

Seize the Moral Low Ground

Land seizure for
“security needs” in the West Bank



December 2018

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Kerem Navot is an Israeli organization established in 2012. The organization tracks, examines, and publishes research on Israel's land policies in the Israeli settlements and the West Bank.

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Cover photo: The separation barrier south of a-Ram. ©Marwan Hamad

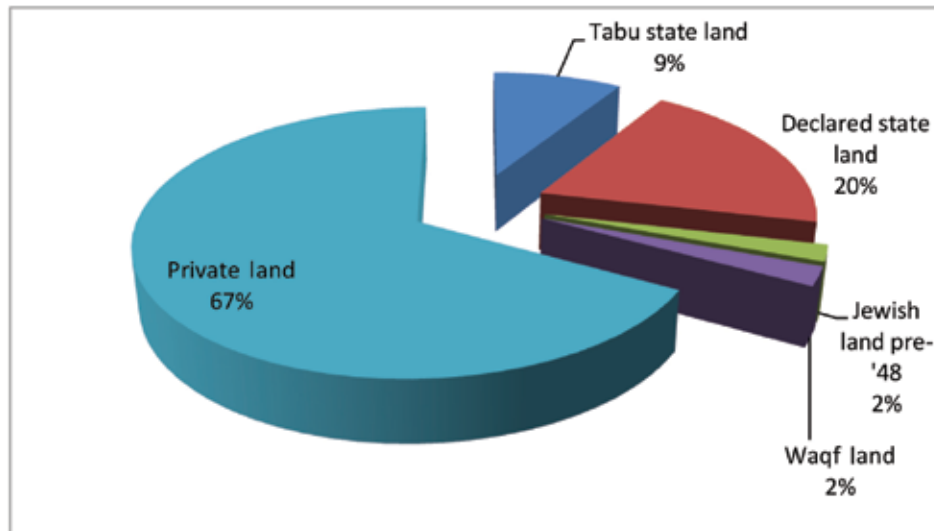




Abstract

This report is devoted to a review of seizure orders issued by military commanders in the West Bank from the years 1967-2014. Throughout the course of those years close to 1,150 orders were signed, through which **just over 100,000 dunams** were seized, most of them privately owned by Palestinian residents of the West Bank.

Seized areas according to ownership status (in dunams and percentages)



*Solely including valid seizure orders

The West Bank was occupied by the Israeli army in June of 1967, and has been under “belligerent occupation” ever since. International humanitarian law, which defines the rights and obligations of the occupying power, recognizes the right of the military commander to seize land owned by residents of the area, subject to certain basic conditions:

- The seizure must be temporary and solely applied for urgent military needs.
- Damage entailed in seizing the land must be “proportionate” and correlate with the security benefit of the seizure.
- Landowners will be compensated for harm caused due to their inability to earn a living through working their land so long as the seizure is in place.
- The army will return the land to its owners upon termination of use in a state as close as possible to its original condition.

Classifying orders according to their aims

In order to write this report, we determined functions for which seizure orders were issued and designated the orders accordingly:

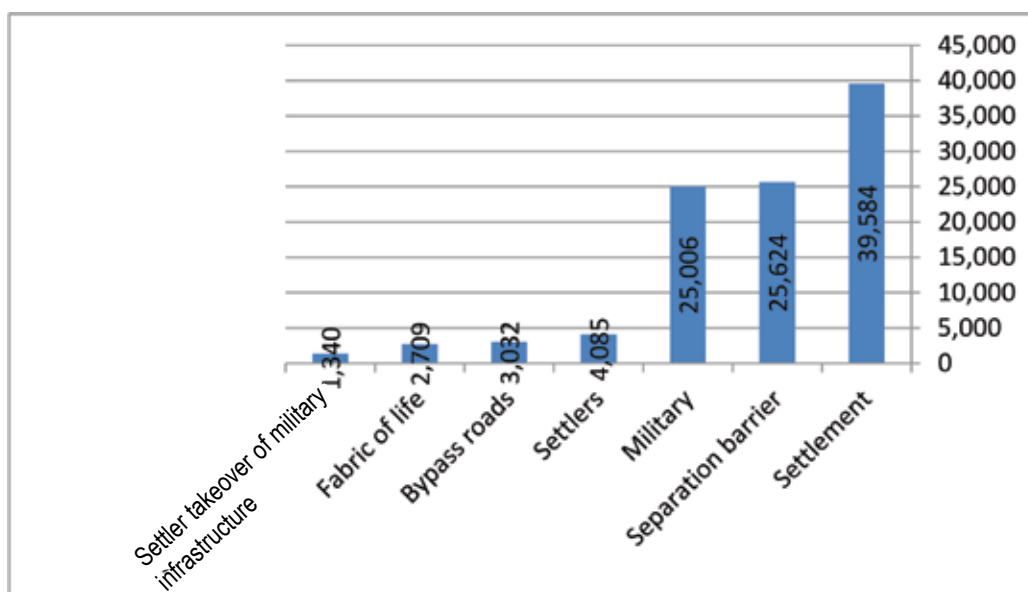
- Settlement
- Military
- Settlers
- Bypass roads
- Separation barrier
- Fabric of life
- Settler takeover of military infrastructure



The largest group of orders, which currently apply to nearly 40% of the total area included in valid seizure orders, were issued from 1969 through 1983 for the establishment of settlements. This is a territory equal to approximately 7.3% of the total area of jurisdiction of settlements in the West Bank (approximately 540,000 dunams). The two largest groups thereafter are orders issued for the construction of the separation barrier from 2002 on, and those issued for military purposes.

Upon combining the seizure orders' territory spanning the four categories directly related to settlers' needs — namely settlements, settlers, bypass roads, and settler takeover of military infrastructure — it becomes clear that nearly half (47%) of the territories currently under military seizure, directly serve the needs of the settler population, not those of the army. This fact indicates that Israel's interpretation of the concept of "military necessity" has been subordinate to the political interest of Judaizing large parts of the West Bank, which has been promoted in practice by all Israeli governments since 1967.

Territory of valid seizure orders according to function (in dunams)



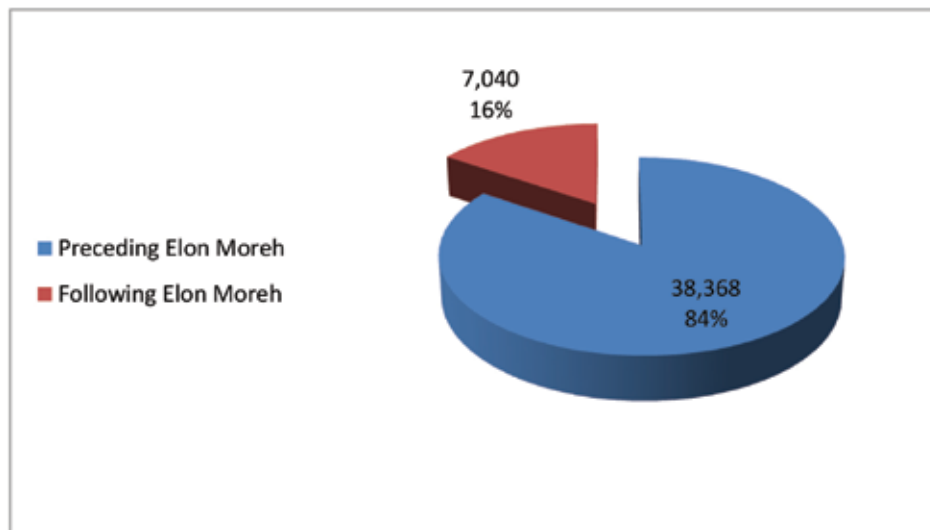
*The territories were calculated following offsetting overlap

Seizure orders for settlement purposes

From the years 1969 through 1983, Israeli military commanders signed 73 seizure orders intended for the establishment of settlements. Over the years, 43 settlements were established. Among them, two were evicted: Elon Moreh following a High Court of Justice (HCJ) ruling in early 1980, and Homesh in August of 2005 following a government decision. Contrary to the army's commitment and the logic that authorizes the military commander to temporarily seize land for security needs (that naturally shift from time to time), all orders issued through 1989, were originally done so without termination dates, including those for settlement purposes. Accordingly, dozens of settlements continue to exist on land seized for alleged military needs, without legitimate landowners' ability to assess whether and when their land will be returned to their disposal.

Following the Elon Moreh HCJ ruling in October of 1979 that restricted the authority of the Israeli military commander in the West Bank to seize land for settlement construction, the state reduced — though didn't completely cease — using seizure orders to establish new settlements. Additionally, over the years the state continued to build in settlements whose land was seized preceding the ruling. Even following the eviction of Elon Moreh, most of Israel's efforts to take over more land to establish settlements were conducted through state land declarations. From 1979 to 1983, Israel established another 12 settlements on land originally seized for security needs.

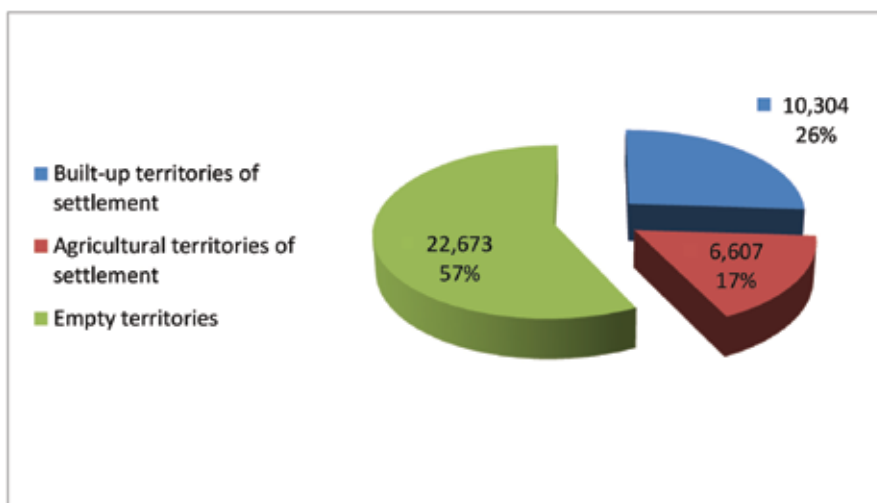
Area of settlement seizure orders issued before and after the HCJ Elon Moreh ruling (in dunams and percentages)



*Including annulled seizure orders

Of the total area seized for settlement purposes, it appears that roughly 43% is used in practice, whether for construction or agriculture.

Actual use of territory with valid seizure orders (in dunams and percentages)



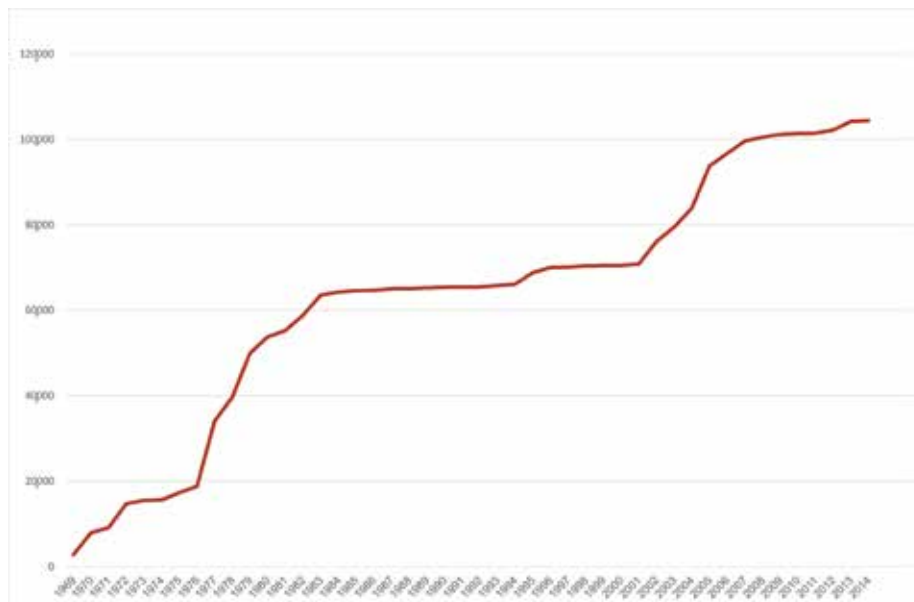
*Including the territory of valid seizure orders following offsetting overlap

Increase in the territory seized by the military from 1969-2014

- During the second half of the 1970s through 1983, 40,000 dunams were seized for settlements that were established over the course of those years. The army also established its military training system in the West Bank during that period, and strengthened its control over the West Bank along the border between Israel and the Kingdom of Jordan to its east. By the end of this period the entire seized territory amounted to approximately 63,000 dunams.
- During the late 1980s and early 1990s, the Israeli army seized territories to suppress the First Intifada and to secure roads used by settlers and military forces.
- In the mid-1990s, the army re-deployed its presence throughout the West Bank following the Oslo Accords. Most of the bypass roads were built during those years, many of them on land seized by military orders for that purpose. Over the years much land was also seized for military facilities and to protect settlements.

•A major increase in land seizure occurred during the Second Intifada. From the year 2000 to 2014, the total area of land seized by the army in the West Bank increased by approximately 35,000 dunams. A significant part of this growth is related to construction of the separation barrier, which began in 2002. Through this initiative alone, over 25,000 dunams of land were seized. As a result of the construction of the barrier, nearly 3,000 dunams were also seized for “fabric of life” purposes. Throughout those years, the area seized to protect settlers and bypass roads significantly increased.

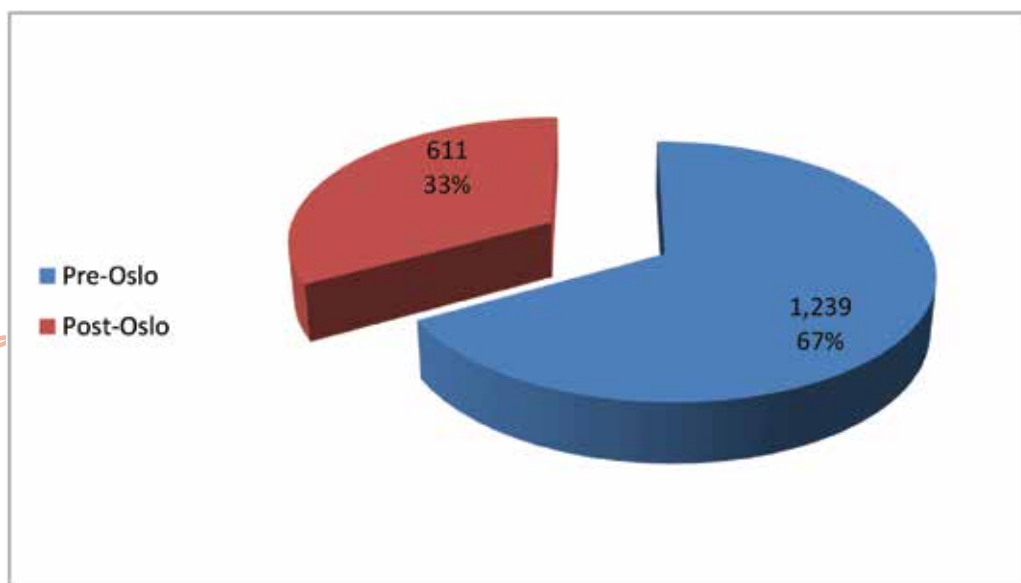
Annual increase in territory of valid seizure orders (in dunams)



Seizure orders in Palestinian Authority territory

An examination of the overlap between seized land and official maps of Palestinian Authority (PA) territory signed in 1995, indicates that valid seizure orders located in that area amount to approximately 1,850 dunams of land. Nearly 70% of the area included in those orders was seized prior to the signing of the Oslo Accords (1993 to 1995), while the remainder was seized thereafter.

PA territory seized before and after the Oslo Accords (in dunams and percentages)



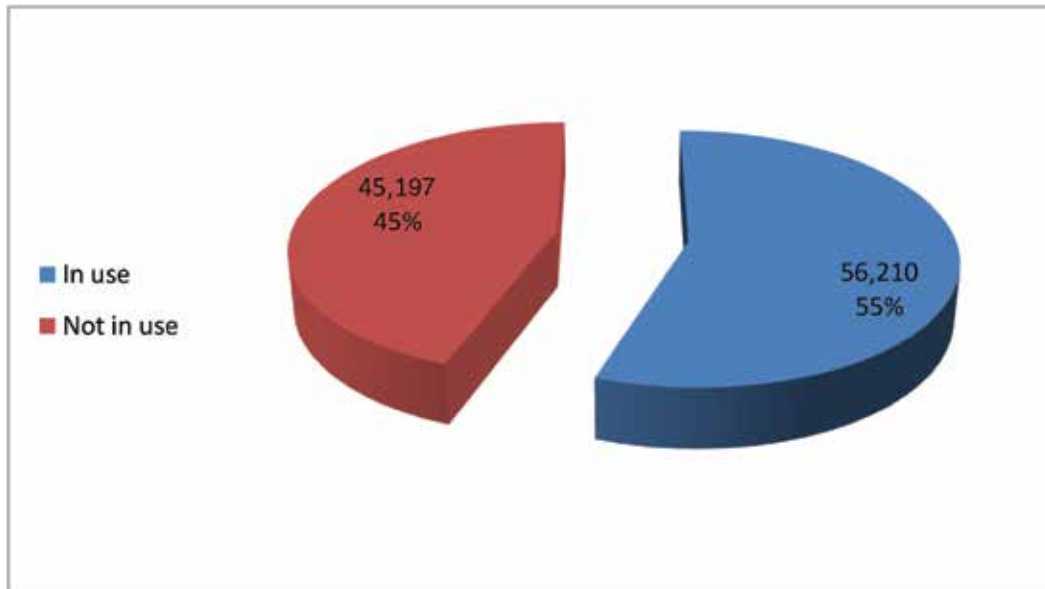
*Including the territory of valid seizure orders



Actual use of all territory seized for military purposes

Throughout the course of the research, we examined the actual use of territory included in all seizure orders in our possession and classified them according to orders in use, not in use, and in partial use. The conclusive data indicates that in practice, nearly half the area of valid seizure orders (encompassing all functions) is not in use.

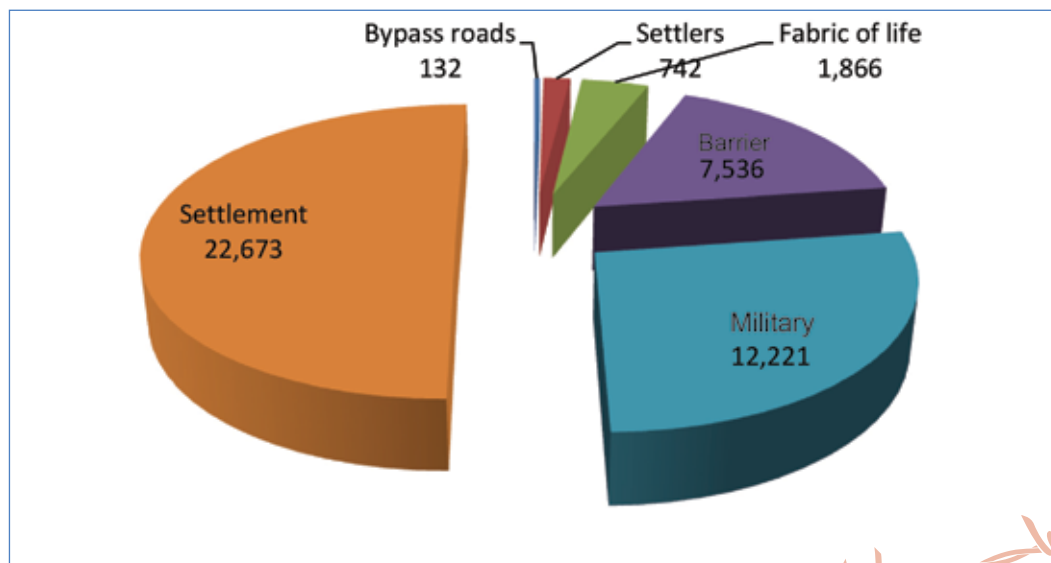
Territory of seizure orders according to actual use (in dunams and percentages)



*Including the territory of valid seizure orders

Naturally, the three functions for which the largest territories were seized that were not used whatsoever, were the three functions spanning the largest areas: namely settlement, military, and the separation barrier.

Area of seizure orders not in use, by category (in dunams)



*Including the territory of valid seizure orders



Payment of usage fees for seized land

As required by international law, Israel provides an official compensation mechanism, and landowners whose land has been seized may demand usage fees for their expropriated land. However, as indicated by the Ministry of Defense's official figures, the total sums that Israel transfers to landowners annually for use of their land are ridiculous considering the size of the private territory seized over the years and the actual value. This fact is related both to the negligible rate of Palestinian landowners' appeals to receive compensation in the first place, and to the nominal amounts that Israel is willing to transfer to them. Data from the Ministry of Defense indicates that the total amount paid by the state for use of all seized territory from the years 2009 through 2016, comes to NIS 19.5 million, slightly less than NIS 2.8 million per year.

Annulment of seizure orders

Over the years, the army annulled and amended hundreds of seizure orders. According to information provided by the Civil Administration, by March of 2016, 282 seizure orders had been revoked, spanning an area of 10,445 dunams. The seizure of another 10,827 dunams was annulled due to amendments made to 90 seizure orders. In other words, the seizure of approximately 21,272 dunams in total was revoked.

From 2001 to 2007, the seizure of approximately 18,860 dunams of land was annulled, which amounts to nearly 90% of the total territory whose seizure was revoked by the army. We do not have an authorized explanation as to why the military began a comprehensive process of annulling seizure orders during those years in particular, which peaked in 2006. Yet it is important to remember that during that period the army seized land comprising a total of 26,176 dunams. It thus appears that though many seizures were annulled or amended, upon calculating the entire area seized by the army during those years, the total amount increased by over 7,000 dunams.



The abandoned Huwara checkpoint.



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Introduction

Toward the end of August 2017, the settlement of Beit El celebrated 40 years of existence. The ultra-orthodox Jewish music star, Avraham Fried, orchestrated the festive performance. As is typical of such events, a group of right-wing politicians saw the event as an appropriate opportunity to strengthen their standing among their supporters. Prime Minister Benjamin Netanyahu did not attend the ceremony himself, but he sent a filmed greeting in which he said the following, among other things:

Tidings and Torah emerge from Beit El — tidings of a nation that has returned to its land, tidings of settlement. I'll bring you some more tidings. Very soon we will approve another 300 housing units, as I promised.¹

Politicians threw about many bombastic promises that evening, all of which repeated the message that Beit El's future is secure as one of the symbols of the settlement enterprise, and that it is "not going anywhere." It is therefore fitting to pause and expand on how this settlement was founded in the first place, and the legal framework that enabled its establishment.



The settlement of Beit El that was built on land seized for settlement purposes.

The settlement of Beit El currently has 6,100 residents. It was established in November of 1977 north of the cities of Ramallah and al-Bireh, within a Jordanian military base that was abandoned during the June 1967 war. The base was built, not coincidentally, adjacent to the historic road connecting the cities of Ramallah and Nablus. The establishment of the settlement on this site was a direct practical expression of the change in Israeli settlement policy, with the Likud party's rise to power after the elections that same year.² It is not by chance that Beit El was one of the first settlements built in the depths of the West Bank at the time: the name Beit El appears in the Bible numerous times, and is associated with ancient traditions of holiness and religious ritual. In the nineteenth century European archaeologists began to identify the Palestinian village of Beitin, which lies east of the settlement of Beit El, with the biblical settlement of Beit El. Thus establishing a settlement in the area was a desirable choice for settlers, who believed they were fulfilling a religious imperative.³ Beyond the national-religious motivation and the fact that

¹ "Netanyahu on construction in Beit El: 'Soon,'" 29.8.2017, Channel 7, <https://www.inn.co.il/News/News.aspx/354107>

² Elections for the Ninth Knesset were held on May 17, 1977. The Likud won 43 Knesset seats and became the largest party.

³ The phenomenon of Palestinian communities that live on ancient sites and preserve the sound or meaning of their names is very common.



there were abandoned Jordanian military structures that settlers could promptly move into until a permanent site was established, the specific location of the settlement intended to serve a clearly geopolitical purpose: to block the northern development of al-Bireh and Ramallah, disconnecting them from the villages located between them and the city of Nablus to their north.⁴ In other words, the settlement of Beit El was established to advance the declarative political vision that most (and arguably all) Israeli governments have sought to promote since 1967: quashing Palestinian space and national identity.

“Two ‘Faithful’ Groups Currently Settling in Samaria

In Army Camps Near Beit El and Nabi Saleh”

Historical Jewish Press (JPress) of the NLI & TAU

מערב, 01.11.1977, page 4

שני גרעיני “אמונים” מתנחלים היום בשומרון במחנות צבא ליד בית-אל ונבי-צלחה

במחנות צבא ומשטרה (סבס"ט), דותן ויתיר שכבר הקמו ובית-אל ונבי צלחה, העולות היום), והתנחלות זמנית אחת (גרעין יריחו), הושב בדרך ירושלים ויריחו). גרעינים נוי ספים של ה"גוש" נמצאים עדיין ביישובים הקיימים. ומ" צפים לעלייתם להתנחלות עד סוף דצמבר.

אמש נמסר לסופר, "מערב" כי לבית אל עולים בשלב ה" ראשון – היום – 15 משפ" חות עם ילדים, ואילו ב"ס" משפחות הנטנות עם גרעין זה בשארית לפי שעה בעפרת, ש" קורמים.

במחנות הצבאי בית-אל, שנקי כע בעבור גרעין זה במקום התנחלות זמני עד להעברתם ליישוב הקבע שבאיזור בית אל, סמוך לרמאללה.

לנבי-צלחה יעלו היום כ-20 משפחות ראשונות מקרב חב" יי הגרעין.

הברי הגרעינים יעסקו ב" ימים הראשונים בעבודות הת" ארגנות והתקמות, ולאחר מ" כן יעסקו חלקם בעבודות ב" מחנות צבא וחלקם יישכרו – לפי שעה – כעסיקים ת" קורמים.

שתי התנחלויות חדשות ש" "גוש אמונים" – נבי צלחה ובית אל – מתו" לווית בשומרון. כמבצע נש" למות הדוכנות לקניית ה" מתנחלים, שיעלו לוקיום – ככל הנראה – נב" מימים הקרובים.

עם עליית שני הגרעינים האלה יהיו לגוש אמונים" ב" שומרון ארבעה יישובים (עם) רת, מצלה אדומים, אלוך מו" רת זסטחה), חמש התנחלויות



Construction of electricity lines in the settlement of Beit El in early 1979.

Photo: Moshe Milner, Government Press Office

⁴ Aside from Beit El, other settlements established during the same years were also founded in abandoned Jordanian military bases, such as Ofra, Kedumim, Neve Tzuf, and Shavei Shomron.

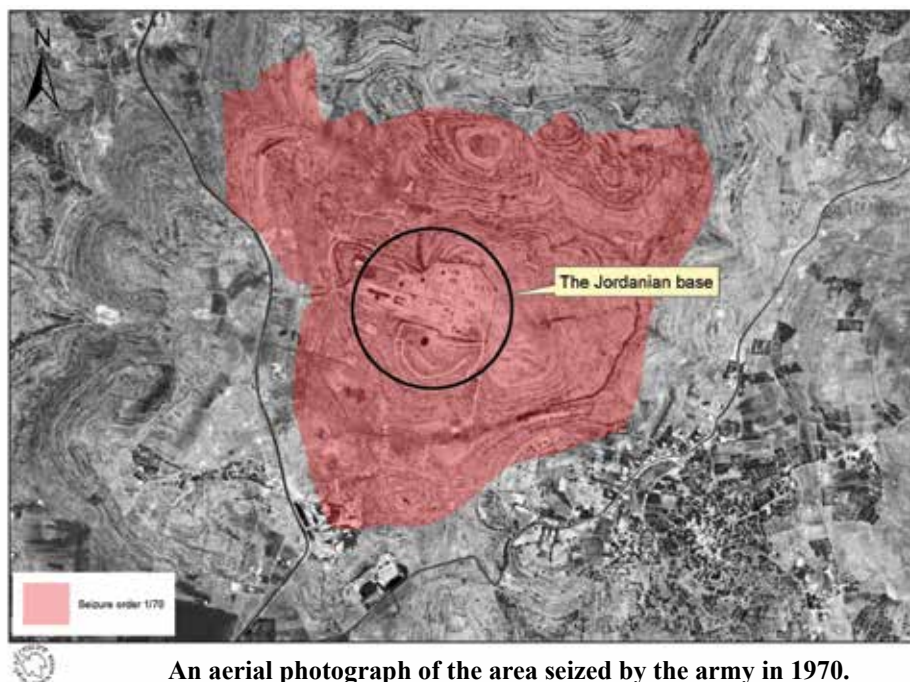
An aerial photograph from 1970 indicates that the Jordanian army base spanned a relatively small part of the territory seized by the Israeli army in 1970, while the rest of the area had cultivated agricultural terraces or served as open grazing land for the surrounding villages. Over the years, following seizure of the territory, Israel built several military bases in the area (that territorially included the original Jordanian base), which collectively constitute the nerve center of the military system that commands the West Bank to date.

Military seizure orders are temporary expropriation orders. International law regulating the rights and obligations of the occupying army with respect to the population residing in occupied territory, permits the army to temporarily seize territory for urgent security purposes and to compensate landowners accordingly.⁵

‘The Bloc of the Faithful’
to Place Emphasis on
Immigration”

מערב, 11.11.1977, page 11

בנטיעת עצים ובריקודים
חגגו המתנחלים בבית-אל
...נושא-אמונים" ישים דגש על עליה

[illegible]

**An aerial photograph of the area seized by the army in 1970.
The Jordanian base was built
on a relatively small portion of the territory.**

⁵ See below, page 18.



Approximately 10 months after the settlers entered the abandoned Jordanian army camp, construction commenced for the establishment of a permanent site for the settlement located within the territory seized by the army in 1970. As a result, Palestinian landowners whose land was seized by means of the order, filed a petition to the HCJ against construction. They claimed that the establishment of a new settlement is not a just cause for which land can be seized for “security needs.”⁶ Just a few months later in March of 1979, HCJ justices rejected the petition. The justices wrote in their ruling that they were convinced of the security justification for the establishment of the settlement of Beit El. Justice Miriam Ben-Porat wrote the following upon the conclusion of the ruling, which implied that the settlers are not merely civilians, but rather the flesh and blood of the security forces:

Israel, a small country within the long narrow confines of the Green Line, is surrounded, very regretfully, by countries that do not hide their hostility toward it. It is doubtful whether this situation, into which I will not go into detail, has any parallel in the history of humankind. ... It is therefore reasonable to assume that in this unique situation, which requires supreme alertness to precede any possible calamity if, where, and when it may flare up, it is necessary to make use of exceptional solutions as well. ... One of these solutions — and the topic of the discussion before us — is the creation of a Jewish civilian presence at particularly sensitive points. ... I am aware of the fact that we are referring to a civilian population. ... Against this backdrop, I accept Major General Orly’s claim that a civilian presence at these sensitive points is the necessary solution.

