

Industrial Zones in Judea and Samaria and the Rural Sector

## **Chapter Seven**

### **Industrial Zones in Judea and Samaria and the Rural Sector**

### **Audit Actions**

An audit was conducted concerning aspects of law enforcement in the industrial zones under Israeli administration in the area of Judea and Samaria. Amongst others were examined matters related to security of the industrial zones and enforcement of labour laws, amongst them safety and hygiene labour laws and the requirement of paying minimum wage and insuring workers. The audit was conducted in the IDF – Central Command, in the Unit of Coordination of Government Activities in the Territories (COGAT) and the Civil Administration in the Area of Judea and Samaria, the Ministry of Industry, Trade and Employment, in some of the industrial zones in Judea and Samaria under Israeli administration and amongst them the Tulkarem (“Mesila”) and “Aleï Zahav” industrial zones.

In the subject of internal security the deployment and treatment of the police were examined, with an emphasis on the Border Police, in crime and ongoing security in the rural sector. In the audit topics related to the efficiency of police care for agricultural violations were examined; the organisational deployment of Border Police for handling crime; cooperation between the “blue” Police and Border Police; and the level of trust afforded to the police amongst residents of the rural sector. In the area of ongoing security, actions of the Home Front Command and the police were examined concerning the classification of settlements in the rural sector for the purpose of allocating and funding elements necessary for security, the arrangements for hiring the employed guards in the settlements and the activation of on-call squads and preservation of their operational fitness. The audit was conducted primarily in the Police and Central Command. Supplementary audits were conducted in the Ministry of Defence and Ministry of Internal Security.

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## **Industrial zones under Israeli administration in the Region of Judea and Samaria**

### **– Aspects of Law Enforcement**

#### **Summary**

In the region of Judea and Samaria some 20 industrial zones under Israeli administration operate, some of them large industrial zones such as Barkan, Mishor Adumim and Ariel-West, in which numerous Israeli workers are employed<sup>1</sup>, and some 5,800 Palestinian workers. The industrial zones under Israeli administration in Judea and Samaria are located in Area C<sup>2</sup>. In the Interim Agreement signed between Israel and the Palestinian Authority in September 1995, and in legislation which gave effect to it in Judea and Samaria<sup>3</sup> it was determined that the security authorities and a majority of the civil authorities are held by Israel.

The industrial zones under Israeli administration were established on lands managed by the Supervisor of Abandoned Property in Judea and Samaria, which allocates the lands to bodies that work in settlement of Judea and Samaria. To the industrial zones under Israeli administration in Judea and Samaria must be attributed, amongst other things, economic and security importance, as suppliers of employment for Israelis and Palestinians.

The Civil Administration in Judea and Samaria (henceforth: Civil Administration) is subordinate to the Unit of Coordinating Government Activities in the Territories (henceforth: COGAT), at the head of which stands the Coordinator of Government Actions in the Territories, who is an IDF officer at the rank of major-general, who is subordinate to the Minister of Defence. The remit of COGAT is, amongst other things, to implement government policy in Judea and Samaria and to promote it in civilian areas, coordinate government offices, the IDF and security officials in regular times and in emergencies, and to be the civil authority for Israeli settlement in Judea and Samaria in the areas of planning and infrastructure.

#### **Audit Actions**

For the period January until June 2011, the State Comptroller's Office examined aspects of the activities of the industrial zones under Israeli administration in Judea and Samaria. Some of the statistics were updated to August 2011. Amongst other things were examined matters related to security of the industrial zones, enforcement of labour laws and activities of the Tulkarem Industrial Zone (henceforth: Mesila) and "Aleï Zahav". The audit was conducted in the Central Command, in COGAT, the Ministry of Industry,

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<sup>1</sup> According to data of the Central Bureau of Statistics for 2009, in the branch of industry alone are employed in Judea and Samaria some 4,100 Israeli workers.

<sup>2</sup> The size of this area is some 4 million dunam (approximately 60% of the area of Judea and Samaria), in which the Civil Administration in Judea and Samaria exercises civil authorities, primarily in the areas of infrastructure and land, including the treatment of Israeli settlement in Judea and Samaria.

<sup>3</sup> Manifest concerning Implementation of the Interim Agreement (Judea and Samaria) (number 7), 1995.

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Trade and Employment and some of the industrial zones in Judea and Samaria under Israeli administration.

