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## **Driven Out**

# **The Continuing Forced Displacement of Palestinian Residents from Hebron's Old City**

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**July 2013**

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**Researched and written by:** Sarah Adamczyk

**The legal framework chapter was written by:** Sarah Adamczyk and Yotam Ben-Hillel

**Edited by:** Kathleen Gibson and Yotam Ben-Hillel

**Cover photo:** Closed shops in the Hebron's Old City (Photo by: Sahar Issawi, 2013)

NRC wishes to thank Mr. Hamed Qawasmeh from the Office of the United Nations High Commissioner for Human Rights (OHCHR), Hebron, for his insightful comments during the preparation of this report.

The **Norwegian Refugee Council (NRC)** is an independent, international humanitarian non-governmental organisation that provides assistance, protection and durable solutions to refugees and internally displaced persons worldwide.



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## Executive Summary

Hebron, with a population of 189,000-195,000 residents,<sup>1</sup> is the only city in the occupied Palestinian territory, aside from Jerusalem, that contains Israeli settlements<sup>2</sup> in the centre of its Old City. Traditionally a manufacturing and commercial hub, Hebron is a historic holy city to Jews, Muslims and Christians and is believed to be the burial site of biblical patriarchs and matriarchs Abraham, Isaac, Jacob, Sarah, Rebecca and Leah.

In 1968, shortly after the June 1967 Israeli occupation of the West Bank,<sup>3</sup> the first Israeli settlers arrived in downtown Hebron and founded settlements that expanded significantly in the area throughout the 1980s and 1990s.

Under the 1997 Protocol Concerning the Redeployment in Hebron (Hebron Protocol), signed by the Government of Israel and the Palestine Liberation Organisation, Hebron City was divided into two administrative sections: areas H1 and H2. The H2 area of Hebron City is home today to an estimated 35,000 Palestinians and 800 Israeli settlers. In addition, several hundred Israeli soldiers are stationed in H2, mainly to guarantee the protection of the settlements and individual settlers resident in the area. In practice, this protective purpose also entails turning a blind eye to frequent settler attacks against Palestinians. The H2 area is under complete Israeli military control and contains the entirety of the historic Old City of Hebron, in the city centre, as well as five Israeli settlements. By comparison, the Hebron Protocol granted civil and security control of the H1 area, which comprises 18 square kilometres and is home to the majority of the city's Palestinians, to the Palestinian Authority (PA).

Israeli control over H2, and the resultant unconditional protection and support for the settlements and settlers therein, have severely infringed on Palestinian human rights in the Old City of Hebron and introduced severe hurdles to their daily lives. In addition, Israeli practices have wreaked significant damage to the economic health of the city as a whole.

Israel has systematically denied freedom of movement to Palestinians residing in H2 and has frequently prohibited Palestinians from entering or returning to their homes. The once-thriving commercial centre of Hebron has been decimated by these restrictions and nearly all Palestinian commercial activity has been forced to move to H1. The direct consequence has been a mass forced displacement of Palestinians, substantial closures of businesses and shops, an unstable security situation involving daily settler harassment and violence, and the abandonment of the Hebron Old City. According to studies conducted in the Old City by Israeli NGOs B'Tselem and the Association for Civil Rights in Israel in late 2006-early

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<sup>1</sup> According to estimation done by the Palestinian Central Bureau of Statistics for 2012-2013. *See:* <http://www.pcbs.gov.ps/Portals/Rainbow/Documents/hebrn.htm> (Site was last accessed on 28 May 2013).

<sup>2</sup> An Israeli settlement is a Jewish civilian community built on land that was captured by Israel during the 1967 War and that is considered occupied by the international community. In addition to the official settlements recognised by the Israeli Ministry of the Interior, there are dozens of "unauthorised outposts" which the Israeli government does not officially recognise as separate communities, even though various government agencies have been involved in the establishment of these outposts as well. Settlements are legitimate under Israeli domestic law if they meet certain criteria; outposts by definition are considered illegal under Israeli law. Both settlements and outposts are considered illegal under international law (the text accompanying *infra* notes 218-227).

<sup>3</sup> The West Bank, lying west of the Jordan River, is a Palestinian territory that was occupied by Israel in 1967, along with the Gaza Strip, also Palestinian, the Syrian Golan Heights, and the Egyptian Sinai Peninsula. To the west, north and south, the West Bank shares borders with the state of Israel. To the east, across the Jordan River and the Dead Sea, lies Jordan. From 1948 to 1967, the West Bank was under Jordanian rule. Since 1967, most of the West Bank has been under Israeli military occupation. A smaller part of the West Bank, known as "East Jerusalem", was annexed to Israel shortly after the Israeli occupation. The international community has repeatedly stressed that the annexation of East Jerusalem is in contravention to the rules of international law.

2007, more than 40 percent of Palestinian apartments in the Old City had been vacated and over 75 percent of Palestinian businesses had closed due to settler activities and Israeli military restrictions.

Then, as now, the few Palestinians who still reside in the area face daily Israeli checkpoints, searches and frequent detention. Conversely, Israeli settlers who live near the shuttered Palestinian commercial area are allowed to move about freely.

The economic result of these actions has been devastation of livelihoods and increased unemployment in the Old City. A study by the International Committee of the Red Cross (ICRC) in 2009 found that 77 percent of Palestinians in the H2 area live below the poverty line.<sup>4</sup>

Moreover, Palestinians remaining in H2 face settler violence and harassment, often coupled with inaction by the Israeli military and police. This includes the failure of Israeli military and police to intervene when settler attacks are occurring, the difficulty Palestinians in H2 face in filing police complaints against Israeli settlers and the inadequacy of police investigations and follow-up conducted in response to the complaints that are lodged. Israeli military and police forces have also been involved in documented instances of direct harassment and assault of Palestinians.

The clear impact of the settlement enterprise and heavy Israeli military presence in the Old City of Hebron in practice has been to enforce a separation policy between Palestinians and Israelis and has forced many Palestinian residents to leave. The majority of Palestinians who had lived in the Old City prior to the establishment of the settlements have already fled.

Today, the Old City of Hebron has been largely abandoned by Palestinians while international monitoring and reporting, most frequently by the Temporary International Presence in Hebron (TIPH), has become a permanent fixture.

Israeli practices in the Old City of Hebron do not meet even the basic standards of international law. Explicit provisions of international humanitarian law, such as the prohibition on establishment of settlements in the occupied territory, the prohibition on forcible transfer and the prohibition on collective punishment, are completely ignored. Similar failures pertain to respecting international human rights law. Although Israel signed and ratified several central human rights conventions, rights enshrined in these conventions, such as freedom of movement, the right to gain a living by the work of one's choosing, the right to adequate housing, and the right to education, are, to a great extent, not respected.

Unfortunately, in many cases, Palestinians whose rights are violated cannot find recourse to justice in the Israeli court system. Israeli courts have approved, throughout the years, some of the harsh practices that have facilitated forced displacement of Palestinians in Hebron and, consequently, assisted in consolidating the current situation.

This report aims to frame the current widespread violations of Palestinian housing, land and property rights taking place in Hebron against the applicable legal framework, both domestic and international. The laws, orders, practices and policies governing the Hebron Old City are particularly complex on account of the Hebron Protocol, even when measured against the confusing, overlapping and discriminatory set of rules governing the rest of Area C of the West Bank. Against this legal labyrinth is the highly politicised context of Hebron where settler activity is rampant, security justifications are used as a blanket veto on the exercise of basic Palestinian rights and the arbitrary legal framework is used to

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<sup>4</sup> In comparison, according the Palestinian Central Bureau of Statistics, "only" 31.9 percent of Palestinians in the entire oPt lived under the poverty line in 2009. See: [http://www.pcbs.gov.ps/Portals/\\_pcbs/PressRelease/poor\\_E2010.pdf](http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/poor_E2010.pdf). (Site was last accessed on 17 June 2013).

full effect to marginalise, dispossess and displace Palestinians. It is hoped that this report will act as a guide to those wanting to understand the legal basis of Palestinian displacement in Hebron and a tool for challenging this displacement within a rights-based framework consistent with basic rules of international humanitarian and human rights law.

## Table of Contents

<b>EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>TABLE OF CONTENTS .....</b>	<b>6</b>
<b>MAP OF HEBRON OLD CITY.....</b>	<b>9</b>
<b>INTRODUCTION.....</b>	<b>11</b>
<b>1. HISTORICAL BACKGROUND.....</b>	<b>12</b>
1.1 Pre-1967 .....	12
1.2 Israeli Occupation (1967– present) .....	13
1.3 Massacre in the Ibrahimi Mosque/Cave of the Patriarchs (1994) .....	13
1.4 The Oslo Accords and the Creation of the Palestinian Authority (1993–2000).....	14
1.5 The Protocol Concerning the Redeployment in Hebron (1997).....	15
1.6 The Second Intifada (2000-2005).....	16
1.7 Current Status and Conditions of Hebron’s Old City.....	17
<b>2. ISRAELI SETTLEMENTS AND OUTPOSTS IN HEBRON CITY.....</b>	<b>19</b>
2.1 Hebron Old City Settlements .....	20
2.2 Kiryat Arba.....	22
2.3 Settlement Outposts in the Hebron Old City Area .....	23
<b>3. CAUSES OF PALESTINIAN FORCED DISPLACEMENT FROM HEBRON’S OLD CITY .....</b>	<b>29</b>
3.1 Curfews .....	29
3.2 Shop Closures.....	30
3.3 Restrictions on Freedom of Movement .....	31
3.4 Settler Violence and Harassment.....	34
3.5 Harm Directly Caused by Israeli Soldiers or Police.....	37
3.6 Daily Searches and Checkpoints .....	38
3.7 Seizure of Palestinian Houses and Lands for Military Purposes .....	40
<b>4. LEGAL FRAMEWORK.....</b>	<b>42</b>
4.1 Dual System of Law in Hebron’s Old City .....	42

4.2 International Humanitarian Law.....	44
4.3 International Human Rights Law .....	48
4.4 Israeli Court Cases .....	49
<b>CONCLUSION .....</b>	<b>55</b>
<b>SELECTED BIBLIOGRAPHY AND FURTHER READING .....</b>	<b>57</b>
<b>CASE STUDY: JA'ABARI FAMILY, HEBRON DISTRICT .....</b>	<b>60</b>
<b>APPENDIX.....</b>	<b>63</b>



## **Acronyms**

<b>ACRI</b>	Association for Civil Rights in Israel
<b>CRC</b>	Convention on the Rights of the Child
<b>DCO/DCL</b>	District Coordination and Liaison Office
<b>HRC</b>	Hebron Rehabilitation Committee
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICJ</b>	International Court of Justice
<b>ICRC</b>	International Committee of the Red Cross
<b>ILS</b>	Israeli New Shekel
<b>NGO</b>	Non-governmental organisation
<b>UNOCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>oPt</b>	occupied Palestinian territory
<b>PA</b>	Palestinian Authority
<b>PLO</b>	Palestine Liberation Organisation
<b>TIPH</b>	Temporary International Presence in Hebron
<b>UNRWA</b>	United Nations Relief and Works Agency for Palestine Refugees in the Near East

## Map of Hebron Old City

## **Methodology**

This report attempts to outline the historical background of Hebron and the development of Israeli settlements in the Old City while identifying the current causes for forced displacement and violations of housing, land and property rights. This research is based primarily on a desk review of available primary and secondary resources and on key informant interviews conducted throughout Hebron and other areas of the West Bank, including East Jerusalem, between 21 November and 21 December 2011, between May and June 2012 and during April 2013.

This report draws upon the limited primary and secondary source materials available that are related to the legal status and current challenges in the Hebron city centre including legal case information and resources from UNOCHA, B'Tselem, the Association for Civil Rights in Israel (ACRI), Hebron Rehabilitation Committee (HRC), the Land Research Center, and others.

To better understand the current situation facing Palestinians living in the Hebron Old City, NRC conducted individual interviews with representatives from Palestinian and Israeli non-governmental organisations, the United Nations, international organisations, researchers and Palestinians currently living in Hebron. On occasions where it was possible and beneficial, several meetings were arranged with the same individual or organisation.

The names and any identifying information concerning interviewees has been withheld in this report as a protective measure and to respect confidentiality for all parties.<sup>5</sup>

NRC would like to thank all those interviewed and consulted in the preparation of this report.

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<sup>5</sup> A complete list of interviews conducted is on file with NRC.

## **Introduction**

Before analysing the causes for Palestinian forced displacement in the Old City of Hebron and the legal framework regulating these policies, it is essential to provide a contextual background to the situation in Hebron and an overview of settlement activities in the Old City. Hence, the structure of the report is as follows:

### **Part One: Historical Background on Hebron Old City**

Part One begins with a brief discussion of the historical significance and development of Hebron, including its religious significance and the administrative changes made to the city under both the 1995 Interim Agreement on the West Bank and the Gaza Strip and the 1997 Hebron Protocol. This part also highlights the violence and conflict that have occurred over the years in the Hebron area, including the 1929 massacre of 67 Jewish residents, the 1994 Ibrahimi Mosque/Cave of the Patriarchs massacre that resulted in 29 Palestinian deaths, and the ongoing instability that began with the second Intifada in 2000.

### **Part Two: Settlements and Outposts in Hebron**

The second part describes the origins, development and expansion of Israeli settlements in the Hebron area, including those inside the Hebron Old City as well as those settlements on the city's periphery. This part also includes a discussion of Israeli settlement outposts in the Hebron area and highlights some of the more recent outpost developments and related confiscations of Palestinian property.

### **Part Three: Primary Causes of Palestinian Forced Displacement in Hebron Old City**

Part Three focuses on the primary causes of Palestinian forced displacement in the Old City of Hebron. Forced displacement triggers include continuous military curfews, restrictions on movement for Palestinian pedestrians and vehicles, shop closures, settler harassment and violence, violence on the part of the Israeli military and police and daily searches and checkpoints.

### **Part Four: Legal Framework**

The report then highlights the applicable legal framework and the complex legal structure in Hebron, including domestic Israeli laws and military orders as well as international human rights and humanitarian law. This part also analyses the different legal systems applicable to Palestinians and Israeli settlers in Hebron and discusses the different roles of the Israeli military and police forces in the area. It concludes with a review of major cases undertaken in Israeli courts challenging displacement-related activities.

# 1. Historical Background

Hebron, called Al-Khalil in Arabic and often referred to as the City of the Patriarchs, is an ancient West Bank city of 189,000-195,000 residents,<sup>6</sup> the majority of whom are Palestinian Arabs. Located 30 kilometres south of Jerusalem, Hebron is the largest city in the southern West Bank and traditionally served as a manufacturing and commercial hub. Hebron is also a city of strong religious significance for Jews, Muslims and Christians. The most famous historic site in Hebron is the Ibrahimi Mosque/Cave of the Patriarchs, believed to be the burial site of biblical patriarch Abraham and his wife Sarah, their son Isaac and his wife Rebecca, and their grandson Jacob and his wife Leah.

While most residents of Hebron at present are Palestinian Muslims, 800 Israeli settlers also reside in Hebron's Old City in the area's centre.<sup>7</sup> The Israeli Central Bureau of Statistics records these settlers along with the population of the nearby Kiryat Arba settlement, located east of Hebron's Old City and with a population of more than 7,000 settlers.<sup>8</sup>

The focus of this research is on the historic Old City of Hebron, which includes the Casbah, the four Israeli downtown settlements, Shuhada Street, and the Ibrahimi Mosque/Cave of the Patriarchs. This area was traditionally home to the Wholesale Market, the Vegetable Market, thousands of shops and the heart of Hebron's commercial district. Under the 1997 Hebron Protocol, discussed *infra*, these sections of the Old City were designated as part of the H2 area of Hebron, which is under Israeli military control (see below). H2 itself includes a population of 35,000 Palestinians,<sup>9</sup> in addition to the 800 Israeli settlers mentioned above. In addition, there are several hundred Israeli soldiers based in H2, primarily to protect the Israeli settler population.

## 1.1 Pre-1967

Historically, the Hebron area was long home to a small but vibrant Jewish community living alongside the primarily Muslim Palestinian population. Following the collapse of the Ottoman Empire in the wake of World War I, Hebron formally came under British Mandate control after nearly 400 years of Ottoman rule.

During the 1920s, rising tensions between the Jewish and Arab residents of Mandate Palestine, amidst rumors that Jews were attempting to seize control of the Haram al-Sharif/Temple Mount area in Jerusalem, resulted in a wave of anti-Jewish rioting. On 24 August 1929, 67 Jewish residents of Hebron were killed by Palestinian Arabs and more than 100 others were injured. Zionist Archives also include lists of 435 Jews who found safe haven in 28 Palestinian Arab homes in Hebron.<sup>10</sup> The Jewish residents of Hebron who survived the massacre were evacuated by British Mandate forces, though some returned in 1931. In April 1936, following the commencement of the 1936-1939 disturbances, British troops again evacuated any Jews who had returned to Hebron, ending the long-standing presence of the small Jewish community in the area. The 1929 massacre and subsequent evacuations of the Jews from Hebron remain a powerful symbolic event for Hebron settlers today and underpin the ideological justifications for the settlers' presence in the area.

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<sup>6</sup> According to estimation done by the Palestinian Central Bureau for 2012-2013. *See supra* note 1.

<sup>7</sup> According to Peace Now data from March 2011. *See*: <http://www.slideshare.net/peacenowisrael/hebron-settlements> (Site was last accessed on 28 May 2013).

<sup>8</sup> *See* the web site of the Israeli Central Bureau of Statistics, updated to 1 January 2011:

[http://www.cbs.gov.il/publications12/local\\_authorities10/pdf/676\\_3611.pdf](http://www.cbs.gov.il/publications12/local_authorities10/pdf/676_3611.pdf) [Hebrew] (Site was last accessed on 20 June 2013).

<sup>9</sup> UNOCHA, *the Monthly Humanitarian Monitor*, February 2012, p. 7.

<sup>10</sup> Human Rights Watch, *Center of the Storm: A Case Study of Human Rights Abuses in Hebron District*, April 2001, p. 11.

## 1.2 Israeli Occupation (1967– present)

From the establishment of the State of Israel on 14 May 1948 until June 1967, the West Bank was formally annexed by Jordan and there was no Jewish presence in Hebron. Following the 1967 war between Israel and neighbouring states Egypt, Jordan, and Syria, Israel occupied, *inter alia*, the West Bank and the Gaza Strip, where it immediately established a military administration over the area. Hebron, like the rest of the West Bank, remains under Israeli occupation at present.

Following the 1967 War, the Israeli political movement of Gush Emunim and other settler organisations began a campaign to reclaim all of the biblical land of Israel, referred to as *Eretz Israel*.<sup>11</sup> To further this goal, a group of Jewish Israelis led by Rabbi Moshe Levinger, apparently pretending to be Swiss tourists, rented a hotel room in downtown Hebron in April 1968, stating their intention to stay there during the Passover holiday. After 48 hours, however, the group announced that it had no intention of leaving Hebron or the hotel. While Israeli government officials did not immediately authorise their presence in the area, the settlers garnered the support of some Israeli political leaders. A few weeks later, the settlers moved to a nearby Israeli military compound.<sup>12</sup> Eventually, the group agreed to relocate to the newly-established Kiryat Arba settlement on the outskirts of Hebron's Old City, built on Palestinian land originally seized for military use. The first fifty families moved into the settlement in the second half of 1971.<sup>13</sup>

Beginning in April 1979, Jewish settlers from Kiryat Arba began establishing settlements in Hebron's Old City. During the early 1980s, four such Israeli settlements were established in the Old City of Hebron and approved by the Israeli government, discussed *infra*.

## 1.3 Massacre in the Ibrahimi Mosque/Cave of the Patriarchs (1994)

On 25 February 1994, on the Jewish holiday of Purim and during the Muslim holy month of Ramadan, Dr. Baruch Goldstein, an American-born Jewish settler and supporter of the ultra-right Kach movement, opened fire in the Ibrahimi Mosque/Cave of the Patriarchs, killing 29 Muslim worshippers and injuring more than 100 others before being killed himself by survivors.<sup>14</sup>

The massacre led to protests and deadly riots all over the oPt in the following week, resulting in the killing of at least 21 Palestinians by Israeli military forces.<sup>15</sup> An independent Israeli commission, led by the then-Israeli Supreme Court Chief Justice Meir Shamgar, concluded that Goldstein had acted alone. United Nations Security Council Resolution 904 strongly condemned the act and called for the establishment of a temporary international presence in Hebron. In May 1994, the first temporary international presence was established in Hebron with support and personnel from Italy, Norway and Denmark.<sup>16</sup>

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<sup>11</sup> *Ibid.*

<sup>12</sup> Gershom Gorenberg, *The Accidental Empire: Israel and the Birth of the Settlements, 1967-1977*, New York, 2006, pp. 142-152.

<sup>13</sup> B'Tselem and ACRI, *Ghost Town: Israel's Separation Policy and Forced Eviction of Palestinians from the Center of Hebron*, May 2007, p. 10; Baruch Spiegel's database, p. 152. Brigadier General (res.) Baruch Spiegel was appointed by the Ministry of Defence to create a database regarding the settlements. This database is updated to 2006 and was published on Ha'aretz. See: Uri Blau, "Secret Israeli Database Reveals Full Extent of Illegal Settlement," *Ha'aretz*, 31 January 2009.

<sup>14</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 10. Following the massacre, the Israeli government declared the Kach movement "a terror organization" and illegal.

<sup>15</sup> B'Tselem, *Lethal Gunfire and Collective Punishment in the Wake of the Massacre at the Tomb of the Patriarchs*, March 1994, p. 4.

<sup>16</sup> TIPH, *The Establishment of TIPH*, TIPH's website at: [http://www.tiph.org/en/About\\_TIPH/Establishment\\_of\\_TIPH/](http://www.tiph.org/en/About_TIPH/Establishment_of_TIPH/) (Site was last accessed on 25 June 2013).

Despite condemning Goldstein’s actions, then-Israeli Prime Minister Yitzhak Rabin imposed harsh restrictions on Palestinian movement in Hebron and did not act on a proposal to evacuate the Jewish settlers from the city.<sup>17</sup> The result was a clear separation policy between Israeli settlers and Palestinian residents of Hebron and Israeli military orders closed hundreds of Palestinian shops. The Ibrahimi Mosque/Cave of the Patriarchs itself became divided into two separate sections with different entrances for Jews and Muslims. To this day, Muslim worshippers are required to pass through a series of metal detectors and endure lengthy waits before being allowed to enter the mosque. The mosque’s muezzin, who makes the call to prayer five times daily, is frequently prohibited from performing this task since the area he needs to access is within the Jewish section.<sup>18</sup> The muezzin must be escorted by Israeli soldiers in order to make the call to prayer and, at times, has been prevented from doing so up to 60 times per month.<sup>19</sup>

Today, Goldstein’s gravesite in Kiryat Arba has become a pilgrimage site for Jewish right-wing extremists. A plaque near his grave reads, “To the holy Baruch Goldstein, who gave his life for the Jewish people, the Torah and the nation of Israel”.