However, over the years it became clear that the 2,426 dunams seized by the army in 1970 was not enough for the settlers. Although nothing was built on a considerable portion of the territory included in the original seizure order (which remains the case to date), during the 1980s the settlement of Beit El already began sprawling northward toward private Palestinian-owned land **not included in the area to which the order applies**. For example, toward the end of the 1990s the Ulpana neighborhood was built, and part of it was demolished in 2012 following landowners’ submission of a petition to the HCJ.⁷

The settlement of Beit El was not the only one established on land seized for “military needs.” During the first decade following Israel’s occupation of the West Bank, most settlements were established through military seizure orders intended for settlement, and the HCJ recognized them as legitimate “military needs.” Over the years, more than 40 settlements have been established in this fashion.⁸ Yet military commanders signed dozens of seizure orders without termination dates, to begin with. This indicates that the issue of the temporary nature of the orders was interpreted by Israeli authorities, with the backing of the HCJ, in a very “non-conservative” fashion. In order to completely bypass the problem of the temporary nature of the seizure of settlements, in the 1980s, Israeli authorities declared much of the territory seized “state land,”⁹ and transferred it to the settlements. Other territories that could not be declared state land, retain the status of “land under military seizure” to date, and officially belong to the jurisdictional areas of over 20 settlements.

Following the HCJ ruling regarding the Elon Moreh case in October of 1979, which limited the Israeli military commander’s authority in the West Bank to seize land for settlement construction, the state reduced — **though did not completely cease** — to use seizure orders for the establishment of new settlements. Over the years, however, the state continued to build in settlements whose land was seized in the years preceding the ruling regarding the Elon Moreh petition.

⁶ Suleiman Ayoub v. Minister of Defense, HCJ 606/78. For more on the legal argument raised in this High Court proceeding see below, page 23.

⁷ Abd al-Ghani Yassin Khaled Abdallah et al. v. Minister of Defense, HCJ 9060/08.

⁸ See below in Chapter Two, page 50–51.

⁹ More on this below, page 59.



A sign posted at the entrance to Beit El in 2018, announcing the intention to construct a new project. The project is slated for construction on land seized for military purposes.

Of course, seizure of land for military needs was not solely used to establish settlements. Since the occupation of the West Bank in June of 1967 to date, close to 1,150 seizure orders have been issued spanning an area of over 100,000 dunams. These orders were issued by the military in all areas of the West Bank for various purposes, most of which are directly related to the settlement enterprise, and some of which are related to the very presence of the army in the West Bank. This report is the first attempt to tell the story of seizure orders, whose influence on the land regime in the West Bank is far-reaching.

It is important to clarify the geographic span of this report and use of the term “West Bank”: this report does not address the land regime that Israel unilaterally applied to the 70 square kilometers of the West Bank annexed to Jerusalem and the state of Israel following June of 1967. Israeli law was applied to this area and therefore no “seizure for security needs” was implemented, as in all other territories of the West Bank that remained under direct Israeli military control.¹⁰

Report Structure and Methodology

This report has four chapters:

The first chapter is devoted to a discussion of the legal situation that underlies all seizures carried out by the Israeli army in the West Bank. In this chapter, we briefly describe the legal developments following petitions filed throughout the 1970s against the establishment of settlements on land seized for “military needs,” until Israel’s official, though not practical, departure from this mode of action following the Elon Moreh ruling.

The second chapter is devoted to a thorough review of seizure orders issued for settlement purposes, namely all such orders issued to transfer land to settlements (whether for construction or agricultural purposes); the aforementioned seizure order 1/70 referenced in the context of the settlement of Beit El, for example.

The third chapter offers a chronological description of all the seizure orders we have identified to date. In this section we detail developments in whose name Israel issued seizure orders over time, and address the quantity and geographic scope of the orders.

In **the fourth chapter** we address seizure orders annulled by the army over the years.

¹⁰ In East Jerusalem, Israel expropriated over 23,000 dunams of Palestinian land (comprising about one third of the area annexed after the war) by means of orders signed by the Minister of Finance, who holds the authority to expropriate territory within the sovereign borders of the state of Israel. Israeli neighborhoods and/or settlements were established on this land from the end of the 1960s.



Classifying the orders

The construction of the database on which this report was based, also included classifying all seizure orders in our possession. For this purpose, we defined the primary functions for which seizure orders were issued. These are the functions by which the orders were classified:

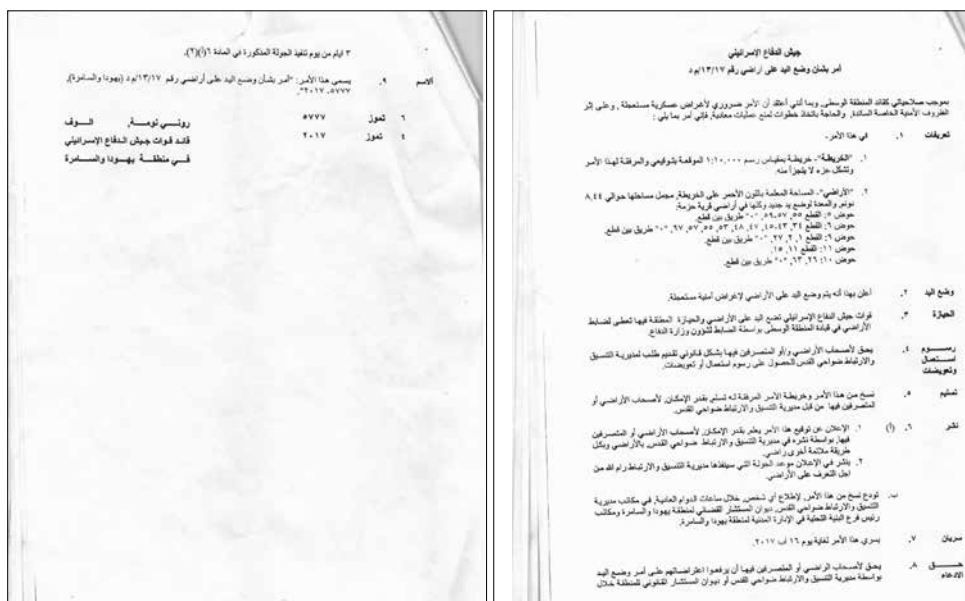
- Settlement
- Military
- Settlers
- Bypass roads
- Separation barrier
- Fabric of life
- Settler takeover of military infrastructure

We will further address this central issue later in this document (page 62-63).

Sources of information and reliability

All the information on which this report is based is official data provided to us by the Civil Administration. From the years 2008 to 2012, we received digital maps from the Civil Administration containing updates on seizure orders. The information was received following freedom of information requests that we submitted during those years. It is important to emphasize that the seizure orders issued by the army do not constitute military secrets. On the contrary, the army is obligated to publish them on the notice boards at the District Coordination and Liaison Offices (both in Arabic and in Hebrew), and to attach detailed maps indicating the territories to which the orders apply. In 2014, we received printed copies of seizure orders issued from 2012 to 2014 from the Civil Administration, along with the accompanying maps.¹¹

We examined the maps and orders that we received from the Civil Administration over the years through extensive field work, among other things, in which we checked whether the territory seized by the army was indeed put to use over the years, and if so, what the nature of the use was. Such field work is of great importance, as a considerable portion of the seized territory is not currently used in any sense, whereas others were not used in the past. In some cases the land use does not even correlate with the original rationale behind the seizure.



¹¹ Although we noted that we had previously received digital maps of seizure orders, as of 2014 the Civil Administration has refused to transfer them to us on the grounds that their transfer "may endanger the security of the state."



A seizure order issued by the army in July of 2017, for the construction of fences around the Palestinian village of Hizma, northeast of Jerusalem.

Accuracy and timeliness of information

Despite our efforts to offer as timely and comprehensive a portrayal of the seizure orders as possible, we currently only retain orders issued through the end of 2014 in our possession (as well as a small portion of seizure orders issued since, which we were able to obtain from various other sources). Over the past two years, we have tried to obtain seizure orders (through repeated requests based on the Freedom of Information Act) issued by the Civil Administration since the beginning of 2015, in vain. Due to the Civil Administration's utter unwillingness to cooperate, we were compelled to submit a petition to the HCJ in hopes that it would require the Civil Administration to provide us with the requested information.¹² We know that for each year since the end of 2014, the army issued no more than a few dozen seizure orders, spanning a relatively small area (a few dunams per each order). These orders were primarily intended for the establishment of military positions and fences.

In sum, although we do not have comprehensive up-to-date information on the current amount of seizure orders and the expanse of the territories to which they apply, it is clear that the facts presented in this report present a nearly exhaustive portrayal — if not of the precise number of orders, then certainly regarding everything related to the size of the aforementioned territory seized in recent years.

¹² Dror Etkes v. The Civil Administration, HCJ 2778/17. In a verdict ruled on 17.9.2018 regarding this petition, the Civil Administration was obliged to transfer us all seizure orders issued since 2014 within months.



Chapter One - Legal Background

Seizure orders were the primary (and virtually the only) means used by Israel to establish settlements in the first decade following the occupation of the West Bank.¹³ As the West Bank (with the exception of East Jerusalem) was never formally annexed to the state of Israel, international law applies in this area with the function of regulating relations between the occupying power — Israel in this case — and the local Palestinian population.¹⁴ This report is not the forum wherein to address the question of the entire settlement enterprise's legality. We will merely reinforce that the accepted interpretation regarding laws of war among most jurists around the world, is that **the entire enterprise** is criminal. The HCJ refused to discuss its legality, claiming that it is primarily a political issue.¹⁵ Jurists specify clauses of the Geneva Convention that prohibit the transfer of any population, whether forcibly or voluntarily, to an occupied territory.¹⁶

The understanding that this is an illegal enterprise essentially precedes any discussion on the specific status of the land on which the settlements were built, and stems from the inherent contradiction between the interests of the local population, the welfare of the military, and the interests of the settler population. However, in order to justify the settlement enterprise, Israel contends that this is not “occupied” territory but rather a “controversial” area, since Israel conquered the West Bank from Jordanian rule in 1948,¹⁷ a period during which neither party was the legal sovereign in the area. A second claim made by Israel is that though the Geneva Convention prohibits the forcible transfer of residents to and from occupied territory, settlers voluntarily move to settlements. Thus Israel does not entirely renounce the framework of international law, yet maintains that it should be partially applied as it is not an “ordinary occupation.” Moreover, Israel posits that the section prohibiting the transfer of a population to occupied territory should be interpreted only in cases wherein a population is forcibly transferred to or from the territory.

We will now turn to a description of the legal argument that Israel has relied on to justify the use of seizure orders for the establishment of settlements. Yet prior to going into depth, we will note that the premise of international law defining the rights and duties of a military commander in occupied territory (under “belligerent occupation”) is that **occupation entails a temporary state**.¹⁸

We found it appropriate to highlight the full text from the website of the Military Advocate General's (MAG) Office, devoted to the question of the military commander's authority to seize land, as it presents a legal basis according to which the army purports to act. It is advisable to carefully read the document while paying close attention to what is not written.

In accordance with the laws of belligerent occupation detailed in customary international law, an occupying power is prohibited from confiscating the private property of a local population in an area under its belligerent occupation. However, a central exception to this rule was enshrined in 1907 in the annex to Article 52 of the Hague Convention (IV), Regulations Concerning the Laws and Customs of War on Land, which was formulated as follows:

¹³ Ma'ale Adumim and Ofra are the only two settlements established during the 1970s through expropriation orders for public needs. The settlements of Mevo Horon and Beka'ot were established on areas declared closed military zones.

¹⁴ See Limor Yehuda, “The High Court of Justice and the Territories, Chapter Three: The Settlements,” Rule of Law: Following the Film, Interactive Journey, <https://www.thelawfilm.com/inside/english/stories/the-opt-and-hcj> In this article, Yehuda reviews the stance of the HCJ on the issue of settlements since the beginning of the 1970s.

¹⁵ Gabriel Bargil et al. v. Government of Israel et al., HCJ 4481/91. See <http://www.hamoked.org.il/Document.aspx?dID=3850>

¹⁶ This interpretation is based primarily on the last sentence of Article 49 of the Fourth Geneva Convention: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.”

¹⁷ Jordan officially annexed the West Bank in 1950, yet no countries recognized the annexation aside from Britain and Pakistan.

¹⁸ The verdict ruled by Aharon Barak in the case, Jam'iyat Iskan al-Ma'almun al-Tauniyya al-Mahdudah al-Masawliya v. Commander of the IDF Forces in Judea and Samaria and the Supreme Planning Council in Judea and Samaria, 393/82, is considered a foundational court ruling defining the powers of Israeli military commanders in the West Bank. The ruling clarifies the powers of the military commander and permissible use of occupied territory, which stem from the temporary nature of the occupation. For the ruling, see http://www.hamoked.org/items/160_eng.pdf



Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation ...

Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.

Contributions in kind shall as far as possible be paid for in cash; if not, a receipt shall be given and the payment of the amount due shall be made as soon as possible.

According to the introductory provisions of the regulation, the commander of the area has the authority to take possession of private land if there is a military need. Hence the following analysis will address exercising such authority for military needs, and will not examine authority to use land for essentially civilian needs. The text of the regulation defines military needs as the needs of the army seizing the territory. Exercising this authority does not invalidate landowners' rights of possession, although they are temporarily prevented from holding and using the land.

Authorized action

The military need constitutes the threshold for exercising authority to seize land, as part of gauging the appropriate aims to exercise such authority. Military necessity is a term that encapsulates all activities of a military nature, including derivative and supporting actions. This includes, for example, the establishment of military camps and exclusive access to them, the establishment of positions and posts, the construction of the security fence, the regulation of security measures for the protection of settlements, and more.

Prudent decision-making

A military commander's general gauge for decision-making is that it must be within reason. Military commanders must refrain, as much as possible, from carrying out actions that contribute directly or indirectly to the perpetration of legal transgressions or ongoing offenses. Decision-making requires deliberating over the entirety of circumstantial considerations, giving weight to deserving factors such as protecting public order, as opposed to undeserving factors (which constitute extraneous considerations).

A reasonable decision is not necessarily a single solution to a situation, and may include a variety of solutions. What is shared among the various solutions is that prior to deciding upon one of them, the military commander is given as much information as possible regarding the case — the advantages of the solution alongside its shortcomings. Thus, the military commander is required to give weight to various considerations presented before him.

Proportionality of the decision

In the framework of the principle of proportionality, the military commander balances the harm (with an emphasis on harm to the individual) that is likely to be caused by the application of a chosen alternative (land seizure, damaged land caused by infrastructural work, indirectly limited freedom of movement due to security installations, etc.), versus the benefits derived from its implementation (through enforcing necessary security measures).

This examination is roughly divided into three main subsets, according to which: the seized area must conform to the security aims underlying its seizure; among the various possible alternatives, seizure of the area must harm the private asset the least; and the damage caused by the seizure must be proportionate to its security benefits.

In the context of the above, the military commander shall, to the greatest extent possible, make use of the sovereign's property (land managed by the custodian of government property) in lieu of the use of privately owned land, and shall act to reduce physical and indirect damage to its surroundings, while preserving the essence of the military aim for which the seizure was originally intended.



Eligibility for compensation

By virtue of the aforementioned final clause of Article 52, Israeli law recognized landowners' rights to receive periodic usage fees as compensation following seizure for military purposes in Judea and Samaria, both for use of the land and for the damage caused following the use and seizure (see, for example, HCJ 2056/04, Beit Sourik Village Council v. Government of Israel).

Usage fees are determined and paid on the basis of the estimated correlating rate of compensation for expropriation of seized land in Israel.

The right to a plea hearing

As part of the criteria of the administrative law applicable to the actions of the military commander, he is required to give the potential injured party the opportunity to present their claim before the military commander in attempt to persuade him to reconsider his decision. Before a potential offender of the infrastructural operation may make a claim against implementation of the decision, they must be aware that a decision has been made. Therefore, as much as possible, military commanders' decisions regarding land seizures are published prior to the implementation of the seizure.

Annulment of land seizures

Wherein, according to the military commander, there is no longer a military necessity for land seizure, the military commander, or anyone acting on their behalf, may annul the seizure or reduce its scope over time, when possible.

In tandem, considering the obligation to reduce damage caused to private property, upon termination of the seizure for military needs, the commander must act to restore the land to its original state prior to the seizure (to the greatest extent possible).¹⁹

In conclusion, it may be stated that according to the MAG's Office, which is the body authorized to provide legal guidance for military operations, land seizure is permitted in the West Bank. solely under the following conditions:

1. Authorized action - the seizure will be temporary and will indeed be used for military needs.²⁰
2. Prudence - the seizure will not be used to carry out legal offenses.
3. Proportionality - the seizure must meet the three criteria for the proportionality of each administrative action.
4. Compensation - landowners will be compensated for damage caused to the land and for obstructed livelihood due to restricted access.

A close read of the document reveals that it is within the army's authority to seize land for the protection of settlements, yet not in order to establish them ("regulating security measures to defend residents"). This implies that the MAG's office chose to upload a document onto its website clarifying what a military seizure is and under what conditions it is permitted, disregarding the fact that approximately 40% of the total territories seized since 1967, ostensibly for "military purposes," were used to establish settlements from the outset.²¹

¹⁹ "The seizure of military land for military needs," 21.5.2015, Military Advocate General's Office, <http://www.mag.idf.il/Templates/TemplateControls/News/www.mag.idf.il/602-2339-en/Patzar.aspx> (my emphases, DE).

²⁰ The HCJ recognized the military commander's authority to seize land in urgent cases even without a written seizure order. See United National Bus Company Hebron et al. v. Minister of Defense et al., HCJ 469/83, <http://www.hamoked.org.il/items/4910.htm> This petition was filed against the seizure of the Hebron Central Bus Station on Shuhada Street in the early 1980s. A military base was established there, and settlers moved in alongside the soldiers in the late 1980s. In 2008, Peace Now filed a petition against the settlers living there (HCJ 6429/08). Following the submission of the petition, in 2009 the army issued an official seizure order for the site (order 15/09). In 2010, the Peace Now petition was rejected due to a delay, and as there was a "closer petitioner" who could have petitioned in place of the Peace Now movement. For further information on settlers' takeover of military bases, see below, page 64.

²¹ See, page 45 below.



Hence the question: which “military needs” are capable of justifying the seizure of protected residents’ privately owned territory under the aforementioned limitations, in the first place? To address this question we will cite relevant sections from the Conventions to which Israel committed. The first is the **Hague Convention of 1907, Article 23(g)**:

In addition to the prohibitions provided by special Conventions, it is especially forbidden:
To destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war.

As well as **Article 46**:

Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected. Private property cannot be confiscated.²²

From the **Fourth Geneva Convention of 1940, Article 53**:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.²³

Seizures, expropriations, closures, and construction bans

Aside from seizure orders, there are other military orders issued by the Israeli authorities under the land regime it administers in the West Bank.

Expropriation orders - To date, Israel has issued hundreds of expropriation orders for “public needs.” Contrary to seizure orders, which are temporary in nature, expropriation orders permanently confiscate territory from landowners in perpetuity (for certain compensation). According to the accepted interpretation, these orders must also serve the needs of the Palestinian population due to its status as the “protected local population.”²⁴ The expropriation orders were issued, among other things, for some of the bypass roads paved in the West Bank, primarily during the 1990s for sewage treatment plants and waste collection sites. Parenthetically, it should be noted that although the law requires the benefit of the protected population, namely local Palestinians, over the years they have been excluded from a considerable amount of facilities built on expropriated territory. The most well known example, though far from being unique, is Route 443 that was paved in the 1980s on land expropriated from villages west of Ramallah. Following a petition to the HCJ, the road was formally opened to Palestinian vehicular traffic. Yet the restrictions imposed on Palestinian movement defy the logic based on which the road was paved in the first place, such that very few Palestinian vehicles actually drive along the road to date.²⁵

²² From the Convention on the Laws and Customs of War on Land, including Regulations Concerning the Laws and Customs of War on Land (Hague 1907), 1.1.2011, B'Tselem, https://www.btselem.org/english/international_law/hague_convention_and_regulations

²³ From the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1.1.2011, B'Tselem, https://www.btselem.org/english/international_law/fourth_geneva_convention

²⁴ On this matter, see judgment 393/82 (supra note 18).

²⁵ For further reading on Highway 443, see “Road 443: What Really Changed on the Ground?” The Association for Civil Rights in Israel, <http://www.acri.org.il/he/2489>. The issue of the local population has repeatedly arisen over the past year in the context of the state’s attempt to authorize illegal outposts by authorizing access roads illegally breached on private Palestinian-owned land. See Yotam Berger, “Mandelblit: Land May be Expropriated from Palestinians for Public Purposes in the Settlements,” 15.11.2017, Haaretz, www.haaretz.co.il/news/law/.premium-1.4605462. The Attorney General’s attempt to authorize illegal roads breached into outposts was eventually rejected by Chief Justice of the Supreme Court Esther Hayut. To date, there has been no change in the legal situation, which solely defines the Palestinian population as a “local population,” with all that entails regarding land expropriation. See Yotam Berger, “The High Court of Justice: The Ruling That Paved the Way for Expropriation of Land from Palestinians is Not a Binding Precedent,” Haaretz, 30.5.2018, www.haaretz.co.il/news/law/.premium-1.6134386



Closure orders - While the exact number of temporary closure orders issued by the army to date is undisclosed (there are likely thousands), the amount of permanent closure orders stands at dozens, though the areas they include are very large. Our March 2015 report revealed that about one third of the West Bank is classified as a closed military zone for Palestinians for various reasons (firing zones, settlement territory, and areas near Jordanian or Israeli borders).²⁶ As opposed to expropriation or seizure orders, closure orders do not apply to permanent residents living in the closed-off areas, and do not relate to issues of ownership or their right to use the private land under closure (ostensibly only in coordination with the army).²⁷ However, due to their enormous size, there is considerable overlap between closure and seizure orders. For example, among the army's firing zones, which sprawl over more than 980,000 dunams, there are over 15,500 dunams that were seized for a variety of aims.

Orders prohibiting construction - Construction bans entail dozens of orders issued by the army, prohibiting construction primarily along roads and parts of the separation barrier in the West Bank. To date we have incomplete information regarding the size of the area to which all the orders banning construction apply, but we know that they span tens of thousands of dunams, and some lie within PA territory.²⁸

Question for interpretation - what are “military needs?”

The question regarding which military needs justify the seizure of territory, repeatedly resurfaced at the gates of the HCJ throughout the 1970s. Throughout this decade, most of the settlements were established in areas that the army confiscated from their owners through seizure orders. The establishment of settlements in these areas has raised two primary legal challenges:

1. Can the establishment of settlements be considered a military security need that justifies their seizure?
2. How can one overcome the contradiction between the existence of settlements as civilian communities (whose populations believe that they have come to settle permanently) and the principle of temporary seizure?

As noted, a series of petitions to the HCJ during the 1970s addressed the question of whether the establishment of settlements constitutes a just cause to seize private land. A detailed account of these petitions is provided in Moshe Negbi's book “Cables of Justice,” we will thus solely offer a brief review of them and their ramifications.²⁹

Rafah Salient HCJ - The first HCJ petition to examine the connection between seized land and the establishment of settlements, was submitted in the early 1970s regarding land in the Rafah Salient in northwestern Sinai.³⁰ From 1969 and 1972, Israel expropriated approximately 47,000 dunams of land in the Rafah Salient, expelling thousands of Bedouin and establishing several settlements there. The petition filed by residents against the seizure and expulsion from the land, was rejected following an affidavit signed by Major General Israel Tal. He claimed that the seizure of the territory, the expulsion of the population, and the establishment of settlements, were essential to preventing attacks from the area. Following the rejection of the petition, Israel continued to build up the Yamit region.

²⁶ “A Locked Garden: Declaration of Closed Areas in the West Bank,” March 2015, Kerem Navot, <https://www.keremnavot.org/gannaul>

²⁷ The definition of the term “permanent residents” is crucial in this context. The army consistently refuses to recognize residents of shepherds' villages living in firing zones as permanent residents who are permitted to live there.

²⁸ Amos Harel, “Israel Prevents Construction in Territories Administered by Palestinians for Security Reasons,” Haaretz, 25.2.2013, <http://www.haaretz.co.il/news/politics/1.1937128>

²⁹ Moshe Negbi, *Cables of Justice*, Jerusalem 1981, page 28–74. See also Yehuda, High Court of Justice and the Territories (supra note 14), where there is a brief review of primary petitions regarding this matter.

³⁰ Sheikh Suleiman Hussein Odeh Abu Hilu v. Government of Israel, HCJ 302/72.



Anata HCJ - In 1978, Israel seized approximately 1,800 dunams of land from the Palestinian village of Anata. Most of it was cultivated at that time, and villagers even lived on some of the tracts. Following a petition filed by the landowners, the HCJ issued an interim order against the seizure. The petition was rejected after the state committed to the establishment of a sole military base on the territory. In time, the Anatot base was indeed established on site, which is currently located east of the village of Anata.³¹

Beit El and Beka'ot B (Roi) HCJ - In 1978, the Court debated two petitions: one against the construction of the settlement of Beit El, and the other against the construction of the Nahal's (one of the Israeli military's infantry brigades) Beka'ot B outpost, which later became the settlement of Roi.³² Attorney Elias Khoury, who claimed on behalf of the landowners that land had been deceitfully and arbitrarily seized and transferred to the settlers on the pretext of military necessity, filed both petitions. Ultimately, Major General Avraham Orly of the Coordination of Government Activities in the Territories (COGAT), rejected both petitions on the basis of affidavits. The following was written in the verdict:

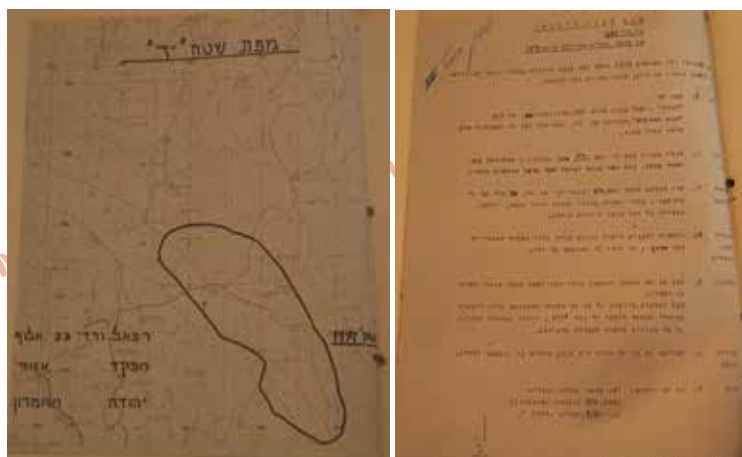
General Orly's affidavits leave no doubt that the two areas in which the petitioners' land was seized are located in sensitive strategic locations. One of them is located on the route from the Jordan River to the heart of Samaria, and the other is on thoroughfare adjacent to the military camp. It is hard to imagine that the occupying power would leave control of such areas in the hands of potentially hostile bodies.³³

The issue regarding temporary seizure is written in the verdict as follows:

Mr. Khoury asks: how is it possible to establish a permanent settlement on land that was seized solely for temporary use? That is an honorable question. Yet it seems that Mr. Bach's reply that the civilian community can exist on the same site, only holds so long as the Israeli Defense Forces maintain a seizure order over the area. The possession itself may come to an end one day as a result of international negotiations liable to result in a new agreement that will be valid according to international law, determining the fate of this settlement along with other settlements in the occupied territories.³⁴

In summary, the Beit El and Beka'ot B petitions were rejected for two reasons:

1. The HCJ justices accepted the state's claim that the settlements were established due to security aims.
2. The HCJ justices extended the notion of "temporariness" to encompass an indefinite period of time, and determined that a temporary seizure could be interpreted as identical to that of a temporary state of occupation.



The closure order signed in 1971 for territory on which the settlement of Roi (Beka'ot B) was established in 1977.

³¹ Musa Abd al-Salam Salameh et al. v. Minister of Defense et al., HCJ 834/78.

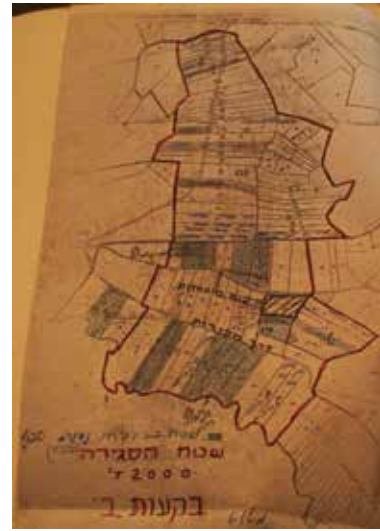
³² Beit El – Suleiman Tawfiq Ayub et al. v. Minister of Defense et al., 606/78; Roi – Jamil Qassem Mataweh et al. v. Minister of Defense et al., 610/78.

³³ From the verdict ruled for both petitions on March 15, 1979.

³⁴ For more on the issue of the temporary nature of seizures, see this chapter below, page 32.



An aerial photograph from 1967 of the territory seized for the settlement of Roi (Beka'ot B), in which it is evident that the vast majority of the area was cultivated at the time.



A detailed map attached to the state's response regarding the Beka'ot B petition, in which the land seized for the settlement is mapped.

Matityahu HCJ - In April 1979, the HCJ debated the issue of seizure for the establishment of a new settlement. In September of 1977, the army seized 500 dunams of land from the village of Na'alín west of Ramallah, in order to establish the settlement of Matityahu (now adjacent to the settlement of Modi'in Illit, which was established thereafter). When the work began two years after seizing the territory, the landowners petitioned against the seizure claiming that it was not a security necessity. After the HCJ issued an interim order forbidding further work, the state submitted an affidavit on behalf of Danny Matt, the commander of COGAT at the time, claiming that the establishment of the settlement is part of the overall security seizures in the area.³⁵ In response, the petitioners filed an affidavit on behalf of Major General (Reserves) Matti Peled, who maintained that military units are sufficient in achieving the same security aims and that there is no need to establish a civilian settlement. Preferring the COGAT affidavit, the HCJ rejected the petition and the settlement was established.

Elon Moreh HCJ - Two months later, on June 14, 1979, a petition was filed by 17 residents of the village of Rujeib east of Nablus, where about 650 dunams of their land were seized to establish the settlement of Elon Moreh and its access road.³⁶ The establishment of the settlement commenced a week earlier and was planned as a secret operation with army backing. In order to prevent landowners from petitioning the HCJ in advance, thereby averting or delaying the establishment of the settlement, the seizure order was issued the morning of the day on which work began to prepare the area, though it had been signed two days earlier. On June 20, a week after construction for the establishment of the settlement commenced, the HCJ issued an interim order phrased as follows:

Wherefore seizure orders will not be declared null and void, and wherefore the land will not be cleared of the tools and structures erected on it, and the establishment of a civilian settlement on site will be prevented. An interim injunction order was issued to prevent further excavation and construction in the territory under discussion, and the settlement of further civilians, in addition to those who settled there up until the issuance of the interim order.