### **Primary Findings**

#### **Definition of industrial zones under Israeli administration**

To the industrial zones under Israeli administration apply the statutory provisions of various laws from the security legislation<sup>4</sup> (henceforth: laws of the industrial zones). The laws of industrial zones do not note the names of the industrial zones under Israeli administration and their geographic area, and the term “industrial zone under Israeli administration” is not defined. In this situation it is unclear if authority to enforce regulations of the industrial zone laws in various factories was provided, which has, amongst other things, an impact on the manner of the security check conducted on outgoing goods from these industrial zones to Israel.

#### **Employment Permits**

The Civil Administration did not act to enforce the Order Concerning Prohibition on Employment (West Bank region) (number 65), 1967 (henceforth: Order Concerning Prohibition on Employment), on factories operating in the industrial zones under Israeli administration without employment permits, and did not determine the criteria for their issuance.

#### **Enforcement of Labour Laws in Israeli Factories in Judea and Samaria**

A few of the Israeli legislative statutory provisions concerning labour law further apply only to labour relations between Israeli employers and Israeli employed and only in the area of the Israeli settlements in Judea and Samaria<sup>5</sup>. From the audit we see that even though four years have passed since the day of the High Court of Justice ruling<sup>6</sup> from October 2007, in which it was determined that the existing distinction between an Israeli worker and a Palestinian worker employed in Judea and Samaria is, in the circumstances, invalid, the work of the inter-ministerial special staff on the topic of examining the need to amend the security legislation concerning labour laws is only just beginning.

The Civil Administration and Ministry of Industry, Trade and Employment did not take care to conduct ongoing audits in factories under Israeli administration in Judea and Samaria in order to enforce the obligation to pay minimum wage by Israeli employers in Judea and Samaria: In the period April 2006 and until June 2010, the Ministry of Industry conducted an audit in only four industrial zones out of twenty, and from June 2010 and until June 2011 no ongoing audits were conducted; the bulk of its actions were conducted following complaints. In these circumstances, harm is liable to be caused to the salary of all

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<sup>4</sup> Security legislation is “legislation that was legislated by the IDF on areas of the military government, which the IDF holds” (Dictionary of IDF terms, 1998, a.g.m.-T.o.h.d. in the IDF).

<sup>5</sup> Except for the obligation to pay minimum wage to every worker employed in Judea and Samaria which was imposed on the Israeli employer through the Order Concerning Employment of Workers in Certain Areas (Judea and Samaria) (number 967), 1982.

<sup>6</sup> H.C.J. 5666/03 **Kav Laoved Association and others v National Labour Court in Jerusalem and others**, Takdin.

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workers employed in Judea and Samaria and as seen in documents of the Civil Administration, harm was caused to the salary of the Palestinian workers and their rights. Additionally, as of August 2010 the Civil Administration and Ministry of Industry did not conduct an audit on the subject of workplace safety and hygiene in the factories under Israeli administration in Judea and Samaria, in order to ensure the safety and health of the workers there.

The Civil Administration did not enforce the Statutory provisions of the Order Concerning Insurance for Workplace Injuries (Judea and Samaria), (Number 662), 1976, and did not supervise the Israeli employers in everything concerning fulfilling their obligation to acquire insurance policies for the Palestinian workers they employ outside the areas of the Israeli settlements in Judea and Samaria, as mandated in this order.

### **Security of Industrial Zones**

In several of the industrial zones in Judea and Samaria security components are lacking, such as a peripheral fence, entry gate and peripheral lighting. In several of them the security components are not utilised as required, and in others there is no supervision of entry into the industrial zones.

The industrial zones under Israeli administration in Judea and Samaria are a closed military zone. Some of them lack a security infrastructure to prevent the entry of people into the closed military zone, such as a peripheral fence; the Declaration Concerning Closing of an Area (Israeli settlements)(Judea and Samaria) 2002, does not define the geographic area of the industrial zones which are included there, and as such it is not possible to know what is the area to which the declared order applies; and in some of the industrial zones in Judea and Samaria Palestinian workers are employed without employment permits.

COGAT did not determine the factories for which it is required to appoint a security trustee in accordance with the Order Concerning Security Arrangements in the Industrial Zones (Appointment of Security Trustee) (Judea and Samaria) number 1640, 2009 (henceforth: Order Concerning Appointment of Security Trustee); in the Order Concerning Appointment of Security Trustee only nine industrial zones are defined, of the 20 existing ones, on which the order's statutory provisions apply; COGAT has no procedure for transferring information to the operators of the passages into Israel, which includes the names of the factories under Israeli administration in the industrial zones in Judea and Samaria and of the aforementioned security trustees who are meant to act there, in order to allow the passage operators to ensure that the products exiting these factories in Judea and Samaria to Israel via the crossings are indeed approved by the security trustee.