#### 1.4 The Oslo Accords and the Creation of the Palestinian Authority (1993–2000)

The Government of Israel and the Palestine Liberation Organisation (PLO) signed the Declaration of Principles on Interim Self-Government Arrangements (the Oslo Accords) in September 1993 in Washington D.C., USA. The aim of Israeli–Palestinian negotiations was to establish a Palestinian Interim Self-Government Authority for the Palestinian people in the West Bank and the Gaza Strip, for a transitional period not exceeding five years, leading eventually to a permanent agreement between the parties. As known, today, almost twenty years later, this final goal has not yet been accomplished.

On 28 September 1995, Israeli Prime Minister Yitzhak Rabin and PLO Chairman Yasser Arafat signed the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (also known as the “Interim Agreement” or the “Oslo II Agreement”). Pursuant to the Interim Agreement, Palestinians were granted a limited measure of self-government and autonomy in the West Bank and the Gaza Strip through the Palestinian Authority (PA).

The 1995 Interim Agreement divided the West Bank into three zones: Areas A, B and C:

**Area A** Under full Palestinian military and civilian control by the PA. Area A comprises approximately 18 percent of the West Bank, and includes main Palestinian cities, such as Jenin, Nablus and Ramallah as well as large Palestinian towns such as Salfit.

**Area B** Under Palestinian civilian control and Israeli military control. Today Area B comprises about 22 percent of the West Bank. It includes primarily the built-up area of the small Palestinian towns and of the Palestinian villages. In Area B, as in Area A, the PA is responsible for land, planning and construction issues.

**Area C** Under Israeli military control, with all powers concerning land held by the Israeli Civil Administration. The Civil Administration, established in 1981, is the military body responsible for all civilian aspects of life in those parts of the West Bank under full Israeli control. Area C comprises more than 60 percent of the West Bank. It includes all Israeli

<sup>17</sup> B’Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 17, n. 22.

<sup>18</sup> See: HRC, *Statistical Report on the Israeli Violations in the Old City of Hebron*, January-June 2012, pp. 23-24; Land Research Center (LRC), *Geopolitical situations in Hebron Governorate Palestine*, July 2006, pp. 10-11.

<sup>19</sup> NRC interview with a representative from an international organization operating in Hebron, Hebron, 14 December 2011.

settlements and some of the main roads in the West Bank, as well as some 150 Palestinian villages.

These administrative divisions granted Israel control over the majority of the West Bank while providing the PA with limited control over the non-contiguous territorial spaces of Areas A and B. Moreover, while the Interim Agreement only gave Israel full control over military and civilian aspects concerning land in Area C, the PA's ability to provide services for other civilian aspects of life in Area C is wholly dependent on formal building approvals from the Israeli Civil Administration.

Under the Interim Agreement, the parties agreed to leave Hebron under Israeli military control while most other major West Bank cities became classified as Area A.

### **1.5 The Protocol Concerning the Redeployment in Hebron (1997)**

On 17 January 1997, PLO Chairman Yasser Arafat and Israeli Prime Minister Benjamin Netanyahu signed the Protocol Concerning the Redeployment in Hebron, also known as the Hebron Protocol. To facilitate the redeployment of the Israeli military in Hebron, the Hebron Protocol divided the city of Hebron into Areas H1 and H2. The Hebron Protocol also called for the establishment of a special security arrangement to apply to areas adjacent to areas under Israeli military control as well as for the establishment of a Joint Military Unit (JMU) to operate in H2 to handle incidents involving Palestinians.

**Area H1** Under complete Palestinian control. Includes an area of 18 square kilometres, or 80 percent of the municipal boundaries of Hebron, and the vast majority of the city's population. Palestinian police stations may be established in H1 and manned by up to 400 policemen, 20 vehicles, 200 pistols and 100 rifles. Any operation of Palestinian police outside H1 requires Israeli District Coordination and Liaison Office (DCO) coordination.

**Area H2** Under complete Israeli military control. All civil powers and responsibilities are under Palestinian control, with the exception of those relating to Israeli settlers and their property. Includes an area of 4.3 square kilometres, or 20 percent of the municipal boundary of Hebron, and contains 35,000 Palestinian residents and roughly 800 Israeli settlers. Encompasses the entirety of the historic Old City of Hebron as well as the main north-south traffic artery.<sup>20</sup>

While the distinctions between Areas H1 and H2 do not precisely translate to the framework of Areas A, B and C elsewhere in the West Bank, Area H1 granted a level of Palestinian autonomy comparable to Area A whereas the definition of Area H2 probably lies somewhere between the Area B and Area C distinction under the Interim Agreement.

Article 9 of the Hebron Protocol expressly stated that “the division of security responsibility will not divide the city” and “both sides share the mutual goal that movement of people, goods and vehicles within and in and out of the city will be smooth and normal, without obstacles or barriers”.<sup>21</sup> Likewise, Article 7 called for “the normalization of life in Hebron”, including the opening of the Wholesale Market and the Shuhada Street, which had been closed by military order since the 1994 Ibrahimi Mosque/Cave of the Patriarchs massacre. However, to date, the status of the Wholesale Market and Shuhada Street remains closed and unchanged. Moreover, despite the agreement for the normalisation and the protection of the

<sup>20</sup> B'Tselem, *Hebron, Area H-2: Settlements Cause Mass Departure of Palestinians: Status Report*, August 2003, p. 5.

<sup>21</sup> Hebron Protocol, Article 9; UNOCHA, *the Monthly Humanitarian Monitor*, February 2012, p. 7.



historic character of Hebron, Palestinians in Area H2 are still facing heavily guarded checkpoints, roadblocks and military barriers.<sup>22</sup>

At the time of the agreement, critics argued that the Hebron Protocol simply provided a Palestinian seal of approval to the continuation of the Hebron settlers, which included Baruch Goldstein.<sup>23</sup> As Palestinian literary scholar, author and activist Edward Said noted:

What sort of “strategic” calculation on the part of the Palestinian leadership produced acquiescence in that bizarre mathematics whereby an Israeli settler population of less than .03 percent got 20 percent of an Arab city, were allowed to carry their arms, were abetted by Israeli patrols who were given virtually the run of the hills surrounding the town, while the Palestinian police were limited to a few poorly armed men, theoretically subject to Israeli restraints in everything they did?<sup>24</sup>

### **Temporary Presence in the Old City of Hebron (TIPH)**

The Hebron Protocol also resulted in a re-established Temporary International Presence in Hebron (TIPH) in February 1997, which remains active to this day in monitoring incidents and activities in Hebron and is supported and staffed by Norway, Sweden, Denmark, Italy, Turkey and Switzerland.

According to the Agreement on the Temporary Presence in the Old City of Hebron (TIPH), TIPH “will assist in monitoring and reporting the efforts to maintain normal life in the City of Hebron, thus creating a feeling of security among Palestinians in the City of Hebron”.<sup>25</sup> However, the agreement explicitly states that “TIPH personnel shall have no military or police functions, nor will they interfere in disputes, incidents or the activities of Israeli security forces or the Palestinian Police”. These rather limited powers have drawn criticism, in particular from Palestinians who have expressed frustration due to TIPH’s lack of authority to physically intervene in cases of violence.<sup>26</sup> In addition, the fact that TIPH’s reports are not publically available and are distributed only to the Israeli and Palestinian authorities and the six member countries supporting TIPH’s activities is also problematic in terms of fulfilling TIPH’s reporting duties.

Since its establishment, TIPH has produced more than 20,000 confidential reports documenting breaches of bilateral agreements and international humanitarian and human rights law.<sup>27</sup>

### **1.6 The Second Intifada (2000-2005)**

Following the eruption of the second Intifada on 29 September 2000, adherence to the provisions of the Hebron Protocol waned. Violence escalated in Hebron with daily clashes, the distinction between H1 and H2 became blurred and increasing restrictions were applied to freedom of movement for Palestinian residents. During Israeli military operations in April 2002, codenamed Operation “Defensive Shield”, the Israeli military took full control of the city, including H1, and the PA lost its ability to operate there.

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<sup>22</sup> UNOCHA, *West Bank Movement and Access Update*, August 2011, p. 16.

<sup>23</sup> Edward W. Said, “The Real Meaning of the Hebron Agreement”, *Journal of Palestine Studies*, Vol. 26, No. 3, spring 1997, p. 31.

<sup>24</sup> *Ibid.*, p. 33.

<sup>25</sup> Agreement on the Temporary Presence in the Old City of Hebron, 21 January 1997, Article 1.

<sup>26</sup> Karin Aggestam, *TIPH: Preventing Conflict Escalation in Hebron?* (Published at: Clive Jones and Ami Pedahzur (Editors), *Between Terrorism and Civil War: the Al-Aqsa Intifada*, 2005, pp. 51-69).

<sup>27</sup> TIPH’s website: [http://www.tiph.org/en/Observing\\_+\\_Reporting/](http://www.tiph.org/en/Observing_+_Reporting/) (Site was last accessed on 17 June 2013).

Throughout the second Intifada, Hebron was an epicentre of violence. Palestinian combatants killed 17 Israeli security forces posted in Hebron and five Israeli civilians during this period, including an 11-month-old infant.<sup>28</sup> During this time, Israeli security forces killed at least 88 Palestinians, at least 46 of whom were not participating in the hostilities at the time of their deaths and including nine children.<sup>29</sup> Israeli civilians were also responsible for the deaths of Palestinians, including a 14 year-old girl shot in her home by settlers.

The express goal of the Israeli response to Intifada violence was to further cement the separation between Palestinians and Israeli settlers in Hebron and create so-called “protective spaces”. The Israeli government confirmed as much in its response to a petition before the High Court of Justice in 2005, stating that:

According to the assessment of the most senior IDF commanders, there is a security and operational need for such protective spaces, both to safeguard IDF soldiers and the lives of the Jews living in Hebron.<sup>30</sup>

Israeli soldiers stationed in Hebron were instructed to protect the Jewish settlements and the settlers. According to the testimony of one soldier stationed in Hebron provided to the Israeli NGO Breaking the Silence in 2008:

I remember we were told that essentially our mission was to protect the settlers, and we also have to maintain order in the area. We are seen as soldiers on behalf of the State, so the Palestinians have to be protected, too. But you have no tools to do that... Perhaps it wasn't said to you in so many words, but it was obvious that you couldn't handle a Jewish settler as violently as you could a Palestinian...<sup>31</sup>

The harsh living situation for Palestinians in H2 led the International Committee of the Red Cross (ICRC) to establish a food-distribution programme in the Old City. In 2009, the ICRC, with the help of Palestine Red Crescent volunteers, distributed monthly food parcels to over 6,700 people living in the most severely restricted parts of Hebron.<sup>32</sup>

During the second Intifada, the exodus of Palestinians living in H2 and the commercial district, that started in 1994 with the massacre and subsequent restrictions, continued until the area was essentially emptied. According to studies conducted in the Old City by Israeli NGOs B'Tselem and the Association for Civil Rights in Israel (ACRI) in late 2006-early 2007, more than 40 percent of Palestinian apartments in the Old City had been vacated and over 75 percent of Palestinian businesses had closed due to settler activities and Israeli military restrictions.<sup>33</sup>

## 1.7 Current Status and Conditions of Hebron's Old City

Although Hebron remains a commercial and industrial centre in the West Bank, accounting for about one-third of the West Bank gross domestic product,<sup>34</sup> the Old City and H2 areas of Hebron are still experiencing the lasting economic and social consequences of the second Intifada closures and restrictions on movement, many of which remain in place today.

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<sup>28</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 11.

<sup>29</sup> *Ibid.*

<sup>30</sup> HCJ 11235/04 *Hebron Municipality et al. v. State of Israel et al.*, Statement on Behalf of the Respondents, 16 November 2005, section 22 (quoted in B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 23).

<sup>31</sup> Breaking the Silence, *Soldiers' Testimonies from Hebron, 2008-2010*, p. 49

<sup>32</sup> ICRC, *Israeli and the occupied Palestinian territory: life remains hard for Palestinians in the occupied West Bank*, 16 February 2010.

<sup>33</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 14.

<sup>34</sup> See TIPH's website at: [http://www.tiph.org/en/About\\_Hebron/Hebron\\_today/](http://www.tiph.org/en/About_Hebron/Hebron_today/) (Site was last accessed on 20 June 2013).

To date, many of the Palestinians forced to leave their homes and shops in the Hebron Old City during the second Intifada have never returned. The Old City areas most acutely affected were the neighbourhoods in direct proximity to the four downtown Israeli settlements.<sup>35</sup> The closures also affected non-commercial Palestinian institutions, including several government ministries and medical centres that have relocated to H1.<sup>36</sup>

In late 2006, B'Tselem and ACRI undertook a survey of 1,000 structures in the main H2 neighbourhoods and found that 1,014 Palestinian housing units had been vacated by their owners, with 659 units, or 65 percent, closed during the second Intifada. In addition, according to a UNOCHA report (citing the Hebron Rehabilitation Committee (HRC)),<sup>37</sup> there are currently 512 Palestinian businesses in areas restricted for Palestinian movement that have been closed by Israeli military orders, and at least 1,100 others shut down due to restricted access of customers and suppliers.<sup>38</sup> According to B'Tselem, shop closures include 304 shops on Shuhada Street.<sup>39</sup>

For those who remained in the Old City, many frequently cite their financial inability and lack of economic means as their reason for staying. In testimony provided in 2007 to ACRI and B'Tselem, Palestinian resident Bahija Sharabati, who lives in the Tel Rumeida area of the Hebron Old City, adjacent to one of the Israeli settlements, stated:

At times, I consider leaving because of the pressure and the tension, but rent in a safe place in Hebron is at least 1,500 Jordanian dinars [about 7,800 ILS, or 2,100 USD] a year. We have no alternative and have to suffer these living conditions.<sup>40</sup>

According to a 2008 ICRC report, Sharabati is among those worst affected, as “she has only has [sic] 51 USD a month for food, clothes, medical bills and other expenses for each member of her family”.<sup>41</sup> Sharabati relies on the ICRC monthly food distributions and is still “forced to go heavily into debt to make ends meet”.<sup>42</sup>

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<sup>35</sup> B'Tselem, *Hebron, Area H-2: Settlements Cause Mass Departure of Palestinians*, *supra* note 20, p. 8.

<sup>36</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 15.

<sup>37</sup> Hebron Rehabilitation Committee (HRC) is a Palestinian organisation based in the Old City of Hebron. HRC was established in 1996 to rehabilitate and preserve the buildings in the Old City. HRC has a legal unit who deals with cases primarily related to settler violence, seizure of land and other housing land and property violations.

<sup>38</sup> UNOCHA, *the Monthly Humanitarian Monitor*, September 2012, p. 8.

<sup>39</sup> B'Tselem, *17 years after Goldstein Massacre, Hebron City Center Paralyzed*, 3 March 2011.

<sup>40</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 15.

<sup>41</sup> ICRC, *Life in Hebron: Harassment and increasing poverty*, 17 November 2008.

<sup>42</sup> *Ibid.*

## 2. Israeli Settlements and Outposts in Hebron City

Hebron is the only Palestinian city in the occupied West Bank, aside from East Jerusalem, to contain Israeli settlements in its historic Old City. There are an estimated 800 Israeli settlers and yeshiva students living at present in four settlements in the Old City of Hebron – Beit Hadassah, Abraham Avinu, Beit Romano and Tel Rumeida – accompanied by a permanent ‘protective’ presence of Israeli soldiers.<sup>43</sup> All settlements in the Hebron Old City are classified by the Israeli Military Commander as closed military zones, off-limits to any Palestinians without an approved permit; Israeli citizens or even non-citizens of Jewish descent may freely enter.<sup>44</sup> Of the four downtown Hebron settlements, all but Tel Rumeida are built on or near Shuhada Street, the traditional Palestinian commercial centre.

The settlements in Hebron’s Old City form a non-contiguous pattern of sites, “with each site anchored by a formerly Jewish-owned property which the settlers have ‘reclaimed,’ renovated, and expanded”.<sup>45</sup> In late 2002, there was a plan approved by then-Prime Minister Ariel Sharon to build a promenade connecting Kiryat Arba to the four downtown Hebron settlements, despite the Palestinian property along the proposed path. The promenade proposal was never implemented<sup>46</sup> but it remains unclear as to whether or not it has been completely abandoned.

The Israeli government has continually provided financial and military support to these settlements. Administrative services are provided to the Israeli settlements through the Hebron Municipal Committee, established by the Israeli Ministries of Defence and the Interior and with functions similar to regular Israeli local councils.<sup>47</sup> In addition, the Hebron settlers are funded through international donations such as from the Virginia-based American Friends of the Shavei Hebron Yeshiva and the Christian Friends of Israeli Communities; the Brooklyn-based Hebron Fund has reportedly raised hundreds of thousands of dollars over the years and all donations are tax-deductible in the United States.<sup>48</sup>

Settlers in the Old City of Hebron “are widely considered to include some of the most extremist Israeli settlers living in the West Bank”.<sup>49</sup> Leaders and activists within these groups include members of the outlawed Kach and Kahane Chai movements.<sup>50</sup> The settler presence in Hebron is often solidified and broadcast through Israeli flags and graffiti and Jewish holidays are often politicised to advance the settlers’ agenda.<sup>51</sup>

In addition to settlements officially authorised by the Israeli government, the following part also examines several outposts in the Hebron Old City and the surrounding area. While these outposts are considered by Israeli law to be illegal and potentially subject to eviction and demolition, in practice, Israeli authorities regularly provide such outposts with military services, infrastructure and indirect financial support.<sup>52</sup>

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<sup>43</sup> Peace Now data from March 2011, *supra* note 7.

<sup>44</sup> Declaration concerning Closing Area (Israeli Settlements) (Judea and Samaria) 1996.

<sup>45</sup> Peace Now, *Hebron – Settlements in Focus*, October 2005.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

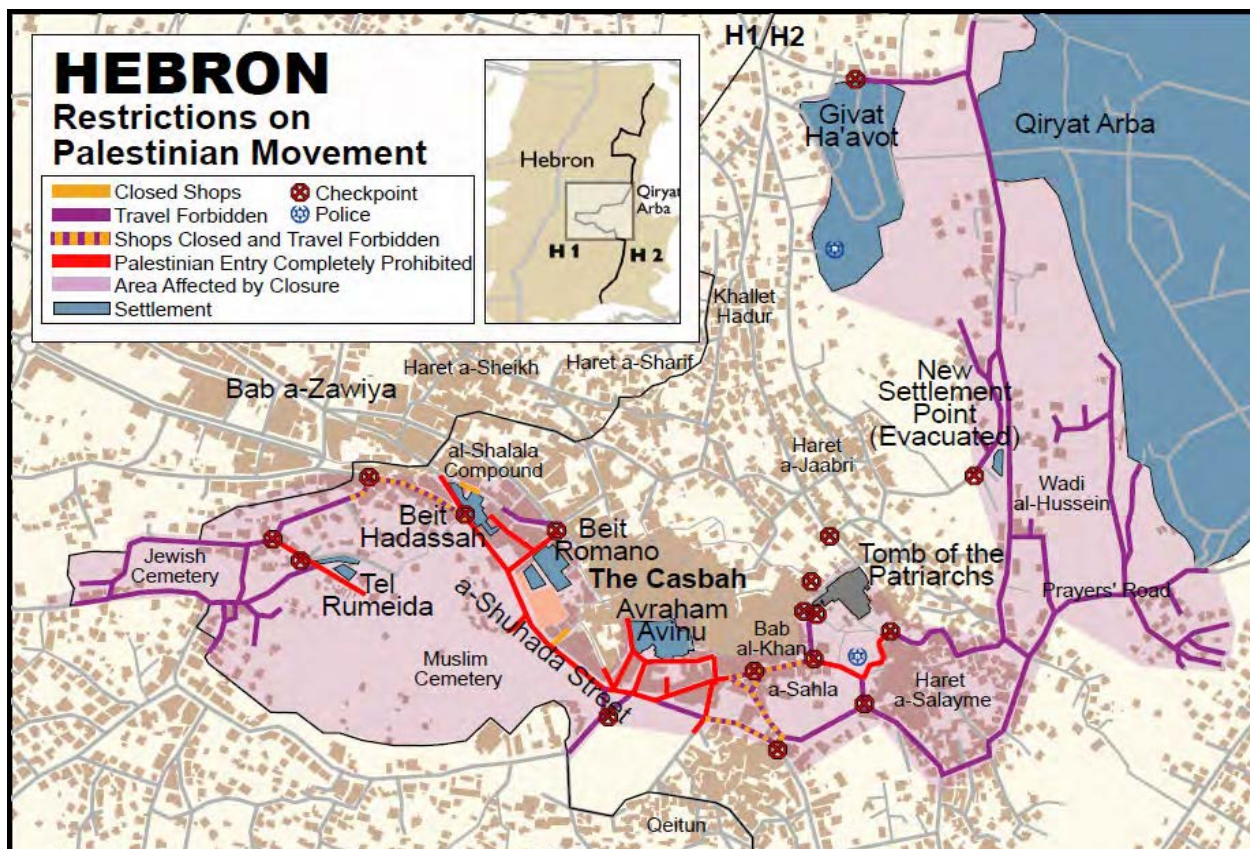
<sup>48</sup> *Ibid.*

<sup>49</sup> Human Rights Watch, *Center of the Storm*, *supra* note 10, p. 50.

<sup>50</sup> Peace Now, *Hebron – Settlements in Focus*, *supra* note 45.

<sup>51</sup> NRC interview with a representative from an international organisation operating in Hebron, Hebron, 22 November 2011. *See also*: Avi Issacharoff and Chaim Levinson, “Settlers remember gunman Goldstein; Hebron riots continue”, *Haaretz*, 28 February 2010; Yair Altman, “Hebron celebrates Purim under heavy guard”, *Ynet*, 20 March 2011; Saed Bannoura, “Settlers Raise Israel’s Flag on top of Ibrahimi Mosque”, *MEMC*, 27 April 2012.

<sup>52</sup> ARIJ, *Locality Profiles and Needs Assessment in the Hebron Governorate*, 2009, p. 34



Map of the Restrictions on Palestinian Movement in Hebron, August 2011 (map by: B'Tselem).

## 2.1 Hebron Old City Settlements

### Beit Hadassah

Beit Hadassah was the first Israeli settlement established in the Hebron Old City. The building housing the settlement, also known as Al Dabbuya, was built by Jewish residents of Hebron in around 1880, and served as a Jewish hospital in 1909.<sup>53</sup> After the last Jewish residents of Hebron were evacuated from the area in 1936, following the 1929 massacre and rise in tensions between the Jewish and Arab residents of the area, the building became a dairy factory and later a school operated by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).<sup>54</sup>



Photo: Al Dabbuya/ Beit Hadassah, Hebron (Photo by: Yotam Ben-Hillel, 2013)

In 1979, a group of 10 women and 40 children living in the nearby settlement of Kiryat Arba moved into the Beit Hadassah building.<sup>55</sup> The Israeli government led by Prime

<sup>53</sup> TIPH, *Hebron Settlements*, TIPH's website at: [http://www.tiph.org/en/About\\_Hebron/Settlements/](http://www.tiph.org/en/About_Hebron/Settlements/) (Site was last accessed on 20 June 2013).