³⁵ Falah Hussein Ibrahim Amira et al. v. Minister of Defense et al., HCJ 258/79.

³⁶ Izzat Muhammad Mustafa Dweikat et al. v. Government of Israel, HCJ 390/79. Press from the same period indicates different estimates relating to the size of the area included in the seizure orders issued for the establishment of the settlement of Elon Moreh (16/79) and the road leading to it (17/79). The numbers presented here are based on maps of the orders forwarded to us by the Civil Administration.



On October 22, 1979, roughly four months after the petition was filed, the court ordered the annulment of seizure order 16/79 and the evacuation of the settlement established on site.³⁷ Attorney Limor Yehuda summarized the reasons why HCJ justices reversed their decisions for this verdict, in contrast to those made regarding the previous petitions we reviewed, and concerning Beit El in particular:

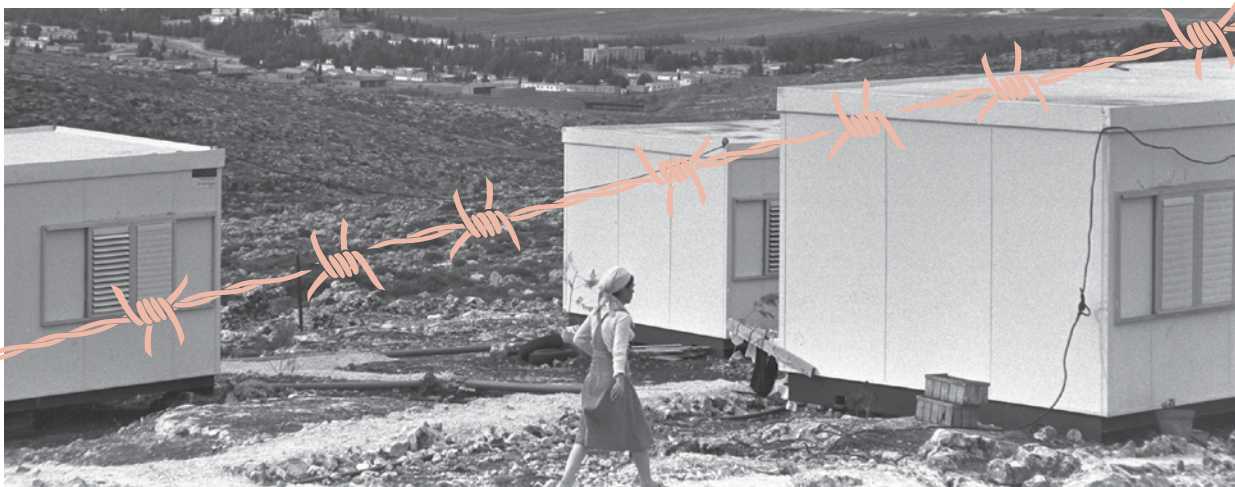
The first difference concerns the security necessity. In the case of Elon Moreh, too, land seizure was allegedly intended for security purposes. But unlike the Beit El case, regarding Elon Moreh, the respondents — Chief of Staff Rafael Eitan and Defense Minister Ezer Weizman — disagreed on the question of the security logic behind establishing a settlement on site, in a dispute that was widely publicized. Weizman opposed the government's decision to establish the settlement there, as did Foreign Minister Moshe Dayan and Deputy Prime Minister Yigael Yadin, all of whom have an impressive security record.

A second difference relates to the manner in which the petitioners based their claims on the absence of a security need. In the Elon Moreh case, the petitioners attached affidavits to their petition from former IDF Chief of Staff Haim Bar-Lev and Major General (Reserves) Matti Peled, who declared that there was no security need to establish the settlement there.

“Through the ‘tower and stockade’ model - but with a helicopter and Arik Sharon - the settlement of Elon Moreh is established.”



A third difference, which turned out to be very significant during the hearing, concerns the parties participating in the hearing before the HCJ. In the Beit El case, settlers who planned to settle in the area were not part of the discussion, and their positions regarding the claims presented by state representatives (which had direct implications for the settlers) were not heard. Whereas in this case, two core settlers from Elon Moreh sought to join, and were included as additional respondents to the petition. The two participants clarify in their statements to the court that their plans to settle on site are the outright opposite of temporary. They are here to settle the land eternally promised to Jacob.³⁸



The settlement of Elon Moreh in November of 1979.

Photo: Hanania Herman, Government Press Office

³⁷ The seizure order for the access road to the settlement (17/79) was not annulled by the court, alleging that none of the petitioners claimed ownership of the land, yet the army later annulled this order on its own initiative.

³⁸ Yehuda, the High Court of Justice and the Occupied Territories (supra note 14).



In early 1980, the settlement of Elon Moreh was indeed evacuated and moved to an alternative site on Mount Kabir, a few kilometers north, where it was established on land registered as “state land” during the period of Jordanian rule. Despite the ruling, the settlement of Elon Moreh turned out to be one of the leading settlements in terms of invasions and takeover of private Palestinian-owned land. Yet in these cases the settler invasions were pirated, without any official military order.³⁹

Although the Elon Moreh ruling is considered one of the most daring in the history of the HCJ’s decisions regarding the settlement enterprise, it is important to consider what **the verdict did not rule at all**:

1. The HCJ did not unequivocally prohibit the state from seizing land in the future. It forbade the seizure of additional areas whose primary aim was to establish new settlements (meaning that their primary aim was political rather than military).
2. The ruling did not retroactively apply to settlements established on land seized for “military needs” prior to the Elon Moreh ruling.⁴⁰ Thus, for example, on December 9, 1979, approximately two and a half weeks after the Elon Moreh ruling, government decision 251 approved 150 additional housing units in Beit El and 150 units in the northern part of the settlement called Beit El B at the time. Ever since, thousands more housing units have been built in dozens of settlements established on private land seized through the very same means.⁴¹



An aerial photograph of the original seizure order for the settlement of Elon Moreh, located on land belonging to the Palestinian village of Rujeib. On the lower edge of the photo you can see the northern tip of the settlement of Itamar.

³⁹ “The Humanitarian Impact of De Facto Settlement Expansion: The Case of Elon Moreh,” OCHA, 10.10.2017, <https://www.ochaopt.org/content/humanitarian-impact-de-facto-settlement-expansion-case-elon-moreh>

⁴⁰ Over the years, individual seizure orders issued for the establishment of settlements have been annulled. Regarding this matter, see Chapter Four below, page 80.

⁴¹ In HCJ 6528/13, Abd al-Rahman Ahmad Abd al-Rahman Qassem v. Minister of Defense et al., the petitioner requested to revoke the validity of seizure order 23/79, which was issued for territory inside the settlement of Beit El, on part of which the Dreinoff houses (named after the contractor who built them) were illegally constructed and destroyed in July of 2015. Supreme Court President Asher Grunis ordered the demolition of the houses and in the process evaded the request to annul the seizure order, claiming that the security necessity, even if it had previously existed, was now null and void (clause 27). On the other hand, then Deputy Chief Justice Miriam Naor chose not to evade the question and ruled that there was no place to annul the seizure order, since its territory was “an integral part of the Beit El community” (clause 12). See the verdict dated September 8, 2014, <http://elyon1.court.gov.il/files/10/690/096/S48/10096690.S48.htm>. In 2015, Qassem petitioned yet again with another landowner to annul seizure order 23/79 and have his land returned to him, following the Beit El Regional Council’s intention to advance a construction plan in the compound where the Dreinoff houses were built and destroyed (Qassem et al. v. the Permit-granting Authority in the Occupied Territories for Land Seized for Military Needs, et al., HCJ 5165/15). In the verdict for this petition, then President of the Supreme Court Naor chose to evade discussing and coming to a decision on the matter, claiming that this was a “theoretical” matter, since the state retracted its intention to promote construction on site (clause 8). See the ruling from September, 10, 2017, <http://elyon1.court.gov.il/files/15/650/051/c27/15051650.c27.htm>



During the period of time between issuing the seizure order for Elon Moreh on June 7, 1978, and the ruling on October 22, 1979, the army took advantage of three more seizure orders for three settlements:

1. Order 15/79 for the settlement of Shiloh on June 15, 1979.
2. Order 22/79 for the settlement of Ariel on July 11, 1979.
3. Order 23/79 for part of the settlement of Beit El on July 18, 1979.

These three orders remain valid to date.

The transition to declaration of state land

Mere weeks after the publication of the ruling regarding the Elon Moreh petition, on November 11, 1979, the government published Resolution 145, which reads as follows:

We decide (unanimously):

To expand the settlement in Judea, Samaria, the Jordan Valley, the Gaza Strip and the Golan Heights, by increasing the populations in existing settlements and by establishing additional **settlements on state-owned land**.⁴²

As stated, the ruling on the Elon Moreh affair led to a restriction of the state's ability to use seizures for "security needs" in order to establish new settlements. As a result, the state was compelled to create a new mechanism that would enable it to continue to take over additional land, in the name of transferring tracts to dozens of settlements that the Likud government planned to establish or fortify at the time. The aforementioned matter is described in B'Tselem's report:

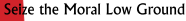
The primary legal step in this direction was to expand the definitions of the Order Concerning Government Property. In 1984, the military commander published an amendment to the order according to which "government property" includes "property on the determinant date [7.6.1967] or thereafter, belongs, is registered in the name of, and is vested to" the Kingdom of Jordan. Through the amendment, the "original definition of government property" was changed, "which was a static definition, primarily indicating the situation on the determinant date." According to the amended order, "even if the rights of the enemy state were acquired or expanded after the determinant date (the day the IDF entered the area), they become part of the government's property." The amendment to the order clearly reflects the change in the Israeli view of state land in the West Bank — from a static approach to a dynamic perception according to which even land that was previously not considered state land, were liable to become government property under certain conditions.⁴³

In the decades since the Elon Moreh ruling, Israel has declared over 750,000 dunams of land in the West Bank "state land." After the rearrangement of land following the Oslo Accords (from 1993 to 1995), approximately 655,000 dunams remained in Area C. Over the years, a large portion of this land was allocated for the future development of settlements, while other tracts were unofficially maintained for the same purpose, with Palestinian use almost entirely forbidden.⁴⁴

⁴² Report by the Professional Team to Formulate an Outline for Building Regulations in Judea and Samaria (Zandberg Committee), page 19. Quoted from Haya Zandberg et al., The Professional Team to Formulate an Outline for Building Regulations in Judea and Samaria: Conclusive Report, 15.2.2018. The Zandberg report may be found at https://www.haaretz.co.il/embeds/pdf_upload/2018/20180504-102258.pdf

⁴³ Nir Shalev, Under the Guise of Legality: Declarations of State Land in the West Bank, February 2012, page 11.

⁴⁴ A few years ago, the organization Bimkom revealed that 37% of state land was transferred to settlements while only 0.7% was transferred for Palestinian use. Haim Levinson, "Just 0.7% of State Land in the West Bank Has Been Allocated to Palestinians, Israel Admits" Haaretz, 28.3.2013, <https://www.haaretz.com/.premium-w-bank-jews-get-39-palestinians-1-1.5235879>. See also Yotam Berger, "Palestinians Have Received 0.25% of State Land Allocated in the West Bank since 1967," Haaretz, 19.7.2018, <https://www.haaretz.com/israel-news/.premium-palestinians-got-0-25-of-west-bank-state-land-israel-has-allotted-1.6290748>



On February 25, 1980, a few weeks after the evacuation of the settlement of Elon Moreh, Attorney General Yitzhak Zamir published a document titled “Opinion on the Legal Status of the Israeli Settlements in Judea and Samaria.”⁴⁵ This document was an attempt to elucidate the significance of the ruling on the Elon Moreh petition, and primarily to reassure the government regarding the fear that other settlements would be evacuated for the same reason. According to Zamir, the case of Elon Moreh related to very specific circumstances and it was therefore unreasonable for the court to intervene in other instances of settlements established on territory seized through the same method, for the following reasons:

- Zamir stressed that there is no reason to prevent the establishment of settlements on “state land” or on land owned by Jews before 1948, or purchased by Israelis after 1967.

- A certificate granted by the Ministry of Foreign Affairs that territory in the West Bank is not “occupied territory.”
- Limitation of the HCJ’s authority to discuss petitions filed by Palestinian residents of the West Bank against the establishment of settlements on their land.
- Expropriation of land in accordance with Jordanian law.
- The application of Israeli law regarding the purchase of land for public purposes.
- The application of Israeli law in the West Bank.



The Jordanian police building in which settlers of Elkana lived, upon the establishment of the settlement on land seized for settlement purposes.

[illegible]

⁴⁶ It should be noted that this legal opinion was written when there were already dozens of settlements built on land seized for military purposes in the West Bank, hence the concern that Zamir saw fit to refute.



The Legal Status of Israeli Settlements in Judea and Samaria Legal Opinion of the Attorney General

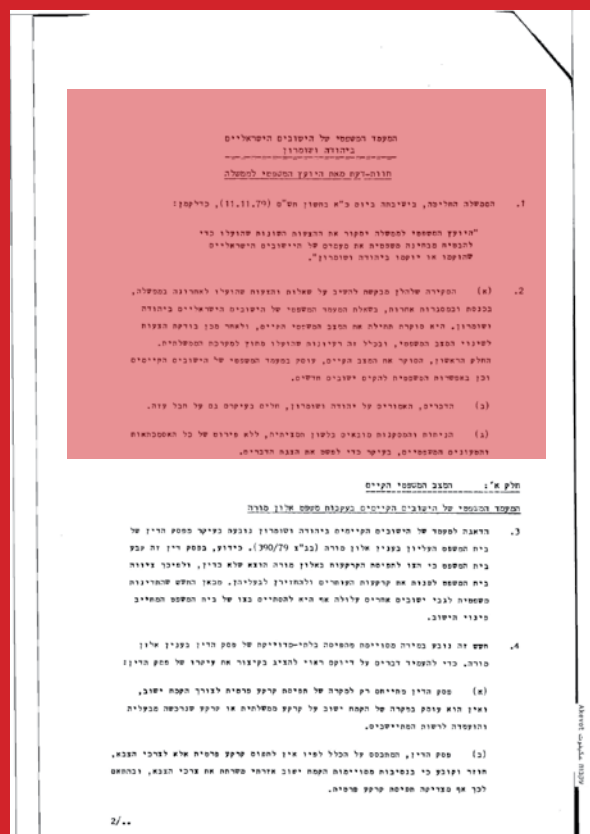
During a meeting on the 12th of Chesvan 5760 (11.11.79), the government concluded the following:

“The Attorney General will make a list of the various proposals that were raised in order to ensure, from a legal standpoint, the status of established Israeli settlements or of those to be established in Judea and Samaria.”

(a) Their review seeks to answer questions and suggestions recently raised by the government, the Knesset, and within other frameworks, regarding the legal status of Israeli settlements in Judea and Samaria. It first reviews the existing legal situation, and then proceeds to examine proposals for changing the legal situation, including ideas raised outside the government system. The first part, which reviews the existing situation, addresses the legal status of the existing settlements and the possibility of establishing new settlements.

(b) The aforementioned statements regarding Judea and Samaria apply to the Gaza Strip in principle.

(c) The analysis and conclusions are presented in concise language, without detailing all references and legal arguments, primarily in order to simplify presentation of the matter.



From Attorney General Zamir's legal opinion, which was written following the Elon Moreh ruling.

Could this mark the end of the seizure period?

Despite the government's decision to establish new settlements on “state land” (government decision 145), which was adopted following the ruling on the Elon Moreh case, Israel continued to seize land to establish new settlements in the early 1980s.

Over the course of these years, the following settlements were established on land seized for “military needs.”⁴⁷

1. Otniel
2. Pnei Hever (a few years later the settlement was moved to its present location)
3. Migdalim
4. Asfar

⁴⁷ In some of these settlements, a military seizure was later added to the declaration of the land as state land. See below, page 59. In addition, the seizure order issued for the establishment of the settlement of Psagot was later revoked, and the seizure order issued for the establishment of the settlements of Maon and Carmel was greatly reduced to the degree that today it includes a handful of dunams in the heart of Maon.



5. Tene Omarim
6. Beit Haarava
7. Ma'on
8. Carmel
9. Dolev
10. Har Bracha
11. Maaleh Levona
12. Psagot

All of these settlements (excluding Psagot) were established following the Elon Moreh ruling as Nahal outposts (meaning that they were formally IDF military bases), which became civilian settlements after a period of time ranging from a few months to a few years. It is clear that this course of action intended to grant legal “justification” for the land’s seizure under the guise of security, although their establishment had clear political aims. Toward the end of 1991, Israel established another Nahal outpost that later became the civilian settlement of Rehelim in the late 1990s, and in 2013 the government decided that it would become an independent settlement.⁴⁸



**The road leading to the settlement of Maon,
which was built on land originally seized for settlement purposes.**

The story behind the establishment of the Kochav Hashachar settlement

The process of establishing the settlement of Kochav Hashachar was somewhat different than the more typical means of founding settlements. In 1975, a Nahal outpost called Kochav Hashachar was established on land belonging to the village of Deir Jarir east of Ramallah, though no official seizure orders were issued. In the summer of 1980, a seizure order was issued for an area of 880 dunams, most of which was privately owned by residents of the Palestinian villages of Deir Jarir and Kafr Malik. Thus, through bypassing the Elon Moreh ruling the state took control of hundreds of dunams of land that were then cultivated by their Palestinian owners and transferred them to settlers, who were occupying a few dozen dunams at the time. It later became clear that this area was not enough for the residents of Kochav Hashachar, and they built surrounding outposts through taking over very large swaths of private territory, among other things, for agricultural cultivation.⁴⁹

⁴⁸ In accordance with order 24/91, which spans an area of 17 dunams.

⁴⁹ Amos Harel, “This is How Another Outpost Was Established Under Our Noses,” Haaretz, 19.4.2012, www.haaretz.co.il/news/politics/1.1689150



מסעיב, 04.05.1975, page 8

מאת דליה מזוזר	נודר — יוסטו בקרוב ב"י	מי הארץ, יעסטי בחקלאות.	הם יתגוררו למית, במבנים
שתי היאחזויות ומוטט	במקט היורה וטבי המוטט,	בימים אלה החלו תבירי ה'	המורטטים שבמקט. נחב ה'
נחבים חדש — נחבים ה'	כולם בני מוטטטים מכל רח'	מוטטב לתניע למעלה אטרים.	נחוד יוטט לא רחוק מכלכל.

מאת דליה מזוזר	נודר — יוסטו בקרוב ב"י	מי הארץ, יעסטי בחקלאות.	הם יתגוררו למית, במבנים
שתי היאחזויות ומוטט	במקט היורה וטבי המוטט,	בימים אלה החלו תבירי ה'	המורטטים שבמקט. נחב ה'
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The question of the validity of motives for land seizure remains under debate to date, but as explained above (page 20), the legality of the seizure orders must meet two additional conditions:

1. The temporary nature of seizure orders stems from the nature of their existence as “security needs,” which inevitably shift from time to time.
2. Provision of compensation to the owners of the seized land.

We will now examine these aspects.

The temporary nature of seizure orders

The military commander’s authority to seize land in the West Bank is based on the principle of temporariness. We will reference a sentence from the MAG’s website that relates to this aspect:

Exercising this authority does not invalidate landowners’ rights of possession, although they are temporarily prevented from holding and using the land.

Nevertheless, it turns out that all seizure orders from 1967 to 1989 — including those issued for the establishment of settlements — were done so without termination dates. There are 436 seizure orders spanning an area of 70,000 dunams.⁵⁰ That being the case, it appears that the question regarding the temporary nature of seizures for the establishment of settlements, was interpreted by Israeli authorities with the HCJ’s consent as “political transience” (identical to the temporary nature of the “belligerent occupation” of the entire West Bank, which is not bound by a certain date), in turn granting these settlements interminable “transience.” This interpretation of the term “temporariness” also appears in Attorney General Zamir’s aforementioned legal opinion following the Elon Moreh affair:

This means that in this respect there is no impediment to the establishment of new settlements, though it should be clear, as stated in the ruling, that if the IDF’s control over the area will come to an end, the fate of the settlements will be determined in an arrangement to be agreed upon following negotiations. In other words, although the government seeks to establish permanent settlements, it must be aware that it is legally unable to guarantee the status of the settlements until it maintains control of the territory. Should this control cease, and a new arrangement be established in its stead on the ground, the legal status of the settlements will depend on the arrangement determined for this purpose. The government of Israel may revise and clarify, if it sees fit, that it will not consent to any arrangement that does not ensure the interminable status and existence of the settlements.⁵¹

The very generous and unconventional interpretation of the concept of “temporariness” granted to land seizures for the establishment of settlements, did not exclude seizures for explicit military aims at the time. This is indicated, among other things, in clause 4 of a document sent in July of 1972 in which the chief of staff’s approval was requested for the seizure of two dunams of land for a helipad near the Hanan camp in Jericho — “the duration of the seizure is indefinite.”⁵²

⁵⁰ Over the years, 18 of these orders, spanning an area of some 3,200 dunams, have been annulled. On the annulment of the seizure orders, see page 79 of Chapter Four, below.

⁵¹ See supra note 45.

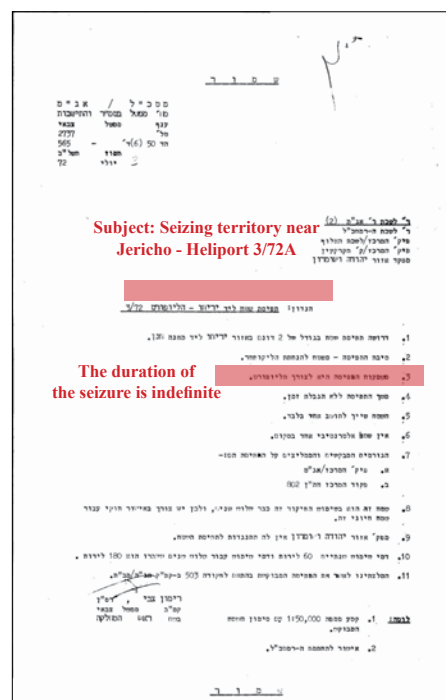
⁵² Since the implementation of the first phase of the Oslo Accords in 1993, the PA uses the Hanan camp mentioned in the document. See page 82, below.



This mode of indefinite seizure stands in opposition to the Supreme Court's stance toward petitions filed by Palestinians whose property was seized during the First Intifada; for instance, in attempt to tighten military hold along main roads that were also used by settlers and military forces. For these petitions, the notion of "temporariness" is interpreted in court in a much narrower fashion, which ultimately led to the annulment of the practice of issuing seizure orders without termination dates. The ruling on the petition filed by Bethlehem resident Na'im Khalil 'Issa Juha, against the seizure of a plot of land that he inherited from a relative, was a watershed case on this matter.⁵³ Although the HCJ rejected the petition and approved the seizure of the land, it declared that the temporary nature of a seizure must have explicit limitations to a specific duration of time that may be extended if necessary:

However, in our opinion, there is room to determine a number of specific conditions, necessitated by the circumstances of the matter:

First, in our opinion, we must determine and include the length of the seizure period. This is not a period of combat or other such circumstances, in which there is ambiguity regarding more long-term planning. Within the circumstances posed before us, we are capable of determining a specified period for the order's validity. Should an extension be required due to persistence of the circumstances that necessitated the seizure in principle, such authority is vested in the respondent [the state] however, as this is individual property, it is only befitting to express the temporary nature of the seizure by designating the order's duration.⁵⁴



Document addressing, "Seizing territory near Jericho - Heliport 3/72A," from July of 1972, in which approval is requested for the seizure of two dunams of land for a helipad in Jericho.



An aerial photograph of seizure order 4/89, located adjacent to the Bethlehem police station against which Juha petitioned.

⁵³ Namely, seizure order 4/89, which spans 2.8 dunams. The order was only officially annulled in 2006, years after the army left the city of Bethlehem following the signing of the Oslo Accords.

⁵⁴ Naim Khalil, Issa Juha v. Military Commander of the Judea and Samaria Region, HCJ 290/89, 3.7.1989, <http://www.hamoked.org.il/items/2510.pdf>



This procedure did not retroactively apply to the hundreds of seizure orders issued for various reasons prior to the ruling, but rather solely to subsequent orders.⁵⁵ Therefore, dozens of settlements continue to exist on land seized for “military needs,” ostensibly disabling legitimate landowners from assessing whether their land will be returned to their disposal and when.

Payment of usage fees and compensation for damages

As noted, an additional condition for the validity of the seizure is the payment of annual usage fees for assets expropriated from their owners, and compensation for incidental damages caused by the seizure. The following is a quote from statements published on the MAG website on the matter:

By virtue of the aforementioned final clause of Article 52, Israeli law recognized landowners’ rights to receive periodic usage fees as compensation following seizure for military purposes in Judea and Samaria, both for use of the land and for the damage caused following the use and seizure. ... Usage fees are determined and paid on the basis of the estimated correlating rate of compensation for expropriation of seized land in Israel.⁵⁶

In order to receive usage fees, landowners must submit an official request to the Civil Administration (see below, page 36-37). Thereafter, the Ministry of Defense examines land ownership rights and appraises their value, according to which the usage fees will be determined. To date, we do not retain information on the amount of landowners who applied for usage fees, nor on the relative quantity of potential applicants. Yet information provided by the Ministry of Defense (see below, page 36), offers the impression that while there exist claimants who file for usage fees, the amount is negligible relative to the number of potential applicants. From 2009 to 2016, approximately 1,300 landowners’ applications were registered, of which 1,102 were approved. Since the private land occupied by Israel to date encompasses approximately 68,500 dunams (see page 76 below), there is no doubt that the landowners - the amount of potential applicants - are among the thousands, if not the tens of thousands. It is reasonable to assume that the huge discrepancy between the amount of applications in practice, versus the amount of potential applicants, is related to the social taboo among Palestinians for receiving usage and compensation fees from Israel, so as not to appear to implicitly recognize Israel’s right to expropriate land in the West Bank.

Ministry of Defense figures also indicate that the total amount paid by the state for use of these territories over the course of those seven years is NIS 19.5 million, slightly less than NIS 2.8 million per year. If this amount is distributed among all the private territories that Israel has occupied to date, it becomes clear that the average amount paid by the state of Israel is NIS 41 per dunam, per year. There is clearly no means of deriving the amount paid by the state of Israel per dunam from this figure, as we do not know the total area for which landowners have received usage fees. However, this data does inform us of some matters:

1. The compensation that Israel pays for land seizures in the West Bank is negligible given the size and value of the occupied territories.
2. The cumulative economic damage caused to the Palestinian public whose land was expropriated, is far greater than the compensation it receives each year.
3. About one third of Israel’s usage fees have been paid to Israeli citizens over the past seven years. This figure indicates that Israelis who own land in the West Bank (and as far as we know, the territories in question are very limited compared to those owned by Palestinians) are not deterred from claiming usage fees from the state in cases where their property is seized.⁵⁷

⁵⁵ Seizure order 39/90, which was signed three weeks after the ruling on Juha’s petition, was the first to be issued with a termination date.

⁵⁶ See supra note 19.

⁵⁷ We do not have official and comprehensive information on the size of the areas that Israeli citizens claimed to have purchased and managed to register in their names in the West Bank. The state refuses to publish these details on the grounds that their publication will endanger the peace of the Arab “sellers” and security in the region. Nevertheless, the estimates lie in the range of a few thousand dunams.



An interview with Wajih Bernat, father of 10, 62-year-old farmer from Bil'in

His land was seized through seizure order 40/04 on November 21, 2004 for the construction of the separation barrier that was built on site throughout 2005. On September 4, 2007, the HCJ ordered the state to dismantle that stretch of the barrier and plan an alternate route that would minimize harm to landowners whose access to their land was restricted as a result of its construction (HCJ 8414/05, Yassin v. Government of Israel et al.). From 2010 to 2011, the fence was built to the west - closer to the settlement of Modi'in Illit. After having dismantled and relocated the fence, roughly 700 dunams were once again accessible to the villagers.

In 2004 the army came to our village and placed seizure orders under stones throughout the territory. None of the landowners received the order personally, farmers simply found the paperwork on their territories, on which it was written that the army was expropriating the land for security needs. But we knew it was expropriation for the construction of the fence, because the fence had already been built in many other places.

About 10 dunams of olive trees were confiscated from my family. I personally inherited three dunams from my father and about another seven dunams were shared by my brothers and sisters. Throughout the course of the work in 2005, they uprooted around 100 olive trees of various ages, some of which were very old.

I don't recall being offered compensation for the land, and as far as I know none of the landowners in the village sought compensation for loss of land. In any case, what does "compensation" even mean in this case? How can one compensate a person for uprooting a 100-year-old tree planted by his ancestors? There's no way I would have been willing to receive compensation from the army. The land was taken from me violently and forcefully and there's no way to compensate that.

After the old fence route was dismantled, we replanted olive trees in part of our territory, but the land is destroyed. The place will never be the same again. Apart from the land that was destroyed, I have another 38 dunams west of the new fence that I can't access today at all.





“Subject: Information request in accordance with the ‘Freedom of Information Law 5758-1998’”

Clause 2: “Over the past seven years no compensation whatsoever has been paid for Areas A and B. Regarding Area C, approximately 1,300 requests for usage fees and/or compensation for seizure of land were submitted to the defense establishment, of which 1,102 were approved. The vast majority of requests were rejected due to failure to prove damage. Precise information on the rejections and their circumstances cannot be retrieved computatively. In order to glean the desired information, the files must be ordered from the archive and reviewed. As there are hundreds of cases, under the assumption that the overall evaluation of each case will take one hour (a minimum initial assessment), this implies hundreds of hours of work that will interfere with the proper functioning of the body addressing the issue. For more on this matter, see clause 8 (1) of the law.”



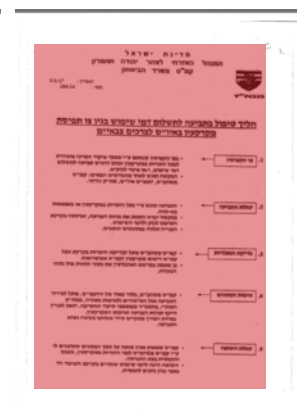
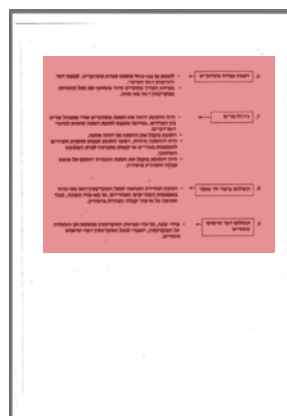
Clause 3: “The total amount paid as compensation or usage fees for the seizure of land in Judea and Samaria over the past few years is NIS19,446,495. In addition, NIS 1,180,000 was paid for the seizure of public buildings. No compensation or usage fees were paid for the seizure of religious structures or educational institutions. NIS 12,751,170 was paid to citizens and non-Israeli entities; NIS 6,695,325 was paid to citizens and Israeli entities.”