Lack of a definition of the term goods whose source is in "industrial zones under Israeli administration", the lack of a regulation for transmitting information from COGAT to the passage operators, together with the lack of appointment, as noted above, of security trustees in the factories, resulted in an expansion of the phenomenon in which goods whose source is Palestinian are transferred from Judea and Samaria to Israel through the industrial zones under Israeli administration as goods whose source is Israel, not via the goods passage ("back to back" passages)<sup>7</sup>. This phenomenon is dubbed "laundering of goods", and

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<sup>7</sup> "Back to back" – the accepted practice for the transfer of goods and their examination at crossings between Israel and Judea and Samaria, according to which the goods arriving from one side of the crossing are unpacked from the truck and pass a security check in the examination site, and afterwards they are loaded onto a truck arriving from

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represents a danger to those located in the industrial zones and also to residents of Israel, in wake of the concern of smuggling weapons from Judea and Samaria to Israel in the framework of transferring goods not via the “back to back” passages. Additionally, this phenomenon is liable to involve aspects from the field of proper governance and integrity.

### Industrial Zones “Mesila” and “AleI Zahav”

1. The existing construction and infrastructures in the “Mesila” industrial zone do not correspond with the urban planning plan which was approved in 1994; buildings were constructed without building permits, occasionally through the takeover of lands; all of the factories in the industrial zone are functioning without the necessary employment permits from the Civil Administration; the Civil Administration issued to the factories in the industrial zone permits to employ hundreds of Palestinian workers in contravention of the Order Concerning Prohibition of Employment, which prohibits Israelis from employing workers without employment permits; there are serious environmental hazards in the industrial zone.

In March 2004, the Commander of IDF Forces in Judea and Samaria signed the Order for Confiscating Land (henceforth: Confiscation Order) for the purpose of establishing a wall on the eastern side of the “Mesila” industrial zone. The wall was built by deviating from the route determined in the Confiscation Order and through an invasion into private Palestinian property; up until conclusion of conduct of this audit, June 2011, the Civil Administration did not execute the demolition order for the wall that was issued in December 2005 by the Sub-Committee for Supervision of the High Planning Council of the Civil Administration; the confiscation order was not renewed as it expired in December 2005, and the land confiscation continued in practice also at the time of concluding this audit, June 2011.

2. The “AleI Zahav” industrial zone is functioning without an approved urban planning plan, and all the factories in it are functioning without building permits and without employment permits. Despite this, the Civil Administration granted these factories permits to employ Palestinian workers; the industrial zone functions without development infrastructures and sewage infrastructure, all the while harming the environment.

### Summary and Recommendations

Industrial zones under Israeli administration were established on lands managed by the Responsible for Abandoned Property in Judea and Samaria, which allocated the land to bodies which work in settlement in Judea and Samaria. To the industrial zones under Israeli administration in Judea and Samaria must be attributed, amongst other things, economic and security importance, as suppliers of employment for Israelis and Palestinians.

In the audit, weighty findings were raised related to a harming of the rights of workers employed in the industrial zones under Israeli administration. This is expressed in the absence of care in conducting ongoing audits of the Civil Administration and the Ministry of Industry, Trade and Employment of the

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the other side of the crossing and are taken to their destination. In this system the connection between the transporter of the goods and their receiver is cut.

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Israeli employers on the subject of paying minimum wage, which resulted in the phenomenon of harming the wages of Palestinian workers; in the lack of substantial supervision and enforcement in the topic of workplace safety and hygiene, which can lead to real danger to the health and lives of the workers in the industrial zones; and in not arranging the insurance of workers for workplace injuries. The lack of care in these subjects harms the image of the state of Israel and its position in international public opinion as a state which enforces the law and protects the worker rights of Palestinians employed by Israelis in Judea and Samaria.

Due to the importance of the topic of workers' rights, its sensitivity and political and economic meanings which attend to it, it is appropriate that COGAT and the Head of the Civil Administration, in cooperation with the Ministry of Industry, will act to enforce the regulations of the law which exist in the aforementioned topic in Judea and Samaria. It is also appropriate that the Head of the Civil Administration, COGAT, the Ministry of Industry and the Legal Advisor of Judea and Samaria will act expediently with the Ministry of Justice to examine amendments required in security legislation concerning labour laws in Judea and Samaria, and will bring about a ruling of the political echelon concerning the possible means of action for implementing the changes.