<sup>54</sup> *Ibid.*

<sup>55</sup> *Ibid.*



Minister Menachem Begin did not formally recognise the creation of the new settlement, but also opposed physically removing the women and children.<sup>56</sup> For the first year, the Israeli army allowed these women and children free movement in and out of the building, but no one else was permitted access. Then, in January 1980, a Jewish yeshiva student was killed in Hebron by a Palestinian. Following the incident, the Israeli government granted official authorisation the Beit Hadassah settlement. In addition it was decided to rehabilitate and extend the building.<sup>57</sup> In May that year, six Jewish yeshiva students were killed by a hand grenade thrown by Palestinian assailants in front of the Beit Hadassah building and 20 more were wounded.<sup>58</sup>

Today, Beit Hadassah consists of a cluster of buildings and includes a museum of the Jewish history of Hebron and memorial for the 67 Jews killed in the 1929 massacre of Jewish residents of Hebron.<sup>59</sup> In 2001, during the early years of the second Intifada, the Israeli army closed the Gold Market in the Old Suq below the Beit Hadassah building. These shops remain closed at present.

In 2008, the estimated population of Beit Hadassah was 129 settlers.<sup>60</sup>

### **Avraham Avinu/Hay Al-Yahud**

Avraham Avinu is the largest downtown settlement in Hebron with an estimated population of 171 settlers in 2008.<sup>61</sup> It was built in the early 1980s around the site of the Old Jewish Quarter and the original synagogue in Hebron<sup>62</sup> with the support of the Israeli government. The settlers contend that the building was purchased in the 16<sup>th</sup> century by Jewish exiles from Spain. Today, the settlement includes a synagogue, school and offices in addition to housing units.<sup>63</sup>



*Photo: Avraham Avinu Settlement, Hebron (Photo by: Yotam Ben-Hillel, 2013)*

### **Beit Romano/Madraset Osama**

The Beit Romano settlement in Hebron's Old City consists of a yeshiva for Jewish religious studies and is adjacent to an Israeli military camp. The settlers maintain that the first Beit Romano was constructed in 1879 by Avraham Romano, a wealthy Jew from Turkey.<sup>64</sup> In 1917, British Mandate authorities confiscated the building and used it as a headquarters and police station.<sup>65</sup> In 1948, the Jordanian authorities opened a boys' school in the building, which was later closed by Israeli forces in 1981-1982 for security reasons.<sup>66</sup> In March 1980, the Israeli government decided to build a structure for a yeshiva in the city centre and in 1983 the Israeli government permitted the restoration and expansion of the Beit Romano Yeshiva in the building.<sup>67</sup> At the moment, massive construction is carried out in Beit Romano,

<sup>56</sup> *Ibid.*

<sup>57</sup> HCJ 175/81 *Al Natsha v. the Minister of Defence* 35(3) PD 361, p. 364 (judgment rendered 19 May 1981).

<sup>58</sup> Peace Now, *Hebron – Settlements in Focus*, *supra* note 45.

<sup>59</sup> TIPH, *Hebron Settlements*, *supra* note 53.

<sup>60</sup> ARIJ, *Locality Profiles and Needs Assessment in the Hebron Governorate*, *supra* note 52, pp. 33-34.

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> The website of the Jewish Settlements in Hebron: [http://www.hebron.org.il/hebrew/articles.php?cat\\_id=4](http://www.hebron.org.il/hebrew/articles.php?cat_id=4) [Hebrew] (Site was last accessed on 20 June 2013).

<sup>64</sup> TIPH, *Hebron Settlements*, *supra* note 53.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

following the Minister of Defence's decision from 2008 to authorise building of a dormitory for the yeshiva students.<sup>68</sup>

## Tel Rumeida

Tel Rumeida is located on an archaeological site on a hilltop overlooking the Hebron Old City and is believed to be on the site of the historic home of the biblical patriarchs and King David. In 1984, a group of seven Israeli families placed portable caravans on the Tel Rumeida hilltop.<sup>69</sup> These families remained in these temporary trailers until the construction of permanent buildings was approved by the Israeli government following the death of Rabbi Shlomo Ra'anani in August 1998.<sup>70</sup>

## 2.2 Kiryat Arba

Located in the outskirts of Hebron's city centre and overlooking Hebron's eastern hills is the settlement of Kiryat Arba, which, together with neighbouring settlement Givat Haharsina, includes approximately 7,096 settlers. The establishment of Kiryat Arba was approved by the Israeli Knesset in March 1970 and the first families began moving into the settlement in 1971.<sup>71</sup>

The Settlement of Kiryat Arba was built on lands that were seized based on alleged military grounds, lands declared as "state lands" and lands bought by Himnuta, a subsidiary company of the Jewish National Fund.<sup>72</sup> The land was initially seized by Israel from its Palestinian owners for military reasons and was later offered as an incentive to compel Rabbi Moshe Levinger and his colleagues to abandon their positions in a downtown Hebron hotel they were occupying in April 1968. During the 1990s, Kiryat Arba expanded significantly, though the municipal area of Kiryat Arba is non-contiguous. Substantial portions of Palestinian agricultural land surrounding Kiryat Arba have been designated as a security "buffer zone" around the settlement; the Palestinian owners of this land are routinely prevented from cultivating it.

As Kiryat Arba has expanded, additional Palestinian land surrounding the settlement has been confiscated. In May 2008, an Israeli Military Appeals Committee rejected the appeal of a Palestinian landowner challenging the declaration of his private land as state land. The land at issue, which totals 100 dunums, was beyond the northern fence of Kiryat Arba's perimeter and hundreds of housing units are planned as part of the settlement's expansion.<sup>73</sup>

Throughout the years several outline plans have been approved for the purpose of inhabiting settlers in Kiryat Arba. One of these plans, Plan no. 550/11, was approved for the purpose of building Givat Ha'avot.<sup>74</sup> The Givat Ha'avot settlement is located west of Kiryat Arba, a few kilometres north of the Old City, and it is considered a "neighbourhood" of Kiryat Arba. The Israeli police station of Hebron is located in the neighbourhood.<sup>75</sup>

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<sup>68</sup> Uri Blau, "Barak okays construction of dormitory at Hebron seminary", *Haaretz*, 3 July 2008.

<sup>69</sup> TIPH, *Hebron Settlements*, *supra* note 53.

<sup>70</sup> *Ibid.*

<sup>71</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 10.

<sup>72</sup> Baruch Spiegel's database, *supra* note 13, pp. 152-154.

<sup>73</sup> Peace Now, *Despite Promises – Land Confiscation Continues throughout 2008*, January 2009.

<sup>74</sup> Baruch Spiegel's database, *supra* note 13, pp. 152-154.

<sup>75</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 10.

## 2.3 Settlement Outposts in the Hebron Old City Area

Outposts are settlements considered illegal by Israeli law and built without official Israeli approval or permission. Typically, outposts will be built by a small group of ideological settlers in close proximity to an existing settlement and often serve as the first step in the expansion of a settlement.<sup>76</sup> Israeli government approval to an existing outpost is frequently granted on a *post facto* basis. Between 1996 and 2005, settlers established 44 illegal outposts in the Hebron district of the West Bank.<sup>77</sup>

The geographic locations of outposts are typically not haphazard, but reflect clear strategic planning. In the context of the H2 area, the outposts are designed to ultimately connect the currently non-contiguous established settlements. Current outpost strategies involve connecting Kiryat Arba and adjacent Givat Ha'avot with the four Old City settlements in order to create a single, connected settlement area in the heart of Hebron city.<sup>78</sup>

### Hebron Military Base Outpost

In 1983, the Israeli military seized land in the Hebron Old City and established a military base near the settlement of Beit Romano, in what had previously served as the central bus station. During the 1990s, an Israeli settlement outpost was established within the confines of the military base, “with caravans being brought into the base and families of settlers beginning to live side by side with the soldiers”.<sup>79</sup> An aerial photograph of the base “shows at the top a military outpost and command center, and at the bottom, the trailers for the families complete with yards for their children to play in”.<sup>80</sup>

In testimony provided to Israeli NGO Breaking the Silence, one soldier based with Israel’s Kfir Brigade in Hebron in 2006 stated that the settlers inside the military base walked around freely, often using the front gate to the military post. In fact, the military base was not allowed to close its gates on Shabbat in order to facilitate access for the Beit Romano yeshiva students. According to this soldier:

[The settlers] are standing and watching. Inside a post, an IDF military post, standing and watching. You know, training if someone attacked from the side, and they are all whatever, it’s cool and whatever – standing and watching. Suddenly, you know, you say to yourself: ‘come on, this is ridiculous, totally unbelievable. What are you doing here.’ You know, and it doesn’t seem strange to anyone.<sup>81</sup>

In 2008, the Israeli NGO Peace Now filed a petition to the Israeli High Court of Justice requesting that the Israeli army evict the settlers who were residing in the military base, arguing that their presence violated the principles of distinction between civilian and military locations as required under international humanitarian law.<sup>82</sup> In January 2010, the Israeli High Court of Justice rejected Peace Now’s petition on the grounds of delay, arguing that too long had passed between the time the settlers first moved into the base and the filing of the Peace Now petition.<sup>83</sup>

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<sup>76</sup> ARIJ, *Locality Profiles and Needs Assessment in the Hebron Governorate*, *supra* note 52, p. 34.

<sup>77</sup> *Ibid.*

<sup>78</sup> This strategy is rooted in a plan initiated by the Hebron settlers during the 1980’s. See Patrick Muller, *Occupation in Hebron*, the Alternative Information Center, 2004, pp. 45-46.

<sup>79</sup> Peace Now, *The Hebron Military Base Settlement Petition*, July 2008.

<sup>80</sup> Ha’aretz, “Hebron settlers set up outpost on grounds of IDF base,” 28 July 2008.

<sup>81</sup> Breaking the Silence, *Israeli soldier testimonies, 2000-2010*, *supra* note 31, p. 376-377

<sup>82</sup> HCJ 6492/08 *Sha’al Educational Project v. Commander of the IDF Forces in the West Bank*, Petition for an Order Nisi, 21 July 2008; Peace Now, *The Hebron Military Base Settlement Petition*, *supra* note 79.

<sup>83</sup> In regard to this petition, see also the text accompanying *infra* notes 250-251.



## Wholesale Market and the Beit Ezra Outpost

The Wholesale Market Outpost in Hebron city comprises several structures that were under Jewish ownership until 1947. During Jordanian rule over the area (1948-1967), the structures functioned as a wholesale market. The Israeli Civil Administration took over management of the market structures in 1967 and rented it out to the Hebron Municipality, which retains management of the structure today. Following the 1994 massacre in the Ibrahimi Mosque/Cave of the Patriarchs, the Israeli army closed the shops in the Wholesale Market.<sup>84</sup>

Settlers have tried numerous times thereafter to re-establish a presence in the Wholesale Market but were evicted each time by Israeli security forces. In 2001, following the killing of the infant Shalhevet Pass by a Palestinian sniper, nine Israeli families squatted in a small section of the closed Wholesale Market and the Israeli military refused to remove them.<sup>85</sup> Eventually, these families left in 2006 following an apparent agreement with the military, but more settlers returned to the market a few months later.<sup>86</sup>

One of the Wholesale Market properties is a building known as Beit Ezra, which was allegedly owned by Jews prior to 1948. During the Jordanian rule of the city, the property served as home to small Palestinian stores at the Wholesale Market. After Hebron came under Israeli rule in 1967, the market was placed under the control and management of the Civil Administration but the Palestinian storeowners have still been using it for merchandising purposes.

Following the return of the settlers to the Wholesale Market in 2006, a Military Appeals Committee found, in August 2007, that the settlers had broken the law and had no legal claim to occupy the building and issued an eviction order against them. However, the order was never implemented by the Israeli military and, in 2010, the Palestinian tenants, who had previously run small shops in the property, petitioned the Israeli High Court of Justice to enforce the order to remove the settlers.<sup>87</sup> Following the submission of the petition the State informed the High Court in December 2012 that it would evacuate settlers who had broken into the house by the end of April 2013.<sup>88</sup> As a result, the High Court concluded in its ruling that the eviction order should be implemented by 24 April 2013. However, the Court mentioned in the verdict that the State is currently examining the legal aspects regarding the option of designating the property for the use of the settlers, but stressed that the eviction should take place regardless of the results of this examination.<sup>89</sup> On 23 April 2013 the settlers left the house and it is currently closed, until further decision by the State.<sup>90</sup>

## Hazon David Outpost

The outpost of Hazon David lies on land owned by the Al Ja'abari family and is situated along a concrete pathway between the nearly adjacent settlements of Kiryat Arba and Givat Ha'avot.<sup>91</sup> The outpost itself consists of the pathway and a tent that serves as a synagogue, which has been razed by the Israeli military and police many times, as a result of a demolition order issued against the tent. Each time the tent is

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<sup>84</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, pp. 33-34.

<sup>85</sup> *Ibid.*, pp. 37-38.

<sup>86</sup> *Ibid.*

<sup>87</sup> Chaim Levinson, "Palestinians petition High Court to evict Hebron squatters", *Ha'aretz*, 25 November 2010.

<sup>88</sup> Chaim Levinson, "State to High Court: Israeli Settlers to be evacuated from Hebron house by April", *Haaretz*, 17 December 2012.

<sup>89</sup> HCJ 8570/10 *Al Awiwi v. IDF commander in the West Bank* (judgment rendered 26 December 2012).

<sup>90</sup> Tovah Lazaroff, "Hebron settlers adhere to court, leave Beit Ezra", *the Jerusalem Post*, 23 April 2013.

<sup>91</sup> UNOCHA, *Unprotected: Israeli settler violence against Palestinian civilians and their property*, December 2008, p. 12. *See: Case Study: Ja'abari Family, Hebron District* for more information.

demolished, settlers immediately rebuild a new temporary structure.<sup>92</sup> Apart from the synagogue, there are no other structures in the outpost and no one sleeps or lives there. The eventual aim in establishing the pathway and synagogue outpost on the Al Ja'abari land appears to be to connect the settlements of Kiryat Arba and Givat Ha'avot through a more permanent means and construct a road linking the two.

According to one Breaking the Silence testimonial from an employee with the Israeli Civil Administration from 2002-2003:

[E]very time they went to evacuate [Hazon David], an order was given by the Minister of Defence not to evacuate. When they evacuated it, it came back, and there was a story.<sup>93</sup>

The Al Ja'abari family are among the few Palestinians living in the area between the settlements of Kiryat Arba and Givat Ha'avot and have been personally subjected to numerous attacks by settlers over the years including, but not limited to, two shooting incidents, breaking and entering into their home, property damage, being prevented from harvesting their olives, and attacks on physically-challenged children in the family as they walked to school. In 2008, they filed 15 police complaints related to settler harassment and violence, but are not aware of any subsequent indictments resulting from these complaints.<sup>94</sup>

The site on which Hazon David was established is also the place where Kiryat Arba residents David Cohen and Yehezkel Mualem were killed by Palestinian gunmen in a July 2001 drive-by shooting during the second Intifada.

In January 2004, the Israeli High Court of Justice issued a temporary injunction prohibiting the eviction of the site.<sup>95</sup> However, a ruling given in February 2004 approved the military's decision to issue a demolition order against the tent and an order forbidding the settlers from residing in the site.<sup>96</sup> At times, the Israeli military has set up a fence to prevent settlers from rebuilding the outpost, but such action also prevents the Al Ja'abari family and other nearby landowners from accessing their property.<sup>97</sup>

### **Bakri House Outpost**

In 2001, Zakaria Bakri and his family were forced to leave their home in the Tel Rumeida area of Hebron in the face of persistent settler harassment and abuse from settlers in the nearby Tel Rumeida settlement and restrictions on Palestinian movement in the area set by the Israeli military. In 2005, settlers took possession of the empty house, claiming that a settler land-trading company, Tal Lebniya VeHashkaot Karnei Shomron (Tal Lebniya), had purchased the property from the family.<sup>98</sup>

In 2009, the Bakri family filed a claim to the Jerusalem District Court asking the court to declare they are the owners of the property. The Jerusalem district Court denied the settlers purchase claims and found that the property was owned by the Bakris. Judge Winograd ordered the six settler families now residing in the house to leave the property by 15 May 2012 and to pay the Bakri family's legal costs.<sup>99</sup> However, the Tal Lebniya company appealed to the Supreme Court and the case is still pending there.<sup>100</sup>

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<sup>92</sup> UNOCHA, *Unprotected*, *supra* note 91, p. 12.

<sup>93</sup> Breaking the Silence, *Israeli soldier testimonies, 2000-2010*, *supra* note 31, p. 398

<sup>94</sup> UNOCHA, *Unprotected*, *supra* note 91, p. 12.

<sup>95</sup> *Ha'aretz*, "High Court: Don't evacuate Hazon David outpost for now", 23 January 2004.

<sup>96</sup> HCJ 548/04 *Amana v. IDF Commander in Judea and Samaria* (judgment rendered 26 February 2004).

<sup>97</sup> *Ha'aretz*, "Troops and settlers clash at Hazon David outpost", 14 February 2004.

<sup>98</sup> Chaim Levinson, "Israeli court orders eviction of settlers from another Hebron house", *Haaretz*, 22 April 2012; Peace Now's website: <http://peacenow.org.il/bakri-hebron> [Hebrew] (Site was last accessed on 3 June 2013).

<sup>99</sup> Civil Claim 3329/09 *Bakri v. Tal Lebniya VeHashkaot Karnei Shomron LTD* (judgment rendered 18 April 2012).

<sup>100</sup> In regard to this petition, *see* also the text accompanying *infra* notes 266-269.

## Nazar/Shapira House Outpost

On the night of 6 April 2006, several settler families entered a house in Hebron owned by the Nazar family not far from the Avraham Avinu settlement. The house was empty and locked at the time. The Nazar family left the house a few years prior to the squatting due to movement restrictions imposed by the Israeli military and the dangerous vicinity to the settlement.<sup>101</sup> The settlers, who refer to the house as the “Shapira House”, claimed that they rented the house from a Palestinian person, Hani Al-Batash, who, according to the settlers, purchased the property from the Nazar family.<sup>102</sup> The military ordered the settlers to evacuate the house immediately. In a petition filed to the High Court of Justice by the settlers the State contended that documents presented by the settlers regarding Al-Batash’s alleged ownership – were forged.<sup>103</sup> The High Court decided that the house should be evacuated and sealed until an inquiry regarding the ownership rights in the house is concluded.<sup>104</sup> Consequently, the Israeli military evacuated the settlers from the property on 7 May 2006.<sup>105</sup> Following the evacuation, the house was sealed by the military. Settlers still try from time to time to forcibly break into the building.<sup>106</sup>

## Al Rajabi House/Beit Hashalom Outpost

On 19 March 2007, hundreds of settlers invaded a four-story building in the a-Ras Palestinian neighbourhood of H2, known as the Al Rajabi house. The settlers presented allegedly forged documents claiming to have purchased the property and named the building Beit Hashalom, or “Peace House”.<sup>107</sup> The following day, ACRI petitioned to the Israeli Prime Minister, Minister of Defence and the Attorney General demanding the immediate eviction of the settlers.<sup>108</sup> Israeli army and police forces provided the settlers with protection and many of the settlers themselves were armed.<sup>109</sup> Establishment of this outpost, located along the main road between Kiryat Arba and the Ibrahim Mosque/Cave of the Patriarchs, aimed to bolster the territorial contiguity linking the H2 settlements.



Photo: Al Rajabi House/Beit Hashalom Outpost, Hebron  
(Photo by: Sarah Adamczyk, 2011)

In the year that followed, and despite the Israeli Minister of Defence’s decision to evict the settlers, the settlement was connected to the electricity grid, and construction and renovation work was undertaken.<sup>110</sup> During this time, UNOCHA, ACRI and B’Tselem documented repeated attacks by settlers against Palestinians in the area, including “beatings, blocking of passage, destruction of property, throwing of stones and eggs, hurling of refuse, glass bottles, and bottles full of urine, urinating from the settlement structure onto the street, spitting, threats, and curses.”<sup>111</sup> Much of this

<sup>101</sup> HCJ 3713/06 *Tal Hashkaot Vebinian LTD. v. Commander of Central Command*, pars. 8,12 (judgment rendered 30 August 2006).

<sup>102</sup> *Ibid.*, pars. 4-5.

<sup>103</sup> *Ibid.*, par. 6.

<sup>104</sup> *Ibid.*, par. 21.

<sup>105</sup> Saed Bannoura, “Israeli police evacuates three settler families that occupied a Palestinian house in Hebron”, International Middle East Media Center, 7 May 2006.

<sup>106</sup> Yair Altman, “Hebron: Rightists evacuated from Beit Shapira”, *Ynet*, 24 May 2011.

<sup>107</sup> See the State’s arguments as quoted in: HCJ 10302/07 *Tal Bniya VeHashkaot Karnei Shomron v. Minister of Defence* (judgment rendered 16 November 2008), section 19.

<sup>108</sup> ACRI, *ACRI demands the immediate evacuation of a new settlement in Hebron*, 21 March 2007.

<sup>109</sup> *Ibid.*

<sup>110</sup> B’Tselem, *Hebron: The Israeli Settlement in the a-Ras Neighborhood*, 19 October 2007.

<sup>111</sup> *Ibid.*

abuse was carried out in front of Israeli forces and there was little attempt to enforce the law by either the Israeli military or police. Several Palestinians living in the immediate vicinity put up wire fences and constructed walls to prevent settler attack.<sup>112</sup>

On 16 November 2008, the Israeli High Court of Justice ruled that the settlers must leave the Al Rajabi house, and named the State of Israel as temporary custodian over the property pending a final ruling on ownership. On 4 December 2008, Israeli security forces evicted the settlers who were resident in the house by force.<sup>113</sup> After the clash-filled eviction, violence continued in the Hebron City area. Settler groups went on a rampage in the area, throwing stones, defacing property, attempting to force entry into Palestinian homes and setting fire to vehicles, agricultural fields, houses and the contents of one mosque.<sup>114</sup> Further incidents of settler violence, including stone throwing, vandalism, arson and physical violence occurred throughout the West Bank.<sup>115</sup>

At present, as the proceedings regarding the ownership of the property are still pending,<sup>116</sup> Israeli military forces continue to occupy the building.