The State of Israel The Civil Administration for Judea and Samaria Ministry of Defense Staff Officer

Date: 5/1/17
No.: 186/16

Procedure for handling a claim for payment of usage fees with respect to a seizure order for military purposes over land in Judea and Samaria

1. The seizure order →
 - The seizure order signed by the Commanding Officer of the Central Command makes it clear that the landowner has the right to file a claim for payment of usage fees and/or compensation for damages.
 - The request will be submitted to one of the following: the Military Police Officer, the Legal Advisor for Judea and Samaria, the regional District Coordination Office (DCO).
2. Acceptance of the claim →
 - The claim shall be filed by the possessor of ownership rights or through a representative.
 - In the request, the plaintiff shall specify the nature of the violation, their rights to the land, and an assessment of the damage and usage fees.
 - The appeal will be accompanied by supporting documents.
3. Examination of ownership →
 - The Ministry of Defense Officer works to examine the land rights with the Land Registration Officer and the Executing Officer.
 - Thus verifying the population registry's identifying data with the ownership data.
4. Verify the data →
 - The Ministry of Defense Officer, accompanied by the Legal Advisor, works to clarify the claim on all levels and to verify data at the regional DCO, with the Regional Brigade, and through documentation of the exposure. All this regarding the scope and nature of the damage, and the location of the land. If necessary, a joint patrol takes place in the area of the claim.
5. Receipt of the assessment →
 - The Assessment Officer prepares an evaluation based on the data presented by the Ministry of Defense Officer regarding land rights, their condition, and their span at the time of seizure.
 - The assessment is for annual use of the land and singular compensation for its damage.



The State of Israel The Civil Administration for Judea and Samaria Ministry of Defense Staff Officer

6. Present Ministry of Defense's position →
 - The Ministry of Defense's position is presented to the prosecutor or his representative, up to the cost of the usage fee and/or compensation.
 - If necessary, a joint tour takes place with the possessor of land rights and/or his representative.
7. Conduct negotiations →
 - If the prosecutor rejects the Ministry of Defense's offer, negotiations are conducted between the parties. At their conclusion, the prosecutor is presented with a final proposal for compensation and/or usage fees.
 - The prosecutor accepts or rejects the offer.
 - If the offer is rejected, the prosecutor may petition the Appeals Committee for claims in Judea and Samaria or file a claim with the authorized court.
 - If the plaintiff accepts the compromise offered, he will sign a receipt form and termination statement.
8. Payment of one-time compensation →
 - Issuance and delivery of the check to the landowner and/or his representative through the regional DCOs, or the applicant's representative, against the signature confirming receipt of the termination statement.
9. Payment of annual usage fees →
 - Each year, so long as the land seizure continues along with ownership of the land, the landowners will be transferred annual usage fees.

37

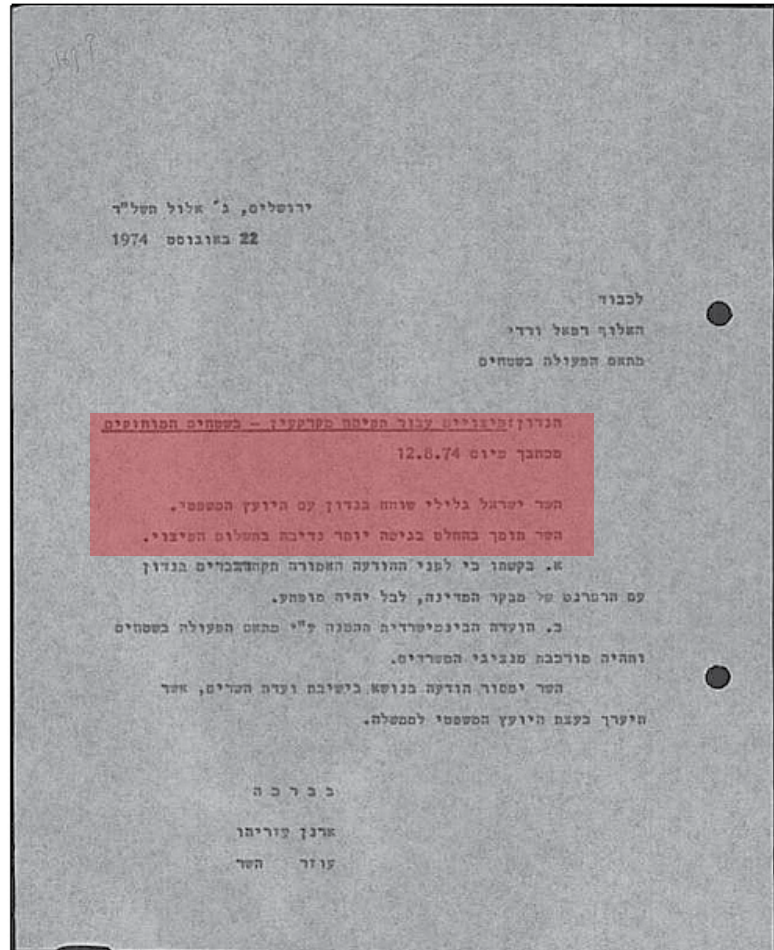


In a letter sent to COGAT commander Major General Raphael Vardi in 1974, Arnan Azaryahu, aide to Minister Israel Galili, wrote that Israeli officials sought to soften the opposition of Palestinian landowners to land seizure by means of what they deemed “a more generous approach to offering compensation.”⁶⁰ It seems that this approach was not adopted in practice, and that the amount the state offered to landowners remained, and remains, very low relative to the value of the land.

Subject: Compensation for land seizure - held territories

Your letter written on 12.8.74

Minister Israel Galili discussed the matter with the Attorney General. The minister definitively supports a more generous attitude regarding paying compensations.



The letter sent to Major General Vardi by Azaryahu, aide to Minister Galili, in 1974.

It turns out that the Israeli Ministry of Defense’s current calculation is not much different than the calculation on which it was based in the early 1970s. The following table indicates that a landowner is entitled to receive NIS 186 for one dunam of cultivated unirrigated land, NIS 313 for one dunam of irrigated land without water rights, and NIS 471 for one dunam of irrigated land with water rights.

⁶⁰ Minister Galili was a minister in Prime Minister Golda Meir’s office and led the Ministerial Committee for Settlement Affairs. Throughout the initial years following the occupation of the West Bank, Galili pushed for the establishment of settlements in the West Bank and other territories occupied by Israel in June of 1967.



Seize the Moral Low Ground

State of Israel
The Civil Administration for Judea and Samaria
Officer Ministry of Defence

"Date: 18/2/19

Subject: Usage fees per dunam
of seized agricultural land."

Year	unirrigated land	Irrigated land without water rights	Irrigated land with water rights
------	------------------	--	-------------------------------------

מדינת ישראל המנהל האזרחי לאזור יהודה ושומרון קמ"ט משרד הביטחון			
18/2/19 4/19	תאריך: מס':	הנדון: דמי שימוש לדונם לקרקע חקלאית תפוסה	
שנה	אדמת בעל	אדמת שלחין ללא זכויות מים	אדמת שלחין עם זכויות מים
1993	42 ₪	86 ₪	128 ₪
1994	53 ₪	108 ₪	160 ₪
1995	90 ₪	142 ₪	215 ₪
1996	95 ₪	154 ₪	242 ₪
1997	100 ₪	165 ₪	260 ₪
1998	105 ₪	175 ₪	275 ₪
1999	120 ₪	200 ₪	300 ₪
2000	122 ₪	203 ₪	305 ₪
2001	122 ₪	203 ₪	305 ₪
2002	130 ₪	215 ₪	324 ₪
2003	135 ₪	225 ₪	340 ₪
2004	135 ₪	225 ₪	340 ₪
2005	135 ₪	225 ₪	340 ₪
2006	146 ₪	244 ₪	368 ₪
2007	146 ₪	244 ₪	368 ₪
2008	150 ₪	252 ₪	380 ₪
2009	155 ₪	260 ₪	392 ₪
2010	162 ₪	272 ₪	410 ₪
2011	168 ₪	282 ₪	426 ₪
2012	173 ₪	290 ₪	438 ₪
2013	178 ₪	301 ₪	453 ₪
2014	182 ₪	307 ₪	462 ₪
2015	186 ₪	313 ₪	471 ₪
2016	186 ₪	313 ₪	471 ₪
2017	186 ₪	313 ₪	471 ₪
2018	186 ₪	313 ₪	471 ₪
2019	200 ₪	365 ₪	500 ₪

**Ministry of Defense table from 2019 for the
determination of usage fees for seized territories.**

During an HCJ hearing concerning usage fees for seized land, the state declared that it is willing to transfer 5% of the value of the land.⁶¹ According to this calculation, one dunam of cultivated unirrigated land in the West Bank is currently worth NIS 3,720, and one dunam of irrigated land without water rights is worth NIS 6,260, while one dunam of irrigated land with water rights is worth NIS 9,420. These figures do not come close to the value of land in the West Bank today, especially given the sharp increase in the value of land in Areas A and B, on which construction is often permitted without Israeli military restrictions.⁶²



The separation barrier between the village of Kharbata and the settlement of Modi'in Illit.

⁶¹ Suliman Darwish Hijazi v. State of Israel et al., HCJ 5519/99, https://www.nevo.co.il/psika_html/elyon/99055190.htm The petitioner is a land dealer from East Jerusalem who owns land in the village of Dura Al-Qar'a, north of the settlement of Beit El, which the army seized for the alleged purpose of building the settlement.

⁶² Even in the case of land seizure in urban areas in Area A, such as the construction of the wall around Rachel's Tomb in Bethlehem, the state maintained that it must only pay annual usage fees for 5% of the total land seized (that is, not for the entire territory included in the seizure order, in the event that not all of it is in use). See Shibli Mikhael Sansour v. State of Israel, Tel Aviv 8417-07, https://www.nevo.co.il/psika_html/shalom/SH-07-8417-270.htm



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Operations Division / enclosed herein

Tel: 2058
CM: 484
2Adar 5729
1969 Feb.20

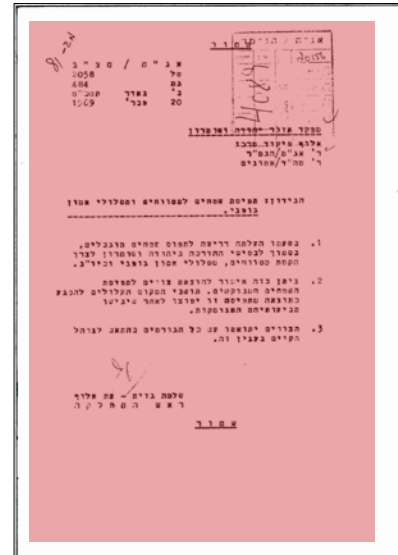
Commander of Judea and Samaria
Major General of the Central Command
Head of the Operations Division / Regional Defense
Head of the Training Department / Exercises

Subject: Seizure of territories for firing ranges and physical training courses.

1. A demand was raised to seize restricted areas adjacent to training bases in Judea and Samaria for the purpose of establishing firing ranges, physical training courses, and the like.
2. Permission was granted to issue seizure orders for the sought-after territories. Local residents who are liable to yield to this seizure, will be compensated following submission of their justified claims.
3. The orders will be coordinated with all parties in accordance with the existing procedure regarding this matter.

Shlomo Gazit – Brigadier General
D e p a r t m e n t h e a d

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A letter from 1969 in which military seizures are approved for new training bases in the West Bank in exchange for compensation to landowners.

Conclusion

In this chapter, we reviewed the legal basis on which military seizures have been implemented by Israel in the West Bank since 1967. Military seizure in occupied territory is a draconian measure that severely violates the property rights of the protected population living in the region. Nevertheless, international law permits temporary seizure of assets and land, provided that they are indeed used for urgent security needs that cannot be obtained through more moderate means, on the condition that landowners are compensated for damages caused as a result of the expropriation.

Nevertheless, we have seen that from the end of the 1960s through the mid-1980s, even after the HCJ Elon Moreh ruling in 1979, Israel seized tens of thousands of dunams of land for the establishment of settlements. Such seizures were repeatedly approved by the HCJ, which was able to interpret the “security need” and “temporariness” in such a sense that enabled the state to continue to take control of land through this means. The Elon Moreh petition in 1979 was ostensibly a milestone in the state’s authority to seize private land for the establishment of settlements, although it appears that a few years later (until 1983) Israel continued to seize land for “Nahal outposts” that became civilian outposts not long after their establishment.

Despite the official “temporariness” of the seizures, which is a necessary legal condition, as noted, it appears that until 1989 the army did not bother to limit the duration of military seizures. This practice changed as a result of an HCJ ruling on a petition submitted by a resident of Bethlehem, whose family’s land had been seized that same year.

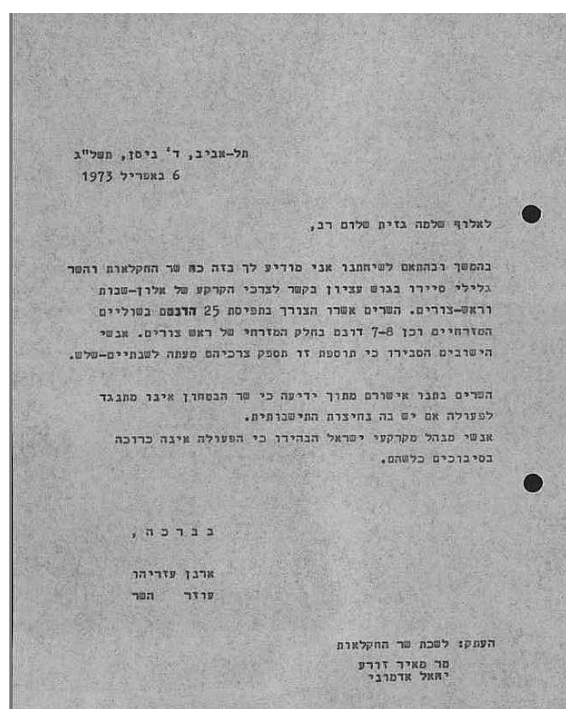
As required by international law, Israel offers a mechanism of compensation, such that landowners may demand usage fees for their expropriated land. However, as indicated by official figures from the Ministry of Defense, the total sums that Israel annually transfers to landowners for use of their land are disproportionately meager given the size of the private land that Israel has seized over the years, relative to its actual value. This fact is related both to the negligible amount of Palestinian landowners who seek compensation in the first place, and to the nominal fees that Israel is willing to transfer to landowners, as indicated by the Civil Administration’s table.



Chapter Two - Seizure Orders for Settlement

This chapter addresses the dozens of military seizure orders that were issued for the establishment of new settlements or for the expansion of existing settlements. The chapter will solely address seizures through 1983 for the establishment of settlements and the breaching of direct access roads to settlements (as opposed to bypass roads, which generally serve Palestinians as well), along with agricultural areas that were transferred to settlers following their seizure. The decision to focus on orders issued until 1983 is not incidental: as indicated in the first chapter, military seizures for the establishment of new settlements have continued to bypass the HCJ, even following the Elon Moreh ruling in late 1979, in which they were presented as Nahal military outposts that fulfilled alleged “security needs.” However, as noted above, shortly after their establishment they were naturalized and turned into independent settlements for all intents and purposes.⁶³

On June 5, 1969, the commander of the Israeli military forces in the West Bank signed the first two seizure orders for settlement purposes (5/69 and 6/69). The settlement of Alon Shvut was built on seized territories, along with parts of the settlements of Kfar Etzyon and Rosh Tzurim.⁶⁴ These orders were issued although a large part of their land overlaps with land purchased by Jews in Gush Etzyon prior to 1948. Though these seizure orders have not been annulled, much of their territory has never been effectively seized and continues to be cultivated by Palestinian residents of the area, to date.



A letter sent on April 6, 1973, by Azaryahu, to Major General Shlomo Gazit, who coordinated the committee of directors-general to address the occupied territories at the time (a position that preceded the head of the Civil Administration), confirming the seizure of land around the settlements of Alon Shvut and Rosh Tzurim.

⁶³ Although all of the settlements established after 1983 were predominantly built on “state land” or on land registered in the name of private Israeli companies (with the exception of the settlement of Rehelim), seizures intended for paving access roads to existing settlements and outposts, continued throughout the 1990s under the claim that they were essential to the settlers’ security. Among other reasons, these access roads were built on the basis of seizure orders for the settlements and outposts of Pnei Hever, Nahliel, Karnei Tzur, Oranit, Tzufin, Haresha, Horesh Yaron and Talia Farm.

⁶⁴ Kfar Etzyon, the first settlement established by Israel in the West Bank, was built in September of 1967. Seizure orders 5/69 and 6/69 were issued retroactively in order to formalize its status and create a legal basis for the establishment of the two neighboring settlements, established in 1969 (Rosh Tzurim) and 1970 (Alon Shvut).

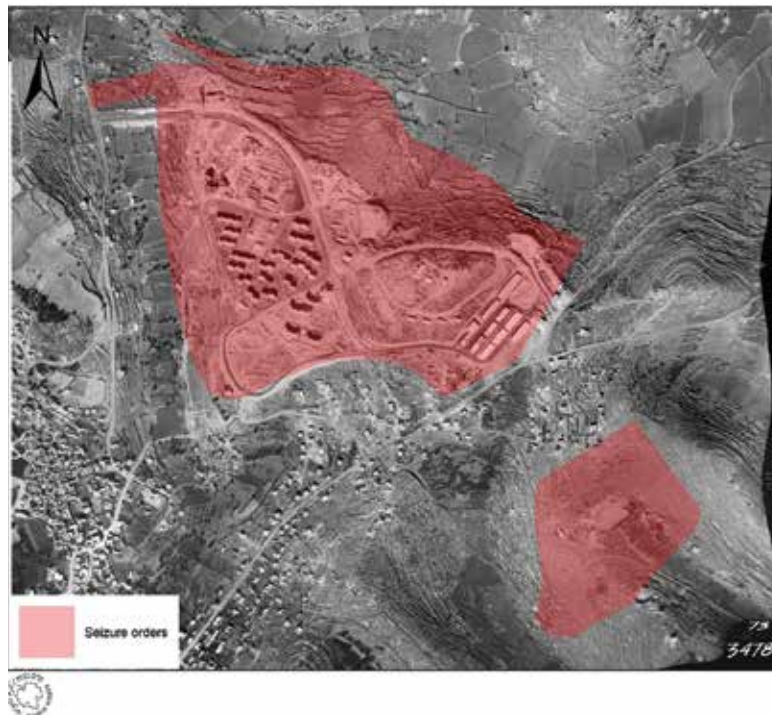


The “Kiryat Arba method”

During the 1970s several settlements were established within abandoned Jordanian military bases. In most cases, the Israeli army used these bases simultaneously. The settlements of Beit El, Kedumim, Shavei Shomron and Neve Tzuf (Halamish) were built inside Jordanian army bases, which were seized along with extensive surrounding areas. In dozens of additional military seizures for settlements during those same years, open areas were demarcated and transferred to settlers. The establishment of settlements within existing military bases served two purposes:

1. It enabled the settlers to establish themselves there quickly, eliminating the need to build and prepare the ground, saving time and money.
2. It enabled the army to disguise civilian settlement activity and claim that it was military activity.

On July 15, 1970, Brig. Gen. Shlomo Gazit, who headed the military government at the time, wrote a classified letter to a small group of senior officials in the defense establishment. In the letter, Gazit summed up the outline of what he called the “Kiryat Arba method,” which is primarily a means of using camouflage to fraudulently conceal the government’s intention to build 250 housing units in the new settlement, through presenting them as construction for military purposes (and thus as temporary, by implication).⁶⁵ On July 17, 1970, two days after Gazit’s letter was written, seizure order 8/70 was signed, whereby the army took possession of two hundred dunams east of the neighborhood where the Jabari clan lives in Hebron. This was the first of five seizure orders issued between 1970 and 1977 for the settlement of Kiryat Arba. They span approximately 640 dunams in total, and the settlement expanded and grew throughout the 1970s.⁶⁶



An aerial photograph of Kiryat Arba from 1973, in which it is possible to see the settlement three years after its establishment and the seizure orders issued for its construction and expansion.

⁶⁵ Yotam Berger, “Secret 1970 Document Confirms First West Bank Settlements Built on a Lie,” Haaretz, 28.7.2016, <https://www.haaretz.com/israel-news/.premium-document-confirms-first-settlements-built-on-a-lie-1.5416937>

⁶⁶ In the 1980s, Israel began a campaign to declare state land, during which approximately 3,300 dunams in 27 non-contiguous sites were declared state land and annexed to Kiryat Arba.



Coordination of Activities in the Territories
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The Kiryah, 11 Tammuz 5730

Office of the Minister of Defense

July 15, 1970

Assistant to the Minister of Defense

Office of the Chief of Staff

Office of the Head of the Operations Branch

Commanding General of the Central Command

Regional Commander of Judea and Samaria

Legal Advisor to the Ministry of Defense

Head of Construction and Housing Division

Subject: The Kiryat Arba establishment method

1. Discussion on the matter took place on Tuesday, July 14, 1970, at the office of the Minister of Defense with the participation of: - Minister of Defense

- Director General of the Ministry of Housing and Utilities
- Chief of Staff of the Central Command
- Regional Commander of Judea and Samaria
- Commander of the Hebron District
- Legal Advisor to the Ministry of Defense
- Spokesperson for the Ministry of Defense
- Head of Construction and Housing

2. The following is a summary of the discussion: -

a. The construction of the 250 housing units in Kiryat Arba will be carried out within the perimeter of the territory enclosed for the needs of the military unit.

b. All construction will be carried out by the Ministry of Defense - Construction and Housing Division (from the Ministry of Housing budget), and will be presented as part of the construction for IDF needs.

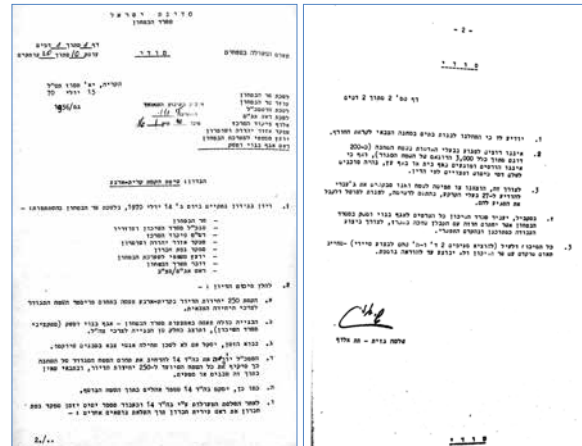
c. When the time comes, consideration will be devoted to whether or not to house military personnel in the established structures.

d. The General Staff will instruct Training Center 14 to expand the area of the camp's enclosed area, such that that it will encircle the entire territory designated for the 250 housing units, provided that there are no structures or orchards inside.

e. Furthermore, a number of tents will be erected within the additional territory of Training Center 14.

f. Following the completion of Training Center 14 operations, the Commander of the Hebron District will summon the mayor of Hebron a few days later, upon raising the following matters: -

2./..



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Page 2 of 2 pages

1. Inform him that we have begun to build houses in the military camp ahead of the winter.

2. We do not wish to harm landowners within the camp's territory (about 200 dunams of the 3,000 dunams of territory under closure), and although we will not destroy or harm any house or tree, we will be prepared to pay usage fees and compensation in accordance with the law.

3. For this purpose, we issued a seizure order for the territory, and requested that Jabari inform the 27 landowners, in accordance with the list, to appeal to the governorate and receive what they deserve.

g. At the same time, the Ministry of Defense will transfer all the details to the Ministry of Defense's Construction and Housing Division, which will sign a contract with the contractor who won the tender, in order to carry out the work as planned and as soon as possible.

3. The entire aforementioned summary (aside from clauses 2d, e, and f, which entail immediate implementation) – requires prior coordination with the Minister of Housing and will not be carried out until further instruction.

Shlomo Gazit – Brigadier General

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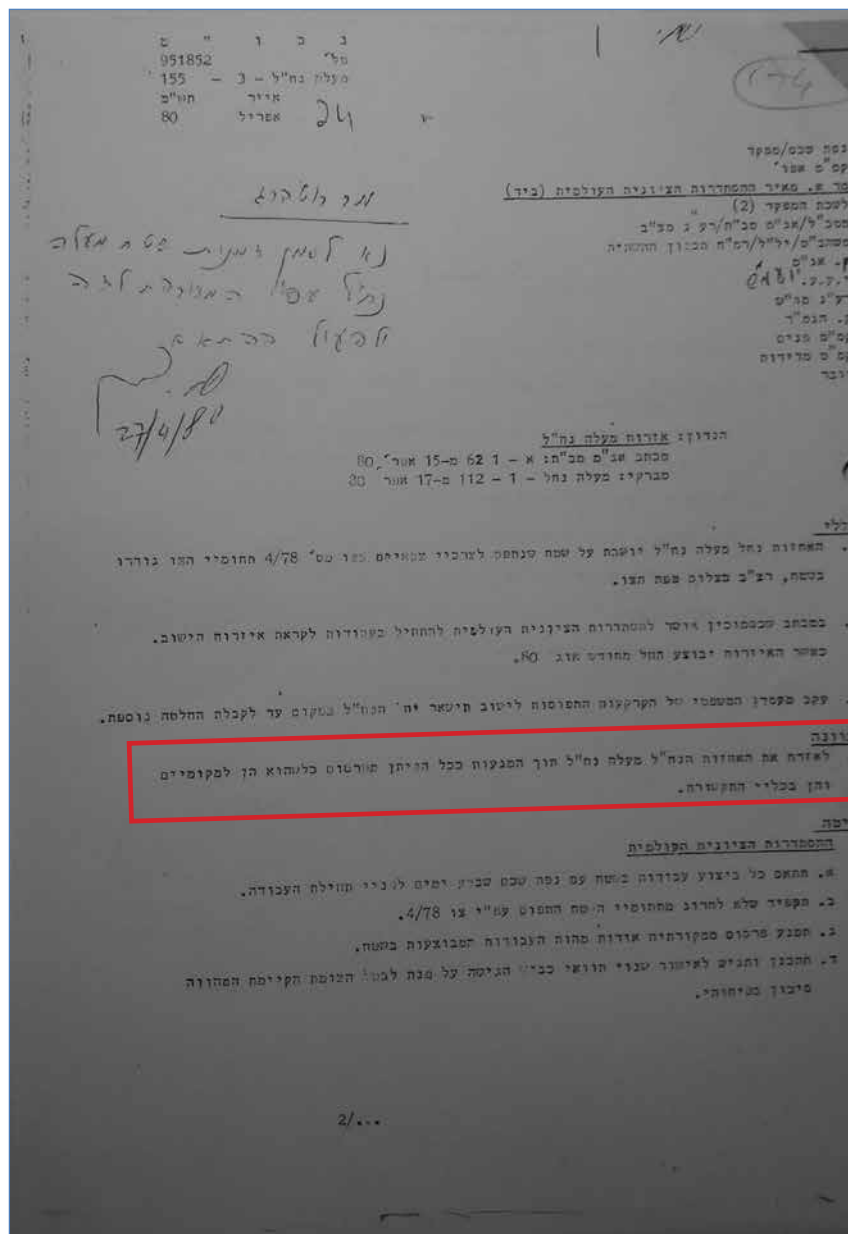
The settlement of Kiryat Arba from Route 60.



It seems that the spirit of the Kiryat Arba method also served to establish settlements nearly one decade later. One such example is the settlement of Homesh, which was built on the road between Nablus and Jenin, though was eventually evacuated during the summer of 2005. In 1978, seizure order 4/78 was issued for approximately 700 dunams owned by residents of the villages of Burqa and Silat ad-Dhahr. In the first stage, the outpost of Ma'ale Nahal was established on site. In preparation for its naturalization two years later, a letter of directives was sent to officials among the army and Settlement Division, including the following items among other things, which speak for themselves:

The intent:

- To naturalize the Nahal outpost, Ma'ale Nahal, while avoiding any publicity both among locals and the media.⁶⁷



A letter dated April 24, 1980, containing instructions for the naturalization of the outpost of Ma'ale Nahal, and the establishment of the settlement of Homesh in its place.

⁶⁷ We are unsure who sent the letter, as the second page with the sender's signature is not in our possession.



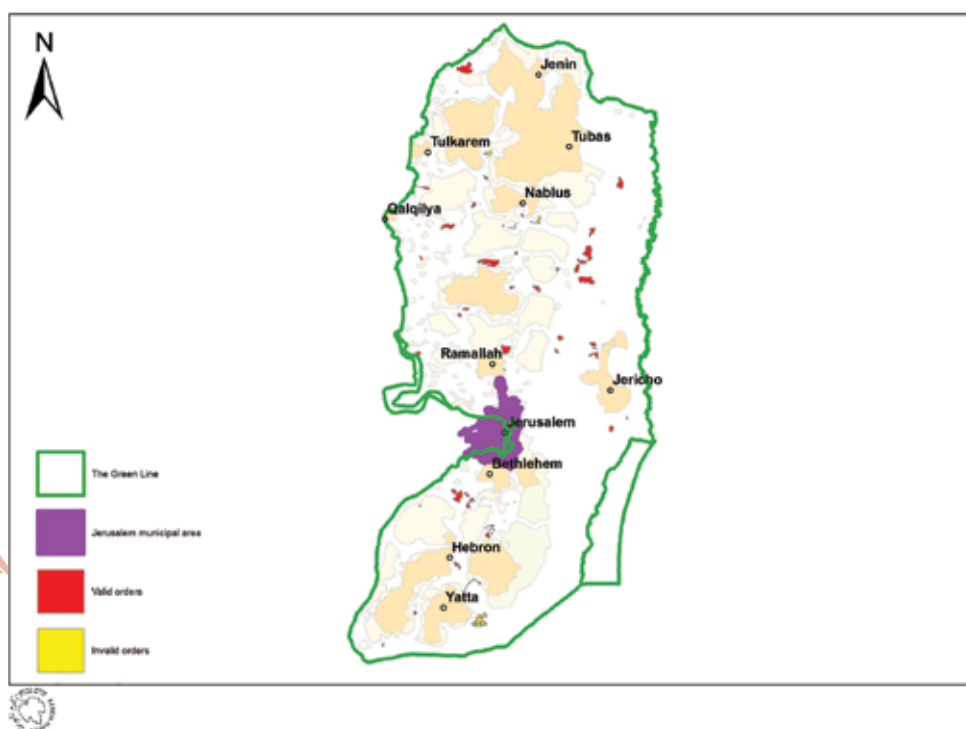
What is the size of the territory seized for settlement purposes, and how many seizure orders are there?

