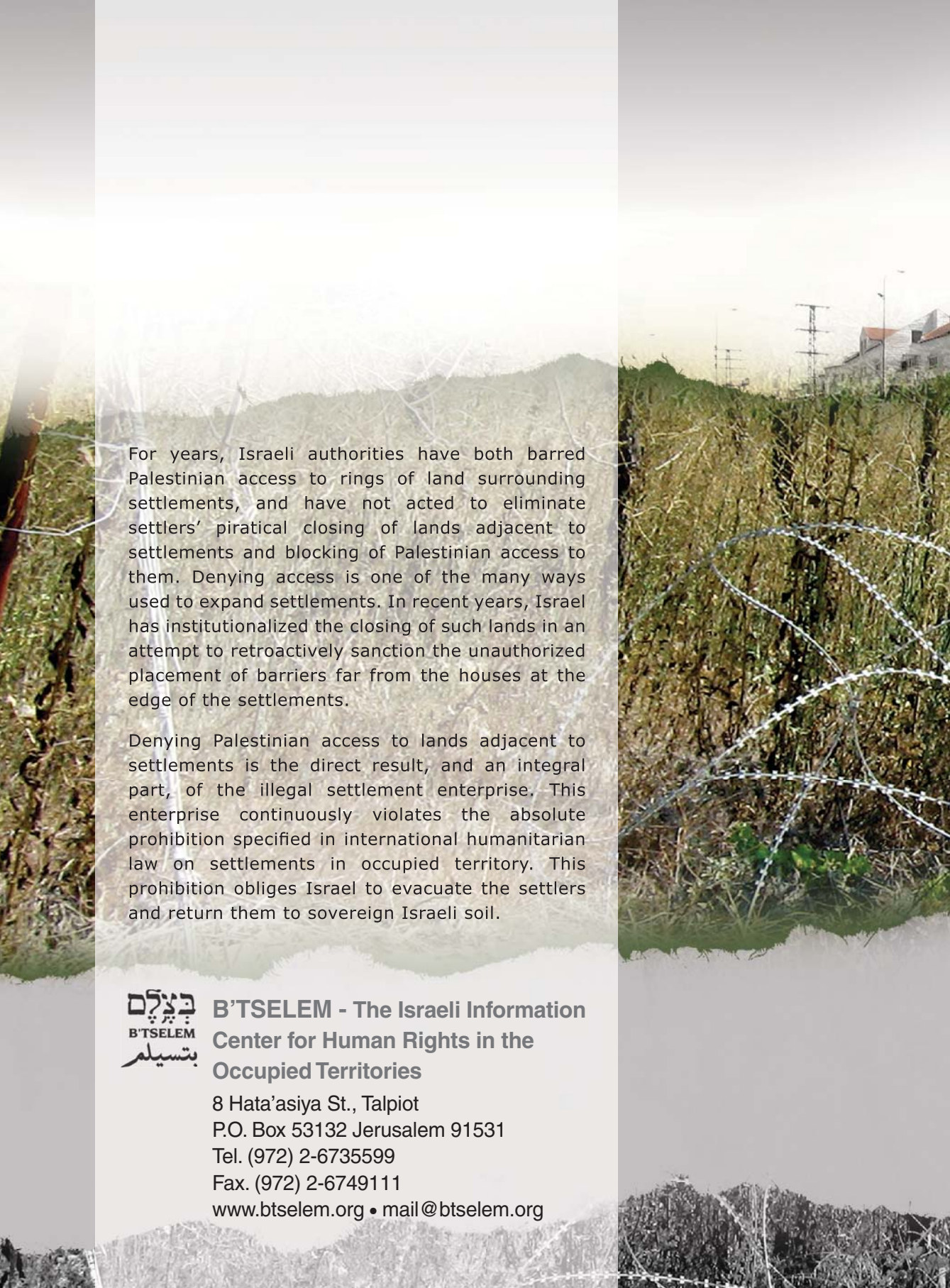
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For years, Israeli authorities have both barred Palestinian access to rings of land surrounding settlements, and have not acted to eliminate settlers' piratical closing of lands adjacent to settlements and blocking of Palestinian access to them. Denying access is one of the many ways used to expand settlements. In recent years, Israel has institutionalized the closing of such lands in an attempt to retroactively sanction the unauthorized placement of barriers far from the houses at the edge of the settlements.

Denying Palestinian access to lands adjacent to settlements is the direct result, and an integral part, of the illegal settlement enterprise. This enterprise continuously violates the absolute prohibition specified in international humanitarian law on settlements in occupied territory. This prohibition obliges Israel to evacuate the settlers and return them to sovereign Israeli soil.



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