### **Beit Hamachpela Outpost**

On Thursday, 29 March 2012, a group of Israeli settlers took over the empty third floor of a three-story building in Hebron's Old City, 100 metres south of the Cave of the Patriarchs. The Israeli army subsequently declared the building a closed military zone, blocking off the building's courtyard and preventing anyone from visiting the home of the Abu Rajab family, the Palestinian residents living on the second floor. The settlers and their visitors were allowed access to enter and exit the building freely.<sup>117</sup>

The settlers claim to have purchased the third floor of the building, dubbed "Beit Hamachpela", or "House of the Patriarchs", as well as a storage room on the first floor, and the garden, from the Palestinian owners. However, Israeli military law requires that all purchases by Israeli civilians in Palestinian localities in the West Bank must be approved by the Israeli Civil Administration, and Israel's Minister of Defense. No such approval was given in this case.



*Photo: Beit Hamachpela Outpost, Hebron (Photo by: Sahar Issawi, 2013)*

As a result, on the afternoon of Monday, 2 April 2012, the Israeli army issued an eviction order requiring the settlers to leave by 3:00 p.m. the following day. Although Prime Minister Benjamin Netanyahu requested that the Defense Ministry delay the eviction order to allow the 15 settler families residing there

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<sup>112</sup> B'Tselem, *Hebron: The settlement in the a-Ras neighborhood is one year old*, 19 March 2008.

<sup>113</sup> UNOCHA, *Unprotected*, *supra* note 91, p. 1.

<sup>114</sup> *Ibid.*

<sup>115</sup> Nadav Shragai and Amos Harel, "Israel braces for settler violence in wake of Hebron house evacuation", *Haaretz*, 5 December 2008.

<sup>116</sup> In this regard, see the text accompanying *infra* notes 259-265.

<sup>117</sup> B'Tselem, *Army must evacuate the new settlement point in Hebron's Old City*, 15 April 2012; Isabel Kershner, "Israeli Doesn't Let Eviction Slow Push for Settlements", *The New York Times*, 4 April 2012; Chaim Levinson, "IDF gives settlers 24 hours to evacuate Hebron house", *Haaretz*, 2 April 2012.

time to present their legal case, on Tuesday, 3 April, Israeli Defense Minister Ehud Barak ordered the army to proceed with the eviction.

The following morning, Wednesday, 4 April 2012, the Israeli forces evicted the settlers and sealed the house.<sup>118</sup> In October 2012 the Civil Administration has notified the settlers in Hebron that it would not approve the purchase of the house, due to faults found in the purchase agreement. The settlers reject this opinion and are expected to proceed with their endeavors to re-establish the outpost.<sup>119</sup>

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<sup>118</sup> Tovah Lazaroff, Herb Keinon, Joanna Paraszcz, "Border Police evacuate settlers from Hebron Home", *the Jerusalem Post*, 4 April 2012.

<sup>119</sup> Chaim Levinson, "Civil Administration rejects purchase of contested Hebron house by Jewish settlers" *Haaretz*, 4 October 2012.

### 3. Causes of Palestinian Forced Displacement from Hebron’s Old City

This part of the report focuses on the primary causes of Palestinian forced displacement from the Old City of Hebron. By no means exhaustive, the following categories highlight many of the various ways in which Israeli policies and practices in the area have normalised life for settlers by creating a “protective space” that severely impedes Palestinian life and livelihoods. The net result of Israeli measures in Hebron’s Old City for many Palestinians has been economic devastation, severe restrictions on freedom of movement, daily humiliation and harassment, physical harm and damage to education and employment prospects. At the same time, the H2 area of Hebron has become a safe haven for settler violence, damage to and confiscation of land and property and other forms of patently illegal conduct.

Self-evidently, one of the main causes of Palestinian forced displacement from the Old City is settler takeover of Palestinian property; acts that in many cases are supported by the Israeli administration.<sup>120</sup> In Hebron’s Old City, Israeli settlers also trespass on Palestinian property, frequently with the aim of ultimately creating a permanent settler path, and confiscate or squat in abandoned Palestinian homes. Taking control of Palestinian property is often done through violent means, for example, as in the case of the Bakri house in the Tel Rumeida area.<sup>121</sup> These practices are elaborated in detail in part 4.4 below.

In this part the focus is on other efforts to drive Palestinians out of H2 including:

- Imposition of curfews;
- Shop closures, frequently through military orders;
- Prohibitions on the freedom of movement, both to Palestinian pedestrians and vehicles;
- Settler violence and harassment, with little to no Israeli military or police intervention;
- Injury and death directly caused by the Israeli military or police;
- Daily searches and checkpoints;
- Seizure of Palestinian houses and lands for military purposes.

#### 3.1 Curfews

Following the beginning of the second Intifada in September 2000, the Israeli military imposed prolonged curfews throughout H2 and even areas of H1, which was ostensibly under full Palestinian authority. The result was a near-constant curfew over Palestinian residence. During the first three years of the second Intifada, the Israeli army imposed curfews on H2 for more than 377 days in total, including one stretch that lasted 182 consecutive days.<sup>122</sup> These restrictions extended beyond H2 and included the Bab a-Zawiya neighbourhood of H1, which served as a commercial district for Hebron. Residents of Bab a-Zawiya were subject to curfews and movement restriction until the end of 2003 and much of the commercial business in the area died as a result.<sup>123</sup>

According to testimony provided in 2007 to ACRI and B’Tselem, Samir al-Qawasmeh, a Palestinian resident of Tel Rumeida stated:

The Israeli army imposed frequent prolonged curfews in our area. They usually let us go out to buy provisions for only two hours every two weeks. Sometimes, the curfew lasted for a whole month. The curfew was generally lifted suddenly, without informing us in an orderly way. Sometimes, they lifted

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<sup>120</sup> See .e.g. – regarding the takeover of property allegedly owned by Jews before 1948 – the text accompanying *infra* notes 247-249.

<sup>121</sup> See the text accompanying *supra* notes 99-100.

<sup>122</sup> B’Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 18.

<sup>123</sup> *Ibid.*, p. 36.

the curfew in the morning and sometimes at night. There were instances in which we didn't know that the curfew had been lifted and did not have time to buy provisions.<sup>124</sup>

Throughout these curfews, Mr. al-Qawasmeh lived with his wife and 10 children in a two-room house. His grocery shop closed as a result of the curfews and three of his sons moved to H1 for better employment options. Mr. al-Qawasmeh and his entire family ultimately moved out of the H2 area in 2003.<sup>125</sup>

Palestinians found outside in violation of the curfews risked arrest, fines and even death. Between 2002 and 2004, Israeli soldiers used tear gas, stun grenades, rubber bullets and live ammunition against those found outside their homes after curfew and killed at least 35 Palestinian civilians.<sup>126</sup> In addition, the curfews resulted in economic devastation, poor nutrition, harm to education, and limited access to medical services.<sup>127</sup> According to B'Tselem and ACRI, the prolonged curfews, imposed on the Palestinian population of H2 during these years, amounted to a form of collective punishment, in violation of international humanitarian law standards,<sup>128</sup> and "was one of the major reasons for the mass movement of Palestinian residents from areas near the settlements in the first years of the second intifada".<sup>129</sup>

In January 2003, ACRI filed a petition challenging the prolonged military curfews. In response, the State of Israel claimed that there were adequate breaks in which to purchase provisions, that the curfew was intended to protect Israeli settlers, Palestinian residents and Israeli security forces, and that the curfew amounted to a legitimate military means.<sup>130</sup> The High Court of Justice rejected the ACRI petition on 9 July 2003.<sup>131</sup> While the lengthy curfews did ultimately cease in late 2003, the Hebron Old City has not recovered from the number of residents forcibly displaced as a result.

### 3.2 Shop Closures

As mentioned above, by September 2012, an estimated 1,612 Palestinian shops had been closed in the H2 area, and 512 of these shop closures were the direct result of a military order.<sup>132</sup> According to a 2007 B'Tselem and ACRI report:

The army generally refused to let shopkeepers return to their shops, not even to remove the merchandise that had been left there. The doors of many shops were soldered shut; barbed wire, iron gates, and other obstructions were placed around the markets, blocking all access to them. Some of the shopkeepers who managed at some stage to get to their shops to remove their merchandise found that the shop had been broken into, robbed, and in some instances torched. In many cases, the persons who broke into the shops were Hebron settlers, a fact that the State confirmed in the High Court. As a result, many business owners lost not only their source of livelihood but also valuable merchandise. Also, when they were able to return to their shops, after the orders closing them had been cancelled, there was no point to reopen, inasmuch as the area no longer functioned as a commercial district.<sup>133</sup>

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<sup>124</sup> *Ibid.*, p. 19.

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*, p. 21. See also: B'Tselem, *Lethal Curfew: The Use of Live Ammunition to Enforce Curfew*, October 2002; Breaking the Silence, *Israeli soldier testimonies, 2000-2010*, *supra* note 31, pp. 270-271.

<sup>127</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, pp. 18-19.

<sup>128</sup> *Ibid.*, pp. 73-74.

<sup>129</sup> *Ibid.*, p. 19.

<sup>130</sup> *Ibid.*, pp. 21-22; HCJ 854/03 *Dr. Sufiyan 'Abd al-Rahman Sultan et al. v. Commander of Military Forces in the West Bank*.

<sup>131</sup> HCJ 854/03, *Dr. Sufiyan 'Abd al-Rahman Sultan et al. v. Commander of Military Forces in the West Bank* (judgment rendered 9 July 2003).

<sup>132</sup> UNOCHA, *the Monthly Humanitarian Monitor*, September 2012, p. 8.

<sup>133</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 36.

In March 2001, after 10-month old infant Shalhevet Pass was killed by a Palestinian sniper near the entrance of Avraham Avinu settlement, the Israeli army closed the Gold Market near the Beit Hadassah settlement and 73 shops in the Bab al-Khan and Huzk al-Far areas of the city.<sup>134</sup> Settlers also destroyed an improvised Palestinian market set up near the shuttered Wholesale Market and the Israeli military refused to re-open the market. In defending these actions before the Israeli High Court of Justice, State attorneys argued that the entirety of H2 was under a prolonged curfew, “which prevents commercial activity anyway”.<sup>135</sup> State attorneys further asserted that the shops could not be re-opened in order to protect those settlers who had taken possession of the closed Palestinian shops.<sup>136</sup>



Photo: Closed shops in the Hebron's Old City (Photo by: Sahar Issawi, 2013)

In 2003, ACRI filed a High Court of Justice petition challenging the closure of more than 100 shops in the Shalala compound, located next to the foundations of the Beit Hadassah settlement and in its vicinity. Following the submission of the petition, the military agreed to open the shops located in the environs of Beit Hadassah, but not those located in Beit Hadassah compound itself and they remain closed at present.<sup>137</sup>

The Israeli military referred to the process of closing Palestinian storefronts on entire streets as “sterilising” the area. According to a testimonial provided to Breaking the Silence from an Israeli soldier stationed with Nahal Brigade in Hebron in 2005:

“Sterile” means that all the stores on that street, which were once stores, almost all of them except maybe one or two, are closed. Along the whole street ten stores are closed. That means that all of the houses, either someone lives in them or doesn’t live in them anymore, or they blocked it off so they can’t live there anymore. There are no Palestinians that enter the street. Like, a few. There are a few with work permits, and they aren’t workers there, the stores there are closed. There is one store open. There is permission only for certain people, very specific. So it’s like an atrocious injustice, because you see that basically [just] so that there can be [settler] facilities there, which include the Bet Romano Yeshiva and next to it there is another house [Beit Hadassah].<sup>138</sup>

### 3.3 Restrictions on Freedom of Movement

In the aftermath of the 1994 massacre in the Ibrahimi Mosque/Cave of the Patriarchs and again at the outset of the second Intifada, the Israeli military imposed severe restrictions on both Palestinian pedestrian and vehicular movement in the Hebron Old City, most acutely along Shuhada Street. According to UNOCHA, by September 2012, there were a total of 123 movement obstacles segregating the H2 area from the rest of the city, including 18 checkpoints, 12 partial checkpoints and 57 roadblocks.<sup>139</sup>

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<sup>134</sup> *Ibid.*, p. 34.

<sup>135</sup> *Ibid.*

<sup>136</sup> *Ibid.*

<sup>137</sup> HCY 7007/03 *Qawasmi v. the IDF Military Commander in Judea and Samaria* (judgment rendered 19 April 2005). More on the court proceedings see the text accompanying *infra* notes 277-279.

<sup>138</sup> Breaking the Silence, *Israeli soldier testimonies, 2000-2010*, supra note 31, p. 191

<sup>139</sup> UNOCHA, *the Monthly Humanitarian Monitor*, September 2012, p. 8.



Since the second Intifada, the Shuhada Street shops, along with other main roads in H2, from Kiryat Arba in the east to the Jewish cemetery in the west, have been closed to Palestinian vehicles.<sup>140</sup> Israeli military officials have claimed that permits will be issued for those Palestinian living in the area. As of December 2011, approximately 20 individuals received such permits.<sup>141</sup>

### **Impact on Access to Services**

This prohibition on Palestinian vehicles includes ambulances and emergency services. Palestinian ambulances may not enter H2 without prior coordination and approval from Israeli authorities and injured persons often walk on foot to locations where the ambulance can meet them. The Palestinian Red Crescent Society (PRCS) estimated that roadblocks add two minutes to the time necessary to reach patients in H2 and, when Israeli army coordination is required, it may take up to 47 minutes to reach the patient.<sup>142</sup> A significant improvement was implemented in January 2011. Following approval by the Israeli authorities, the PRCS began operating an ambulance sub-station in the Old City. This development enables evacuation of a patient from H2 and a return to the sub-station through the Giv'at Ha'avot checkpoint without prior coordination.<sup>143</sup> However, following an attack against a PRCS ambulance by settlers in March 2011, the Israeli military began requiring ambulances already present in the area to perform prior coordination before entering the Tel Rumeida area.<sup>144</sup>

Between September 2000 and January 2004, Hebron fire brigades “responded to 120 calls from H2 with an average waiting time of 15 minutes to obtain the authorization to access the area. In 38 cases the fire brigades waited for more than one hour before reaching their destination”.<sup>145</sup>

Hebron Municipality vehicles also cannot enter H2 without Israeli coordination, meaning that it may take several days to repair electricity, water, sewage or telephone services.<sup>146</sup>

### **Shuhada Street**

Shuhada Street, the north-south artery through Hebron City, runs from the Ibrahimi Mosque/Cave of the Patriarchs past all the major markets as well as the settlements of Avraham Avinu, Beit Romano and Beit Hadassah. The street was initially closed to Palestinian vehicular traffic in the wake of the 1994 massacre in the Ibrahimi Mosque/Cave of the Patriarchs. Pursuant to both Article VII of Annex I to the Interim Agreement and the Hebron Protocol, Israeli authorities alternately opened and closed Shuhada Street until the beginning of the second Intifada.<sup>147</sup>

Since the onset of hostilities in September 2000, however, the Israeli military has banned Palestinian vehicles for the entire length of Shuhada Street; the section of Shuhada Street running between Beit Hadassah and Avraham Avinu has also been barred to Palestinian pedestrians.<sup>148</sup> No written military order was ever issued approving the restrictions on pedestrian access to the street, though soldiers stationed near Shuhada Street were told “that the street was a ‘sterile route’ along which Palestinian

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<sup>140</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 23.

<sup>141</sup> NRC interview with a representative from an international organisation operating in Hebron, East Jerusalem, 4 April 2013.

<sup>142</sup> UNOCHA, *Humanitarian Update*, July 2005, p. 2.

<sup>143</sup> UNOCHA, *West Bank Movement and Access Update*, August 2011, p. 18.

<sup>144</sup> *Ibid.*

<sup>145</sup> LRC, *Geopolitical situations in Hebron Governorate Palestine*, *supra* note 18, p. 12.

<sup>146</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 27.

<sup>147</sup> B'Tselem, *17 years after Goldstein Massacre*, *supra* note 39. In regard to Israel's obligations according to the Hebron Protocol, *see* the text accompanying *supra* notes 21-22.

<sup>148</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 23.

movement was completely forbidden”.<sup>149</sup> At the start of the second Intifada, Hebron settlers prepared and delivered a document to the Hebron Brigade commander outlining a list of demands for the closure of streets to Palestinian pedestrians and vehicles. The requested prohibitions from the settlers were nearly identical to the restrictions ultimately imposed by the Israeli army.<sup>150</sup>

In December 2006, in response to an ACRI inquiry, Israeli military officials “admitted among themselves that the movement of Palestinians along Shuhada Street had been prohibited for years without an official order having been issued, this, they claimed, was ‘by mistake’. The legal advisor’s office stated that a new directive had been issued cancelling the prohibition”.<sup>151</sup> Following this admission, a small number of Palestinians were allowed to walk on a stretch of Shuhada Street while a significant number of soldiers escorted them. Less than a week later, however, Palestinians were again informed that the Hebron Brigade Military Commander had issued a new military order and they could not walk on the sections of Shuhada Street that pass by the Hebron settlements.<sup>152</sup>

As elsewhere in the Hebron Old City, these severe restrictions have economically paralysed the once vital Shuhada Street and many residents of the area have been forced to abandon their homes and businesses there. Since the closures began, B’Tselem and ACRI estimate that 304 Palestinian shops and warehouses along Shuhada Street have closed, and some Palestinian municipal and governmental offices on the street have been forced to relocate to H1.<sup>153</sup> For the few Palestinian families remaining in homes on or adjacent to Shuhada Street, the Israeli military forces them to enter their homes “via side entrances, since they are not allowed to use the main entrances on Shuhada Street. Where side entrances are not available, the Palestinian residents have no choice but to climb on ladders leading to the roofs of the buildings”.<sup>154</sup> These residents are also forced to find circuitous routes to navigate through the area, often through multiple checkpoints, since they are forbidden from walking on the main street.

In 2007, the Israeli Civil Administration began issuing temporary permits to allow Palestinian residents to enter and exit their homes via the main entrances on Shuhada Street, though most such three-month permits stopped being renewed in late 2008.<sup>155</sup> The Israeli Civil Administration has also fortified and sealed shut the main entrances to Palestinian homes that open onto Shuhada Street. Of those few Palestinian residents who have remained and continue to access their homes through alternative entrances and even rooftops off Shuhada Street, many simply could not afford to relocate elsewhere and stayed due to lack of feasible alternatives.

In the years 2004-2006 a few petitions were submitted to the High Court of Justice regarding movement restrictions in the City of Hebron. As a result, the military has been willing to consider opening, under strict limitations, some of the roads in the Old City for Palestinian vehicles and pedestrians. However, Shuhada Street, as other main roads, remains closed for Palestinians at present as the High Court accepted the military’s justifications for its movement restrictions there and has dismissed the petitions.<sup>156</sup>

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<sup>149</sup> *Ibid.*, p. 29.

<sup>150</sup> *Ibid.*, p. 31.

<sup>151</sup> *Ibid.*, p. 29 (citing letter of 25 December 2006 from Harel Weinberg, office of the legal advisor for the West Bank, to the Association for Civil Rights); see also: HCJ 4639/02 *‘Adb Alsalleem Qatsrawi et al. v. Commander of IDF Forces in Judea and Samaria and Minister of Defense*, Supplemental Response on Behalf of the Respondents, 5 August 2002 (“Due to a malfunction, no closing order was made in writing”).

<sup>152</sup> B’Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 30.

<sup>153</sup> B’Tselem, *17 years after Goldstein Massacre*, *supra* note 39.

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*

<sup>156</sup> In this regard see the text accompanying *infra* notes 275-276.

## The Prayers' Road

The Prayers' Road or Worshippers' Way, which goes through the Palestinian neighbourhood of Wadi Al Hussein, connects the Old City of Hebron with the area now home to the Kiryat Arba settlement. According to testimony provided to ACRI and B'Tselem in 2007, Hisham Abu S'ifan, who lives in the Wadi Al Hussein area stated:

In 2002, the army closed the road leading to Wadi al-Hussein. Since then, it has been forbidden to enter the neighbourhood by vehicle. This has caused us great hardship in our daily routines. For example, we have to carry provisions for the house, such as food and cooking-gas canisters, by hand and pushcart. Also, there is a water shortage in our neighbourhood, and we used to buy water from tankers that came to the house and filled the water tanks on the roof. Since the army closed the road, the tankers can't get to us.<sup>157</sup>

As a result, Palestinians are frequently required to use long bypass roads to reach their destinations and many locations are completely inaccessible by Palestinian vehicles. Many building and other supplies, including propane canisters, must be brought in by hand or cart.

In September 2012 the Israeli authorities began building a new road barrier for approximately 70 meters along the Prayers' Road. The fence consists of a 1.5 meter high metal fence installed on top of concrete slabs, and divides the road lengthwise. Since the fence was erected the Israeli military has not allowed Palestinians to walk on the road and instead have directed them to a narrow, unpaved and rough pathway on the other side of the fence. The pathway is very difficult for baby strollers or bicycles to pass and is completely inaccessible by wheelchair.<sup>158</sup>



Photo: The new fence along the Prayers' Road, Hebron (Photo by: Yotam Ben-Hillel, 2013)

The Israeli District Coordination Liaison (DCL) for Hebron area informed UNOCHA that the new barrier is needed for "security reasons", to prevent Palestinian children from "bothering Israeli settlers" walking along the street, and from "stealing the settlers' bags".<sup>159</sup>

### 3.4 Settler Violence and Harassment

Daily incidents of settler harassment and violence against Palestinian residents of Hebron's Old City likewise have the effect of pushing Palestinian families out of the H2 area and away from the areas closest to Israeli settlements. Settler attacks may include "physical assault, including beatings, at times with clubs, stone throwing, hurling of refuse, sand, water, chlorine, empty bottles and other objects, occasionally using sharp objects, destruction of shops and doors, shattering of windows, thefts, cutting of fruit trees, destruction of merchant's stands, and verbal insults".<sup>160</sup> Between June 2007 and June 2008, more than 70 percent of all settler-related incidents in the Hebron Governorate took place in H2, with 49

<sup>157</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 28.

<sup>158</sup> B'Tselem, *19 years after massacre at Tomb of Patriarchs, Israel continues to entrench separation policy in Hebron*, 5 March 2013; UNOCHA, *the Monthly Humanitarian Monitor*, September 2012, pp. 7-8.

<sup>159</sup> UNOCHA, *the Monthly Humanitarian Monitor*, September 2012, p. 8.