From the years 1969 to 1983, the army issued 73 seizure orders for 45 settlements.⁶⁸ Approximately 45,000 dunams were seized through these orders, although a large proportion of them remain unused. Some of the orders were later annulled or significantly reduced, whether due to legal proceedings as in the case of Elon Moreh, or as a result of political decisions seen in the case of Homesh, which was evacuated during the “disengagement” in 2005.” Throughout the course of this study, it became clear to us that some of the seizure orders issued for settlement purposes were not implemented. One of them was issued in 1981 for the Nahal outpost of Mitzpe Adulam (southwest of Bethlehem), though ultimately the outpost was not built. To the best of our knowledge, the validity of this order has not been annulled to date, though since 1995 it has been located in Area B under the PA, and is thus unlikely to be established in the future. Another seizure order was mistakenly issued for the moshav (cooperative agricultural community) Mei Ami, located several hundred meters from the Green Line within the official borders of the state of Israel (see below, page 57).

Table of seizure orders for settlement purposes, in order of issuance

Amount of seizure orders	Total area of valid orders	Total area of valid orders after reduction of overlap	Total area of annulled orders	Total area of annulled orders after reduction of overlap
73*	40,484	39,584	4,947	4,924

*Orders for territory divided into several sites were only counted once.



⁶⁸ According to a database prepared by the team headed by Baruch Spiegel and leaked in 2009, another seizure order was allegedly issued for the settlement of Argaman in the Jordan Valley, yet the seizure order was not found. See <http://www.hamoked.org.il/files/2013/1157900.pdf>. *ibid.*, page 26.

**Table of seizure orders for settlement purposes in order of issuance***

Order no.	Area (in dunams)	Purpose	Use in practice	Valid
5-6/69	2,253	Alon Shvut, Kfar Etzyon, Rosh Tzurim	Yes	Yes
1/70	2,426	Beit El	Yes	Yes
7/70	410	Kedumim	Yes	Yes
8/70	198	Kiryat Arba	Yes	Yes
12/70	32	Kiryat Arba access road	Yes	Yes
13/70	322	Shavei Shomron	Yes	Yes
2/71	500	Kiryat Arba	Yes	Yes
5/71	22	Rosh Tzurim	Yes	Yes
8/72	118	Kiryat Arba	Yes	Yes
10/72	275.5	Gitit military use	Yes	Yes
12/72	3,265	Gitit agricultural territory	Yes	Yes
12/72A	567	Gitit agricultural territory	Yes	Yes
13/72	1,141	Mechora	Yes	Yes
3/73	388	Elazar	Yes	Yes
4/74	4.5	Alon Shvut	Yes	Yes
15/75	23	Elazar	Yes	Yes
15/75	15	Elazar	Yes	Yes
13/76	527	Migdal Oz	Yes	Yes
1/77	8	Kiryat Arba	Yes	Yes
1/77	2	Kiryat Arba	Yes	Yes
2/77	295	Rimonim	Yes	Yes
4/77	755	Maaleh Efraim	No	Yes
5/77	1,934	Roi	Yes	Yes
7/77	25	Kedumim access road	Yes	Yes
8/77	4,138	Reihan	Yes	Yes
10/77	619	Salit	Yes	Yes
13/77	549	Mattityahu	Yes	Yes
14/77	7	Connection between both parts of Mei Ami	No	Yes
14/77	149	Mei Ami (the order was mistakenly issued for territory within the state of Israel)	Yes	Yes
28/77	679	Yativ	Yes	Yes
28/77	1,009	Yativ agricultural territory - Omer Farm	Yes	Yes

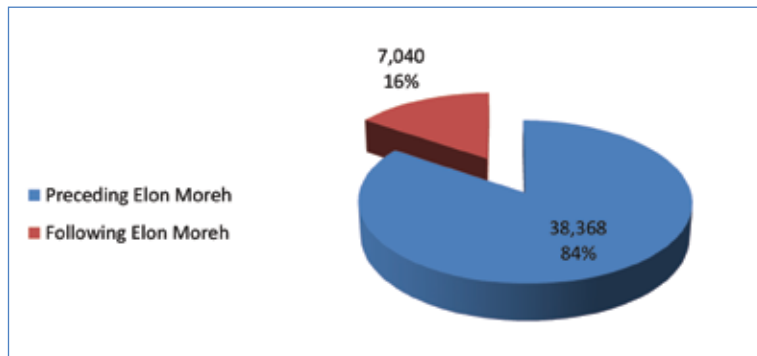
30/77	160	Har Gilo	Yes	Yes
31/77	1	Kiryat Arba	Yes	Yes
31/77	2	Kiryat Arba	Yes	Yes
31/77	0.5	Kiryat Arba	Yes	Yes
32/77	29	Yativ agricultural road	No	Yes
34/77	371	Karnei Shomron	Yes	Yes
35/77	412	Maaleh Efraim	No	Yes
35/77	3,461	Maaleh Efraim	Yes	Yes
1/78	116	Tel Shiloh	No	Yes
2/78	198	Kfar Tapuach	Yes	Yes
4/78	698	Homesh	No	No
10/78	40	Kedumim	Yes	Yes
12/78	773	Almog	Yes	Yes
13/78	320	Ariel	Yes	Yes
16/78	76	Elkana	Yes	Yes
17/78	19	Ariel	Yes	Yes
22/78	40	Elkana	Yes	Yes
24/78	2.5	Kedumim access road	Yes	Yes
24/78	4	Kedumim access road	No	Yes
28/78	371	Halamish	No	Yes
28/78	315	Halamish	Yes	Yes
29/78	539	Karnei Shomron	Yes	Yes
29/78	824	Karnei Shomron	Yes	Yes
8/79	428	Efrat	Yes	Yes
9/79	599	Kfar Etzyon and Rosh Tzurim agricultural territory	Yes	Yes
15/79	760	Shiloh	Yes	Yes
16/79	616	Original site of Elon Moreh	No	No
17/79	29	Access road to the original site of Elon Moreh	No	No
22/79	4,274	Ariel	Yes	Yes
23/79	147	Beit El	Yes	Yes
29/79	87	Psagot	Yes	No
Amount of orders: 53*	Total prior to Elon Moreh (without reduction of overlap): 38,368 dunams			



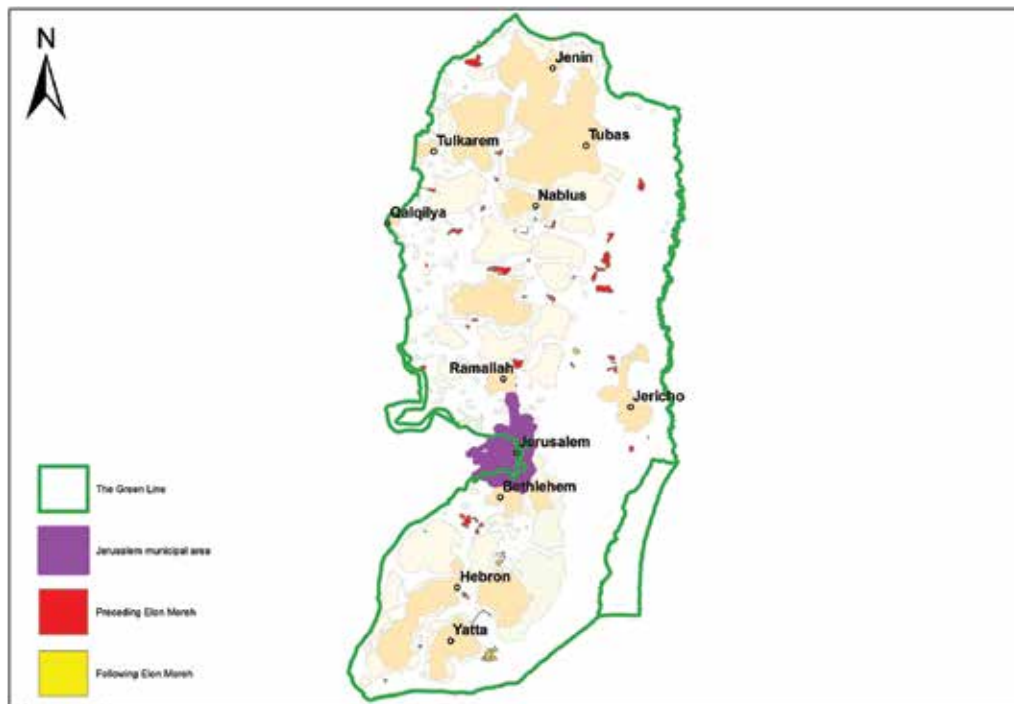
Following Elon Moreh	Following Elon Moreh	Following Elon Moreh	Following Elon Moreh	Following Elon Moreh
11/80	85	Beit Haarava	No	Yes
12/80	2,924	Maon	Yes	Amended
12/80	538	Carmel	Yes	No
12/80	9	Carmel access road	No	Yes
18/80	820	Kochav Hashachar	Yes	Yes
21/80	16	Shiloh agricultural territory	Yes	Yes
38/80	3	Carmel access road	Yes	Yes
38/80	73	Road connecting Maon and Carmel	Yes	No
3/81	75	Gitit agricultural territory	Yes	Yes
3/81	58	Gitit	No	Yes
28/81	74	Original site for Pnei Hever	No	Yes
30/81	73	Mitzpe Adulam - not established (currently located in Area B under PA rule)	No	Yes
1/82	206.5	Bracha	Yes	Yes
5/82	10	Homesh access road	Yes	Yes
10/82	171	Pnei Hever access road	Yes	Yes
12/82	22	Yitzhar access road	Yes	Yes
13/82	77	Maaleh Levona access road	Yes	Yes
15/82	60	Tene	Yes	Yes
23/82	100	Migdalim	Yes	Yes
3/83	253.5	Otniel	Yes	Yes
6/83	209	Expansion of Maaleh Levona	Yes	Yes
8/83	897.5	Asfar	Yes	Yes
8/83	1.5	Asfar access road	Yes	Yes
8/83	1	Asfar access road	Yes	Yes
8/83	99	Pnei Kedem	Yes	Yes
12/83	184	Dolev	Yes	Yes
Amount of orders: *20	Total area of seizure orders following Elon Moreh (without reduction of overlap): 7,040 dunams			
Amount of orders: 73	Total area of seizure orders for settlement (without reduction of overlap): 45,408 dunams			

*Orders divided into several sections were counted only once.

Territory of seizure orders for settlement purposes, before and after the Elon Moreh ruling (in dunams and percentages)



*Including annulled seizure orders



Seizure orders issued for settlement purposes.



The old entrance to the settlement of Shiloh, which was built on land originally seized for settlement purposes.



Settlements established on the basis of seizure orders

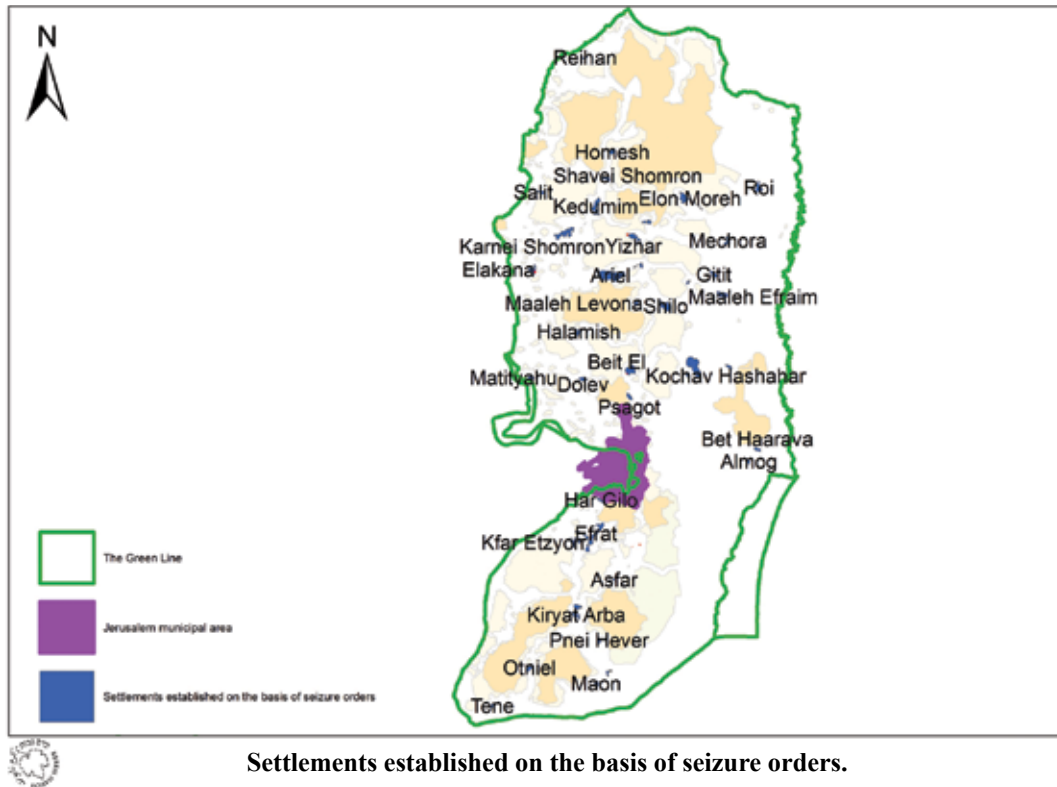
	Name of settlement	Current land status
1	Elon Moreh	The settlement was evacuated and the seizure orders were annulled
2	Alon Shvut	Orders valid
3	Almog	Order valid
4	Elazar	Orders valid
5	Elkana	Orders valid
6	Asfar	Order valid
7	Efrat	Order valid
8	Ariel	Orders valid
9	Beit El	Orders valid
10	Beit Haarava	Orders valid
11	Bracha	Order valid
12	Gitit	Orders valid
13	Dolev	Order valid
14	Har Gilo	Order valid
15	Homesh	The settlement was evacuated and the seizure orders was annulled
16	Halamish	Order valid
17	Tene	Order valid
18	Yativ	Order valid
19	Yitzhar (access road)	Order valid
20	Kochav Hashachar	Order valid
21	Kfar Etzyon	Order valid
22	Kfar Tapuach	Order valid
23	Carmel	Orders annulled
24	Migdal Oz	Order valid
25	Migdalim	Order valid
26	Mechora	Order valid
27	Maon	Order amended

28	Maaleh Efraim	Orders valid
29	Maaleh Levona	Orders valid
30	Mattityahu	Order valid
31	Salit	Order valid
32	Otniel	Order valid
33	Pnei Hever	Order valid
34	Psagot	Order annulled
35	Kedumim	Order valid
36	Kiryat Arba	Order valid
37	Karnei Shomron	Order valid
38	Rosh Tzurim	Order valid
39	Roi	Order valid
40	Reihan	Order valid
41	Rimonim	Order valid
42	Shavei Shomron	Order valid
43	Shiloh	Orders valid

*Some settlements were established with more than one seizure order.



The access road to the village of Qusra and the settlement of Migdalim that was built on land originally seized for settlement purposes.

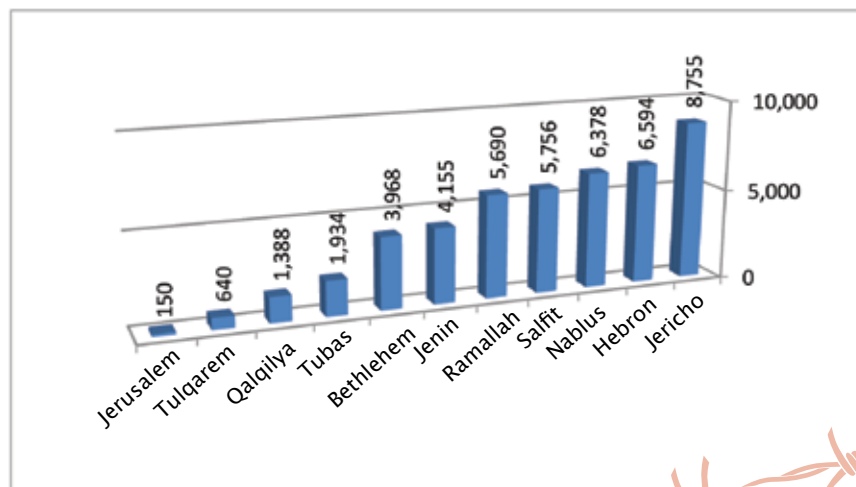


Settlements established on the basis of seizure orders.

Territory of seizure orders for settlement purposes according to district divisions

Following the Oslo Accords and the establishment of the PA, the West Bank was divided into 11 administrative districts. An examination of the entire territory of all the seizure orders issued for settlement purposes (including those that were annulled) indicates that the largest area was located in the Jericho district, which stretches from the northern part of the Dead Sea along most of the length of the Jordan Valley.⁶⁹ This encompasses 8,755 dunams, which is about 19% of the total area of the territory seized for settlement purposes. This figure corresponds with the nature of the settlement enterprise's development: during the first decade following the occupation of the West Bank, while most of the settlements were established by means of seizure orders, the majority of settlement efforts were concentrated within the Jordan Valley.

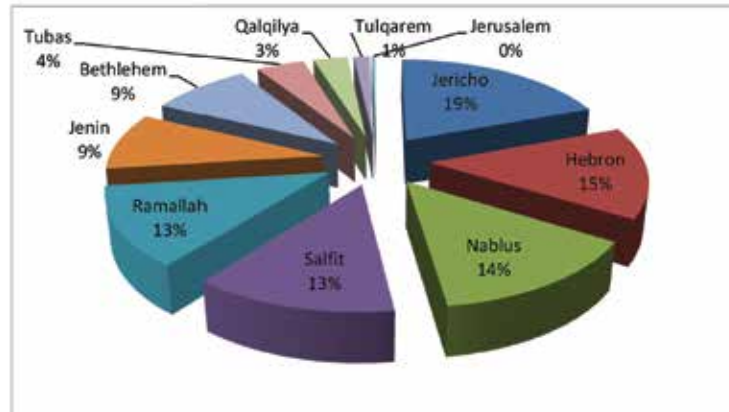
Area of seizure orders for settlement purposes by district (in dunams)



*Including annulled seizure orders

⁶⁹ In the data presented here, the offsets were not calculated due to the overlap between various orders.

Area of seizure orders for settlement purposes by district (in percentages)



*Including annulled seizure orders

Area of seizure orders for settlement purposes within settlement jurisdiction

The area of settlement jurisdiction in the West Bank spans approximately 540,000 dunams.⁷⁰ Seizure orders for settlement purposes span nearly 40,000 dunams, which constitutes approximately 73% of total settlement jurisdiction. It is important to note that the area of settlement jurisdiction is of a mosaic of means that Israel has implemented in order to take over territory in the West Bank, including:

- Allocation of state land registered in the Land Registry (the Tabu) prior to 1967.
- Declaration of state land and its allocation to settlements.
- Transferring land expropriated for public needs to settlements.⁷¹

Use of the areas seized for settlement purposes in practice

In the decades following these seizures, it is interesting to note which portion of the territories seized for settlement remain valid to date and are indeed currently in use.⁷²

Constructed areas - 10,304 dunams are built-up today, which comprise 26% of the total seized territory.

Agricultural land - 6,607 dunams are currently used for agriculture, which amount to nearly 17% of the total seized area.⁷³

In sum, only approximately 43% of the land previously seized for settlement purposes is used in practice, whether for construction or for agriculture, while the rest of the area seized for settlement purposes was not put to any use whatsoever.



Vineyards planted on land belonging to the residents of Deir Jarir, seized in 1980 for settlement purposes and transferred to the settlement of Kochav Hashachar.

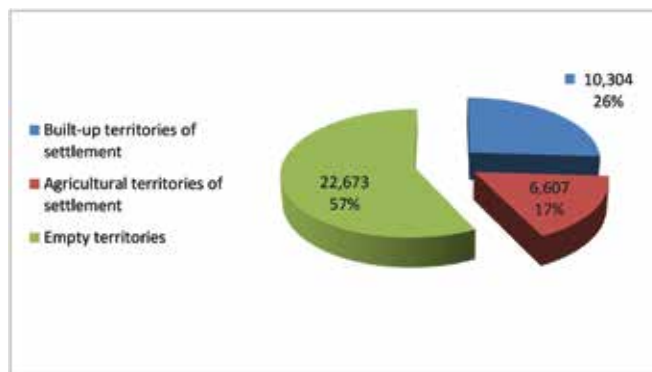
⁷⁰ See A Locked Garden (supra note 26), page 9.

⁷¹ See note 13 above.

⁷² These calculations also include territories that were originally seized for settlement, and were later declared state land.

⁷³ See Kerem Navot: Israeli Agriculture in the West Bank, October 2013, https://docs.wixstatic.com/ugd/cdb1a7_370b44f21ceb47adb3ac7556c02b8972.pdf, page 30.

Use of the areas seized for settlement purposes in practice (in dunams and percentages)



*Including the territory of valid seizure orders following offsetting overlap

Seizure orders for settlement purposes that were not put to use

In contrast to most of the orders, which were used at least in part, 12 seizure orders for settlement purposes have not been used to date, yet their validity has not been annulled. The territory of these orders spans almost 2,000 dunams, which constitute about 5% of the total area seized. Some of the orders were issued to pave access roads that were ultimately not paved, while others were issued for areas apparently intended for settlement construction or expansion. Yet these plans, too, were ultimately not implemented.

A table of seizure orders for settlement purposes that remain completely unused

Order no.	Settlement	Area (in dunams)
24/78/ח	Kedumim access road	4
14/77/ח	Connection between both parts of Mei Ami	7
12/80/ח	Carmel access road	9
32/77/ח	Yativ agricultural road	29
3/81/ח	Gitit - annexed to the settlement though not constructed	58
30/81/ח	Mitzpe Adulam - not established. The land was transferred to the PA within the framework of the Oslo Accords	73
28/81/ח	Pnei Hever original site	74
11/80/ח	Beit Haarava - the settlement was established adjacent to seized territory and remains empty	85
1/78/ח	Tel Shiloh - an archaeological site controlled by settlers of Shiloh	116
28/78/ח	Halamish (Neve Tzuf) - the settlement was established on another site ⁷⁴	370
35/77/ח	Maaleh Efraim - annexed to the settlement though not constructed	412
4/77/ח	Maaleh Efraim - annexed to the settlement though not constructed	755
		Total 1,992

⁷⁴ In the late 1970s, the Society for the Protection of Nature in Israel (SPNI) led a struggle against the intention to establish the settlement of Neve Tzuf in the Umm Safa Forest Reserve. As a result, then-Minister of Agriculture Ariel Sharon decided to replicate the intended settlement to another site.

55



Order 997

On August 2, 1982, the military commander of the West Bank signed the Order Regarding Work Permits in Seized Territories for Military Purposes (Judea and Samaria) (no. 997), 5742 — 1982. In general, planning and construction laws do not apply to the army when it comes to erecting military facilities in seized territory. The idea behind this exemption is to spare the army the need for exhaustive planning regulations required by law, with standard regulations that include publication of the plans and the opportunity to submit objections, as military facilities are indeed intended to be temporary in nature.⁷⁷

The purpose of order 997 was to authorize planning and building regulations solely in settlements built on territory seized for “military needs.”

Clause 2 of this order determines:

A person shall not carry out or commence any of the following in seized territory until after they have been granted a permit for this purpose by the commissioner or individual authorized to do so on their behalf:

- (a) The configuration, paving, and closure of a road;
- (b) The construction of a building, its demolition and re- establishment, in whole or in part, incorporated into any existing building and any repair thereof, aside from internal changes in the apartment;
- (c) Any other work on the land and within the building, along with any use thereof.

Thus for years, “systematic guidelines” (meaning, plans for entire settlements) were approved without any opportunity to object, either on behalf of those whose lands were seized for the construction of settlements, or the neighbors of those same landowners whose lives were directly and profoundly impacted.⁷⁸

However, an examination of the settlements in which the planning guidelines were implemented in accordance with order 997, indicates that in practice the army also used this order to authorize construction on land that had never been included in any seizure order. For example: Mevo Horon,⁷⁹ Beka’ot,⁸⁰ the northern neighborhood of Maaleh Ephraim, and ostensibly the settlement of Eli as well.⁸¹

An aerial photograph of the areas included within plan 210/2/10 (the mistaken number is the Civil Administration’s error) for the settlement of Mevo Horon, which was approved on the basis of order 997.



⁷⁷ The head of the Civil Administration’s Planning Bureau is the individual authorized to grant construction permits for military purposes. In 2008, the order was amended through Amendment 3. The amended order authorizes the Civil Administration’s commissioner to authorize special settlement committees to issue permits in seized territories on their behalf. This implies that settlers received the authority to plan on this land.

⁷⁸ The Zandberg Report claims that the process of approving plans on the basis of order 997 today is identical to the process entailed for regular master plans. Even if this claim is correct, it is clear that in the past it was not the case. See the Zandberg Commission Report (supra note 44), clause 326, page 72.

⁷⁹ The settlement of Mevo Horon was built on land belonging to the village of Beit Nuba, whose inhabitants were expelled a few days after the end of the war in June of 1967. The settlement was built on private land without a government decision and without any valid master plan, in territory declared a closed military zone. This is likely why the planning guidelines for order 997 were implemented.

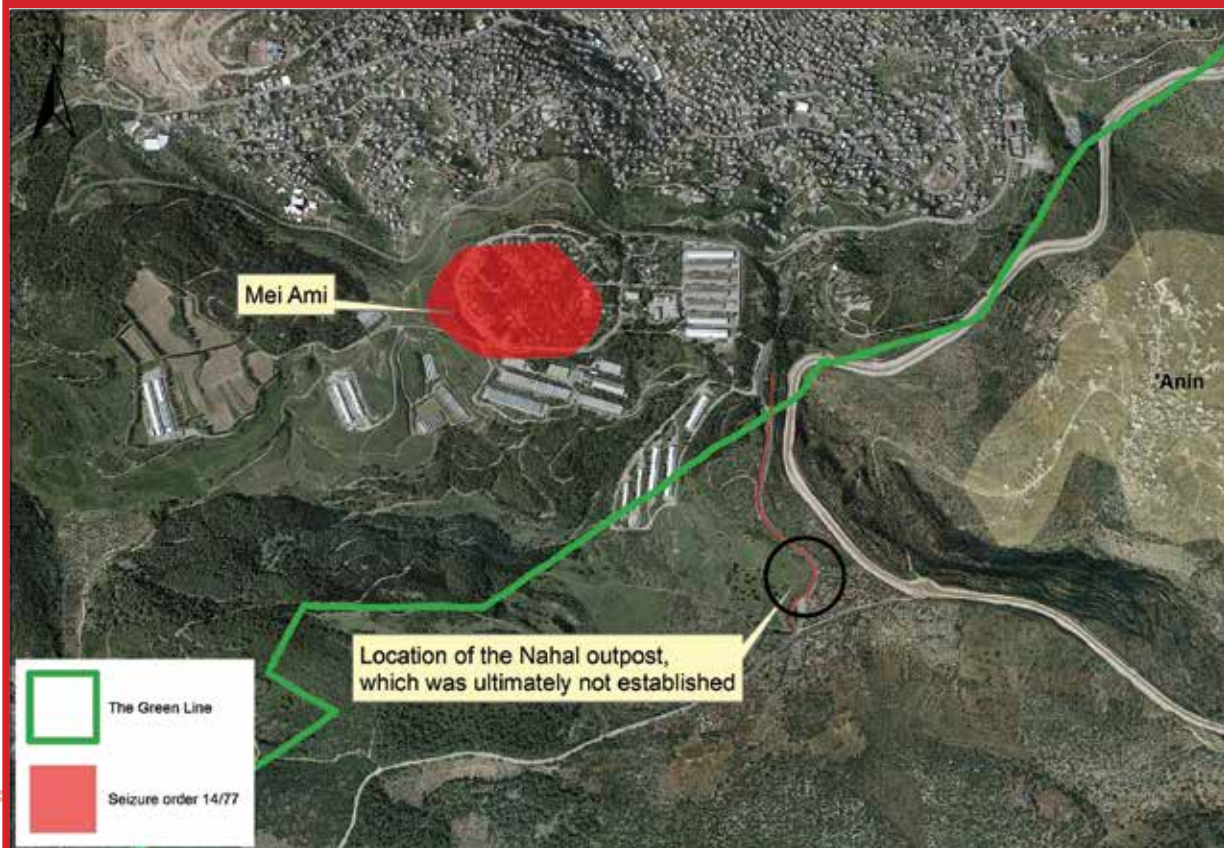
⁸⁰ The settlement of Beka’ot was established in an area declared a closed military zone in 1972.

⁸¹ The settlement of Eli is a special case in this context, since it was illegally constructed in its entirety without any valid master plan. It is built in part on land declared state land, and in part on privately owned land that settlers have gradually taken over. In 2012, local resident Netanel Elyashiv published an article that implied that the Binyamin Regional Council issued fictitious building permits rather than those based on order 997: “As a result, when I came to build my house, I paid the authorities huge sums for taxes and fees, but instead of a building permit I received a fake document issued by the regional council in conjunction with ‘the authority for granting permits in seized territories for military purposes.’” Netanel Elyashiv, “Marrying the Mistress,” NRG, 26.3.2012, <https://www.makorishon.co.il/nrg/online/1/ART2/350/355.html>

In 2001, an amendment to order 997 was signed, following which the authorities of the “commissioner” were delegated to special Israeli planning committees for local and regional councils in the West Bank. As a result of this amendment, the authority to approve construction on Palestinian-owned land seized for settlement purposes was transferred to settlers, thereby completing the process of naturalizing land originally seized by the army for settlements intended for alleged security needs.

Order No. 14/77 for the settlement of Mei Ami

On September 20, 1977, seizure order 14/77 was signed. The seizure order included two territories: one for the settlement of Mei Ami (149 dunams), and the other for the road intended to connect both parts of the settlement of Mei Ami (seven dunams). The settlement of Mei Ami was established in 1963 a few hundred meters north of the Green Line as a Nahal outpost on land belonging to the village of Anin (in the West Bank), which remained under Israeli control following the ceasefire agreements and was declared absentee land. In 1969, the Nahal outpost was established. In 1977, a decision was ostensibly made to establish another Nahal outpost connected to Mei Ami. It would be located about one kilometer southeast of the original settlement, though within the West Bank. A seizure order was issued for this purpose, mistakenly including the settlement within Israel and the road to the Nahal outpost, which was ultimately not established.