The serious defects which were raised in the topic of securing the industrial zones represent a security breach which is liable to endanger those in the industrial zones and the residents of Israel due to concern of smuggling weapons and terrorists from Judea and Samaria to Israel. The commander of COGAT, in cooperation with the Head of the Civil Administration, must act to correct these defects, including to arrange the nomination of security trustees, and to act to limit the phenomenon of "goods laundering".

COGAT, the Ministry of Industry and the Civil Administration must act decisively against the phenomena of taking over private property and of state lands, and the establishment of buildings without building permits in the "Mesila" and "Ale Zahav" industrial zones – a phenomenon which represent a serious breach of the rule of law – and to arrange the functioning of the "Mesila" and "Ale Zahav" industrial zones in accordance with the law. Additionally, the Civil Administration and the Samaria Regional Council must examine in a detailed manner all the necessary arrangements in the subject of the environment in each factory and to act to implement them, and also to act to establish the necessary infrastructures in each of these industrial zones, such as sewage and drainage.

From this report we see that enforcement of the law in the industrial zones under Israeli administration in Judea and Samaria in all of the areas examined is not at all sufficient. It is appropriate that the Government Legal Advisor give his opinion on the aforementioned in this report, including violations of the law.

### Introduction

In the area of Judea and Samaria function some 20 industrial zones under Israeli administration. Some of the industrial zones are large, such as Barkan, Mishor Adumim and Ariel-West, and in which numerous Israeli workers are employed<sup>8</sup> and some 5,800 Palestinian workers. The industrial zones under Israeli administration in Judea and Samaria are located in Area C<sup>9</sup>. In the Interim Agreement signed between Israel and the Palestinian Authority in September 1995, and in legislation which gave effect to it in Judea and Samaria<sup>10</sup>, it was determined that the security authorities and a majority of the civil authorities in this area are given to Israel.

The industrial zones under Israeli administration were established on land managed by the Supervisor of Abandoned Property in Judea and Samaria, which allocates the lands to bodies that work in settlement in Judea and Samaria. To the industrial zones under Israeli administration in Judea and Samaria must be attributed, amongst other things, economic and security importance, as suppliers of employment for Israelis and Palestinians.

According to the Manifest Concerning Government and Legal Arrangements (West Bank region) (number 2) 1967, will be executed by the IDF Commander in Judea and Samaria – Central Command Headquarters – or one appointed by him for this, or acting on his behalf, all the authorities of government, legislation, appointment and administration concerning Judea and Samaria or its residents, and he holds overall security and military responsibility in Judea and Samaria.

The Civil Administration in Judea and Samaria was established on the basis of a government decision from October 1981 with the goal of separating between the security activities and the civil activities in Judea and Samaria. In 1981 an order of the IDF Commander in Judea and Samaria<sup>11</sup> was issued, in which it was determined that “established with this is civil administration in the region. The civil administration will manage the civilian affairs in the region in accordance with the statutory provisions of this order, for the benefit and welfare of the population and in order to provide the public services and their implementation, in consideration of the need to establish proper governance and public order.” The Civil Administration is responsible for supervision of subjects related to the actions in the industrial zones under Israeli administration in Judea and Samaria.

The Civil Administration is subordinate to the Unit of Coordinating Government Activities in the Territories (henceforth: COGAT), at whose head stands the Government Activities Coordinator in the Territories, who is an IDF officer at the rank of Brigadier who is subordinate to the Minister of Defence.

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<sup>8</sup> According to statistics from the Central Bureau of Statistics from 2009, in the branch of industry only are employed in Judea and Samaria some 4,100 Israeli workers.

<sup>9</sup> The size of this area is some 4 million dunams (some 60% of the area of Judea and Samaria), in which the Civil Administration in Judea and Samaria wields civil authorities, primarily in the fields of infrastructure and land, including the handling of the Israeli settlement in Judea and Samaria.

<sup>10</sup> Document concerning Implementation of the Interim Agreement (Judea and Samaria) (number 7), 1995.

<sup>11</sup> Order Concerning Establishment of the Civil Administration (Judea and Samaria) (number 947) 1981.