<sup>160</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 43.

percent of cases involving casualties and 52 percent involving prevention of access for Palestinians.<sup>161</sup> ICRC data collected in 2007 indicated that incidents of settler violence had tripled in the previous three years.<sup>162</sup>

Oftentimes, these attacks on Palestinians and their property are part of the so-called “price tag” reprisals, a term coined by settlers to indicate retribution for and protest against any Israeli law-enforcement actions deemed to threaten settlement construction or expansion.<sup>163</sup> Therefore, the risks of attacks against Palestinians may be highest when the Israeli government or High Court of Justice announces a decision against the settlers or settlement interests. For example, when the eviction of the Al Rajabi House/Beit Hashalom Outpost was carried out – pursuant to a High Court of Justice ruling – on 4 December 2008, there was a massive rise in settler attacks. As Palestinian human rights NGO Al-Haq noted:

[H]undreds of extremist settlers from across the West Bank have flocked to the city and mounted violent attacks against the local population. Widespread stone throwing at Palestinians and other targets, including ambulances, and desecration of Palestinian homes, mosques, and gravestones, has now escalated into more severe and violent attacks, including shootings and serious physical abuse against the Palestinian residents of Hebron. At least four Palestinian homes and two Palestinian shops have been set ablaze, while emergency response vehicles such as fire trucks and ambulances have either been prevented access or attacked during attempts to reach the wounded. Livestock and agricultural lands have also been attacked and burned. Settlers throughout the West Bank have begun indiscriminately attacking Palestinian cars, burning olive trees and destroying agricultural land.<sup>164</sup>

In several areas of the Old City, metal screening has been placed over pedestrian walkways that run below the Avraham Avinu and Beit Hadassah settlement buildings to prevent settlers from throwing garbage, bricks, stones and empty bottles at the passersby below.<sup>165</sup> This screening, however, provides no protection against dirty water or urine that may be thrown from the settlements onto the streets below.<sup>166</sup> It has been proposed that additional Plexiglas sheeting should be erected above the streets to protect Palestinian pedestrians.



Photo: Metal screening installed to protect Palestinian pedestrians in Hebron's Old City (Photo by: Sahar Issawi, 2013)

In the beginning of 2012, the Special Rapporteur on adequate housing, Raquel Rolnik, carried out a mission to Israel and the oPt in order to assess the situation of the right to housing in the region. In her report she mentioned, *inter alia*, the situation in Hebron:

Settlement activity is also a regular source of violence and permanent tension. In Hebron, for example, the Special Rapporteur received testimonies from several persons of attacks by settlers on infrastructure, such as water tanks, and other violence against the Palestinian population. The heavy

<sup>161</sup> Ma'an Development Center, *Hebron – Destroyed from Within: Fragmentation, Segregation and Forced Displacement*, September 2008, p. 11.

<sup>162</sup> ICRC, *Dignity Denied in the Palestinian Occupied Territories*, November 2007.

<sup>163</sup> Human Rights Watch, *Israel: New Commander Should Protect Palestinians from Settler Violence*, 21 November 2011; B'Tselem's website (<http://www.btselem.org>): *Background on violence by settlers*.

<sup>164</sup> Al-Haq, *Al-Haq calls for immediate measures to stop settler violence in Hebron and throughout the Occupied Palestinian Territory*, 5 December 2008.

<sup>165</sup> LRC, *Geopolitical situations in Hebron Governorate Palestine*, *supra* note 18, p. 10.

<sup>166</sup> ICRC, *life remains hard for Palestinians in the occupied West Bank*, *supra* note 32.

presence of soldiers in the heart of the city to protect the settlers contributes to a climate of fear and mistrust.<sup>167</sup>

### **Failure of Israeli Military and Police to Intervene as Settler Attacks are Happening**

The criminal acts of settlers frequently take place directly in front of Israeli military and police, who in many cases act as bystanders and refrain from protecting Palestinian residents or their property.<sup>168</sup> Given the dual system of law in which Israeli civil law applies to Israeli settlers in the oPt and Israeli military law is applicable to Palestinians, discussed *infra* in part 4.1, Israeli soldiers are often unclear as to the scope of their authority in dealing with settlers. As one soldier based in Hebron during the second Intifada told Breaking the Silence:

One of the things that really upset us was really the powers that they didn't give us to cope with the settlers. I am a soldier. I don't know how to stop a person, a Jew. I don't know what the law is. They didn't really tell me that I would some time have to do such a thing, and in Hebron, they essentially told me, 'This is not your function. This is why the police are here'...I remember that the police commander explained to us that they don't have the money for enough police officers to respond to every call. So we essentially were helpless, and this decision was made from above.<sup>169</sup>

As pervasive as this sentiment may be amongst Israeli soldiers, it is ultimately not accurate. Under Article 78 of the Order Regarding Defence Regulations No. 378, soldiers are empowered to arrest, without warrant, every person violating the order. Offenses under this order include assault, throwing objects and destruction of property. Moreover, the Procedure for Enforcing Law and Order on Israeli Offenders in the West Bank, "which was published by the attorney general, clearly states that the security forces have the duty 'to take every action necessary to prevent harm to life, person, or property,' and also 'to detain and arrest suspects who might flee from the scene'".<sup>170</sup>

### **Difficulties in Filing Complaints against Settlers with the Israeli Police**

For Palestinians who have been the victims of settler violence or harassment, difficulties surrounding the filing of police complaints are an additional hurdle and barrier to obtaining a meaningful remedy. There are no Palestinian police in the H2 area of Hebron; only Israeli police and soldiers are permitted to operate there. The Israeli police station for the area is located inside the Kiryat Arba settlement, making it difficult for Palestinians to reach, particularly as Palestinians cannot enter the settlement without Israeli military approval. Complaints may also be filed at the local DCO, which is located in Har Manoh, though that process is not much easier. As it is throughout the West Bank, Israeli police in the DCO often will refuse to receive complaints or will demand extensive and unrelated supporting documents, such as – in cases of complaints regarding settlers' seizure of Palestinian land – land registration or surveyor's maps, in order to allow the complaint.<sup>171</sup> When a police report is filed, the entire document is often prepared in Hebrew, a language which many Palestinians do not speak or understand. The Palestinian complainants are then instructed to sign the report, even though they cannot read the document and are often unsure what they are signing.

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<sup>167</sup> UN Human Rights Council, *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context : Addendum, Mission to Israel and the Occupied Palestinian Territory*, 24 December 2012, A/HRC/22/46/Add.1, par. 83.

<sup>168</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 41. See also Yesh Din, *A Semblance of Law: Law Enforcement upon Israeli Civilians in the West Bank*, June 2006; B'Tselem, *Free Rein: Vigilante Settlers and Israel's Non-Enforcement of the Law*, October 2001.

<sup>169</sup> *Breaking the Silence, Soldiers' Testimonies from Hebron*, *supra* note 31, p. 14

<sup>170</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 48.

<sup>171</sup> UNOCHA, *Unprotected*, *supra* note 91, p. 13.

In many cases, Palestinians subjected to violence or harassment from Hebron settlers simply refrain from filing a police complaint. Many Palestinians also fear worse settler harassment if they choose to file a complaint.<sup>172</sup> In addition, some of the complaints pertaining to settler violence end up in the arrest of the Palestinians filing the complaints.<sup>173</sup> Some Palestinians have filed multiple complaints in the past with no indictment, follow-up or other result and have simply abandoned the process as futile. Even for those who have filed cases and proceeded to win their cases in court, the decision is frequently not implemented.<sup>174</sup> As Bahija Sharabati, a Palestinian resident of Tel Rumeida, stated in an interview with B'Tselem and ACRI, "We already filed dozens of complaints with the Israeli police, but nothing changed. I don't believe in complaints anymore".<sup>175</sup>

### **Failure of Israeli Police to Adequately Investigate Complaints against Settlers**

Israeli police, who exercise jurisdiction over Israeli settlers, consistently fail to adequately investigate complaints filed by Palestinians against the settlers.<sup>176</sup> Of police investigations involving settler-caused injury to Palestinians or Palestinian property in the entire West Bank between September 2000 and December 2011, B'Tselem found that "[a]n indictment was filed in only 11 percent of all cases in which investigations were opened. In cases where settlers were tried and convicted, they were generally given extremely light sentences—in stark contrast to the policy of law enforcement and punishment where Palestinians harm Israelis".<sup>177</sup> A separate Yesh Din study suggests that of the investigations Yesh Din is monitoring (starting 2005) involving violence by Israeli civilians against Palestinians in the West Bank – where investigation processing has been concluded – only in 14.5 percent were indictments served against suspects. Of concluded investigations in which the results of the investigation are known to Yesh Din, some 81 percent were closed in circumstances reflecting investigative failure.<sup>178</sup>

Compared with the Israeli military, the Israeli police in Hebron are severely understaffed and underfunded. Even to enter the Hebron Old City, police must obtain Israeli military permission. Police rarely undertake basic follow-up investigative procedures in complaints stemming from Palestinians against settlers, such as identification line-ups or verification of alibis.<sup>179</sup> Police are often themselves intimidated by the settlers; one soldier's testimony from *Breaking the Silence* describes an incident where his commander told him: "OK, the police don't agree to enter Avraham Avinu. They are afraid of creating a provocation, and they are afraid that they [the settlers there] will throw eggs at them'...Then my commander says, 'OK, there is nothing to do. Let him go'".<sup>180</sup>

### **3.5 Harm Directly Caused by Israeli Soldiers or Police**

In addition to their failure to intervene or investigate incidents of settler violence against Palestinians, there is compelling evidence to show that Israeli military and police themselves commit acts of violence against Palestinians and play a contributing role to the forced displacement of Palestinians from H2.

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<sup>172</sup> *Ibid.*

<sup>173</sup> See, e.g., IMEMC, "Hebron man arrested for filing complaint about settler attack", 9 June 2013.

<sup>174</sup> NRC interview with a representative from an international organization operating in Hebron, Hebron, 14 December 2011; NRC interview with a representative from an international organization operating in Hebron, Hebron, 22 December 2011.

<sup>175</sup> Quoted in: B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 50.

<sup>176</sup> Human Rights Watch, *Israel: New Commander Should Protect Palestinians*, *supra* note 163.

<sup>177</sup> B'Tselem, *Violence by settlers: Authorities' handling of complaints regarding settler violence*, 1 January 2011 (updated on 23 January 2013).

<sup>178</sup> Yesh Din, *Law Enforcement upon Israeli Civilians in the West Bank*, March 2012, p. 6.

<sup>179</sup> Yesh Din, *A Semblance of Law*, *supra* note 168, pp. 97-101.

<sup>180</sup> *Breaking the Silence, Israeli soldier testimonies, 2000-2010*, *supra* note 31, p. 29.

In cases of police abuse, the Department for the Investigation of Police (DIP) within the Ministry of Justice reviews the complaints. Information gathered by B'Tselem in 2007 suggests that 82 percent of cases submitted to the DIP during the second Intifada were closed without an indictment filed.<sup>181</sup> In one case, involving the beating of Ra'id Fatafteh by a police officer, the file was closed due to 'lack of evidence', "even though the incident took place in daylight and was witnessed by many persons".<sup>182</sup>

Between the years of 2000-2012, the Military Police Investigations Unit within the Israeli military had opened 2,207 cases throughout the West Bank and Gaza involving offences committed by soldiers against Palestinians and their property. Only 5 per cent of cases resulted in any form of indictment.<sup>183</sup> In recent years there has been a significant fall in the rate of indictment following investigations. Only 2.62 percent of the investigation files opened over the years of 2009-2011 resulted in indictment.<sup>184</sup> The 2010 killing of Palestinian Fayez Ahmed Faraj by Israeli soldiers exemplifies the apparent lack of accountability for soldiers that persists in the West Bank. On 12 February 2010, Faraj, a resident of Hebron's Old City, was shot several times by Israeli soldiers and later died of his injuries. The Israeli military claimed that the man had attacked a soldier with a knife, though evidence collected by Palestinian NGO Al-Haq contended that Faraj was unarmed and that, after the shooting, a soldier took his own knife and threw it down beside the victim.<sup>185</sup>

### 3.6 Daily Searches and Checkpoints

Palestinians living in the H2 area of Hebron are subjected on a regular basis to an array of house searches and checkpoints manned by Israeli security forces. Routine searches of homes are most frequent for the families living in close proximity to Israeli settlements.

Some of the searches seem designed purely to intimidate. One of the testimonies obtained by Breaking the Silence in 2010 from a soldier based in Hebron relates to a Palestinian who lives close to one of the Hebron settlements, and constantly conducts tours for tourists about Hebron and the occupation. According to the testimony, the military wanted to put an end to these tours:

The brigade commander proposed that we carry out an intimidation mission, although we never called it that. The whole platoon went in there at one or two o'clock in the morning, the company commander and deputy wore black masks... it was not an arrest mission, it was just to scare them. Wild banging on the door with our weapons, telling them: "Get out now!" We took out Abed and his brother and some guys from the platoon entered the house and woke up the kids and the wife. I think the grandparents were there, too. Old people. Then the commander and deputy yelled at Abed and his brother outside, something like: "Stop doing this!"... We were inside, there wasn't too much to do...His wife and kids were there, tired as hell, and nervous. We knew we shouldn't conduct a search, and I don't know who gave the order. It wasn't really an order, it was more like: "Let's behave as if we're searching the house." Like, let's mess this place up... You stick your gun barrel in the closet, mess up the clothes, open a cupboard, open drawers, use your rifle, as if you're conducting a search, as if it's justified.<sup>186</sup>

Palestinians walking in H2 are also subjected to dozens of checkpoints, frequent patrols, random ID checks, and are subject to being detained from anywhere between several minutes to a few hours.<sup>187</sup> The

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<sup>181</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 58.

<sup>182</sup> *Ibid.*, p. 57 (citing letter of 7 December 2006 from DIP to Ra'id Fatafteh).

<sup>183</sup> Yesh Din, *Law Enforcement upon IDF Soldiers in the Territories*, January 2013, p. 3.

<sup>184</sup> *Ibid.*

<sup>185</sup> Al-Haq, *Excessive Use of Force and Willful Killing in Hebron*, 3 March 2010.

<sup>186</sup> Breaking the Silence, *Soldiers' Testimonies from Hebron*, *supra* note 31, p. 25.

<sup>187</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 63.



same case pertains to Palestinian vehicles. According to a testimonial obtained by Breaking the Silence from a soldier based in Hebron in 2008: “We’d check vehicles... We’d go in on patrol, put up a roadblock in the middle of their street, and actually check vehicles... There were cases where just to pass the time, people would take cars apart”.<sup>188</sup>

### **Qurtuba Primary School**

Daily checkpoints are an unavoidable reality for the approximately 150 students and 15 teachers at the Qurtuba primary school, which is located 100 metres from the Beit Hadassah settlement in the Hebron Old City and not far from Tel Rumeida. Because of the ban on Palestinian vehicles on Shuhada Street, where the school is located, it can only be reached by Palestinians on foot. Every day the students and teachers coming from H1 and most of H2 must pass through Military Checkpoint 56 twice a day, where they go through a metal detector and may have their school bags searched by soldiers. Once through the checkpoints, the students also have to pass by Beit Hadassah, where they face regular harassment from the settlers.

In 2006, the Israeli Civil Administration waived the requirement that all students and teachers needed to pass through the metal detector at this checkpoint en route to the school and agreed orally that these groups were exempt. In October 2011, however, without notice, the military changed the security policy and all students and teachers were again required to pass through the metal detectors on the way to and from school, regardless of any medical conditions or pregnancy. In response, students and teachers protested this policy change.<sup>189</sup> The majority of the teachers began using alternate lengthy detours and dirt routes to reach the school.<sup>190</sup> However, in December 2011 the Israeli military changed the policy again and currently allows only the teachers passing through Checkpoint 56 to go through a side door, thus avoiding the metal detectors.<sup>191</sup>

**Table 2: Student Enrolment in Palestinian Schools in the H2 area of Hebron, 2005<sup>192</sup>**

School	Academic Year						
	1999	2001	2003	2005	2007	2009	2011
Qurtuba	194	148	85	101	125	145	147
Al Fayhaa	327	269	207	218	209	229	265
Al Ibrahimieh	532	428	309	343	361	402	368

This change in policy should be seen in a broader sense of displacement – as another move towards forcing the closure of Qurtuba School, as well as two other Palestinian schools located in H2, the Al Fayhaa and Al Ibrahimieh schools. Following the beginning of the second Intifada, and up until 2005, student enrolment in these three schools has dropped by nearly 50 percent. Starting in 2005 a gradual improvement is shown in this regard, but student enrolment in these schools is still significantly lower than prior to the commencement of the Intifada. Settlers also set fire to the Qurtuba School in August 2007, the newly-refurbished garden at the school was destroyed in November 2007, and the windows and door to the school were broken in March 2008.<sup>193</sup>

<sup>188</sup> Breaking the Silence, *Soldiers’ Testimonies from Hebron*, supra note 31, p. 45.

<sup>189</sup> Al-Haq, *Harsh living conditions in Hebron: Checkpoints limit right to education*, 27 October 2011.

<sup>190</sup> NRC interview with a representative from an international organisation operating in Hebron, Hebron, 14 December 2011.

<sup>191</sup> NRC interview with a representative from an international organisation operating in Hebron, East Jerusalem, 4 April 2013

<sup>192</sup> Data by: UNOCHA, *Humanitarian Update*, July 2005, p. 2; UNICEF, Hebron office, April 2013.

<sup>193</sup> Ma’an Development Center, *Hebron – Destroyed from Within*, supra note 161, p. 27.



### 3.7 Seizure of Palestinian Houses and Lands for Military Purposes

According to Israeli military “legislation”, the Israeli military may issue an order to seize land for military needs, which does not change the status or ownership of the land and only affects rights to use of the land. Essentially, these orders result in the forced leasing of the land to the Israeli military and dispossess the owners for a period of time. At the end of the seizure order, land should revert to its previous owners; in practice, however Israeli military seizures have historically been used to build settlements.<sup>194</sup> As mentioned above, the settlement of Kiryat Arba is partially built on land initially seized by the Israeli army purportedly for military use.

In addition, under the Order concerning Security Provisions (Judea and Samaria) (No. 378), 1970, Article 90, the Military Commander “may declare any area or place closed.”

Based on these provisions of military legislation, hundreds of thousands of dunums (tens of thousands of hectares) of land in the West Bank have been declared a “closed military zone”. These areas serve for military training, for the Seam Zone (which is the area between the Wall and the Green Line) and also for the creation of Special Security Areas (SSA), or “buffer zones”, a term referring to a 400-1000 meter wide strip around some settlements (not all settlements have SSAs). The SSA is a closed military zone, entry into which by Palestinian landowners is permitted only with permits issued for that purpose. These zones often include a 400 to 1,000 metre-wide strip around most Israeli settlements.

In the H2 area of Hebron, these measures acutely affect Palestinians whose agricultural land falls in the Special Security Areas (SSA), or “buffer zones” that surround the Kiryat Arba settlement as well as Palestinians in the Hebron Old City whose homes or rooftops have been seized for military positions. At least 35 Palestinian homes and shops in Hebron have been seized for security purposes, either on a permanent or temporary basis, including: 10 structures near Avraham Avinu, 10 houses along Prayers’ Road, four houses in Tel Rumeida, five houses near Beit Hadassah, three buildings in the area of Beit Romano, and three structures in H1.<sup>195</sup> In addition, near the Tel Rumeida settlement, there are portions of one Palestinian family’s land that have been declared a closed military zone and, according to interviews with NGOs operating in the area, the family’s children have even been arrested by Israeli security forces for accidentally entering the prohibited area.<sup>196</sup>

#### **Rooftop Israeli Military Positions**

A number of Palestinian families in H2 have had their rooftops seized to serve as Israeli military positions, on permanent or temporary bases. Temporary rooftop positions are generally used for less than 48 hours during Shabbat or Jewish holidays; these temporary positions are typically seized without any written military order.<sup>197</sup> While soldiers are in position on the rooftops, the families resident in the structure cannot access their roofs or sometimes even the stairs or top floors of the building. The impact of this presence can be devastating on families already living in overcrowded living conditions.<sup>198</sup>

In a 2006 interview with B’Tselem and ACRI, Bahija Sharabati, whose home in Tel Rumeida hosted a permanent Israeli military rooftop position, described the effects of the soldiers’ presence:

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<sup>194</sup> In 1979, the High Court of Justice deemed this practice of converting land seized for military use into civilian settlements as illegal (HCJ 390/79 *Dweikat v. Government of Israel* 34 (1) PD 1 (also known as the “Elon Moreh case”). However, land which was seized before the verdict was rendered was not returned to the Palestinian owners.

<sup>195</sup> B’Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 59.

<sup>196</sup> NRC interview with a representative from an international organization operating in Hebron, Hebron, 14 December 2011; NRC interview with a representative from an international organization operating in Hebron, Hebron, 22 November 2011.

<sup>197</sup> NRC interview with a representative from an international organization operating in Hebron, Hebron, 14 December 2011.

<sup>198</sup> B’Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 59.

Our yard has become a refuse dump. The soldiers eat and throw the food scraps on the ground around our house. They also urinate on the roof. Three years ago, my little daughter, Abrar, left the house and the urine of one of the soldiers sprayed her on the head. She came into the house and cried.<sup>199</sup>

The Sharabati family avoided using the water from the tanks on their rooftop for fear that the soldiers had urinated in them. The family was also prevented from doing necessary renovations to their house.<sup>200</sup> While all building permits in H2 should be granted by the Palestinian Authority, the Israeli army intervened in the permit application process for unspecified security reasons to prevent the Sharabatis' renovations.

The testimony of an Israeli soldier stationed in Hebron in 2002 with the Nahal Brigade, as provided to *Breaking the Silence*, confirms the behaviour common when Israeli soldiers seized Palestinian property in Hebron:

There is a house we captured in Hebron...we captured a house. You know the procedure, the family moves a floor down. Now, what did we do? We were...the guys set up, they set up a pipe to pee, it was on the third floor, to pee outside. They put the pipe, we put the pipe so that it would exactly, all the pee would flow into the courtyard of the house below us. There were a few chicken coops right there, everything just poured out there. That was the daily joke. Waiting for the father and one of his kids to go to the coop and then everyone stands and pees down [on them]. Or I just remember a friend that liked brushing his teeth and he would wash his mouth with a canteen, and then wait for someone to pass underneath and then spit on them, spit outside.<sup>201</sup>

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<sup>199</sup> *Ibid.*, p. 60.

<sup>200</sup> NRC interview with a representative from an international organization operating in Hebron, Hebron, 14 December 2011; NRC interview with a representative from an international organization operating in Hebron, Hebron, 22 November 2011.

<sup>201</sup> *Breaking the Silence, Israeli soldier testimonies, 2000-2010, supra* note 31, p. 87.

## 4. Legal Framework

The legal system in the occupied West Bank consists of multi-layered legislation and labyrinthine procedures that reflect the changing policies under different governing authorities, from the Ottoman Empire, the British Mandate period, the Jordanian authority and the Israeli military occupation. The primary local law governing property rights in the West Bank is embodied in the Ottoman Land Code of 1858, which is based on Muslim law. The British Mandate period did introduce some amendments to the Ottoman Land Code as did the two decades under Jordanian rule, but for the most part, the Ottoman provisions remain applicable. From 1967 to present, the Israeli military has introduced more than 1,700 military orders governing the West Bank. These provisions regulate nearly all areas of Palestinian life, including purely civilian aspects, such as land administration, taxation, planning and construction.