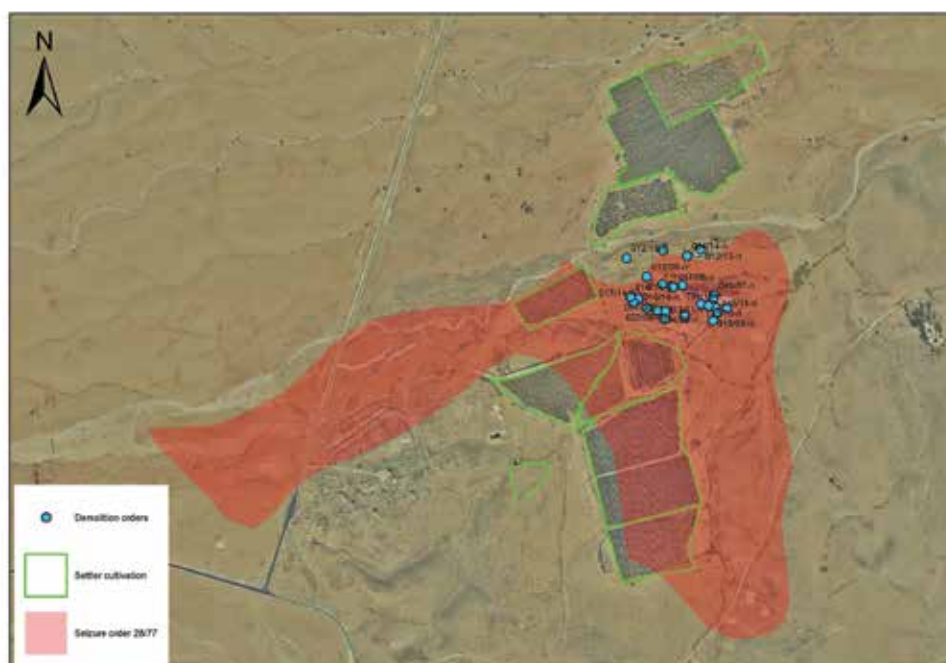
Aerial photograph in which both parts of seizure order 14/77 are visible.



Construction of outposts through seizure orders for settlement purposes

Over the years illegal outposts have also been built on land seized for settlement purposes.

Seizure order no.	Name of settlement for which the order was issued	Name of outpost	Status of territory
1/70	Beit El	Tel Haim (eastern Beit El)	Private
8/72	Kiryat Arba industrial zone	Gal outpost	Most of the territory was declared state land
3/73	Elazar	Part of the Derech HaAvot outpost	Declared state land
28/77	Yativ	Omer Farm	Private
8/83	Asfar	Pnei Kedem	Declared state land



The outpost of Omer Farm, which was built on land originally seized for cultivation by the settlement of Yitav.

The Shehadeh Family Home and the Mishpatei Eretz Institute

In 2003, settlers of Ofra took over the Shehadeh family home from the village of Ein Yabrud, and transferred the Mishpatei Eretz Institute to the site, which offers training for rabbinical judges. The house that the settlers took over was located one kilometer and a half south of the settlement of Ofra, and following the paving of the Ramallah bypass road in the mid-1990s, it was cut off from the rest of the village's houses, which lie west of the road. During the initial years of the Second Intifada, the family was compelled to abandon its home for fear of its safety. After the takeover, Al Watan, a company established by settlers in the area that has been involved in many land transactions based on forged documents, claimed that it had purchased the house from the family. In 2013 the Jerusalem District Court ruled that the documents that Al Watan presented were



forged in this case, too.⁸² However, a few days after the publication of the ruling (July 4, 2013), the commanding general of the central command at the time, Nitzan Alon, signed seizure order 14/13 in which he ordered the seizure of the plot on which the Shehadeh family's home was built, and the settlers remained there.⁸³ From the years 2015 to 2018, the Ministry of Culture and Sport transferred approximately NIS 780,000 to the Mishpatei Eretz Institute, which continues to operate on site.⁸⁴



The Mishphatei Eretz Institute that operates within the Shehadeh family home, which was taken over by settlers from Ofra.

Jordanian state land in areas originally seized for settlement purposes

Although land seizure is formally intended to apply solely to private property, in practice, some of the land seized by the army for settlement purposes over the years, encompasses territories listed in the Land Registry as state land prior to Israel's occupation of the West Bank in 1967.⁸⁵ This is due to the fact that the land was seized during relatively early stages of the establishment of the system of land control in the West Bank, which Israel developed over the years. Those responsible for outlining the boundaries of the seizure orders were allegedly not always aware of the location of state land, and of the fact that there was no legal need for their seizure. According to Civil Administration data, 4,870 dunams of the total land seized for settlement purposes, which remain valid to date, were listed as state land in the Land Registry prior to 1967. This encompasses approximately 12% of the total territory seized for settlement purposes that, as noted, remains valid to date.

Declaration of land originally seized for settlement purposes as state land

As explained above (page 27), declaration of state land began in the early 1980s following the ruling regarding the Elon Moreh petition. Over the years, hundreds of thousands of dunams have been declared throughout the West Bank. Approximately 10,140 dunams seized for settlement purposes were later declared state land. This encompasses approximately 26% of the total area seized for settlement purposes, which remains valid to date. Deeming the territory state land resolved the issue of "temporariness" for state seizures. The government was thus freed from the need to provide usage fees, should it be sued, since from its point of view the property was not private. To the best of our knowledge, all such seizure orders aside from order 12/80 (issued for the establishment of the settlements of Carmel and Ma'on in the South Hebron Hills), were not revoked or amended to date, although they seem to serve no purpose.

⁸² https://www.nevo.co.il/psika_html/mechozi/ME-08-2056-542.htm

⁸³ Haim Levinson, "IDF Seized West Bank House Despite Court Ruling for Palestinian Owners," Haaretz, 9.12.2013, Haaretz, <https://www.haaretz.com/.premium-army-ignores-court-seizes-house-1.5298062>

⁸⁴ <https://www.guidestar.org.il/organization/580365443/govsupport>

⁸⁵ One year and a half after Israel entered the West Bank, the process of land settlement was suspended, meaning that it was frozen until further notice by means of a military order regarding land and water regulation (Judea and Samaria) (no. 291) (5729 —1968), signed by then regional commander Brig. Gen. Rafael Vardi, thus the process of land settlement in the West Bank was effectively halted to date. Clause 3a of this order provides that "The validity of any regulation order and any proceeding made in accordance with a regulation order shall be suspended."



Amendment to seizure order 12/80

In 1980 the military issued seizure order 12/80, which included approximately 2,940 dunams of land belonging to the village of Yatta, with the aim of establishing the two Nahal outposts of Carmel and Maon. Like other Nahal outposts established during those years, they quickly became civilian settlements.⁸⁶ Throughout the 1980s large tracts of state land were declared in this area, including most of the area previously included in seizure order 12/80. For some reason, in October 2006, the army decided to amend the map of this seizure order so that the entire area of the order was annulled, excluding 18 dunams in the heart of the settlement of Maon, which were cultivated prior to their seizure and were therefore not included in the declaration of state land. As a result, Maon's area of jurisdiction is comprised of two categories of land: private land seized in 1980, and land declared state land in the early 1980s. The army's conduct indicates that it is well aware of the issue of the status of land in settlements, and is concerned with preserving the legal system that will maintain the settlements' integrity.



Approximately 18 dunams in the heart of the settlement of Maon remained within seizure order 12/80 because they were cultivated and could not be declared state land.

“Jewish land” in territories seized for settlement purposes

From 1969 to 1979, Israeli military commanders signed four seizure orders for settlement purposes in the Gush Etzyon area. These seizure orders included 1,333 dunams that were purchased by Jews prior to 1948, according to Civil Administration data. This encompasses approximately 3.5% of the total area seized for settlement purposes, whose seizure remains valid to date.

Seizure of waqf land for settlement purposes

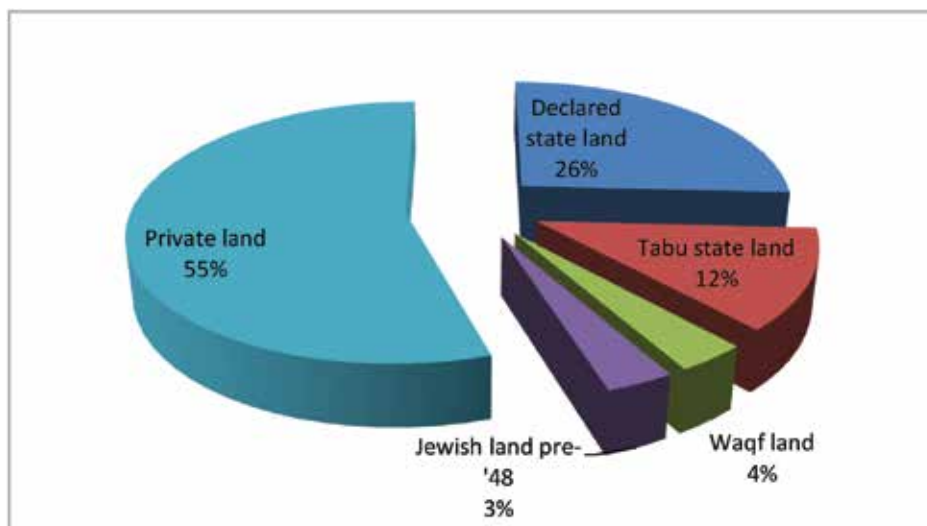
In 1970, the Nahal Yativ outpost was established northeast of Jericho. Seven years later, in 1977, prior to the naturalization of the outpost, the military issued signed seizure order 28/77, which included 1,690 dunams of land. According to Civil Administration figures, 1,385 dunams of this area are registered as land owned by the Muslim waqf. This includes approximately 3.5% of the total territory seized for settlement purposes, which remains valid to date.⁸⁷

⁸⁶ The Nahal outpost of Carmel was established in January of 1981 and was naturalized in May of 1981. The Nahal outpost of Maon was established in May 1981 and was naturalized in 1984.

⁸⁷ In addition to the settlement of Yitav, the two settlements of Netiv HaGdud and Niran (and the surrounding agricultural territories) were also established on land owned by the Muslim waqf. See Akiva Eldar, “Documents: Israel Used Waqf Land to Build Settlements, Separation Fence,” Haaretz, 5.8.2012, <https://www.haaretz.com/waqf-claims-land-creep-to-settlers-1.5277177>



Territory seized for settlement purposes, according to status of ownership (in percentages)



*Solely including valid seizure orders

Conclusion

From 1969 to 1983, Israeli military commanders signed 73 seizure orders intended for the establishment of settlements. On the basis of these orders, 43 settlements have been established over the years. Two of them were evacuated: Elon Moreh following an HCJ decision, and Homesh following a government decision. In addition to these settlements, a seizure order was mistakenly issued for a settlement located several hundred meters north of the Green Line within the sovereign territory of the state of Israel. The total area of seizure orders for settlement purposes encompasses nearly 40,000 dunams, constituting approximately 7.3% of the total area annexed to settlements in the West Bank. Despite the time that has elapsed since the seizure of this land, it has become clear that over half of the territory has not been used whatsoever, to date. Twelve seizure orders issued for settlement purposes have not yet been put to use, though to the best of our knowledge they have not yet been annulled. Of the total land seized by Israel for settlement purposes, some 15,000 dunams (approximately 38%) are listed as state land in the Land Registry prior to 1967, or were declared state land in the 1980s. Another 3.5% is made up of land that was purchased by Jews prior to 1948, and a similar percentage constitutes land belonging to the Muslim waqf.



The old entrance to the settlement of Ariel that was built on land seized for settlement purposes.

Chapter Three - Valid Seizure Orders (1969 to 2014)

The second chapter addresses seizure orders issued by the army for settlement purposes from 1969 to 1983, and this chapter addresses all seizure orders issued by the army since the occupation of the West Bank in June of 1967 through the end of 2014, which remain valid to date.⁸⁸

Over the course of these years, the army issued 868 seizure orders that remain valid to date.⁸⁹ These orders apply to an area that spans 104,500 dunams, which amounts to 101,380 dunams after deducting the overlap among the orders.

Amount of seizure orders	Area of seizure orders prior to overlap deduction	Area of seizure orders following overlap deduction
868	104,500	101,380

The typology of seizure orders

Construction of the database on which this report is based, included the classification of all seizure orders in our possession. To this end, we defined the primary functions for which seizure orders were issued:

- Settlement - Orders issued until 1983 for the construction or expansion of settlements and the paving of direct access roads for use by settlers only (as opposed to bypass roads, most of which are also used by the Palestinian population), or for the agricultural cultivation of land transferred to settlers. These orders were reviewed at length in the second chapter.
- Military - Orders issued for military training facilities and central points of control along the borders of the West Bank (with Jordan or Israel) or in the heart of populated Palestinian areas, whose primary purpose is to fortify military control over the Palestinian population in the West Bank.
- Settlers - Orders issued for the ongoing security system that the army maintains around settlements and civilian facilities, along with bypass roads on which settlers travel.
- Bypass roads - Orders issued for paving bypass roads. It is clear that most of these roads were paved primarily for the settler population following the Oslo Accords in the 1990s. Throughout much of the Second Intifada, most of these roads were closed to Palestinians, though today most of these roads, though not all, are also open to Palestinian residents of the West Bank.
- The separation barrier - Orders issued for construction and maintenance of the separation barrier. For the purposes of this research we did not distinguish between sections of the barrier constructed deep inside the West Bank to promote de facto annexation of the settlement (such as is the case with Ariel or Emanuel), and between parts of the barrier built relatively close to the Green Line. In this context it is important to remember that 85% of the route of the planned separation barrier has been constructed or is slated for construction within the West Bank.⁹⁰
- Fabric of life - Orders issued to preserve what the army calls the Palestinian population's fabric of life in the West Bank. Most of these orders were issued for new roads that were paved following the construction of the separation barrier, which cut off roads that were used prior to its construction.
- Settler takeover of military infrastructure - Orders originally issued for military facilities, which settlers took control of over the years, with the knowledge and quiet consent of the army.

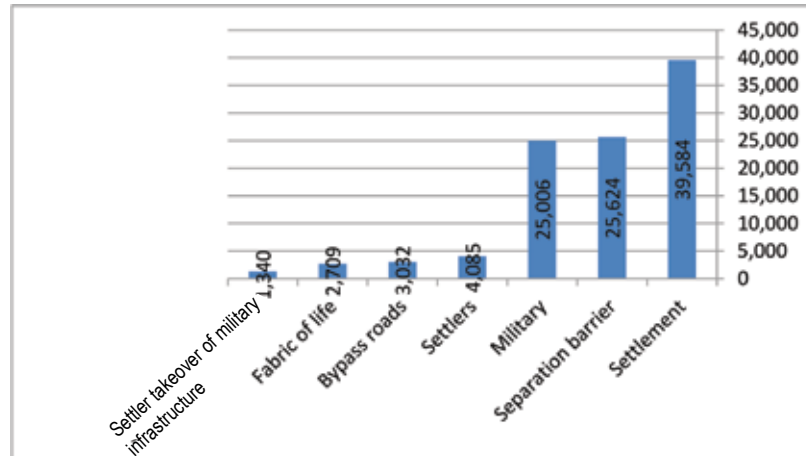
Designations regarding each order's function are not necessarily unequivocal, as quite a few seizure orders are used for more than one function. In such cases we attempted to understand the primary function for which the seizure order was issued, and classified it accordingly. For example, military bases established inside or near settlements were categorized as "settlers," yet in most cases the army also uses them to control the Palestinian population, which we classified as "military." Other army bases established at a greater distance from settlements were categorized as "military" as well, although it is clear that a significant portion of the routine tasks carried out by the units stationed there, include patrols around settlements and bypass roads along which settlers travel daily.

⁸⁸ Chapter Four of this report is devoted to an assessment of annulled seizure orders.

⁸⁹ This number is relevant through the end of 2014. Since 2014, a few dozen more orders have been issued each year, and the precise amount is not currently available to us. See note 11 above.

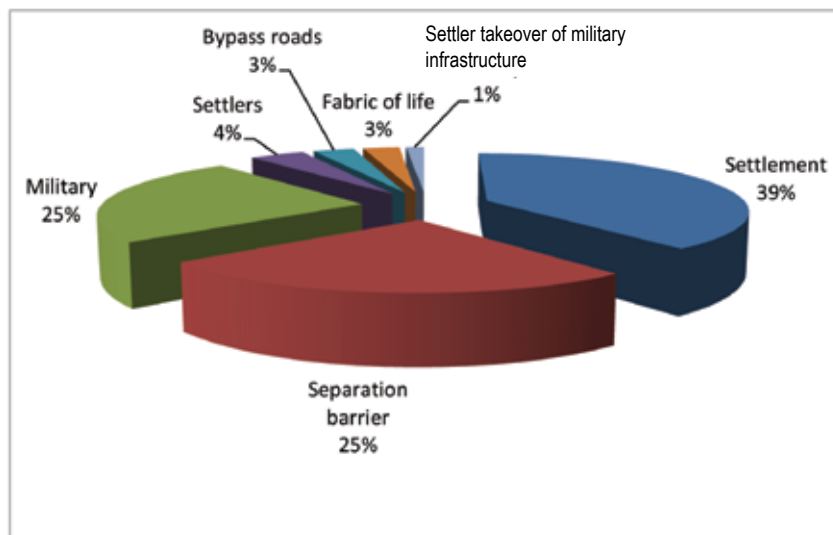
⁹⁰ According to OCHA data, the construction of 65.3% (546 km) of the planned 712 kilometers of the barrier has already been completed. See <https://www.ochaopt.org/en/theme/west-bank-barrier>

Area of seizure orders according to function (in dunams)



*The territories were calculated following offsetting overlap

Area of seizure orders according to function (in percentages)



*The territories were calculated following offsetting overlap

The division of the entire territory of valid seizure orders in accordance with the functions they are intended to fulfill, indicates that 39% of the land was seized for settlement purposes, meaning for the establishment of settlements. The other two significant functions, for which 25% of all seized land was expropriated, are the separation barrier and the military.

Upon combining the four categories directly related to settlers' needs in the West Bank - namely, settlements, settlers, bypass roads, and settler takeover of military infrastructure - nearly half (47%) of the territories currently under military seizure are areas that directly serve the needs of the settler population and not the needs of the army. It is important to reiterate that international law, on the basis of which Israel justifies all seizure orders in the West Bank, permits the seizure of land solely for urgent military needs, with strict restrictions.⁹¹

⁹¹ See above in Chapter One, page 18-21.



Settler takeover of military bases

Over the years, settlers have taken over military bases abandoned by the army. These bases were built on territory originally seized for military purposes, yet when the army abandoned its post, the land should have been returned to its owners. In practice, the seizure orders were not annulled and settlers took over the sites to prevent the return of the land to its owners.

The Adoraim base in the southwest Hebron Hills was built alongside Road 60 (which crosses the length of the West Bank) on territory seized in 1970 (seizure order 10/70) from residents of the village of Dura. In 2012, approximately two years after the army abandoned the site, the Mount Hebron Regional Council took it over with the knowledge of the military, and established what it calls a “regional emergency center” on site. In practice, this is an additional link that local settlers have established along the main road in the West Bank (Route 60), to tighten their hold on an area predominantly populated by Palestinians.⁹²

Another military base occupied by settlers is the Mevo Shiloh training base, which is located between the villages of Al-Mughayyir and Duma east of the settlement of Shiloh, and was established on land seized in 1976 (seizure order 10/76). Following the abandonment of part of the base, settlers tried to take over the area several times but were repeatedly evacuated by the army. In 2015, an outpost called Malachei HaShalom was established on site, and the army, which is still based on part of the compound, even provided water and electricity for a certain period of time. Although the military declared over three years ago that settlers’ presence there constitutes an “illegal invasion,” the settlers remain on site.⁹³

Another site that settlers invaded was the Shdema base east of Beit Sahour. This is a Jordanian base on which Israel expanded its territory in the 1970s through a series of military seizures. The army ultimately abandoned the base in 2006. A few years later, settlers began to take over the area with the backing of the Gush Etzyon Regional Council, and the declared goal of preventing the land’s return to its Palestinian owners. Concurrently, the Palestinian landowners had given their consent to the Beit Sahour Municipality for the construction of a hospital on site.⁹⁴ In early 2016, following several years of settlers managing what they called a “cultural center” on site, the army returned and seized the area to re-establish a military base.⁹⁵



The initial settler takeover of Shdema in April of 2013.

⁹² Gili Cohen, “IDF Hands Over Former West Bank Base to Israeli Settlers,” Haaretz, 3.5.2012, <https://www.haaretz.com/1.5219284>

⁹³ Gili Cohen, “Settlers Took Over Abandoned Army Base – and IDF Provided Them with Electricity,” Haaretz, 3.2.2015, <https://www.haaretz.com/.premium-settlers-took-over-abandoned-army-base-and-idf-provided-them-with-electricity-1.5382373>

⁹⁴ Yehoshua Breiner, “Shdema – A Struggle over a Controversial Piece of Land,” 19.6.2009, Walla, <https://news.walla.co.il/item/1506008>

⁹⁵ Gili Cohen, “IDF Redeploys to West Bank Positions and Checkpoints It Shuttered Years Ago,” Haaretz, 1.19.2016, <https://www.haaretz.com/israel-news/.premium-idf-redeploys-to-several-west-bank-positions-1.5392095>

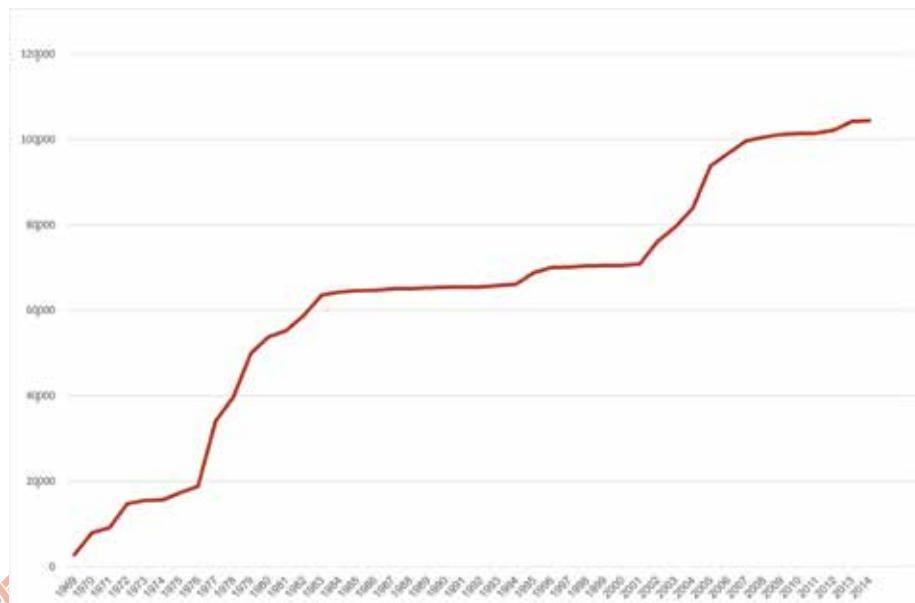


Increase in the territory seized by the military from the years 1969-2014

The following diagram indicates the increase in the entire territory under valid seizure orders in the West Bank. An analysis of the chart indicates that increases in seized territories in the West Bank occurred at two primary points in time: from 1969 to 1983 and from 2000 to 2014. During these two periods of time, there was an ongoing gradual increase of seized territory.

- During the second half of the 1970s through 1983, 40,000 dunams were seized for settlements that were established over the course of those years. The army also established its military training system in the West Bank during that period, and strengthened its control over the West Bank along the border between Israel and the Kingdom of Jordan to its east.⁹⁶ By the end of this period the entire seized territory amounted to approximately 63,000 dunams.
- During the late 1980s and early 1990s, the Israeli army seized territories to suppress the First Intifada and to secure roads used by settlers and military forces.
- In the mid-1990s, the army re-deployed its presence throughout the West Bank following the Oslo Accords. Most of the bypass roads were built during those years, many of them on land seized by military orders for that purpose.⁹⁷ Over the years much land was also seized for military facilities and to protect settlements.
- A major increase in land seizure occurred during the Second Intifada. From the year 2000 to 2014, the total area of land seized by the army in the West Bank increased by approximately 35,000 dunams. A significant part of this growth is related to construction of the separation barrier, which began in 2002. Through this initiative alone, over 25,000 dunams of land were seized. As a result of the construction of the barrier, nearly 3,000 dunams were also seized for “fabric of life” purposes. Throughout those years, the area seized to protect settlers and bypass roads significantly increased.

Increase in the territory encompassing all valid seizure orders by year (in dunams)



⁹⁶ See A Locked Garden (supra note 26), page 32–44.

⁹⁷ Some of the bypass roads were built on land expropriated through expropriation orders. It is not clear to us what considerations went into determining which type of order to use in each case.



From the years 1969 to 2014, approximately 40,000 dunams were seized for settlement purposes. It is visible that the majority of the territory was seized from the years 1976 to 1979. During these years, close to 24,500 dunams were seized. Land seizure for settlement purposes continued until 1983, four years after the HCJ's Elon Moreh ruling.

Annual increase in the territory of seizure orders for settlement purposes (in dunams)

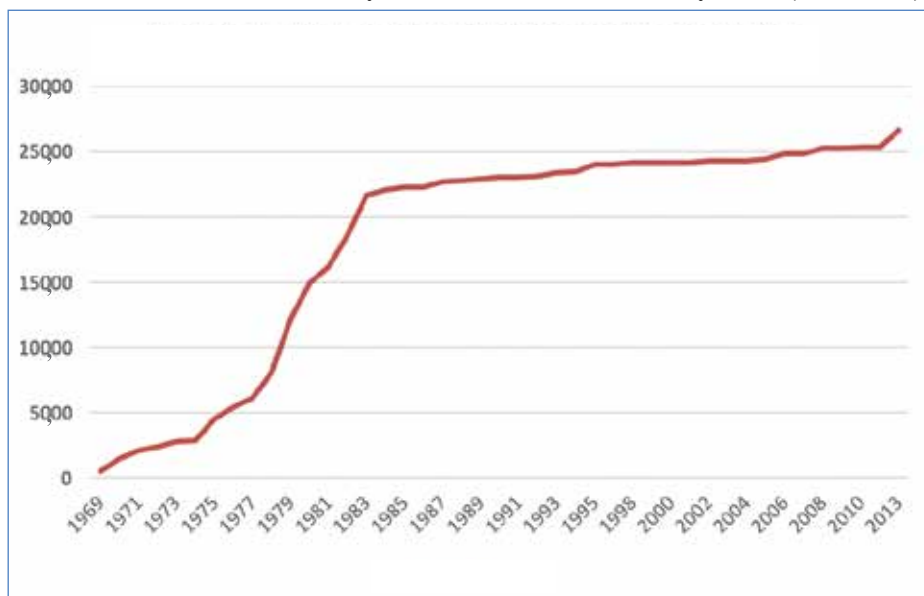


The entrance to the settlement of Bracha, which was built on land seized for settlement purposes.



The vast majority of seizures for military purposes took place from 1969 through 1984 (approximately 22,000 dunams in total). During these years, the army built a system of training bases and established control throughout the West Bank and along the borders between Israel and the Kingdom of Jordan.

Annual increase in the territory of seizure orders for military needs (in dunams)

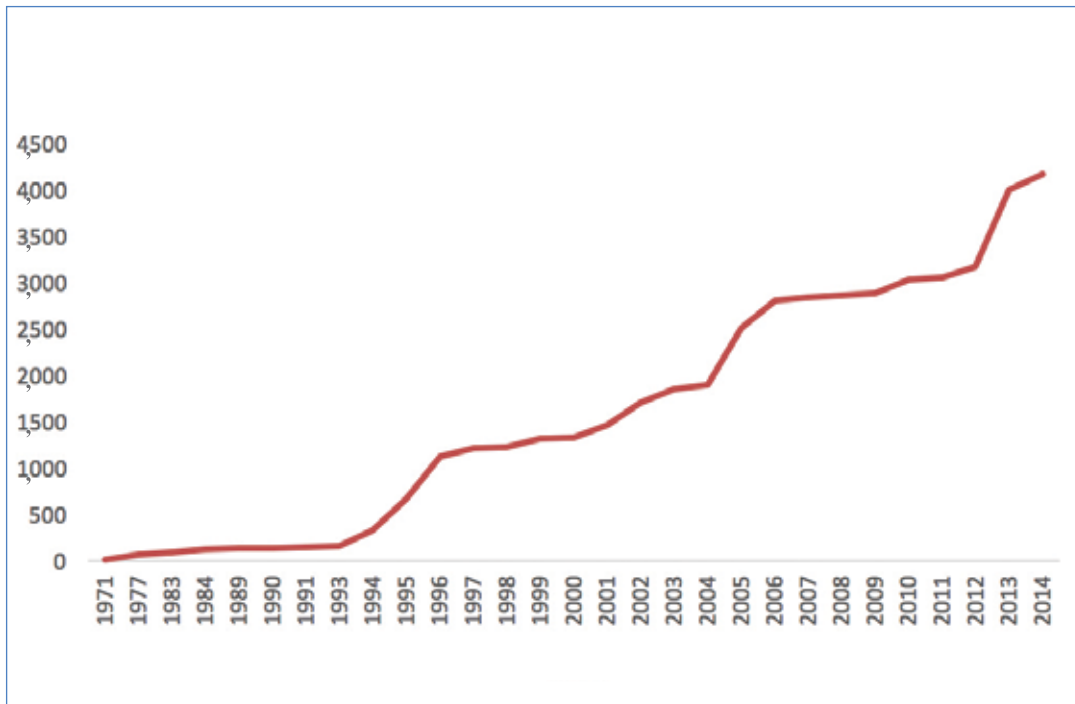


Ofer Prison, built on land seized by the army in 1976 for the establishment of a military base.



Military seizures for securing settlements began in the early 1970s with the establishment of the first settlements in the West Bank. However, up until 1993 the total area seized to protect settlers was relatively negligible (300 dunams). From 1993 to 2000, the area expanded by approximately 1,000 dunams. This growth is related to the significant increase in settlements and the construction of dozens of outposts throughout those years, as well as the intent to protect bypass roads paved following the army's redeployment during that period. A much larger jump in the size of these territories was recorded after the outbreak of the Second Intifada in late 2000. From that year until 2014, over 3,000 dunams were seized for the defense of settlers.

Annual increase in the territory of seizure orders for settler needs (in dunams)

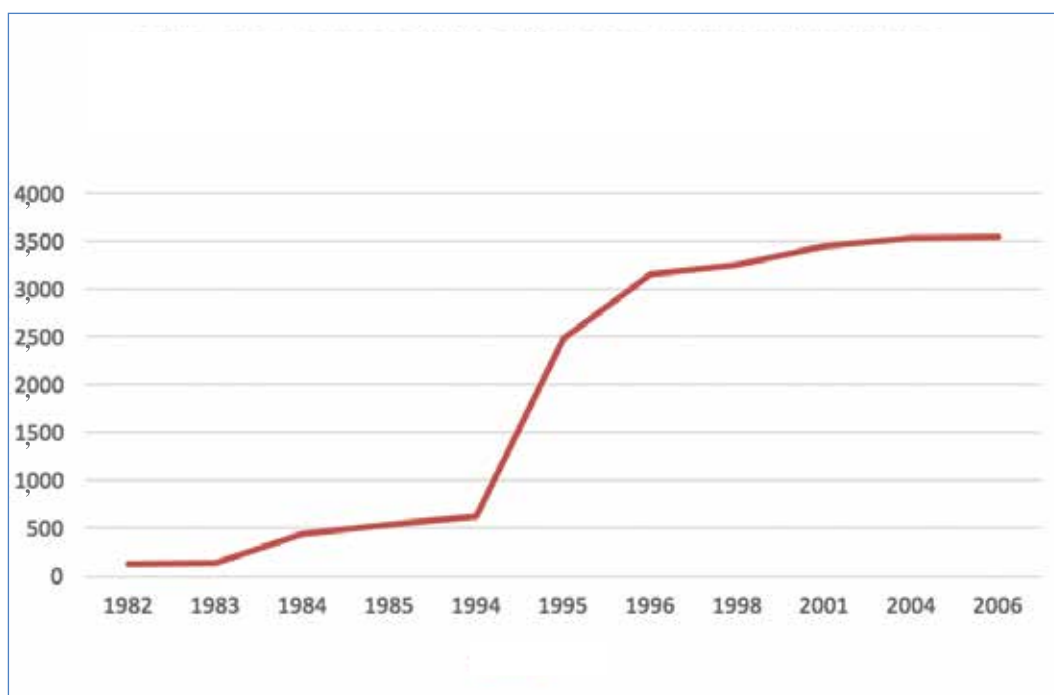


The access road to the settlement of Sha'arei Tikva, which was built on land seized in 2006 for retroactive authorization.