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The remit of COGAT is, amongst other things, to implement government policy in Judea and Samaria and to advance it in civilian areas, in coordination with government ministries, the IDF and security officials in regular times and emergencies, and to be the civil authority for Israeli settlement in Judea and Samaria in the areas of planning and infrastructure.

In the period January until June 2011, the State Comptroller's Office audited aspects of the actions of the industrial zones under Israeli administration in Judea and Samaria. Some of the data was updated to August 2011. Amongst others were examined matters related to security of the industrial zones, enforcement of labour laws and activities in the Tulkarem (henceforth: "Mesila") and "Aleï Zahav" industrial zones. The audit was conducted in the Central Command, in COGAT, the Civil Administration, the Ministry of Industry, Trade and Employment and in part of the industrial zones in Judea and Samaria under Israeli administration. Henceforth the findings:

The Sub-Committee of the Sub-Committee of the Committee for State Comptroller Matters of the Knesset decided not to present to the Knesset and not to publish individual data in this chapter in the name of preserving state security, in accordance with Article 17 of the State Comptroller Law, 1958 (combined version). Privilege of individual data does not preclude an understanding of the audit's essence.

### **Definition of industrial zones under Israeli administration**

To the industrial zones under Israeli administration are applicable the statutory provisions of various laws from the security legislation<sup>12</sup> which was passed, for amongst other reasons, to preserve the security, public security and property and for the establishment of public order. The term "industrial zone under Israeli administration" is mentioned in the security legislation in several statutes (henceforth these statutes will be referred to as the industrial zone laws). The State Comptroller's Office examined the laws of industrial zones and found the following:

In the industrial zone laws there is no mention of the names of the industrial zones under Israeli administration and their geographic location<sup>13</sup>, nor was the term "industrial zone under Israeli administration" defined. For comparison it will be noted that under Israeli law the term "industrial zone" is defined as "territory intended for industry according to a detailed plan as intended in the Planning and Building Law, 1965"<sup>14</sup>.

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<sup>12</sup> Security legislation is "legislation legislated by the IDF in the areas under military government, which are held by the IDF (Dictionary of IDF Terms, 1998).

<sup>13</sup> For comparison, it will be noted that the directives of the industrial zone laws are also applicable in "the area of Israeli settlements" in Judea and Samaria which were precisely defined by a detailing of the names of the settlements in the Order Concerning Management of Regional Councils (Judea and Samaria) (number 783), 1979, and in the Order Concerning Management of Local Councils (Judea and Samaria) (number 892), 1981 (henceforth: orders concerning management of councils). The jurisdictions of these settlements is marked on maps signed by the IDF commander in Judea and Samaria and annexed to the orders.

<sup>14</sup> Order for Encouragement of Capital Investments (determination of the areas of development areas), 2002.

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The State Comptroller's Office remarks that in the absence of a notation of the names of the industrial zones and their geographic location, and in absence of a definition of the concept "industrial zone under Israeli administration", it is not clear whether authority was provided to enforce the statutory provisions of these laws in the area in which the individual factory under Israeli administration functions, whether it functions on land whose designation was defined as industry or whether it was land not defined as such; and also in an industrial zone in which factories under Israeli administration function with no management body, such as the "Ale Zahav" industrial zone, which functions without an approved urban planning plan (see below); in addition to a zone in which factories under Israeli administration function on land whose purpose was not defined as industry in the city building plan. For example, the "Ale Zahav" industrial zone, which functions with no approved city building plan (see below). In this matter and in the absence of names of the industrial zones and their geographic location there is influence, amongst others, in everything related to the security check conducted for outgoing goods from these industrial zones to Israel. Details below:

Industrial zones under Israeli administration were determined in a Declaration Concerning Closing of the Territory (Israeli Settlements) (Judea and Samaria), 2002 (henceforth: Declaration Concerning Closing Territory or the Declaration) as a "closed military zone." In the Declaration it is determined that no person will enter, except for an Israeli, "to the closed zone and will not remain there, unless with a permit from the military commander or one appointed by him and in accordance with the conditions of the aforementioned permit." In the introduction to the Declaration it is determined that issuance of the Declaration "is essential for security reasons and in light of the special security circumstances prevailing in the region." Enforcement of the Declaration's statutory provisions has great importance, and it obligates a clear definition of the concept "industrial zone under Israeli administration" in consideration of the existing threats to the industrial zones, as the IDF defined them, and amongst them: an attack on or kidnapping of Israelis in the area; penetration of weapons, multipurpose materials<sup>15</sup> or attackers into Israel through goods leaving the industrial zones; theft of equipment and material, amongst others from factories holding multipurpose materials; and destruction of the manufacturing means and infrastructures of the industrial zones (see below in the chapter "declaration of industrial zones as closed military zones").