The following section of the report does not purport to be a comprehensive description of the complex system of laws and legal mechanisms related to land ownership nor does it fully outline the available recourse for Palestinians to raise claims before the Military Appeals Committees or the Israeli High Court of Justice. Rather, this part highlights the dual systems of law applicable to Israeli settlers and Palestinians respectively in the H2 area of Hebron as well as relevant protections and Israeli's obligations under international human rights law and international humanitarian law.

### 4.1 Dual System of Law in Hebron's Old City<sup>202</sup>

In understanding the legal context surrounding housing, land and property and other violations in Hebron's Old City, it is important to note the different legal regimes that are applied to Israeli settlers and Palestinians for identical violations or offenses. Israeli domestic legislation, as enacted by the Knesset and valid within the State of Israel, is applied extraterritorially to settlements and to settlers personally, while Palestinians resident in H2 are governed by Israeli military orders as issued by the Military Commander.

These disparate systems of law are applied to the Israeli settlers and Palestinian residents through three techniques:

- **Israeli Criminal Law Applied to Settlers** – Although Israeli settlers in the Hebron Old City and elsewhere in the West Bank live in territory that is subject to Israeli military rule, and the settlements have not been formally annexed, Israel applies much of its domestic law extraterritorially to settlers, particularly in the area of criminal law.<sup>203</sup> The Emergency Regulations (Offenses in the Occupied Territories – Jurisdiction and Legal Assistance), 5727-1967 was enacted by the Ministry of Defence in July 1967 and ordered that Israeli civilians who committed criminal offenses in the oPt were to be tried in Israeli civil courts. This regulation granting extraterritorial application of Israeli criminal law has been regularly extended by the Israeli Knesset.<sup>204</sup>
- **Israeli Administrative Laws Applied to Settlements** – Israeli military orders authorise the application of Israeli administrative laws to the municipal authorities that administer West Bank settlements. Without being formally annexed by Israel, West Bank settlements are essentially treated on par with the Israeli local and regional councils located within the State of Israel. By comparison, the municipal system under Jordanian law still applies to the Palestinian population. Thus, Israeli law is applied extraterritorially to the local and regional councils of the settlements, granting them powers that in practice exceed those of equivalent Palestinian authorities.

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<sup>202</sup> This part is based, to a great extent on: Michael Sfar (ed) and Emily Schaeffer, *A Guide to Housing, Land and Property Law in Area C of the West Bank*, February 2012, pp. 19-20.

<sup>203</sup> The Law Amending and Extending the Validity of the Defense Emergency Regulations (Judea and Samaria) – Jurisdiction of Offences and Legal Aid, 2007.

<sup>204</sup> B'Tselem, *Dual System of Law*, 1 January 2011.

- **Military Orders Applied to Palestinians** – Palestinians resident in the West Bank are subjected to military orders issued by the Israeli Military Commander. Some military orders issued apply disparate standards to Israeli settlers and Palestinians in the West Bank. For example, in the military order declaring the Seam Zone to be a closed military area and requiring all Palestinians, including those residing in the closed area, to obtain a permit to access the area, the order explicitly states that permit restrictions do not apply to citizens of Israel and foreign passport holders.<sup>205</sup>

Because the provisions of Israeli domestic law are typically more protective and in line with international legal standards than the military order regime established in the West Bank to govern and regulate the decades-old Israeli occupation, the dual and largely separate systems of law in the West Bank for Israelis and Palestinians allow settlers to enjoy judicial privileges and legal guarantees that are not provided to Palestinians. Discrepancies in protection and treatment between the two populations are evident in numerous areas, including the authority to arrest a suspect, the maximum period of detention prior to trial, the right to an attorney, minimum due process protections at trial, the maximum applicable punishment and release prior to completion of a sentence.<sup>206</sup> Moreover, this distinction in legal treatment is based entirely on the nationality and ethnicity of the accused, in direct violation of the principles of equality before the law.

Under Israeli law and the law applicable to Israeli citizens in the oPt, persons under the age of twelve cannot be criminally responsible for their actions.<sup>207</sup> Because criminal attacks against Palestinians are often carried out by settler minors under the age of 12, the result is often criminal impunity for serious violent attacks against Palestinian civilians.

Testimony recorded by Breaking the Silence in 2010 from one soldier who served in Hebron described the atmosphere of lack of accountability under which Israeli settler children (in this case, 10-11 years old) act:

Our patience was at its end, we were the standby squad out there, it was Saturday and we were alerted by the barrier, at Beit Hadassah near the “Desperation Stairway”: Jews had blocked the way to a Palestinian woman and began to throw stones at her... I came relatively late...so I joined them and saw my sergeant arguing with several kids who came up to about his navel, shouting at him: “Son of a bitch! What are you doing out here? You’re not even protecting us! Whose side are you on?” Total mess. Their father stands on the side, inciting them against us because we told them they couldn’t go through there because the Palestinian woman was standing there and needed to proceed and they had thrown stones at her a moment earlier, with no reason. It was a real crisis, we didn’t understand what we were able to do about it... There’s nothing we can do about them”.<sup>208</sup>

Even though children under 12 may be immune from criminal liability, Israeli police could take certain actions against settler children, including issuing supervision orders that would require a bond to be posted by the child’s parents and would be forfeited upon subsequent offense.<sup>209</sup> Police could likewise order a welfare worker to be assigned. However, no such actions are typically taken against Israeli settler children who carry out what frequently amount to harsh and unprovoked acts of violence.

<sup>205</sup> See for instance: Declaration of Closure of Area no. S/2/03 (Seam Zone), 2 October 2003. In more recent similar declarations, the provision that the closure does not apply to Israelis was deleted and instead Israelis were granted a “general permit” to enter the Seam Zone and reside therein.

<sup>206</sup> See, e.g., the petition in HCJ 4057/10 *Association for Civil Rights in Israel v. Military Commander in Judea and Samaria*, submitted on 25 May 2010.

<sup>207</sup> Israel Penal Law 5737-1977, Article 34f.

<sup>208</sup> Breaking the Silence, *Soldiers’ Testimonies from Hebron*, *supra* note 31, pp. 61-62.

<sup>209</sup> B’Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 45.

## 4.2 International Humanitarian Law

International humanitarian law applies in situations of armed conflicts, including situations of occupation. Alongside its provisions ensuring the legitimate security interests of the occupying power, international humanitarian law considers the occupying power as a kind of trustee over the territory that should administrate the territory in the interests of its inhabitants and ensure their needs are met. Two of the most pertinent documents regarding the application of international humanitarian law to occupied territories are the Fourth Hague Convention Respecting the Laws and Customs of War on Land of 1907 and its annexed regulations (together referred to as the “Hague Regulations”) and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 (hereinafter: “the Fourth Geneva Convention”).

Overall, Israel does not contest the applicability of international humanitarian law to its occupation of the West Bank and the Israeli High Court of Justice has confirmed that “the legal regime that applies to these areas [the West Bank] is governed by public international law concerning belligerent occupation”.<sup>210</sup> Israel has formally accepted the Hague Regulations as customary international law (and thus binding on all states, including Israel), and consequently has accepted their application to the occupied Palestinian territory.<sup>211</sup> However, the situation is different in regard to the Fourth Geneva Convention. Although Israel is a party to the Fourth Geneva Convention, the official Israeli government position is that it does not apply *de jure* to the occupied Palestinian territory.<sup>212</sup> Nevertheless, the Israeli position has been rejected by the International Court of Justice, other High Contracting Parties to the Fourth Geneva Convention, the ICRC commentary on the Fourth Geneva Convention and the majority of international law scholars.<sup>213</sup>

Palestinians in the oPt are considered “protected persons” under the Fourth Geneva Convention and are “entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs”.<sup>214</sup> Article 43 the Hague Regulations stipulates that “[t]he Authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all measures in his power to restore and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”.<sup>215</sup> Thus, although it recognizes the legitimate security interests of the occupying power in the occupied territory, Article 43 is a clause of limitation, the goal of which is not to create privileges for occupiers, but rather to impose restraints on them.<sup>216</sup> The occupying power must act in the best interests of the local population except where prevented from doing so by military necessity.<sup>217</sup>

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<sup>210</sup> See, e.g., H CJ 7957/04 *Zahran Younis Mara'abe et al v. Prime Minister of Israel et al*, (2005) 60(2) PD 477, 492.

<sup>211</sup> See, e.g., H CJ 606/78 *Ayyub v. Minister of Defence*, (1979) 33 (2) PD 113.

<sup>212</sup> This contention relies on a narrow interpretation of Article 2 of the Convention which, according to Israel, is only applicable to the occupation of the territory of one High Contracting Party by another. Therefore, the Convention is not applicable because Jordan and Egypt were not sovereigns over the West Bank, including East Jerusalem, and Gaza respectively.

<sup>213</sup> For further elaboration on the Israeli position and its rejection see: Orna Ben-Naftali, Aeyal M. Gross & Keren Michaeli, “Illegal Occupation: Framing the Occupied Palestinian Territory”, *Berkeley Journal of International Law*, Vol. 23(3), 2005, 551, pp. 567-570.

<sup>214</sup> Fourth Geneva Convention, Article 27.

<sup>215</sup> The Hague Regulations, Article 43.

<sup>216</sup> Marco Sassoli, “Article 43 of the Hague Regulations and Peace operations in the twenty-first Century”, Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law, Cambridge, June 25-27, 2004, pp. 5-6. Available at: <http://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf> (Site was last accessed on 8 April 2013).

<sup>217</sup> David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, State University of New York Press, Albany, 2002, p. 63.

## Prohibition on Settlement Development

*“The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies”.*

*Article 49(6), Fourth Geneva Convention*

The establishment of Israeli settlements in Hebron’s Old City, as within the rest of the oPt, directly contravenes Article 49(6) of the Fourth Geneva Convention, which prohibits the transfer of the occupying power’s civilian population into the occupied territory. While the settlements were initially established by Israeli civilians and not the government, Israel has for years approved, supported, encouraged and financed the settlement expansion in Hebron and, as such, is in violation of its obligations under Article 49(6).<sup>218</sup>

The International Court of Justice, in its Advisory Opinion in the Wall case, asserted:

That provision prohibits not only deportations or forced transfers of population such as those carried out during the Second World War, but also any measures taken by an occupying power in order to organize or encourage transfers of parts of its own population into the occupied territory... since 1977, Israel has conducted a policy and developed practices involving the establishment of settlements in the Occupied Palestinian Territory, contrary to the terms of Article 49 paragraph 6... the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law.<sup>219</sup>

The expansion of the settlements in the Old City of Hebron is facilitated by different means. One of them is private purchases of Palestinian property by settlers. As detailed below, some of the property transactions are tainted with illegality (for instance, cases where the transaction’s documents were found to be forged).<sup>220</sup> However, from an international law perspective, the legality of these property transactions is questionable even in cases where the transactions were ostensibly done according to the current legislation valid in the oPt. Thus, in order to enable Israelis to purchase land in the oPt, Israel amended the Jordanian law, existing in the West Bank prior to the Israeli occupation, in such a way that restrictions on West Bank land purchases by entities who are not Jordanian citizens or residents, or of Arab origin, were cancelled or mitigated.<sup>221</sup> According to the law of occupation, modification of the local law in the occupied territory by the occupying power may only be justified by the need to maintain public order and to provide for the well-being of the local population. Arguably, the amendments to the Jordanian law do not comply with these principles.<sup>222</sup> In addition, as mentioned above, the entire settlements enterprise in the oPt is illegal from an international humanitarian law perspective. This fundamental provision remains valid regardless of the specific manner in which the purchase took place on the ground.<sup>223</sup>

Another measure that was used in order to facilitate the establishments of settlements in Hebron is recovery of property owned by Jews before 1948. The current position of the Israeli Civil Administration

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<sup>218</sup> B’Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 70.

<sup>219</sup> International Court of Justice (ICJ), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *Advisory Opinion*, 43 IL M 1009 (2004), par. 120.

<sup>220</sup> See the text accompanying *infra* notes 259-269.

<sup>221</sup> Eyal Benvenisti, Eyal Zamir, “Private Claims to Property Rights in the Future Israeli-Palestinian Settlement”, *the American Journal of International Law*, Vol. 89, No. 2 (April, 1995), 295, p. 315.

<sup>222</sup> *Ibid.*

<sup>223</sup> Eyal Zamir and Eyal Benvenisti, *The legal status of lands acquired by Israelis before 1948 in the West Bank, Gaza Strip and East Jerusalem*, the Jerusalem Institute for Israel Studies, 1993, p. 112 [Hebrew].

is that properties owned by Jews before 1948 should not be released by the State to their previous owners. However, properties allegedly belonging to Jews prior to 1948 were released in the past to previous Jewish owners (or their successors) and consequently used to establish the settlements of Avraham Avinu, Beit Hadassah and Tel Rumeida.<sup>224</sup> As detailed below, this type of property was transferred to the Jordanian Custodian of Enemy Property during the period of Jordanian rule over the West Bank between 1948 and 1967. Following the Israeli occupation of the West Bank in 1967, the authorization to administer and manage properties in these areas came under the responsibility of the Custodian of Government and Abandoned Property at the Israeli Civil Administration.<sup>225</sup> Consequently, this property is considered “governmental property” that should be managed, following the Israeli occupation of the West Bank, according to the provisions of international humanitarian law pertaining to public property in an occupied territory. According to these provisions, the occupying force may administer and even enjoy the use of these properties but it does not acquire ownerships rights in them and it is forbidden from transferring them to others;<sup>226</sup> in particular, individuals who moved to the occupied territory in contravention of international humanitarian law, *i.e.* settlers. In addition, Palestinians residing in this type of property, prior to its release to the previous owners, have acquired rights in the property which are also protected by the law of occupation.<sup>227</sup>

### **Forcible transfer**

*“Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive”.*

*Article 49(1), Fourth Geneva Convention*

Forcible transfer entails consequences including the abandonment of one’s home and possessions and potentially losing one’s rights in the property. The prohibition on the forcible transfer of the local population is not limited to physical force, but may encompass threat of force or indirect coercion intended to force out the civilian population.<sup>228</sup> Whereas *deportation* requires the displacement of persons across a national border, *forcible transfer* may take place within national boundaries or the occupied territory.<sup>229</sup> The harshness of this act is underscored by the inclusion and categorization of forcible transfer as a grave breach of the Fourth Geneva Convention.<sup>230</sup> The Rome Statute of the International Criminal Court qualifies forcible transfer as a war crime, and additionally, as a crime against humanity when carried out as part of a widespread and systematic attack against a civilian population. In regard to displacement of civilians within an occupied territory, the ICC Statute contemplates it as a war crime.<sup>231</sup>

The development of Israeli settlements and the separation policy targeting Palestinian residents of H2, including the harsh measures taken by the Israeli forces, have brought about a “quiet transfer” of

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<sup>224</sup> Chaim Levinson, “Israel Supreme Court rules Hebron Jews can’t reclaim lands lost after 1948”, *Haaretz*, 18 February 2011.

<sup>225</sup> The Order concerning Government Property (West Bank Area) (No. 59), 1967, Articles 1-2.

<sup>226</sup> The Hague Regulations, Article 55.

<sup>227</sup> These rights should arguably qualify this property as private property, which is protected from confiscation (*see* the Hague Regulations, Article 46(2)) (*see*, in this regard: Zamir and Benvenisti, *The legal status of lands acquired by Israelis before 1948*, *supra* note 223, p. 127).

<sup>228</sup> *See, e.g.*, Prosecutor v. Radislav Krstic (Trial Judgment), International Criminal Tribunal for the former Yugoslavia (ICTY), 2 August 2001, par. 528-530.

<sup>229</sup> *See: Ibid.*, par. 521; Yoram Dinstein, *The International Law of Belligerent Occupation*, Cambridge University press (2009), pp. 161-162.

<sup>230</sup> Fourth Geneva Convention, Article 147 and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 85(4)(a).

<sup>231</sup> In regard to war crimes, *see*: Rome Statute, Article 8(2)(a)(vii) and Article 8(2)(b)(viii). In regard to crime against humanity *see*: Rome Status, Article 7(1)(d).

thousands of Palestinians from the City Centre. The ‘transfer’ has not taken place voluntarily but in a highly charged and volatile environment where settler violence is endemic, where the legal system provides little protection against rights violations suffered by Palestinians and in fact facilitates settlement expansion in contravention of international law and where ‘security justifications’ are designed to protect settlers, not the occupied population. In addition, as mentioned above, in many cases the security forces also directly prevent Palestinian families from returning to their homes.<sup>232</sup> The serious and pervasive nature of these various practices act as a form of direct or indirect coercion.

### **Prohibition on Collective Punishment**

*“No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited”.*

*Article 33, Fourth Geneva Convention*

*“No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible”.*

*Article 50, The Hague Regulations*

International humanitarian law strictly prohibits collective punishment. However, as described in detail in this report, some of the measures taken by the Israeli military in Hebron – such as the prohibition on Palestinian movement on the streets and closure of businesses – are sweeping and collective by their nature. They are applied indiscriminately, regardless of any individual risk posed, and without due consideration to reasonable alternative arrangements which could better balance legitimate security considerations whilst protecting the rights of the occupied population.

Thus, in 2003, the Hebron Brigade deputy essentially admitted that the Israeli military policy in Hebron was intended to collectively punish the entire Palestinian population and that “the economic burden is not incidental, it is part of a long process to pressure the residents of Hebron to get them to rid themselves from the terror in their midst”.<sup>233</sup>

Israel argues that these measures are not meant to collectively punish the Palestinian population but rather are needed for the protection of the settlers living in the Old City of Hebron.<sup>234</sup> Regardless of the illegality of the settlers’ presence in the city, the credibility of this argument is doubtful. In the past several years – according to the Israeli military itself – there has been an improvement in the security situation in Hebron.<sup>235</sup> Yet, many of the harsh and collective means introduced during the second Intifada are still enforced. In addition, the Israeli army rejected a proposal by a group of retired Israeli military senior officers, that would enable the army to protect the Israeli settlers without isolating the area from the rest of the city and harming the Palestinian population collectively. The rejection was based on the notion that the principle of separation between settlers and Palestinians in Hebron needs to be kept.<sup>236</sup>

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<sup>232</sup> See also: B’Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 74.

<sup>233</sup> Quoted in: B’Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 39 (quoting *Yoman*, Israeli Channel One Television, 7 February 2003).

<sup>234</sup> HCJ 11235/04 *Hebron Municipality v. State of Israel* (judgment rendered 6 June 2011).

<sup>235</sup> *Ibid.*, pars. 2-3 of the ruling.

<sup>236</sup> See: letter by Adv. Limor Yehuda from ACRI to the Attorney General, Meni Mazuz, 27 August 2006, and the State’s response from 31 January 2007 (see: <http://www.acri.org.il/he/?p=1814> [Hebrew], site was last accessed on 23 May 2013).



### 4.3 International Human Rights Law

While Israel does not recognise the extraterritorial application of its human rights treaty obligations in the oPt, prevailing international consensus holds otherwise. In the landmark 2004 *Advisory Opinion considering the legality of the Wall built by Israel in the West Bank, including East Jerusalem*, the International Court of Justice (ICJ) unanimously found that Israel is bound to comply with both the Fourth Geneva Convention and its international human rights obligations in the context of the ongoing occupation of Palestinian territory.<sup>237</sup> In the reports of the Working Group on the Universal Periodic Review of Israel, the UN Human Rights Council similarly rejected Israel's contention that there is no extraterritorial application of its human rights obligations in the oPt.<sup>238</sup>

On 3 October 1991, Israel ratified several United Nations human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC). Pursuant to these treaties, Israel must guarantee freedom of movement,<sup>239</sup> the right to gain a living by the work of one's choosing,<sup>240</sup> the right to an adequate standard of living, including the right to adequate housing,<sup>241</sup> the right to the highest attainable standard of health,<sup>242</sup> and the right to education.<sup>243</sup> As described in detail in this report, Israeli practices in the Old City of Hebron are arguably in contradiction to its obligations according to these treaties.

In regard to the right to education, the Committee on Economic, Social and Cultural Rights, that monitors implementation of the ICESCR by its states parties, in its concluding observations on Israel's periodic report from December 2011, was concerned that "Palestinian children living in the Occupied Palestinian Territory are not able to enjoy their right to education, as a consequence of restrictions on their movement, regular harassment by settlers of children and teachers on their way to and from school, attacks on educational facilities, and sub-standard school infrastructure".<sup>244</sup>

Israel has likewise ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1979, which prohibits all racial discrimination. For the purposes of ICERD, racial discrimination is defined as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life".<sup>245</sup>

The discriminatory treatment of Palestinians under the dual systems of law is in direct violation of ICERD. Moreover, the differential status is not simply an issue of citizenship since non-Israeli Jewish guests in the settlements and yeshiva in Hebron receive equal protection to Israeli-citizen settlers. Conversely, Palestinians are subject to Israeli military law and many of the restrictions imposed upon them are solely based on their national-ethnic origin.<sup>246</sup>

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<sup>237</sup> ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, *supra* note 219, par. 90-121.

<sup>238</sup> Report of the Working Group on the Universal Periodic Review: Israel, Human Rights Council, Tenth session, A/HRC/10/76, 8 January 2009.

<sup>239</sup> ICCPR, Article 12(1).

<sup>240</sup> ICESCR, Article 6.

<sup>241</sup> ICESCR, Article 11(1); CRC, Article 27(1).

<sup>242</sup> ICESCR, Article 12; CRC, Article 24

<sup>243</sup> ICESCR, Article 13; CRC, Article 28;

<sup>244</sup> Committee on the Economic, Social and Cultural Rights, *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel*, 2 December 2011, E/C.12/ISR/CO/3, par. 35.

<sup>245</sup> ICERD, Article 1.

<sup>246</sup> In this regard, *see also*: B'Tselem and ACRI, *Ghost Town*, *supra* note 13, pp. 72-73.

## 4.4 Israeli Court Cases

Though originally initiated by individual Israelis, the development and expansion of the Israeli settlements in the city of Hebron has been carried out and supported by various governmental authorities. As explored below, even the Israeli High Court of Justice, which is mandated to scrutinize practices by Israeli authorities in the oPt in light of domestic and international law, has, in many cases, refrained, from criticizing the settlement activities in Hebron, and has accepted vague and unsupported security justifications or has employed technical arguments to dismiss petitions challenging practices which appear to be manifestly unlawful.

Some of the cases heard by the High Court of Justice have addressed the issue of settlement expansion in Hebron directly, namely petitions filed in regard to particular properties targeted by the settlers. Other cases dealt with different measures which aim to facilitate settlement expansion such as the closing of Palestinian businesses, the seizure and demolition of properties in order to protect the Hebron settlements and cases pertaining to severe restrictions on freedom of movement on Palestinians. The cases presented below cover a range of scenarios and problems but highlight the lack of application of international humanitarian law, inconsistent reasoning, a lack of rigour in weighing security justifications and the legitimization of discriminatory practices.