The paving of the first bypass roads in the West Bank commenced in the 1980s. Yet until the signing of the Oslo Accords in the mid-1990s, these entailed sporadic projects rather than a comprehensive system of transportation. Prior to the implementation of the Oslo Accords in the mid-1990s, much territory was seized to pave bypass roads. From 1994 to 2006, approximately 3,000 dunams were seized for the construction of bypass roads in the West Bank.

Annual increase in the territory of seizure orders to pave bypass roads (in dunams)

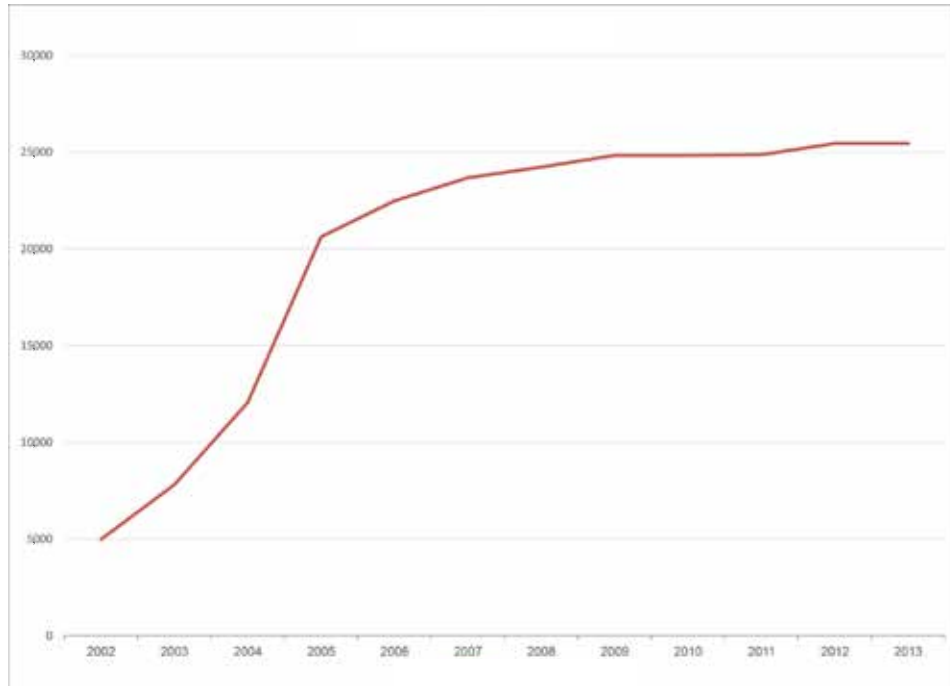


The bypass road paved for the settlements of Itamar and Elon Moreh on land seized for construction in 1995.



A large part of the area seized by the army in the West Bank was designated for the construction of the separation barrier. Most of the territory seized for the barrier was expropriated from 2002 to 2005, during which much of the existing barrier's route was constructed. Since 2005, there has been a significant decrease in land seizure for the barrier, and the areas that have been seized since have primarily been related to changes in its route - either due to HCJ decisions or because of specific tactical changes.

Annual increase in the territory of seizure orders for the separation barrier (in dunams)

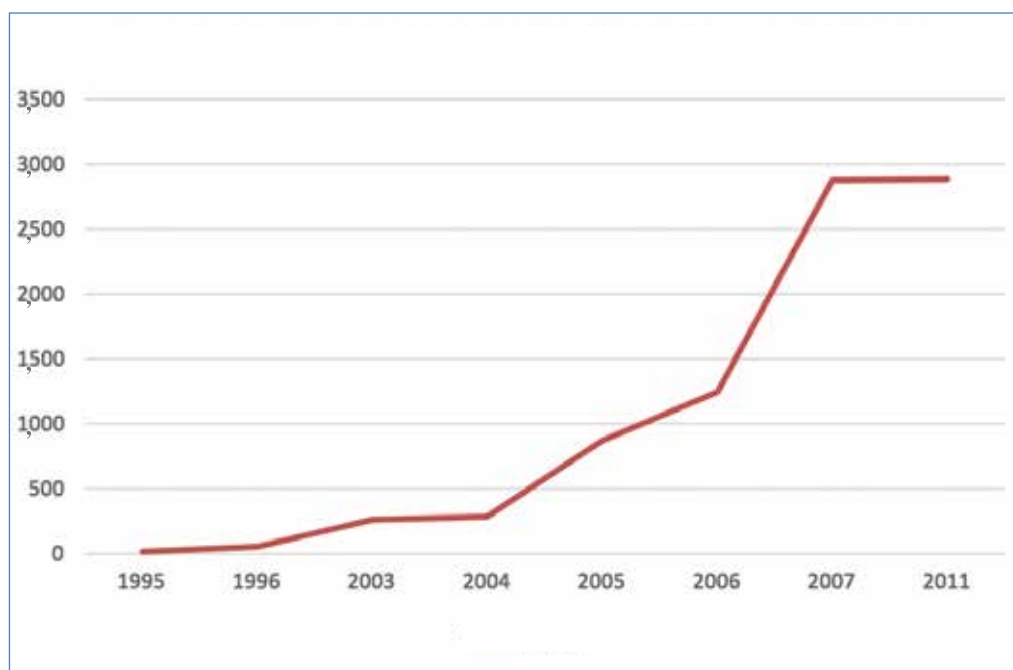


The separation barrier south of the village of a-Za'im.



Military seizures for “fabric of life” purposes are related to the construction of the barrier, which cut off roads previously used by Palestinians. Therefore, most of the territory seized for this purpose was expropriated during the initial years of the barrier’s construction in the early 2000s. In some cases for “fabric of life” purposes, older seizure orders were used that were originally intended for other purposes (such as incomplete bypass roads).

Annual increase in the territory of seizure orders for “fabric of life” (in dunams)

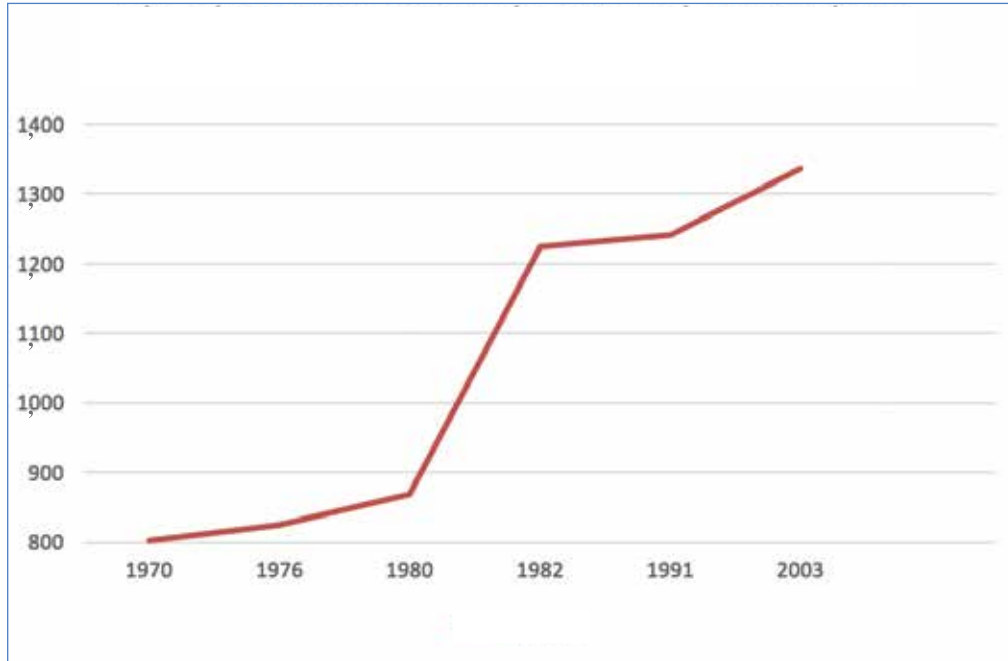


The fabric of life (tunnel) road that was paved between the villages of al-Jib and Bidu.



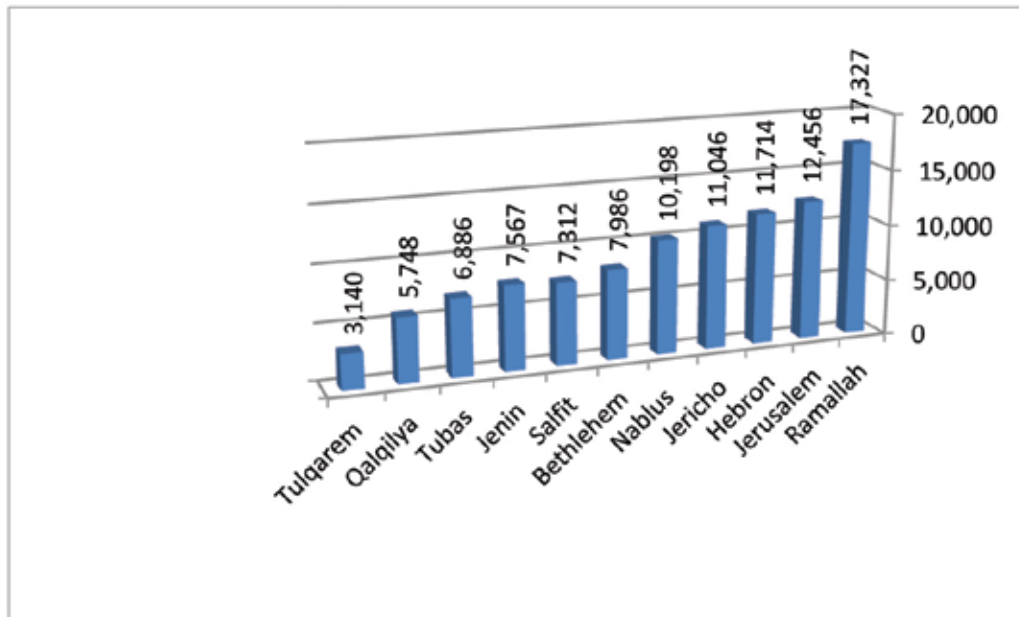
Most of the military facilities that settlers took over throughout the years were built on land seized in the second half of the 1970s and during the 1980s. These territories were seized for training or as part of the defense system instituted by the army in the West Bank in the event of a war with the Kingdom of Jordan. Over the years the army abandoned them, yet the seizure orders were not annulled.

Annual increase in the territory of seizure orders for settler takeover of military infrastructure (in dunams)



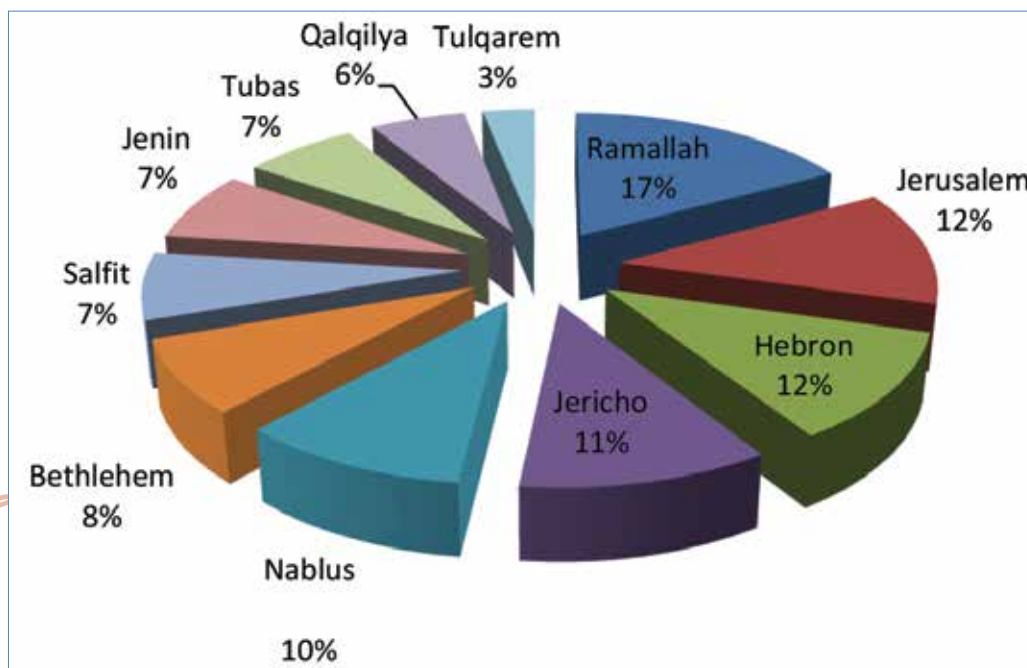
The entrance to the settlement of Rehelim, built on land seized in 1991 for the construction of a military base.

Area of seizure orders divided by Palestinian districts in the West Bank (in dunams)



*The areas were calculated after offsetting overlap

Area of seizure orders divided by district (in dunams and percentages)



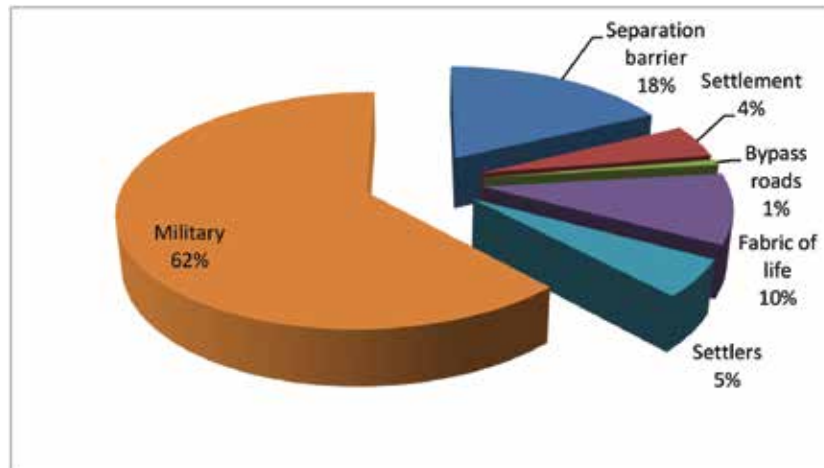
*The areas were calculated after offsetting overlap



Land seizure in PA territory

An examination of the overlap between seized land and official maps of PA territory signed in 1995, indicates that the area expropriated through seizure orders that remains valid to date within PA boundaries, spans approximately 1,850 dunams.⁹⁸ An examination of the functions for which the orders were issued indicates that since 2002 over 60% of the territories have been seized for the army, and slightly less than 20% have been seized for the construction of the separation barrier. It should be noted that 5% of the total area seized within PA territory was expropriated to protect settlers, although settlers are not supposed to live in PA territory.⁹⁹

Area seized in PA territory by category (in dunams)

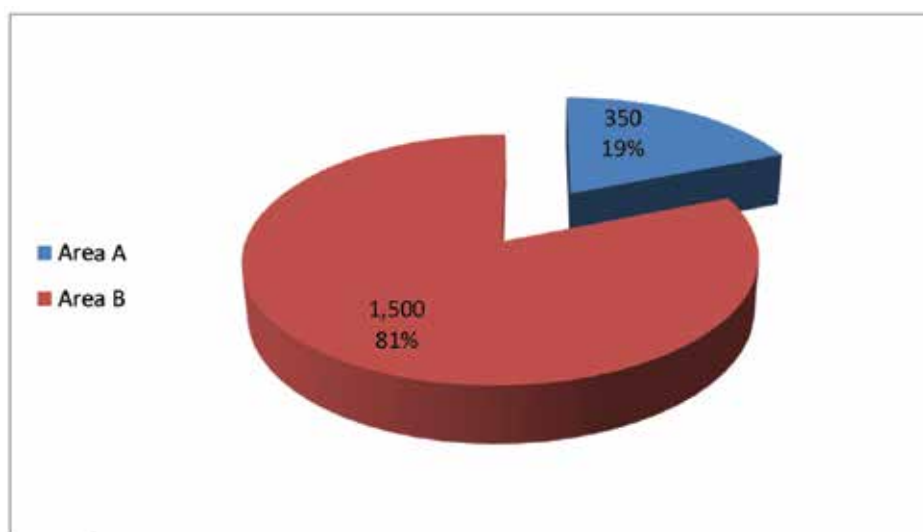


*Including the territory of valid seizure orders

Other points worth considering regarding this matter:

- Approximately 80% of the seized territory under PA control is in Area B. This implies that most seized areas are located in territory belonging to villages, not within cities.

Area seized in PA territory as per its division into areas A and B (in dunams and percentages)



*Including the territory of valid seizure orders

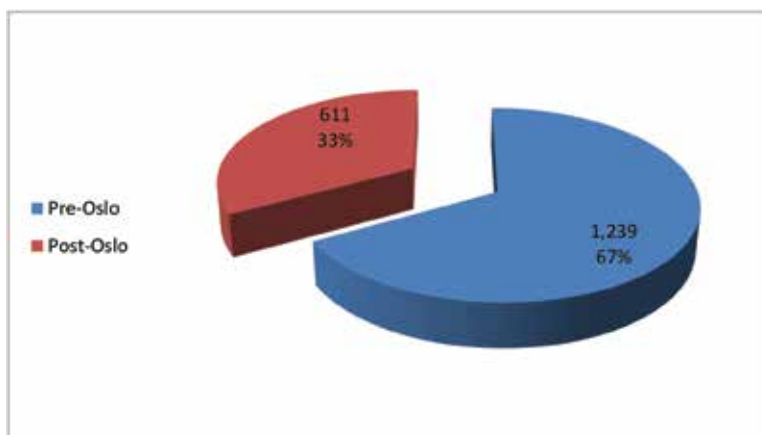
⁹⁸ Collectively, Areas A and B span 39% of the West Bank.

⁹⁹ Chapter Four addresses annulled seizure orders in PA territory. See below page 81.



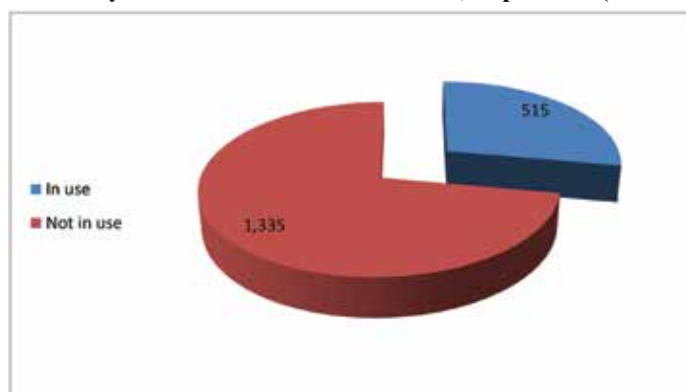
- Close to 70% of the territory included in the seizure orders was seized prior to the signing of the Oslo Accords (1993 to 1995), primarily for military facilities that are not currently in use, yet the orders were not annulled.

Land seized from PA territory before and after the Oslo Accords (in dunams and percentages)



*Including the territory of valid seizure orders

Land seized from PA territory in accordance with actual use, in practice (in dunams and percentages)



*Including the territory of valid seizure orders



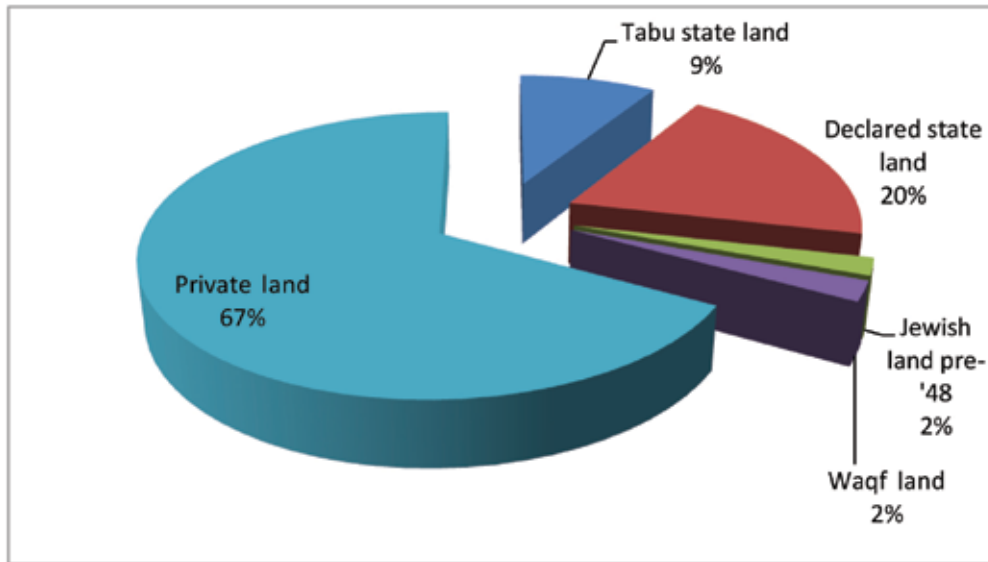
A section of the separation barrier built inside Area B. On the other side of the wall are homes from the village of Anata.



Property status of the land to which the seizure orders apply

The far-reaching authority granted to the army to seize land in territory under military occupation, even under very specific conditions, solely applies to privately owned land, of course. In many cases, however, Israel also includes territory that it recognizes as state land (whether listed in the Land Registry, or declared so by Israel), including areas purchased by Jews prior to 1948, and land registered under the Muslim waqf. The following diagram indicates the division into these four groups.¹⁰⁰

All seized territory according to land ownership status (in dunams and percentages)

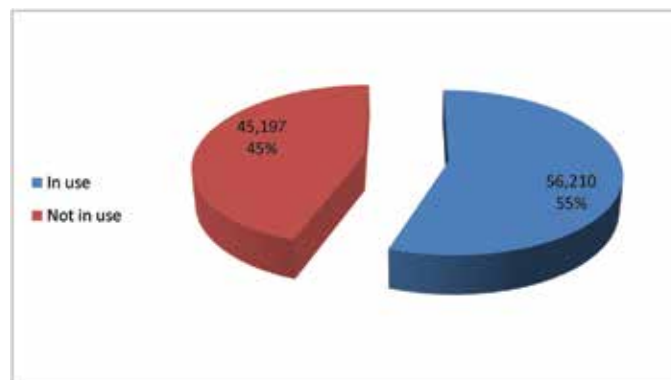


*The areas were calculated after offsetting overlap

Actual use of seized territory

One of the primary points addressed in our research is the actual use of seized territories, since the army must return unused seized land to its owners.¹⁰¹ Over the course of our research, we examined the actual use of all seizure orders in our possession and classified the orders according to use, partial use, and those entirely unused.¹⁰² The conclusion indicated that in practice there is no use made of nearly half the area of all valid seizure orders (spanning all functions).

Area of seizure orders according to actual use (in dunams and percentages)



*The areas were calculated after offsetting overlap

¹⁰⁰ The figures presented here include all seizure orders, including those addressed in this context in Chapter Two, which were issued for settlement purposes. Regarding declarations of state land through numerous orders issued for settlement purposes, see above, page 59.

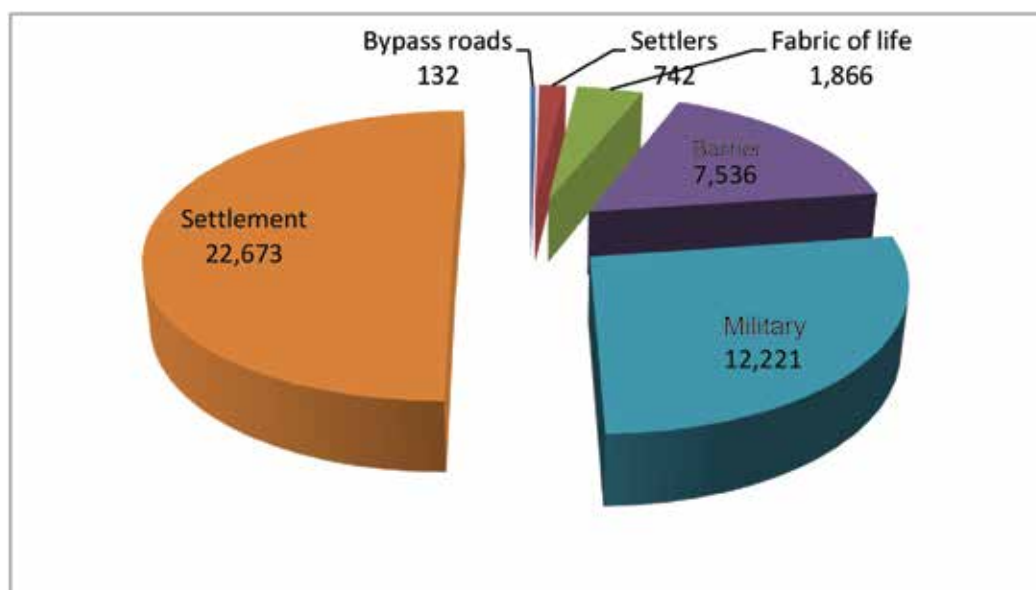
¹⁰¹ See Chapter Four below on page 79.

¹⁰² In total, we found 16 seizure orders for which there was partial use. From the territory of these orders we subtracted the areas in use and added them to the total area used.



Yet it is interesting to note how the unused areas are divided among functions. Naturally, the three main functions for which these seizure orders were intended, are the three functions for which the largest area was seized: namely settlement, military, and the separation barrier.¹⁰³

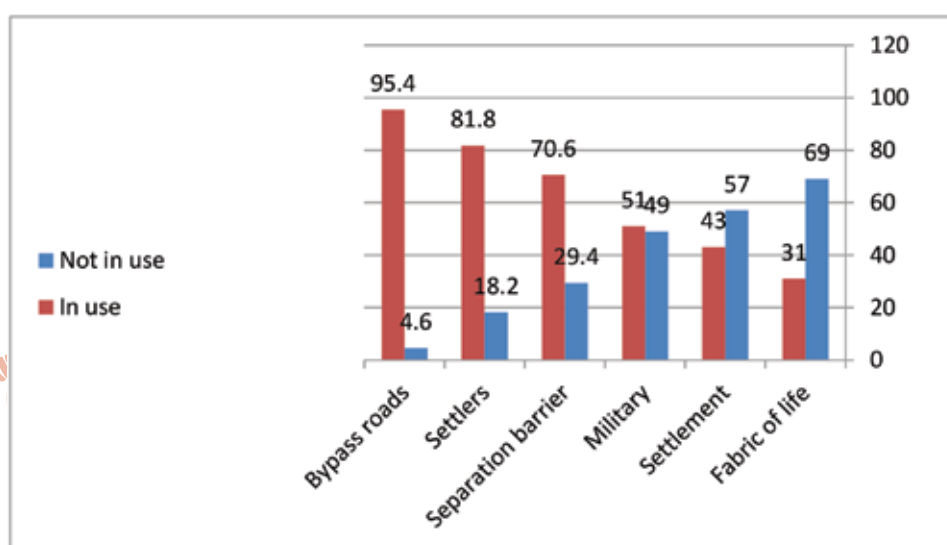
Area of seizure orders not in use, according to categories (in dunams)



*The areas were calculated after offsetting overlap

However, upon examining the percentage of the unused area according to its function, it becomes clear that the proportion of seizure orders issued for “fabric of life” (namely for the needs of the Palestinian population) was the largest (70%). The reason appears to be that this function is at the bottom of the military system’s priorities. Following this function, the three functions for which most of the territories were seized are: settlement¹⁰⁴ (57%), military (49%) and separation barrier (29%). Thus, it appears that the seizure orders issued over the years did not in fact reflect the actual needs of the army or the settlement project (in the case of settlement seizures).

Actual use of the area seizure orders according to function (in percentages)



*The areas were calculated after offsetting overlap

¹⁰³ In the case of the separation barrier, the lack of use is connected to the fact that a large part of the planned route for which land was seized was not actually built. See note 90 above.

¹⁰⁴ See page 62 below.



Summary

From the years 1969 to 2014, the army issued 868 seizure orders that remain valid to date. The total area of these orders encompasses 104,500 dunams. After offsetting the overlap between the seizure orders issued over the years, the orders' total area spans 101,380 dunams. The seizure orders can be divided into seven groups according to the primary functions they fulfill:

1. Orders intended for settlement purposes, namely the establishment of settlements, which the state claimed had security value.
2. Orders issued for military purposes, namely training and consolidating military control over the West Bank.
3. Orders issued to situate a security network around the settlements and along bypass roads.
4. Orders issued to pave bypass roads, for predominant use by the settler population.
5. Orders for the construction of the separation barrier.
6. Orders to protect the fabric of Palestinian life, which in many places has been severely disturbed by the construction of the separation barrier.
7. Orders originally issued for military facilities, which are used by settlers in practice.

The total area of seizure orders particularly increased during four distinct periods:

1. Most of the territory designated for the establishment of settlements was seized from the mid to late 1970s.
2. During the First Intifada, in response to the security situation in the West Bank.
3. In the mid-1990s, when the Oslo Accords were implemented and the army was redeployed in Area C.
4. In the years following the outbreak of the Second Intifada, security conditions in the West Bank drastically shifted and the army was expected to suppress the Intifada.

To date, seizure orders apply to an area of approximately 1,850 dunams of land transferred to the PA. About two-thirds of this area was seized before the signing of the Oslo Accords, and the remaining territory was seized thereafter. Regarding the ownership of the land: although in principle seizure orders are supposed to apply to privately owned land, it appears that the army also issued them for land that was registered or declared state land. In total, military authorities recognize nearly 70% of the seized territory as privately owned Palestinian land. Moreover, there is no use for almost half of the area included in valid seizure orders. We will elaborate on these implications in the following chapter.