The Order Concerning Authorities for Protecting Public Security (Judea and Samaria) (number 1628), 2009 provides civilian guards who function in the industrial zones under Israeli administration with the authorities for conducting body searches, in vehicles, cargo and goods; to demand identification from a person and to confiscate possessions; to detain a person and associated authorities.

The Announcement Concerning Determination of Points for Transfer of Goods (Judea and Samaria), 2008, requires that the removal of goods in a commercial amount from the region to Israel and the bringing from Israel to the region will be done only via the passage points detailed in the addition to the announcement (henceforth: passages). At these passages a security check will be conducted of all goods, amongst others through utilisation of advanced technological means, such as means for x-raying goods

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<sup>15</sup> Various materials, amongst which are chemical materials existing in the free market which can be used for the preparation of explosives of various types.

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and a sniffer<sup>16</sup>. This obligation does not apply to goods whose origin is in industrial zones under Israeli administration or an Israeli settlement or a military facility, goods which can pass through any of the passages between Judea and Samaria to Israel<sup>17</sup>. The goal of the security check of goods is, amongst other things, to prevent the smuggling of weapons and attackers into Israel. The security arrangements and transfer of the goods in the passages is dubbed “back to back”<sup>18</sup>.

Implementation of the authorities of the industrial zone laws involves the imposition of limitations on freedom of movement and harming the privacy of the individual. The State Comptroller’s Office remarks that with the lack of a definition of the term “industrial zones under Israeli administration” it is not possible to define the geographic area in which it is possible to implement the civil security authorities, and they are liable to be implemented not in accordance with the authority given to them by law. Additionally, it is not possible to clearly define the industrial zones from where it is possible to transfer goods not via the “back to back” passages, and therefore security influences of the statutory provisions of the announcement concerning determination of points of transfer of goods are liable to be essentially harmed.

### Employment Permits

According to the Order Concerning Prohibition on Employment (West Bank region) (number 65), 1967, an Israeli will not open or manage in the area an industrial business and will not be employed in it, and additionally will not employ and will not work a person in it, unless with a permit from the authorised authority and in accordance with conditions of the permit (henceforth: employment permit).

Issuance of an employment permit allows the Civil Administration to conduct supervision, control and enforcement over those requesting employment permits. According to the Order Concerning Prohibition on Employment, the authority authorized in the matter of the order or one authorized for this by the regional commander may close a place operating in contravention of the statutory provisions of the order. Additionally, the Order Concerning Prohibition on Employment determines a punishment of three years imprisonment or a fine or both of them together for a violator.

Head of the Economy Branch of the Civil Administration, who is the authorized authority in the matter of the Order Concerning Prohibition on Employment, wrote in this matter in January 2009 to the Legal Advisor of Judea and Samaria and to the Deputy Head of the Civil Administration as follows: “vocation permits serve the factories which present them to authorities of interest (including government ministries)

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<sup>16</sup> A sniffer is a technological method for discovering explosives.

<sup>17</sup> Apart from agricultural produce in commercial amounts, which can only be transferred through some of the passages.

<sup>18</sup> “Back to back” – the practice of moving and examining goods in the passages between Israel and Judea and Samaria, according to which the goods arriving from one side of the passage are unloaded from the truck and passed through a security check, after which they are loaded onto a truck arriving from the other side of the passage and transported to their destination. In this way the connection between the transporter of the goods and the recipient is broken.

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as a document similar to a business license, which represents a declaration of the authorized authorities that the business is managed in accordance with the law.”

In the audit we see that the Civil Administration did not act to enforce the statutory provisions of the order on factories operating in the industrial zones under Israeli administration which are functioning without vocation permits, and did not determine the criteria for issuance of said vocation permits. Furthermore, we see from the audit that as of January 2008, all of the factories in the “Mesila” industrial zone are functioning without vocation permits from the Civil Administration, and despite this the Civil Administration issued to them employment permits to employ hundreds of Palestinian workers, in contravention to the Order Concerning Prohibition on Employment, which prohibits an Israeli from employing workers without vocation permits.