### Ownership Cases

#### *Properties Owned By Jews Before 1948*

Many of the properties inhabited today by settlers in Hebron were owned by Jews before 1948. Despite the current Civil Administration's formal position, according to which these properties should not be released to their previous owners (see below), abandoned Jewish property has been used in the past to establish Jewish settlements in the city. The settlements of Avraham Avinu, Beit Hadassah and Tel Rumeida, which were detailed above, were built this way.<sup>247</sup> At least in regard to Beit Hadassah, the High Court of Justice did not prevent transfer of this type of property to the hands of the settlers.<sup>248</sup> In some cases, properties that were owned by Jews before 1948 were also transferred to the hands of settlers following usage of the Israeli Military Commander's power to seize property for military use. Beit Romano and the area used for the Hebron bus station were seized in this manner.<sup>249</sup>

In regard to the Hebron bus station, a petition was submitted in 1983 to the High Court of Justice following the military takeover of the compound using a land seizure order. The petitioners claimed that this takeover of the bus station was not due to acceptable reasons of military necessity, but rather as part of the Jewish settlement project in the city. The judgment, which was delivered almost nine years after the petition was submitted, accepted the State's claim that the considerations were purely military related.<sup>250</sup> Today, the compound is divided into two: a military section, where soldiers reside, and a civilian section, where the settlers live. In 2008, another petition was filed with the HCJ, this time by the Israeli NGO Peace Now, demanding the eviction of the settlers from the compound. From an international law perspective, it was clear that the seizure order underpinning the takeover of the property cannot apply to the area where the settlers live, since this kind of order may only be issued for military needs. In addition, the petitioner claimed that civilians cannot reside inside a military camp since the laws of war require clear separation between military and civilian facilities. The High Court of Justice has chosen not to

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<sup>247</sup> Levinson, "Israel Supreme Court rules Hebron Jews can't reclaim lands lost after 1948", *supra* note 224.

<sup>248</sup> See, e.g., HCJ 175/81, *supra* note 57.

<sup>249</sup> Zamir and Benvenisti, *The legal status of lands acquired by Israelis before 1948* *supra* note 223, pp. 169-170.

<sup>250</sup> HCJ 469/83 *United Bus Company of Hebron LTD. v. Ministry of Defence* (judgment rendered 1 April 1992).

intervene in the case – which would undoubtedly have had dramatic legal and political consequences – and rejected the petition without any reference to the substantive issues it raised. The High Court, in rejecting the petition, ruled that it was extremely delayed, particularly insofar as the petitioner in the case was a public petitioner (*i.e.* the Peace Now organization) rather than a party which was directly injured (such as the bus company or the City of Hebron).<sup>251</sup>

As mentioned above, the current formal position of the Israeli Civil Administration is that properties owned by Jews in the West Bank (excluding East Jerusalem) before 1948 should not be released to their previous owners. This stance was approved in the High Court of Justice ruling in the case of *Valero* from 2011, pertaining to properties located in the Old City of Hebron.<sup>252</sup> As in other similar cases, this case deals with property owned by Jews before 1948 that was transferred to the Jordanian Custodian of Enemy Property during the period of Jordanian rule over the West Bank between 1948 and 1967. Following the Israeli occupation of the West Bank in 1967, the authorization to administer and manage properties in these areas came under the responsibility of the Custodian of Government and Abandoned Property at the Israeli Civil Administration.<sup>253</sup> The High Court ruled that vesting these properties with the Jordanian Custodian of Enemy Property after 1948 annulled the ownership rights of the previous owners.<sup>254</sup> Following the 1967 Israeli occupation, these properties have become “governmental property” that should be managed according to the provisions of international humanitarian law pertaining to public property in an occupied territory. According to these provisions, the occupying force may administer and even enjoy the use of these properties but it does not acquire ownerships rights in them. The administration of the properties should be carried out in the framework of the law of occupation, *i.e.*, for the purpose of keeping public order and fulfilling the needs of the protected persons (in the present case, the Palestinians).<sup>255</sup> The State has also claimed that releasing these properties to their pre-1948 owners may lead to a series of claims by Palestinian refugees to reacquire their properties left within Israel in 1948. Since, according to the Israeli law, these claims would most likely be rejected, it may lead an increase in disputes over lands in the region and, as a result, to an increase in tension.<sup>256</sup> The High Court of Justice has upheld this position and, in the *Valero* case, the property was not released to its pre-1948 owners.<sup>257</sup>

Another case pertaining to properties owned by Jews before 1948 is the case of “Beit Ezra” near the Avraham Avinu settlement in Hebron. As mentioned above, the house was abandoned by the settlers in April 2013. However, the State is still examining the legal aspects regarding the option of designating the property for the use of the settlers.<sup>258</sup>

### *Dubious Purchases*

Another cause of forced displacement of Palestinians in the Hebron Old City is the purchasing of Palestinian properties by settlers, often done in transactions of questionable legality. Over the years, a number of disputes regarding these transactions have made it to the Israeli courts.

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<sup>251</sup> HCJ 6492/08 *Sha'al Educational Project v. Commander of the IDF Forces in the West Bank* (judgment rendered January 14, 2010). See more in this regard: Yossi Wolfson, “Settlement with Impunity”, *Hamoked – Center for the Defence of the Individual*, 15 May 2011.

<sup>252</sup> HCJ 3103/06 *Valero v. State of Israel*, 6 February 2011. The same Civil Administration opinion was approved by an earlier 1996 ruling, HCJ 1285/93 *Schechter v. Commander of Judea and Samaria*, 8 December 1996, which, as opposed to the *Valero* case, did not deal with property located in Hebron.

<sup>253</sup> The Order concerning Government Property (West Bank Area) (No. 59), 1967, Articles 1-2.

<sup>254</sup> The matter of *Valero*, *supra* note 252, sections 27-31 of the verdict.

<sup>255</sup> *Ibid.*, sections 33-45 of the verdict.

<sup>256</sup> *Ibid.*, section 12 of the verdict.

<sup>257</sup> *Ibid.*, sections 49-50 of the verdict.

<sup>258</sup> See the text accompanying *supra* notes 87-90.

As mentioned earlier in this report, on 19 March 2007, Hebron settlers occupied the Al Rajabi house (also known as “Beit Hashalom” or “the Brown House”).<sup>259</sup> Following the invasion, Al Rajabi filed a petition to the High Court of Justice demanding the assistance of the Israeli police and military in evicting the settlers from his house. Consequently, the State accepted Al Rajabi’s request and the petition was withdrawn.<sup>260</sup>

Shortly after this, the Tal Lebniya company, petitioned to the High Court requesting that the State refrain from assisting Al Rajabi in evicting the settlers from the building. Tal Lebniya claimed that two Palestinians (one of them was Fais Al Rajabi) sold the house in 2004 to a Palestinian named Ayub Jaber and that this transaction was done for the company’s benefit, as the buyers of the property, while Jaber served as a “straw man” for this purpose. Al Rajabi claimed that this transaction was not completed and, therefore, that Tal Lebniya did not have any rights in the property. The State claimed that some of the documents that seemingly showed that the transaction was completed were found to be forged. Moreover, the State claimed that the settlers invaded the house illegally and therefore should clear the building.<sup>261</sup> The High Court asserted that since it has not been proven that Al Rajabi sold the property to Tal Lebniya and since Al Rajabi promptly requested that the authorities evict the settlers, the State’s position is reasonable. Yet, concluded the Court, the question of who possess the rights in the building should be decided in the authorised courts.<sup>262</sup>

As a result of the High Court of Justice’s decision, the house was emptied of settlers on 4 December 2008, and Israeli military forces took over occupation of the building.<sup>263</sup> In the meantime, proceedings were carried out in the Jerusalem District Court regarding the question of ownership rights in the house. In September 2012 the court ruled in favor of Tal Lebniya, asserting that the purchase transaction was completed and should be enforced.<sup>264</sup> Al Rajabi has filed an appeal to the Supreme Court and, in the meantime, the house is still held by the Israeli military.<sup>265</sup>

Another house that was allegedly purchased by settlers is the Bakri family house in the Tel Rumeida area. The Bakri family moved out of their home in 2001 due to constant settler attacks and built a new house in the Palestinian-controlled H1 area of Hebron. After the family left, their home was occupied by Israeli settlers and settlers remain in the building at present.<sup>266</sup> As with the Al Rajabi/Beit Hashalom settlement, the issue of the Bakri house has been dealt with by different courts in several court proceedings.<sup>267</sup> Another resemblance to the Al Rajabi case pertains to the way the house was supposedly purchased: the Tal Lebniya company allegedly used a Palestinian middle man to conduct the purchase. It is quite possible that the documents used for the purchase were forged.

In 2009, the Bakri family petitioned the Jerusalem District Court for a declarative ruling that it is the rightful owner of the house. The court accepted the claim and based its ruling on, among other things, the lack of any evidence pointing to the existence of a sale agreement and the company’s refusal to produce

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<sup>259</sup> In regard to this case, *see* also the text accompanying *supra* notes 107-116.

<sup>260</sup> HCJ 3407/07 *Rajabi v. Minister of Defence* (the petition was deleted on 26 November 2007).

<sup>261</sup> HCJ 10302/07, *supra* note 107, sections 1-21.

<sup>262</sup> *Ibid.*, section 40.

<sup>263</sup> *See* the text accompanying *supra* notes 113-115.

<sup>264</sup> Civil Claim (Jerusalem District Court) 2025/08 *Tal Bniya VeHashkaot Karnei Shomron v. Rajabi* (judgment rendered 13 September 2012).

<sup>265</sup> Civil Appeal 8012/12 *Rajabi v. Tal Bniya VeHashkaot Karnei Shomron*.

<sup>266</sup> Levinson, “Israeli court orders eviction of settlers from another Hebron house”; Peace Now’s website:

<http://peacenow.org.il/bakri-hebron>, *supra* note 98.

<sup>267</sup> *See, e.g.*, HCJ 5979/07 *Hebron Municipality v. State of Israel* (the petition was deleted on 26 July 2010); Appeal (Judea and Samaria area) 9/4 *Tal Lebniya VeHashkaot (Karnei Shomron) LTD v. Head of the Civil Administration* (decision rendered 24 August 2011); HCJ 9732/11 *Bakri v. Appeal Committee in Judea and Samaria area* (judgment rendered 1 January 2012); Civil Claim 3329/09, *supra* note 99.

the relevant witnesses. On this basis, the settlers were ordered to leave the property by 15 May 2012.<sup>268</sup> However, following Tal Lebniya's request, the District Court delayed the execution of the ruling. In addition, Tal Lebniya filed an appeal to the Supreme Court, which is still pending.<sup>269</sup>

### **Land Seizure Using Security Considerations**

The use by the Israeli authorities of security considerations in order to justify seizure of land has previously been noted. This usage is discussed below in detail and focuses on cases where land was seized for "temporary" use, based on military considerations; at times, this seizure involved house demolitions.

The most comprehensive ruling in this regard pertained to the military's decision to expand the "Prayers' Road", connecting Kiryat Arba to the Ibrahimi Mosque/Cave of the Patriarchs, practically turning it into a broad promenade. The seizure order which was issued for this purpose also included an order to demolish 13 houses (following the court hearing, the number was reduced to three houses). In the petitions filed against this decision, the State's response was that the order was based purely on security considerations (as a result of military attacks against army troops and settlers which occurred in this area) and was meant to protect the lives of the worshippers using the road. The court approved this argument, concluding that the seizure and demolitions were justified, based on the Military Commander's duty to preserve normal life in the occupied territory. The practical outcome of the verdict is that the Military Commander may seize Palestinian land and demolish Palestinian houses in order to protect the right of settlers – who reside in this territory in contravention of international law – to walk on the Sabbath day to pray at the Cave of the Patriarchs.<sup>270</sup>

A related case was heard by the High Court of Justice in early 2012. This case pertained to a walking path, originally paved by the settlers, which leads into the area of Wadi Al-Hussein and connects the western areas of Kiryat Arba to the Prayers' Road. At first, the State claimed that paving the road was an act of illegal construction and issued a demolition order against the electric poles alongside the path. Subsequently, the State reversed its position and issued a seizure order in order to take over the land on which the path runs to be used for military purposes. The Palestinian owners of the land filed a petition with the Israeli High Court of Justice, through HRC, challenging the seizure order. In response, the State claimed that the land was seized due to military considerations: in comparison with the "Prayers' Road" the military can protect the users of the new road (*i.e.*, the settlers) in a better way; using the new road decreases friction with the Palestinian population; and the new road may be used as a getaway path from the "Prayers' Road", in cases of emergency. The High Court did not find any basis to intervene with the State's current position despite its sudden and dramatic shift.<sup>271</sup>

On occasion the Israeli military has issued seizure orders regarding land adjacent to military bases in order to improve the protection given to soldiers inhabiting the bases. In other words, following the establishment of military bases in the heart of the H2 area of Hebron for the purpose of protecting the Israeli settlers, military needs allegedly require the army to expand the territory of its bases; this time, in order to protect the soldiers in them. This expansion is accomplished at the expense of private Palestinian land. Two petitions filed in 2005 in regard to seizure of lands surrounding two different bases in Hebron

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<sup>268</sup> Civil Claim 3329/09, *supra* note 99.

<sup>269</sup> Civil Appeal 4503/12 *Tal Lebniya v. Bakri*.

<sup>270</sup> HCJ 10356/02 *Haas v. IDF Commander in the West Bank* (judgment rendered 4 March 2004).

<sup>271</sup> HCJ 4331/10 *Hebron Municipality v. State of Israel* (judgment rendered 1 February 2012). For another HCJ ruling, dismissing a petition to cancel a seizure order issued for paving a road connecting the settlement of Tel Rumeida with the Ibrahimi Mosque/Cave of the Patriarchs, see: HCJ 3435/05 *Al Natsha v. Commander of the IDF in Judea and Samaria* (judgment rendered 12 September 2005).

were heard jointly and dismissed by the High Court. The Court decided not to intervene against the State's reasoning according to which the land seizure was necessary based on military considerations.<sup>272</sup>

### **Restrictions on Freedom of Movement of Palestinians**

Settlement expansion and the forced displacement of Palestinians in the H2 area of Hebron are also facilitated by other measures. Among them are the limitations placed by Israel on the freedom of movement of Palestinian residents.

One of the most common practices used by the Israeli military in the oPt to control Palestinian movement is the curfew. During the second Intifada the city of Hebron was placed under curfew for extensive periods of time.<sup>273</sup> In January 2003, ACRI filed a petition challenging the prolonged military curfews. The petitioners claimed that the prolonged curfews have left the residents of Hebron trapped in their houses without the chance to obtain food, medication or other services. In addition, the petitioners claimed that the military had been using this measure (curfew) too broadly, arbitrarily, and unreasonably. In response, the State of Israel claimed that there were adequate breaks in which to purchase provisions, that the curfew was intended to protect Israeli settlers, Palestinian residents and Israeli security forces, and that the curfew amounted to a legitimate military means. The High Court of Justice upheld the State's arguments and rejected the petition.<sup>274</sup>

In the years of 2004-2006, a few additional petitions were filed with the High Court in regards to movement restrictions imposed on Palestinians by the Israeli military in areas in Hebron City. Restrictions that were imposed by the Israeli military following the 1994 massacre in the Ibrahimi Mosque/Cave of the Patriarchs were increased after the outbreak of the second Intifada. Palestinian movement on central roads within the Old City was also forbidden. These restrictions were enforced by a large network of staffed checkpoints and physical roadblocks. In response to the petitions, the State claimed that the purpose of these extensive prohibitions was to separate Israelis and Palestinians in Hebron. According to the State, this separation was needed due to security and operational considerations, both to safeguard the Israeli soldiers and the lives of the settlers living in Hebron.<sup>275</sup> During the years in which the petitions were pending, the military has been willing to consider opening, under strict limitations, some of the roads in the Old City for Palestinian vehicles. However, other main roads remain closed for Palestinians at present. In 2011, the High Court accepted the military's reasoning for its movement restrictions and dismissed all the petitions.<sup>276</sup>

### **Closing of Palestinian Businesses**

Since the beginning of the second Intifada, hundreds of Palestinian shops and businesses in the Hebron Old City have been closed, some by Israeli military orders and some because of the severe restrictions on Palestinian movement in the area. A number of petitions were submitted to the High Court of Justice in response. In 2003, ACRI petitioned the High Court against the Israeli Military Commander's decision to close shops located next to the foundations of the Beit Hadassah settlement and in its vicinity.<sup>277</sup> Following the submission of the petition, the military agreed to open the shops located in the environs of Beit Hadassah, but not those located in Beit Hadassah compound itself. As a result, the petition remained pending. The petitioners claimed that the military did not show that the risk to the life of the settlers is so grave as to justify closing the shops and that other measures which were less harmful to the Palestinians

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<sup>272</sup> HCJ 5968/05 *The Hebron Municipality v. the State of Israel* (judgment rendered 1 March 2006).

<sup>273</sup> See the text accompanying *supra* notes 122-126.

<sup>274</sup> HCJ 854/03, *supra* note 131.

<sup>275</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, pp. 22-24.

<sup>276</sup> HCJ 11235/04, *supra* note 234.

<sup>277</sup> HCJ 7007/03, *supra* note 137.

should have been taken instead. The State claimed in response that closing the shops was the only measure that would properly protect the settlers from the severe risk to their lives. It should be mentioned that in 1986 the military fenced off the Beit Hadassah area and started checking every person wishing to enter those shops. The shop owners petitioned the High Court and claimed that these measures taken by the Military Commander aimed to eventually evict them from these properties. The Court dismissed the petitions and accepted the Military Commander's explanation that these measures were taken due to security considerations.<sup>278</sup>

In April 2005, the High Court dismissed ACRI's 2003 petition and decided not to intervene with the Military Commander's discretion.<sup>279</sup> Thus, the fears expressed by the Palestinian shop owners in 1986 ultimately came true. They have effectively been forced from their properties. The Court accepted the State's position, according to which the military's measures – whether they were relatively straightforward in 1986 or extremely harsh in 2003 – were taken as permissible security considerations.



*Photo: A shop closed beneath Beit Hadassah (Photo by: Christian Peacemaker Team (CPT))*

A petition regarding closing of Palestinian markets in the Hebron Old City was filed in 2002 (an additional petition was filed in 2007 and since then both petitions have been heard jointly). In response to the petition, the State raised the claim that, in any case, H2 was under curfew, “which prevents commercial activity anyway”.<sup>280</sup> The State initially contended that the markets could not be re-opened because the settlers who had taken possession of the Palestinian shops had to be protected.<sup>281</sup> In later years, the State has shown some willingness to re-open some of the markets, under certain conditions, and compensate the shop owners.<sup>282</sup> As far as is known at present, negotiations between the parties regarding these issues have not concluded, and these petitions remain pending.

The approach of the Israeli Supreme Court and other courts on issues of land ownership, restrictions on movement and limits to usage of residential and commercial premises for Palestinians in Hebron presents real challenges in protecting basic rights. A range of legal strategems are used to dismiss petitions on the basis of technical arguments, sweeping and generalized security justifications and arbitrary and inconsistent reasoning. Even in those cases where rights are protected on paper, enforcement of those rights is illusory in practice.

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<sup>278</sup> HCJ 72/86 *Zalum v. Military Commander in Judea and Samaria* (judgment rendered 9 march 1987).

<sup>279</sup> HCJ 7007/03, *supra* note 137.

<sup>280</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 34.

<sup>281</sup> *Ibid.*

<sup>282</sup> HCJ 4639/02 *Qasrawi v. the Military Commander in the West Bank* (court decision dated 17 June 2009).

## Conclusion

For nearly 20 years, Israel has been conducting a clear separation policy between Israeli settlers and Palestinian residents in Hebron. Although the Ibrahimi Mosque/Cave of the Patriarchs massacre in 1994 was committed by an Israeli settler, the Israeli government's reaction to the massacre has conversely been to restrict Palestinian movement and access to property while solidifying the role of the Israeli military to protect settlers at the expense of Palestinian protection of basic rights including the right to property, freedom of movement and non-discrimination. The Israeli government provides substantial financial and military support to both the official settlements as well as the outposts. Under the guise of security considerations, Israeli policies – implemented by military orders – have resulted in many Palestinian residents of the Old City of Hebron abandoning the area and the closure of hundreds of businesses. The exodus of Palestinians living in H2 from the commercial district started in 1994. However, during the second Intifada and following further restrictions imposed by the Israeli military, this process has escalated until the area has essentially emptied. The Old City of Hebron, which traditionally served as the mercantile centre for the entire southern West Bank, is now economically devastated.

While the goal of Israeli authorities in Hebron, in particular since the second Intifada, appears to be to strengthen the separation policy, Israel has never concealed its territorial aspirations in the Old City of Hebron. Whether government initiatives or actions by settler groups' silently ignored by the government, the separation policy has very much served the benefit of the Hebron settlements. The ultimate goal of the settlers to create a contiguous Israeli settlement area connecting the entire Old City with the nearby settlement of Kiryat Arba, including Givat Haharsina and Givat Ha'avot, has never been abandoned.

In order to facilitate the establishment and expansion of settlements and outposts in Hebron, the Israeli authorities and settlers use different quasi-legal methods. Acquiring properties owned by Jews prior to 1948, purchasing properties in questionable transactions and using land originally seized for alleged military purposes are all various means aimed to achieve the same goal. But in order to accurately understand the settlement phenomenon one should not concentrate only on direct takeover of Palestinian property. The supplementary methods surrounding settlement expansion, which are intended to maintain the separation policy, are also significant. Thus, it is the restrictions on freedom of movement of Palestinians, shop closures and minimum police intervention in cases of settler violence that help create the situation in which Palestinians are driven out of the Old City of Hebron while settlements are flourishing, and consolidated in an area which is almost devoid of Palestinians.

Many Palestinians have exhausted, or simply have been exhausted by, any potential legal recourse to protect their property and freedom of movement. For those Palestinians who do attempt to file police complaints, police may refuse to accept complaints, may demand extensive supporting documentation or may simply have the complainant sign a detailed document entirely in Hebrew, which he or she often would be unable to read. For complaints that are filed, the Israeli police fail to adequately investigate the allegations and the vast majority of complaints are dismissed without indictment.

Overall, the Israeli courts have not prevented the aforementioned violations and have consequently assisted in consolidating them. In many cases this has been done in contravention of international law provisions pertaining to handling private and public property in occupied territories, the role of the occupying power in such territories and the prohibition on establishing of settlements.

Whilst the situation in Hebron is dire, it is not irreversible. There is much that can and must be done to protect Palestinian property rights, prevent displacement and restore respect for international law and human rights law principles. Policies and practices should be rescinded that, directly or indirectly, lead to



the forced displacement and/or forcible transfer of civilians in the H2 area of Hebron, including those that contribute to the creation of a coercive environment that forces Palestinians to leave their homes or land. The free movement of civilians should be allowed through the removal of checkpoints and physical and administrative obstacles not necessary for reasons of legitimate military security. Military policies and practices including street and shop closure, daily searches, checkpoints and other restrictions on freedom of movement for Palestinian pedestrians and vehicles should end. All land and property unlawfully taken from Palestinians must be returned to them. Court orders restoring the property rights of Palestinians must be enforced. Concerted action must be taken to prevent violence by settlers against Palestinians and their property. Allegations of settler violence must be investigated and prosecuted in a timely, independent, impartial and thorough manner. Financial, military and political support to Israeli settlements in the Old City of Hebron should cease. Third States must take concrete and practical actions to ensure respect for principles of international humanitarian law in Hebron. There are many more such actions to be taken.