Chapter Four - Annulment of Seizure Orders

As we explained at length in Chapter One, seizure orders are temporary in nature and do not deprive owners of land ownership rights. This legal situation requires the military commander to limit the duration of the seizure order from its onset, and to assess the security necessity from time to time. In the event that the “security” necessity of the seizure subsides, the land must be returned to its owner in its original state.¹⁰⁵ We will briefly revisit the relevant quotation from the MAG’s website:

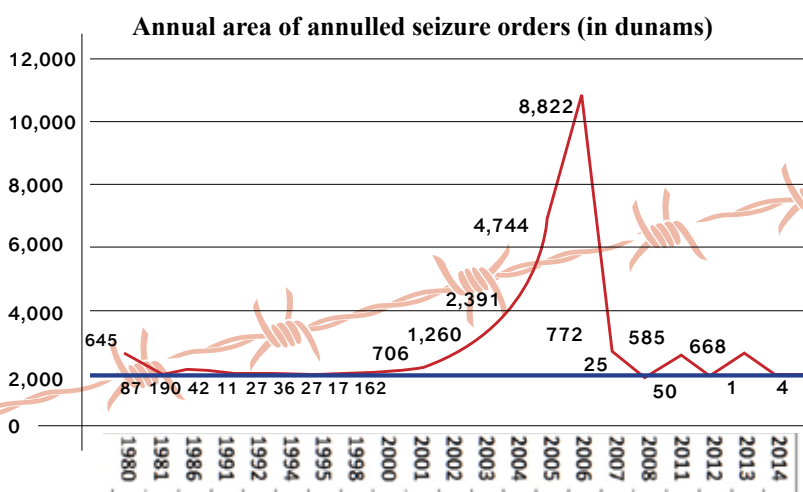
Annulment of land seizure

Wherein, according to the military commander, there is no longer a military necessity for land seizure, the military commander, or anyone acting on their behalf, may annul the seizure or reduce its scope over time, when possible.¹⁰⁶

Over the years, the army has indeed annulled and amended hundreds of seizure orders. According to information provided by the Civil Administration, by March of 2016, 282 seizure orders had been annulled, spanning an area of 10,445 dunams.¹⁰⁷ The seizure of another roughly 10,827 dunams, was annulled due to amendments made to 90 seizure orders. That is, **the seizure of approximately 21,272 dunams was ultimately annulled**.¹⁰⁸ When this territory is compared to the area of seizure orders that were not used (approximately 45,000 dunams) it becomes clear that the army annulled the seizure of a relatively small portion of the area that was not used in practice.¹⁰⁹

Annulment of seizure orders over the years

The annulment of seizure orders began in the early 1980s, and ever since, seizure orders have been annulled irregularly throughout the early 2000s. Over the course of the past two decades, the annulled seizure orders collectively span over 1,000 dunams. From 2001 to 2007, 18,860 dunams of land were revoked, constituting nearly 90% of the total territory whose seizure was annulled. We do not have a fully authorized explanation on why the army began a comprehensive process of annulling seizure orders over the course of those years, reaching its peak in 2006. Yet it is important to remember that during those years the army seized land spanning a total of 26,176 dunams. Thus, though many seizures were annulled or amended, the overall calculation indicates that the army seized over 7,000 dunams throughout those years.¹¹⁰



¹⁰⁵ To read more on the temporary nature of seizure orders, see page 32 above in Chapter One.

¹⁰⁶ See supra note 19 above.

¹⁰⁷ This chapter is based on information provided to us by the Civil Administration in March of 2016. We assume that there are other annulled orders that were not included in the information passed on to us. To the best of our understanding, there are not a large number of orders, but their scarcity may be described by the overall trends.

¹⁰⁸ An examination of orders that were annulled and amended indicates that 617 dunams among them overlap with other seizure orders that were not annulled. These areas were offset by the total area of the orders that were annulled or amended.

¹⁰⁹ See page 76.

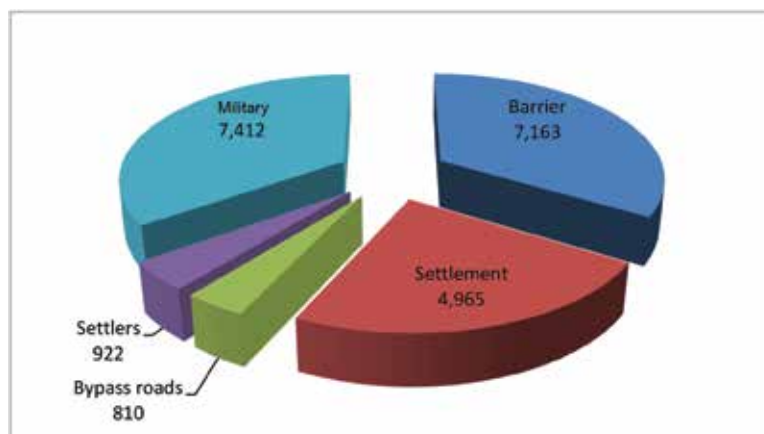
¹¹⁰ See the chart on page 65.



The original designation of territories whose seizure was annulled

Upon assessing all seizure revocations, the three categories for which the largest area was seized (namely settlement, military, and separation barrier) are also naturally the leading categories with regard to the size of the areas whose seizure was annulled.

Size of the areas whose seizure was annulled, divided according to function (in dunams and percentages)



Annulment of seizure orders for settlement purposes

Over the years, the army annulled the seizure of nearly 5,000 dunams originally seized for settlement purposes. The seizure of these territories was annulled in two different contexts:

1. HCJ petitions following which seizures for the settlements of Elon Moreh and Homesh were annulled in 1980 and 2013, respectively.¹¹¹
2. Overlap with territories deemed state land in Psagot (by the Land Registry), Maon, and Carmel (declared state land).¹¹²

Annulment of seizure orders for separation barrier purposes

The seizure of over 7,000 dunams for the construction of the separation barrier has been annulled over the years. However, a comparative examination of the seizure orders issued over the course of those years reveals that most of them were merely amended, and other areas seized for the same purpose replaced the initial territories. These orders were amended following changes in the route of the separation barrier, both as a result of decisions stemming from international pressure on decision-makers to reduce the area that remained west of the barrier,¹¹³ and due to HCJ petitions on behalf of Palestinians harmed by its establishment.¹¹⁴

Annulment of seizure orders for military purposes

Over the years, the army has annulled 124 seizure orders issued for its activities - whether related to training or military control of the West Bank and its population. Over half (78) of the annulled orders originally issued for military purposes are located within areas belonging to the PA (A + B), although the total area of these orders is less than half of the annulled area of orders originally issued for military purposes (3,417 out of 7,412 dunams).

¹¹¹ For further information on the Elon Moreh case see above page 24–29.

¹¹² For the amendment of the seizure order in the settlement of Maon, see above, page 60.

¹¹³ One of the main allegations raised regarding the route of the separation barrier, is that under the guise of security claims, Israel is trying to create a new border line that will enable the future growth of settlements to the west. For more on this matter, see Yehezkel Lein and Alon Cohen Lifshitz, "Under the Guise of Security: Routing the Separation Barrier to Enable the Expansion of Israeli Settlements in the West Bank," December 2005, Bimkom and B'Tselem, https://www.btselem.org/download/200512_under_the_guise_of_security_eng.pdf

¹¹⁴ For example, the HCJ ordered that the separation barrier be rerouted around the settlement of Alfei Menashe (HCJ 7957/04, Mara'abe et al. V. Prime Minister of Israel et al.); The HCJ ruled that the state lied to the court regarding considerations in determining its route south of the settlement of Zufin. The separation barrier was rerouted by the HCJ in the area of the village of Bil'in (HCJ 8414/05, Yassin v. Government of Israel et al.), after it was proven that it was determined according to a general yet unauthorized "master plan" to expand the settlement of Modi'in Illit.

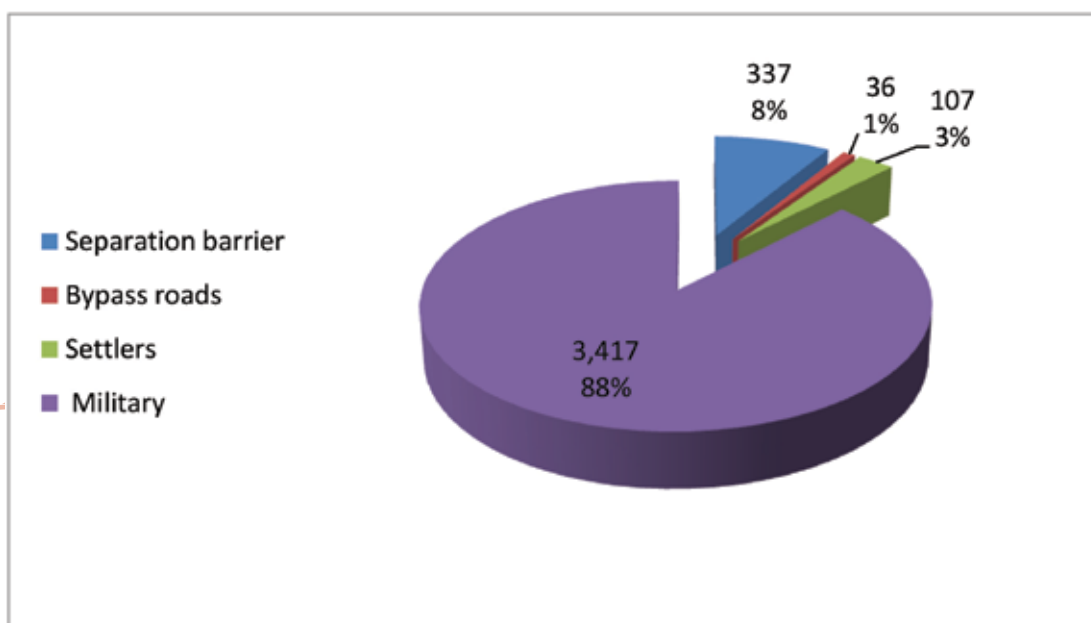


A section of the route of the separation barrier west of the village of Bil'in, which was removed due to a HCJ order.

Annulment of seizure orders within PA territory

Over the years, the seizure of 3,897 dunams have been annulled within PA territory. This represents 18% of the total area of seized land throughout the West Bank. Most of the area seized through seizure orders that were annulled within PA territory, was originally dedicated to the maintenance of military control within Palestinian communities transferred to the PA as a result of the Oslo Accords. However, it is important to remember that today, too, the army continues to occupy approximately 1,850 dunams located within PA territory.¹¹⁵

Size of annulled areas within PA territory, divided by function (in dunams and percentages)

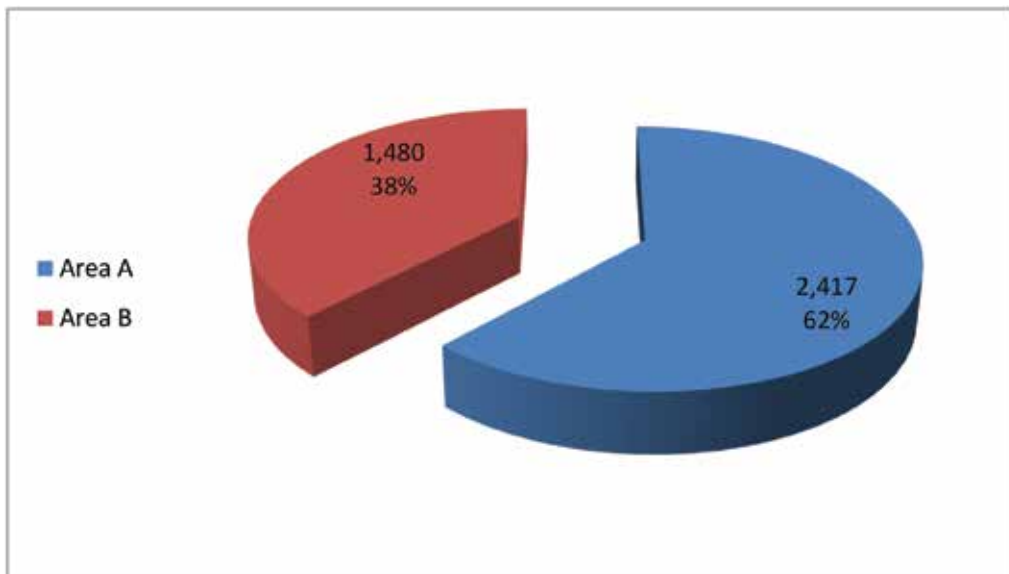


¹¹⁵ For more on this issue, see Chapter Three, page 74.



Most annulled land (62%) is located within Area A and indicates the Israeli army's efforts to control Palestinian city centers. The rest of the area included in annulled seizure orders over the years, is located in rural areas with sparse military presence.

Area of annulled seizure orders in areas A and B (in dunams and percentages)

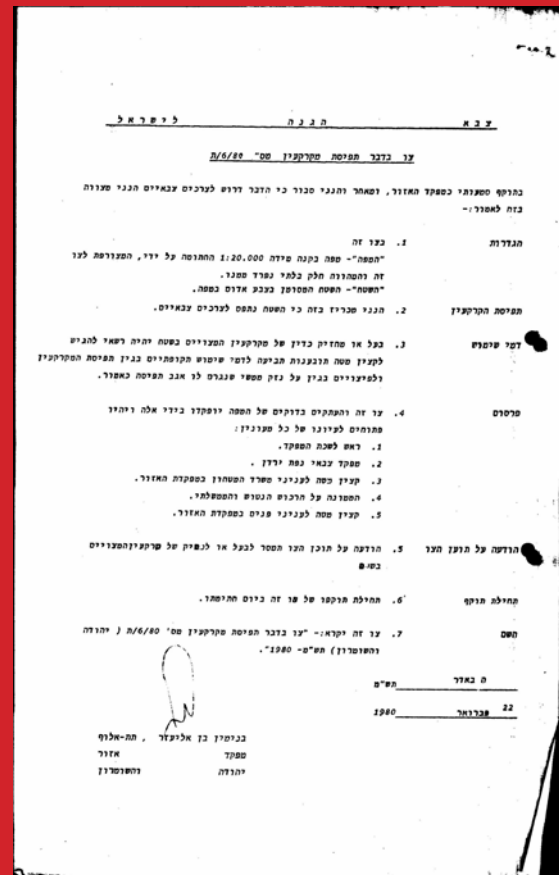


Seizure order 6/80 - Hanan Camp

On February 12, 1980, the military commander of the West Bank signed seizure order 6/80 to seize approximately 112 dunams on the southern outskirts of Jericho. A British police building stands in the northern part of the compound, which was transferred to the Jordanian army in 1948 and then to the Israeli army in 1967. The Hanan Camp was established on the basis of this seizure, which served as Israel's control center in the city of Jericho and a base for the military governor and all bodies entrusted with maintaining military control over the city and its environs (namely, the Israel Police, the Shin Bet Security Service, and the Civil Administration). Upon Israel's withdrawal from Jericho at the end of May of 1994 (following the signing of the Cairo Agreement a few weeks earlier), the compound was transferred to the PA and is currently used as a police base and a prison. Nevertheless, the formal seizure of the complex was only annulled in June of 2006.



Order No. 6/80, which included 112 dunams, was officially annulled in June of 2006, over a decade after the Israeli army's withdrawal from Jericho.



A photograph of a prison facility. In the foreground, a paved road curves to the left. To the right of the road is a high, light-colored concrete wall topped with multiple layers of barbed wire. A guard tower with blue-tinted windows is visible on the wall. In the background, other buildings and a clear sky are visible. A red barbed wire graphic is overlaid across the middle of the image.

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Territory of orders following revocation

The army recognizes that the revocation of a seizure order, once it becomes clear that it is no longer necessary, requires the military to return the land to its owner in its original state prior to the seizure. Similar statements appear on the MAG's website:

In tandem, considering the obligation to reduce harm caused to private property, upon the termination of land seizure for military purposes, the military commander must restore the land to its original state prior to the seizure (to the greatest extent possible).¹¹⁶

Through a comprehensive examination, we did not identify any cases in which the army did indeed return the “land to its original state” let alone a similar state. The maximum carried out by the army following revoking some of the orders, was to clear the land of any physical foundations erected on site. Moreover, in many of the cases in which orders were annulled in practice, the land was neither vacated, nor were its owners granted access due to the proximity to a settlement, main road, or military installation. In some cases, the land was located in the “seam zone” west of the separation barrier — an area inaccessible to many landowners due to its declaration as a closed military zone for Palestinians.¹¹⁷ Through a rough estimate, this territory spans a total of 3,000 to 3,500 dunams that are inaccessible to landowners, although their seizure has expired. The following are some examples that illustrate this phenomenon.

Revocation of seizure order 4/78 - settlement of Homesh

In 1978, the military issued seizure order 4/78, which spanned approximately 700 dunams of the village of Burqa, north of Nablus (see the aerial photograph below). The seizure was intended for the establishment of the settlement of Homesh, which was evacuated within the framework of the Israeli “disengagement” from Gaza and parts of the West Bank in the summer of 2005. Toward late 2011, six and a half years after the evacuation of the settlement, the landowners petitioned the HCJ demanding that the army order the revocation of the seizure order, which was not annulled in spite of its evacuation.¹¹⁸ In May of 2013, the state announced that the seizure order had been revoked.¹¹⁹ However, despite the annulment of the seizure order and the closure order in place (the closure order was annulled approximately five months after the revocation of the seizure order), landowners cannot access their land as a result of the army's refusal to provide protection against a violent settler group illegally located on site. Moreover, although the houses of the settlement were destroyed, the waste and infrastructure were not vacated, and therefore large swaths of the territory cannot be cultivated in their present state.



The area of seizure order 4/78 in 2018.

¹¹⁶ See supra note 19.

¹¹⁷ O. Hess, “How Israel Prevents Palestinian Farmers from Working Their Lands,” Haaretz, 26.5.2017, Haaretz, 28.5.2012, <https://www.haaretz.com/middle-east-news/palestinians/.premium-how-israel-keeps-palestinian-farmers-off-their-lands-1.5477256>

See also A Locked Garden (supra note 26), page 54.

¹¹⁸ HCJ 9389/11, Burqa village council head Mr. Abd al-Fatah Salah, v. Commander of IDF Forces in the West Bank.

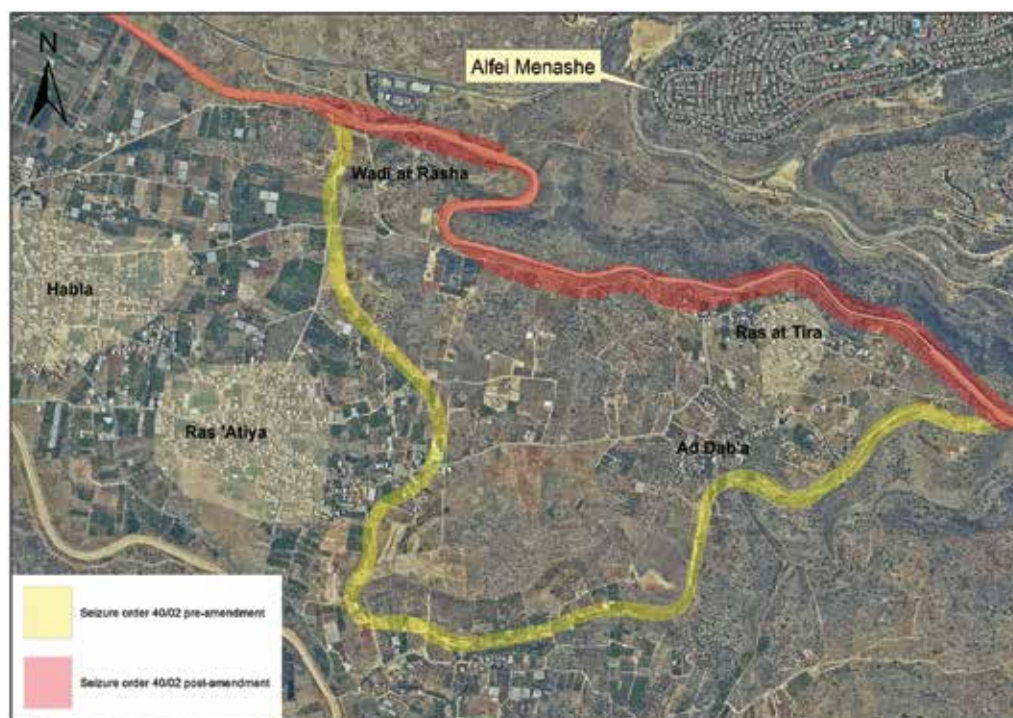
¹¹⁹ Levinson, “State to Supreme Court: Homesh Homes Evacuated in Disengagement Will Be Returned to Palestinian Owners,” Haaretz, 19.5.2013, Haaretz, www.haaretz.co.il/news/politics/1.2023303



The location of the settlement of Homesh, which was evacuated in 2005.

Amendment of seizure order 40/02 - The separation barrier south of Alfei Menashe

In 2002, the military issued seizure order 40/02 in order to build the separation barrier south of the settlement of Alfei Menashe. As a result of its construction, five Palestinian villages inhabited by approximately 1,200 people at the time, were trapped in a gated enclave physically cut off from the rest of the West Bank. Following an HCJ petition in 2004, a ruling in September of 2005 compelled the state to dismantle the section of the barrier that cuts these villages off from the rest of the West Bank (see the aerial photograph below).¹²⁰ After dismantling this section of the separation barrier in 2009, the army left the route of the barrier as it was, and gradually the residents began rehabilitating the land. Even today, some nine years after dismantling the barrier, the damage is clearly visible.



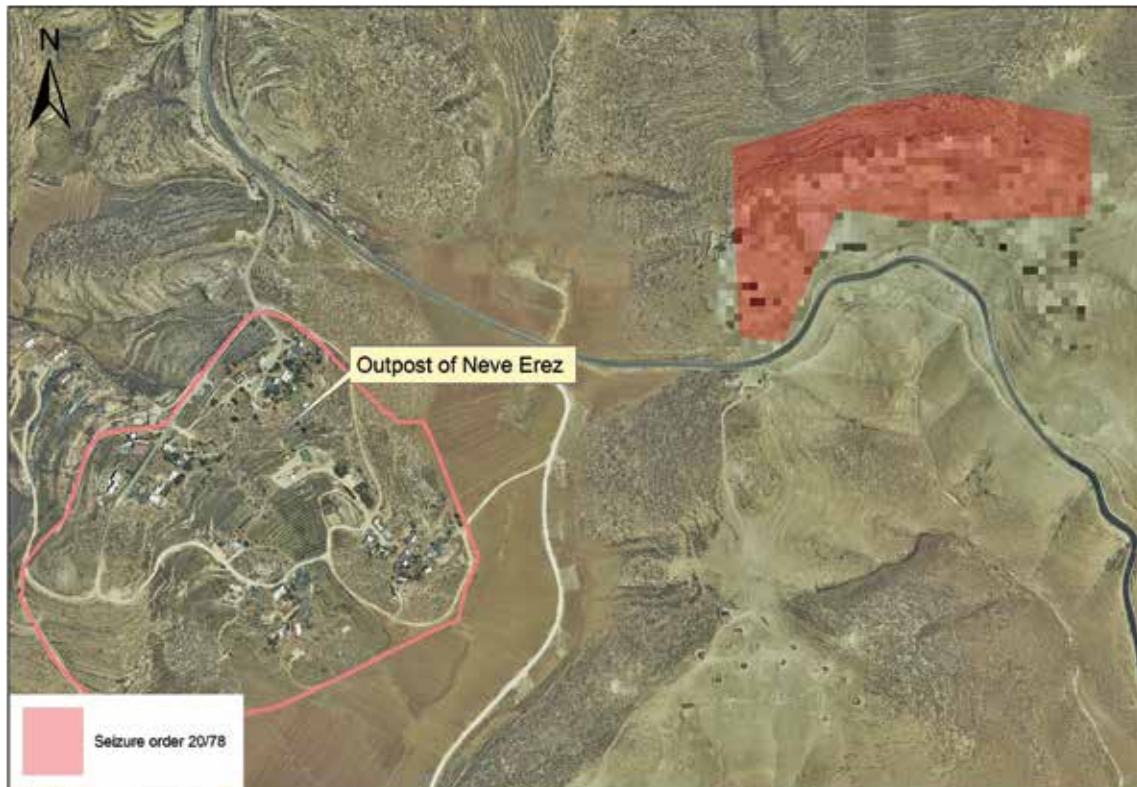
Adjusted route of the separation barrier south of Alfei Menashe, in accordance with the amendment to order 40/02.

¹²⁰ HCJ 7957/04, Mara'abe et al. V. Prime Minister of Israel et al. For the ruling from 15.9.2005 see <http://elyon1.court.gov.il/files/04/570/079/a14/04079570.a14.pdf>



Revocation of seizure order 20/78 - Inbalim Park

In 1978, the military issued seizure order 20/78 for an area of 77 dunams, owned by residents of the villages of Mukhmas and Deir Dibwan, east of Ramallah (see the aerial photograph below), in order to construct a military fortification. This military fortification was part of a chain of similar such fortifications built along the Alon Road.¹²¹ Over the years the army abandoned the site, and settlers from the nearby outpost of Neve Erez turned it into a site for parties and festivals, known as “Inbalim Park,” with the assistance of the Binyamin Regional Council. In 2015, landowners from these villages petitioned the HCJ demanding the annulment of this seizure order, along with two seizure orders for adjacent territories.¹²² In February of 2016, the state annulled the three seizure orders and formally returned the land to its owners. Yet in practice the military outpost was not evacuated, and the settlers continue to use it as their own.



An aerial photograph of the military fortification built on the territory seized by seizure order 20/78.

¹²¹ The Alon Road was paved by the state of Israel in the second half of the 1970s from Ma'ale Adumim to the northern Jordan Valley. This road was intended to mark the western boundary of the territory that Israel would control according to the “Alon Plan,” written shortly after the Six-Day War and named after Yigal Alon, a prominent leader of the Labor Party in the 1960s and 70s. The purpose of the plan was to end the Israeli occupation over parts of the West Bank by withdrawing from the areas most densely populated by Palestinians, and annexing the Jordan Valley, East Jerusalem, and Gush Etzyon, including Hebron and Kiryat Arba. None of the governments of Israel officially adopted this plan, but it was the basis of the Labor Party’s settlement policy until 1977.

¹²² HCJ 9015/15, Muhammad Mustafa Isma'il Mahana v. Commander of IDF Forces in the West Bank. The total area included in these three orders altogether amounts to 237 dunams.

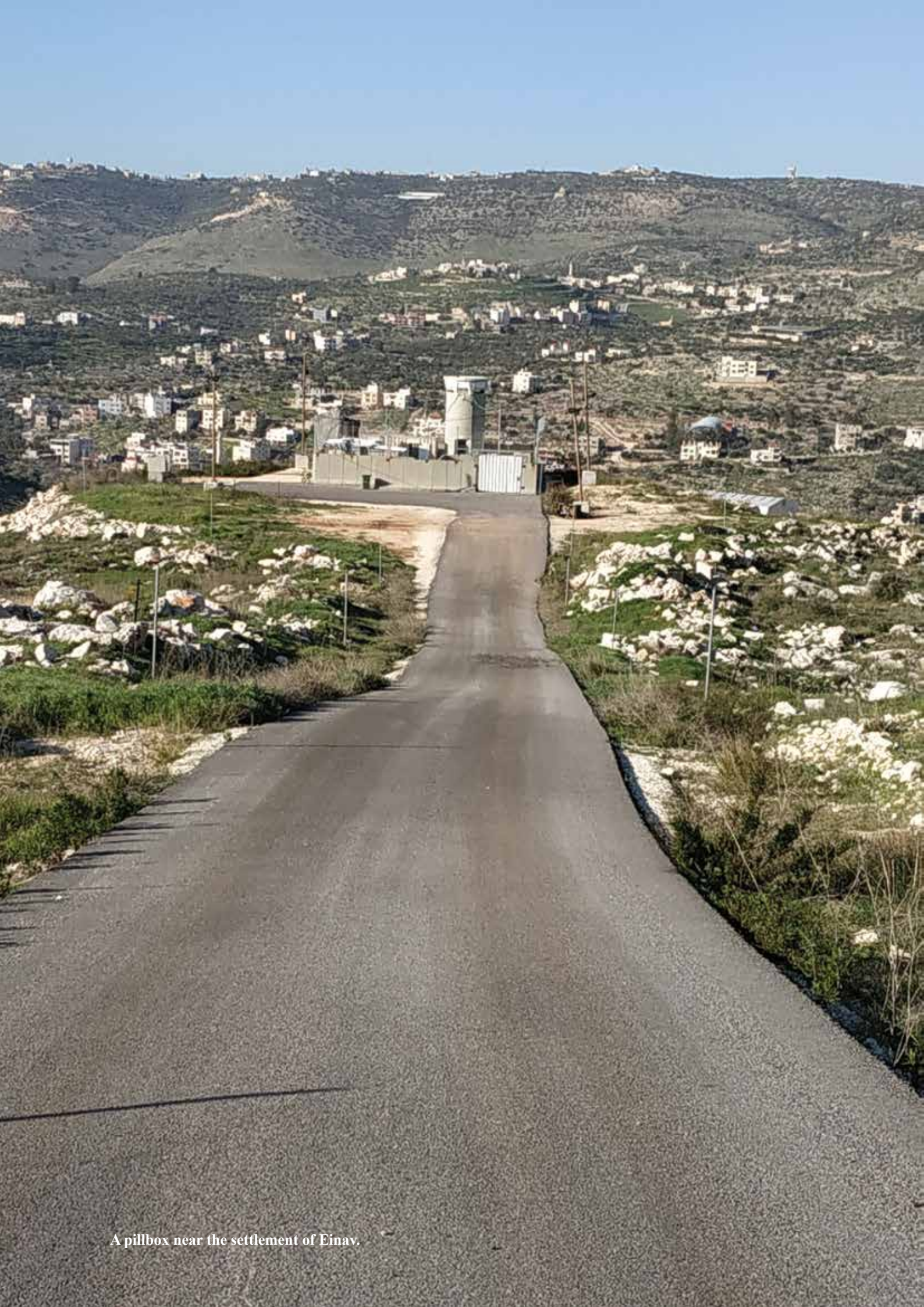


Conclusion

Over the years, the army has revoked the validity of hundreds of seizure orders comprising a cumulative area of approximately 21,272 dunams. The vast majority of these orders were annulled from 2001 to 2007, yet over the course of those years the army seized land spanning a cumulative area of roughly 7,000 dunams from territories whose seizure was annulled. The three categories for which the largest area was seized (settlement, military, and separation barrier) are also the three categories for which most of the territories were seized through annulled seizure orders. A little less than one-fifth (18%) of the total areas that constitute the seizure orders were included in the orders issued for land transferred to the PA under the Oslo Accords. Most of these orders were issued over the years in order to strengthen the army's control over Palestinian city centers. Once seizure orders expire, the army is obligated both by international law and its own regulations, to return the land to its original state. Nevertheless, it is clear that in practice the military does not do so. In many cases, following the annulment of land seizure, the site is left damaged or full of waste in a manner that does not allow its owners to resume cultivation. In many cases, landowners are unable to access their "liberated" land due to its proximity to settlements, main roads, military installations, or the "seam zone" west of the separation barrier, which is deemed a closed military zone.



The entrance sign to "Inbalim Park" near the illegal outpost of Neve Erez.



A pillbox near the settlement of Einav.