Head of the Economy Branch wrote in this matter in January 2009 to the Legal Advisor of Judea and Samaria and the Deputy Head of the Civil Administration as follows: “in accordance with the recommendations of the Legal Advisor to Judea and Samaria, **we recommend not to issue vocation permits** to the factories (in “Mesila”) as the factories are not organized in planning (emphasis in original).

A representative of the Legal Advisor of Judea and Samaria announced to the State Comptroller’s Office in May 2011 that “there exists a need to reorganise the subject vis-à-vis the Economy Branch (in the Civil Administration) to amend the procedures for issuing employment permits for Israeli employers.” At the time of ending the audit, June 2011, these procedures had yet to be established.

The State Comptroller’s Office remarks that in its dealings concerning the factories in the “Mesila” Industrial Zone the Civil Administration passed over the two articles: on the one hand it did not issue vocation permits to the factories in the “Mesila” Industrial Zone, and on the other it permitted the continued operation without vocation permits, and even gave them permits to employ Palestinian workers. The State Comptroller’s Office further remarks that the operation of the factories with no vocation permits harms the ability of the Civil Administration to establish supervision and control of the factories. The Civil Administration must enforce the statutory provisions of the Order Concerning Prohibition on Employment, and to determine the criteria according to which the vocation permits will be issued.

### **Enforcement of Labour Laws in Israel Factories in Judea and Samaria**

#### **1. Application of Israeli labour laws in Judea and Samaria**

In Judea and Samaria there exist tens of places of employment in which Israelis employ Israelis and Palestinians. In the area of the Israeli settlement in Judea and Samaria Israeli labour laws apply to the Israelis workers, laws which do not apply to Palestinian workers<sup>19</sup>.

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<sup>19</sup> The IDF Commander in Judea and Samaria applied in the framework of security legislation some of the directives of Israeli legislation concerning labour laws and labour relations between Israelis in the areas of Israeli settlement in Judea and Samaria through their addition to the statutes of the regional councils (Judea and Samaria), 1979, and the statutes of the local councils (Judea and Samaria), 1981.

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In October 2007 the High Court sitting as the High Court of Justice ruled in the matter of the law applicable to labour relations in the area of Israeli settlement in Judea and Samaria (henceforth: “Kav Laoved” matter)<sup>20</sup>. The petition focused on the ruling of the National Labour Court in the matter of petitions submitted to the regional labour courts by Palestinian workers who were employed in Judea and Samaria by private Israeli companies whose factories were in Judea and Samaria, and by the Givat Zeev Municipal Council. The petitioners requested that they will be paid minimum wage, severance pay and various social rights in accordance with the Israeli law. The High Court accepted the petition and determined that the existing distinction between an Israeli worker and a Palestinian workers employed in Judea and Samaria is in the circumstances invalid and that in accordance with the rules of selecting law, “there is no choice but to rule that the law which must be applied to the relevant labour relations – is the law possessing the “majority of affinities” to employment contracts –the Israeli law.”

The ruling noted that “these rules, which are formed in a normative space influenced by fundamental values of the Israeli society and informed by the entire community of nations, come to prevent unequal employment patterns on the basis of which is a distinction based solely on the national and ethnic affiliation of the workers.”

In wake of the ruling, the Legal Advisor of the Ministry of Industry wrote to the Government Legal Advisor in December 2007 that “in the Ministry of Industry, in the Legal Office and Enforcement Divisions, arose questions concerning the means (of the ruling) in general and concerning actions of the Ministry of Industry in particular.” It was further written that in November 2007 a discussion was convened on the topic of the influence of the ruling on the activities of the Ministry of Industry, in which the Ministry divisions were directed to act as detailed in his letter, and he reports this to the Government Legal Advisor so that the latter would possess the possibility of directing him. In the same discussion it was agreed that the Legal Advisor of Judea and Samaria would act to examine the need to amend security legislation concerning labour law, in coordination with the Ministry of Industry and Ministry of Justice. In response to his letter, the Government Legal Advisor office responded in January 2008 that the Government Legal Advisor requested from Mr. Melchiel Blass, the Deputy Government Legal Advisor (counseling), to take care of the subject.