Hebron need not serve as a blueprint for displacement but could serve as a path to the restoration of rights.

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## Case Study: Ja'abari Family, Hebron District

The case of the Ja'abari family in Hebron is a concrete and continuing manifestation of the lack of respect of Palestinian right to property in H2 area in Hebron. It is also a lucid example of the way the law in this area is not enforced on settlers, even in the existence of clear High Court decisions.

### Family Background

Abed Al Karim Al Ja'abari is a Palestinian landowner residing in the neighbourhood of Wadi Al Hussein, inside the H2 area of Hebron to the north of the Ibrahimi Mosque/Cave of the Patriarchs. Abed Al Karim and his family live on a plot of land that is now sandwiched between Kiryat Arba to the east and Givat Ha'avot, to the west.

The extended Al Ja'abari family owns approximately 100 dunums in the village. As a child, Abed Al Karim lived with his parents and brothers in a small house on this land, which was demolished by the Israeli army after the occupation of the West Bank in 1967. The family moved to a different location on their land and built a new house, which was in turn demolished in the mid-1970s by Israeli settlers.

In 2002, the Israeli military issued a land seizure order for much of this land, for alleged military purposes, leaving the family with approximately 40 dunums.<sup>283</sup> Abed Al Karim owns part of the remaining 40 dunums of family land. In 1998, he built a home on his plot, and resides in it today with his wife and 18 of their children and grandchildren. Three of their children are disabled.

Abed Al Karim uses the rest of his remaining plot of land for agricultural cultivation. The Al Ja'abari land once held more than a thousand trees, prior to the existence of the nearby settlements, but settlers have since burned or uprooted the majority. Today, only 10 or so trees remain.

Immediately to the north of Abed Al Karim's plot of family land lie tracts owned by his brother, Mohammad, and cousin, Zeidan. These tracts of Al Ja'abari land are all located along the Wadi Al Hussein Road. With the influx of settlements into the H2 area, the Wadi Al Hussein Road also came to connect the Kiryat Arba, Givat Ha'avot and Givat Haharsina with the four settlements located near the Ibrahimi Mosque/Cave of the Patriarchs in the Hebron Old City.

At the beginning of the second Intifada, all the lands adjacent to this road, including the Al Ja'abari lands, were declared as a closed military area by virtue of a military order on security grounds and Palestinians were denied use of this road by vehicle or foot.<sup>284</sup>

This ban remained in place until July 2009, when the Israeli High Court ruled in a challenge against the road access ban that Palestinians resident in the homes within the closed area may access the road on foot, but in order to have vehicular access to the road they will have to apply for a special permit. This opportunity is given only to Palestinians residing directly on either side of the road.<sup>285</sup>

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<sup>283</sup> Military Order No. 02/59/T, dated 19 November 2002.

<sup>284</sup> B'Tselem and ACRI, *Ghost Town*, *supra* note 13, p. 23.

<sup>285</sup> HCJ 11235/04 *Hebron Municipality et al. v. State of Israel et al.*, a decision dated 15 July 2009.

## Legal Challenge

On 12 July 2001, Palestinian gunmen shot and critically wounded David Cohen, a settler from Betar Illit as he drove past the western gate of Kiryat Arba, located just across the street from the Al Ja'abari land.<sup>286</sup> At a protest at the site of the shooting that same day, Kiryat Arba resident and council member Yehezkel Mualem was shot and critically injured. Mualem died from his injuries the following morning, and Cohen died on 14 July 2001. Later that year, settlers living in the nearby settlements trespassed onto Zeidan's land and built a large tent on the site and designated it as a synagogue, which they referred as "Hazon David".

The synagogue was constructed along a previously established paved concrete settler path with stairs which runs across Al Ja'abari land from Givat Ha'avot to the Wadi Al Hussein Road outside the Kiryat Arba western gate.<sup>287</sup> It is understood that the ultimate goal in building the pathway and tent on the Ja'abari land is to permanently link Kiryat Arba with Givat Ha'avot, in steps mirroring settlement efforts underway in other parts of H2.

The tent constructed on Al Ja'abari land has been demolished by the Israeli Civil Administration and Israeli police more than 30 times. In addition, a ruling given in February 2004 approved the military's decision to issue a demolition order against the tent and an order forbidding the settlers from residing in the site.<sup>288</sup> Each time the tent was demolished, settlers immediately rebuild a new one. The Al Ja'abari family have video camera footage from 2008 of the settlers rebuilding the tent using a crane. Today, the tent is still intact.



*Photo: Hazon David Outpost, located on land owned by the Al Ja'abari family (Photo by: Sarah Adameczyk, 2011)*

The high volume of settler traffic around and across Al Ja'abari land has meant that the family members and the land have been frequent victims of settler trespass and violence. Amongst the only Palestinian families living in the area between Givat Ha'avot and Kiryat Arba, they have been subjected to numerous attacks by settlers over the years, including two shooting incidents, break-ins at their home, destruction of the family's water cisterns and other property damage, being prevented from harvesting their olives, and attacks on physically-challenged children in the family as they walked to and from school. Settlers have also used part of the family land as a parking spot for their cars, rendering it unusable for planting.

The Al Ja'abari family have documented some of the incidents of trespass, harassment and violence with a video camera provided to the family by B'Tselem. In 2008 alone, they filed 15 police complaints related to settler harassment and violence.<sup>289</sup> In addition, according to Abed Al Karim, the settlers destroyed his water cisterns twice, and the last time was in 2010. However, although the family has filed numerous complaints with the Israeli police at the station inside Givat Ha'avot, they are not aware of any further steps taken by the police thereafter, even where the perpetrators were clearly identifiable in video footage provided by the family.

<sup>286</sup> See: <http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Memorial/2001/David+Cohen.htm> (site last accessed on 5 June 2013).

<sup>287</sup> The stairs were originally constructed in the beginning of the 1970s, to allow the settlers to reach to the Givat Ha'avot settlement up the hill.

<sup>288</sup> HCJ 548/04, *supra* note 96.

<sup>289</sup> UNOCHA, *Unprotected*, *supra* note 91, p. 12.

In 2002, with the support of the Palestinian Authority, the Al Ja'abari family filed a petition to the Israeli High Court of Justice against the military order seizing a large section of their lands (No. 02/59/T dated 19 November 2002). In a 2006 decision, the High Court of Justice held that the land seizure order will remain in effect on military/security grounds and that a road running across the Al Ja'abari family's lands down to Wadi Al Hussein Road, directly alongside to Abed Al Karim's home, will be open for settlers to drive on only when there is a state of emergency. In this ruling, the Court did not address the issues of the tent and the path on the land.<sup>290</sup> Despite the court ruling, Israeli military and the settlement's security forces are using this road on daily basis, and sometimes settlers use the road especially when they want to attack Abde Al Karim's family and property.

Today, there is continuous settler traffic across the concrete path and steady activity in the outpost tent, including morning and evening services. Further attempts to challenge the legality of the construction of the settlers' tent and allow the family to safely use the road and the land are currently underway.

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<sup>290</sup> HCJ 10602/02 *Ja'abari v. Military Commander in the West Bank* (judgment rendered 2 February 2006).

## Appendix

### The Israeli-Palestinian Interim Agreement On The West Bank And The Gaza Strip

#### ANNEX I

#### Protocol Concerning Redeployment and Security Arrangements

##### ARTICLE VII: Guidelines for Hebron

1.
  - a. There will be a redeployment of Israeli military forces in the city of Hebron except for places and roads where arrangements are necessary for the security and protection of Israelis and their movements. The areas of such redeployment are delineated by red and blue lines and shaded in orange stripes on a yellow background on attached map No. 9 (hereinafter "Area H-1").
  - b. This redeployment will be completed not later than six months after the signing of this Agreement.
2.
  - a. The Palestinian Police will assume responsibilities in Area H-1 similar to those in other cities in the West Bank.
  - b. All civil powers and responsibilities, set out in Annex III of this Agreement, will be transferred to the Council in the City of Hebron as in the other cities in the West Bank.
  - c. Palestinian police stations or posts will be established in Area H-1, manned by a total of up to 400 policemen, equipped with 20 vehicles and armed with 200 pistols, and 100 rifles for the protection of those stations.
  - d. The Palestinian Police shall operate freely in Area H-1. Any activity or movement by it outside this area will be carried out after coordination and confirmation through the DCO established in paragraph 6 of this Article.
  - e. The Imara will be turned over to the Palestinian side upon the completion of the redeployment, and will become the headquarters of the Palestinian Police in the city of Hebron.
3. According to the DOP, Israel will continue to carry the responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order.
4.
  - a. In the area of the city of Hebron from which Israel military forces will not redeploy, as delineated by red and blue lines on attached map No. 9 (hereinafter "Area H-2"), Israel will retain all powers and responsibilities for internal security and public order.
  - b. In Area H-2, the civil powers and responsibilities will be transferred to the Council, except for those relating to Israelis and their property which shall continue to be exercised by Israeli Military Government.
  - c. In Area H-2, plainclothes unarmed municipal inspectors will monitor and enforce vis-a-vis Palestinians, compliance with the laws and regulations, within the civil powers and responsibilities transferred to the Council in Hebron.



5. The municipality of Hebron will continue to provide all municipal services to all parts of the city of Hebron.
6.
  - a. A DCO will be located at Har Manoakh (Jabal Manoah).
  - b. Upon completion of the redeployment of Israeli military forces, a JMU will operate throughout the city of Hebron, including in the Old City, if required to do so by the abovementioned DCO.
  - c. A Joint Patrol will function in Hebron on the road from Ras e-Jura to the north of the Dura junction via E-Salaam road and on Route No. 35.
  - d. Three months after the completion of the redeployment, the DCO will consider the reassignment of the Joint Patrol to other parts of Hebron.
7. Measures and procedures for normalizing life in the Old City and on the roads of Hebron will be taken immediately after the signing of this Agreement, as follows:
  - a. opening of the wholesale market - Hasbahe, as a retail market;
  - b. removal of the barrier on the road leading from Abu Sneineh to Shuhada Road in order to facilitate the movement on these roads;
  - c. reopening of the main entrance to the Islamic College;
  - d. replacement of the closed roadblock at the Ras e-Jura junction by a normally open traffic supervision system;
  - e. replacement of the roadblock at the Harsina junction by a regular position;
  - f. opening of the route from the Sa,air Shiukh road to Hebron;
  - g. opening of the Tnuva Road; and
  - h. removal of the two barriers in the vicinity of the Raranta School near the North Dura junction.
8. A high level Joint Liaison Committee will be established in order to deal with the security situation in Hebron after completion of the redeployment.
9.
  - a. Since the two sides are unable to reach agreement regarding the Tomb of the Patriarchs / Al Haram Al Ibrahimy, they have agreed to keep the present situation as is.
  - b. Three months after the redeployment the high level Joint Liaison Committee will review the situation.
10. There will be a Temporary International Presence in Hebron (TIPH). Both sides will agree on the modalities of the TIPH, including the number of its members and its area of operation.
11. Immediately after the completion of the redeployment, measures must be taken to ensure a stable and secure situation throughout the Hebron area, free from efforts to undermine this Agreement or the peace process.

12. Hebron will continue to be one city, and the division of security responsibility will not divide the city.

## **Protocol Concerning the Redeployment in Hebron**

**January 17, 1997**

In accordance with the provisions of the Interim Agreement and in particular of Article VII of Annex I to the Interim Agreement, both Parties have agreed on this Protocol for the implementation of the redeployment in Hebron.

### **Security Arrangements Regarding Redeployment in Hebron**

#### **1. Redeployment in Hebron**

The redeployment of Israeli Military Forces in Hebron will be carried out in accordance with the Interim Agreement and this Protocol. This redeployment will be completed not later than ten days from the signing of this Protocol. During these ten days both sides will exert every possible effort to prevent friction and any action that would prevent the redeployment. This redeployment shall constitute full implementation of the provisions of the Interim Agreement with regard to the City of Hebron unless otherwise provided for in Article VII of Annex I to the Interim Agreement.

#### **2. Security Powers and Responsibilities**

- a.
  1. The Palestinian Police will assume responsibilities in Area H-1 similar to those in other cities in the West Bank; and
  2. Israel will retain all powers and responsibilities for internal security and public order in Area H-2. In addition, Israel will continue to carry the responsibility for overall security of Israelis.
- b. In this context - both sides reaffirm their commitment to honor the relevant security provisions of the Interim Agreement, including the provisions regarding - Arrangements for Security and Public Order (Article XII of the Interim Agreement); Prevention of Hostile Acts (Article XV of the Interim Agreement); Security Policy for the Prevention of Terrorism and Violence (Article II of Annex I to the Interim Agreement); Guidelines for Hebron (Article VII of Annex I to the Interim Agreement); and Rules of Conduct in Mutual Security Matters (Article XI of Annex I to the Interim Agreement).

#### **3. Agreed Security Arrangements**

- a. With a view to ensuring mutual security and stability in the City of Hebron, special security arrangements will apply adjacent to the areas under the security responsibility of Israel, in Area H-1, in the area between the Palestinian Police checkpoints delineated on the map attached to this Protocol as Appendix 1 (hereinafter referred to as "the attached map") and the areas under the security responsibility of Israel.
- b. The purpose of the abovementioned checkpoints will be to enable the Palestinian Police, exercising their responsibilities under the Interim Agreement, to prevent entry of armed persons and demonstrators or other people threatening security and public order, into the abovementioned area.

#### 4. Joint Security Measures

- a. The DCO will establish a sub-office in the City of Hebron as indicated on the attached map.
- b. JMU will operate in Area H-2 to handle incidents that involve Palestinians only. The JMU movement will be detailed on the attached map. The DCO will coordinate the JMU movement and activity.
- c. As part of the security arrangements in the area adjacent to the areas under the security responsibility of Israel, as defined above, Joint Mobile Units will be operating in this area, with special focus on the following places:
  1. Abu Sneinah
  2. Harat A-Sheikh
  3. Sha'aba
  4. The high ground overlooking new Route No. 35.
- d. Two Joint Patrols will function in Area H-1:
  1. a Joint Patrol which will operate on the road from Ras e-Jura to the north of the Dura junction via E-Salaam Road, as indicated on the attached map; and
  2. a Joint Patrol which will operate on existing Route No. 35, including the eastern part of existing Route No. 35, as indicated on the attached map.
- e. The Palestinian and Israeli side of the Joint Mobile Units in the City of Hebron will be armed with equivalent types of weapons (Mini-Ingraham submachine guns for the Palestinian side and short M16s for the Israeli side).
- f. With a view to dealing with the special security situation in the City of Hebron, a Joint Coordination Center (hereinafter the "JCC") headed by senior officers of both sides, will be established in the DCO at Har Manoah/Jabel Manoah. The purpose of the JCC will be to coordinate the joint security measures in the City of Hebron. The JCC will be guided by all the relevant provisions of the Interim Agreement, including Annex I and this Protocol. In this context, each side will notify the JCC of demonstrations and actions taken in respect of such demonstrations, and of any security activity, close to the areas under the responsibility of the other side, including in the area defined in Article 3(a) above. The JCC shall be informed of activities in accordance with Article 5(d)(3) of this Protocol.

#### 5. The Palestinian Police

- a. Palestinian police stations or posts will be established in Area H-1, manned by a total of up to 400 policemen, equipped with 20 vehicles and armed with 200 pistols, and 100 rifles for the protection of the police stations.
- b. Four designated Rapid Response Teams (RRTs) will be established and stationed in Area H-1, one in each of the police stations, as delineated on the attached map. The main task of the RRTs will be to handle special security cases. Each RRT shall be comprised of up to 16 members.
- c. The above mentioned rifles will be designated for the exclusive use of the RRTs, to handle special cases.
- d.
  1. The Palestinian Police shall operate freely in Area H-1.
  2. Activities of the RRTs armed with rifles in the Agreed Adjacent Area, as defined in Appendix 2, shall require the agreement of the JCC.
  3. The RRTs will use the rifles in the rest of Area H-1 to fulfil their above mentioned tasks.

- e. The Palestinian Police will ensure that all Palestinian policemen, prior to their deployment in the City of Hebron, will pass a security check in order to verify their suitability for service, taking into account the sensitivity of the area.

## **6. Holy Sites**

- a. Paragraphs 2 and 3(a) of Article 32 of Appendix 1 to Annex III of the Interim Agreement will be applicable to the following Holy Sites in Area H-1:
  - 1. The Cave of Othniel Ben Knaz/El-Khalil;
  - 2. Elonei Mamre/Haram Er-Rameh;
  - 3. Eshel Avraham/Balotat Ibrahim; and
  - 4. Maayan Sarah/Ein Sarah.
- b. The Palestinian Police will be responsible for the protection of the above Jewish Holy Sites. Without derogating from the above responsibility of the Palestinian Police, visits to the above Holy Sites by worshippers or other visitors shall be accompanied by a Joint Mobile Unit, which will ensure free, unimpeded and secure access to the Holy Sites, as well as their peaceful use.

## **7. Normalization of Life in the Old City**

- a. Both sides reiterate their commitment to maintain normal life throughout the City of Hebron and to prevent any provocation or friction that may affect the normal life in the city.
- b. In this context, both sides are committed to take all steps and measures necessary for the normalization of life in Hebron, including:
  - 1. The wholesale market - Hasbahe - will be opened as a retail market in which goods will be sold directly to consumers from within the existing shops.
  - 2. The movement of vehicles on the Shuhada Road will be gradually returned, within 4 months, to the same situation which existed prior to February 1994.

## **8. The Imara**

The Imara will be turned over to the Palestinian side upon the completion of the redeployment and will become the headquarters of the Palestinian Police in the City of Hebron.

## **9. City of Hebron**

Both sides reiterate their commitment to the unity of the City of Hebron, and their understanding that the division of security responsibility will not divide the city. In this context, and without derogating from the security powers and responsibilities of either side, both sides share the mutual goal that movement of people, goods and vehicles within and in and out of the city will be smooth and normal, without obstacles or barriers.

## **Civil Arrangements Regarding the Redeployment in Hebron**

### **10. Transfer of Civil Powers and Responsibilities**

- a. The transfer of civil powers and responsibilities that have yet to be transferred to the Palestinian side in the city of Hebron (12 spheres) in accordance with Article VII of Annex I to the Interim Agreement shall be conducted concurrently with the beginning of the redeployment of Israeli military forces in Hebron.

- b. In Area H-2, the civil powers and responsibilities will be transferred to the Palestinian side, except for those relating to Israelis and their property, which shall continue to be exercised by the Israeli Military Government.

## **11. Planning, Zoning and Building**

- a. The two parties are equally committed to preserve and protect the historic character of the city in a way which does not harm or change that character in any part of the city.
- b. The Palestinian side has informed the Israeli side that in exercising its powers and responsibilities, taking into account the existing municipal regulations, it has undertaken to implement the following provisions:
  - 1. Proposed construction of buildings above two floors (6 meters) within 50 meters of the external boundaries of the locations specified in the list attached to this Protocol as Appendix 3 (hereinafter referred to as "the attached list") will be coordinated through the DCL.
  - 2. Proposed construction of buildings above three floors (9 meters) between 50 and 100 meters of the external boundaries of the locations specified in the attached list will be coordinated through the DCL.
  - 3. Proposed construction of non-residential, non-commercial buildings within 100 meters of the external boundaries of the locations specified in the attached list that are designed for uses that may adversely affect the environment (such as industrial factories) or buildings and institutions in which more than 50 persons are expected to gather together will be coordinated through the DCL.
  - 4. Proposed construction of buildings above two floors (6 meters) within 50 meters from each side of the road specified in the attached list will be coordinated through the DCL.
  - 5. The necessary enforcement measures will be taken to ensure compliance on the ground with the preceding provisions.
  - 6. This Article does not apply to existing buildings or to new construction or renovation for which fully approved permits were issued by the Municipality prior to January 15th, 1997.

## **12. Infrastructure**

- a. The Palestinian side shall inform the Israeli side, through the DCL, 48 hours in advance of any anticipated activity regarding infrastructure which may disturb the regular flow of traffic on roads in Area H-2 or which may affect infrastructure (such as water, sewage, electricity and communications) serving Area H-2.
- b. The Israeli side may request, through the DCL, that the Municipality carry out works regarding the roads or other infrastructure required for the well being of the Israelis in Area H-2. If the Israeli side offers to cover the costs of these works, the Palestinian side will ensure that these works are carried out as a top priority.
- c. The above does not prejudice the provisions of the Interim Agreement regarding the access to infrastructure, facilities and installations located in the city of Hebron, such as the electricity grid.

## **13. Transportation**

The Palestinian side shall have the power to determine bus stops, traffic arrangements and traffic signalization in the city of Hebron. Traffic signalization, traffic arrangements and the location of bus stops in Area H-2 will remain as they are on the date of the redeployment in Hebron. Any subsequent

change in these arrangements in Area H-2 will be done in cooperation between the two sides in the transportation sub-committee.

#### **14. Municipal Inspectors**

- a. In accordance with paragraph 4.c of Article VII of Annex I of the Interim Agreement, plainclothes unarmed municipal inspectors will operate in Area H-2. The number of these inspectors shall not exceed 50.
- b. The inspectors shall carry official identification cards with a photograph issued by the Municipality.
- c. The Palestinian side may request the assistance of the Israel Police, through the DCL of Hebron, in order to carry out its enforcement activities in Area H-2.

#### **15. Location of Offices of the Palestinian Council**

The Palestinian side, when operating new offices in Area H-2, will take into consideration the need to avoid provocation and friction. Where establishing such offices might affect public order or security the two sides will cooperate to find a suitable solution.

#### **16. Municipal Services**

In accordance with paragraph 5 of Article VII of Annex I of the Interim Agreement, municipal services shall be provided regularly and continuously to all parts of the city of Hebron, at the same quality and cost. The cost shall be determined by the Palestinian side with respect to work done and materials consumed, without discrimination.

#### **Miscellaneous**

##### **17. Temporary International Presence**

There will be a Temporary International Presence in Hebron (TIPH). Both sides will agree on the modalities of the TIPH, including the number of its members and its area of operation.

##### **18. Annex I**

Nothing in this Protocol will derogate from the security powers and responsibilities of either side in accordance with Annex I to the Interim Agreement.

##### **19. Attached Appendices**

The appendices attached to this Protocol shall constitute an integral part hereof.

*Done at Jerusalem, this 17th day of January 1997.*

*D. Shomrom*

*S. Erakat*

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*For the Government of  
the State of Israel*

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*For the PLO*