Knesset Member then, Ran Cohen, Chairperson of the Knesset Special Committees for Examining the Problem of Foreign Workers, wrote in this matter in July 2008 to the Government Legal Advisor and Coordinator of Government Actions in the Territories then, Brigadier (res.) Yosef Mishlev, that “in light of the High Court of Justice ruling... which recognized the obligation to apply labour laws to employers and employees in Judea and Samaria, the committee calls on the Government Legal Advisor, the Central Command Commander, and Coordinator of (Government) Actions in the Territories, to quickly reach an arrangement in the matter and a summary of the means for applying and enforcing all the labour laws including the safety and hygiene laws, on the Palestinian workers employed by Israeli employers in Judea and Samaria. As Chairperson of the Committee I expect that in ten months following the High Court of Justice ruling on the subject, that the necessary steps will be taken to implement the decision.”

In March 2011, some 3.5years after provision of the ruling in the matter of “Kav Laoved”, the Legal Advisor of Judea and Samaria sent to the Deputy Government Legal Advisor (then) an opinion in the

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<sup>20</sup> HCP 5666/03 “Kav Laoved” Association and others v National Labour Court in Jerusalem and others, Takdin.

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matter of “according the labour laws concerning Israeli employers in Judea and Samaria to laws in Israel.” In the opinion, which was founded on internal committee work conducted by the Office of the Legal Advisor of Judea and Samaria, was written that legislative amendments are required for, amongst others, the need to enforce the ruling of the “Kav Laoved” matter.

In May 2011 a discussion was conducted headed by the Deputy Government Legal Advisor on the matter of “according labour laws concerning Israeli employers in Judea and Samaria”, and it was decided on the establishment of a joint professional team with the Legal Advisor of Judea and Samaria, the Ministry of Justice, Ministry of Industry and Ministry of Finance.

In August 2011, some four years after the High Court of Justice ruling, the situation remains the same: Some of the Israeli legislative statutory provisions concerning labour laws apply only to labour relations between Israeli employers and Israeli employed and only in the areas of Israeli settlement in Judea and Samaria, and do not apply to labour relations between Israelis and Palestinians. It will be noted that outside of the areas of Israeli settlement in Judea and Samaria, the Israeli legislative statutory provisions concerning labour laws of an Israeli employer in Judea and Samaria do not apply, in relation to all his workers, Israelis and Palestinians both<sup>21</sup>.

The Deputy Government Legal Advisor, Mr. Melchiel Blas, noted in response to the Office of the State Comptroller in September 2011 that his office is dealing with various matters concerning Judea and Samaria, “and it deals with according the area’s legislation to the changing needs from time to time, in all areas of government.” He further noted that “the task of a comprehensive examination of labour laws, which was agreed in a meeting conducted in the Ministry of Industry...has taken the Legal Advisor of Judea and Samaria more than three years,” according to him, in March 2011 the Legal Advisor of Judea and Samaria turned to him for the first time with a suggestion to review the application of labour laws in Judea and Samaria and to move the work of the joint committee on the topic; “now, as we have before us a detailed and comprehensive opinion, I immediately initiated a meeting on the topic in my office... On 11.5.11 in wake of the meeting tasks were assigned, and extensive mapping work began in the Ministry of Industry and by the Legal Advisor of Judea and Samaria for examining the relevant labour laws for Judea and Samaria and to examine the matter of adopting the laws. At the conclusion of the initial mapping a continuation meeting was conducted in my office on 8.8.11 in which the laws which must be adopted for application were discussed, in addition to topics related to the enforcement authority of supervisors of the Ministry of Industry in Judea and Samaria.”

The State Comptroller’s Office remarks that despite the ruling of the High Court of Justice in the “Kav Laoved matter” in which it was determined that the existing distinction between an Israeli worker and a Palestinian worker employed in Judea and Samaria is, in the circumstances, invalid, work of the inter-ministerial committee on the topic of examining the need for amendments to security legislation concerning labour laws is just at its beginning. The State Comptroller’s Office further remarks on the prolonging of the opinion in the matter under discussion with the Legal Advisor of Judea and Samaria.

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<sup>21</sup> Excluding the obligation to pay minimum wage to every worker employed in Judea and Samaria by an Israeli employer by force of the Order Concerning Employment of Workers in Certain Places (Judea and Samaria) (number 967), 1982.

In the opinion of the State Comptroller's Office, due to the importance of the matter, its sensitivity and attendant political and economic meanings and in light of the ruling of the High Court of Justice, it is appropriate that the Coordinator of Government Activities in the Territories, Head of the Civil Administration, the Ministry of Industry and the Legal Advisor of Judea and Samaria, will act expediently with the Ministry of Justice to examine the need to amend security legislation concerning labour laws in Judea and Samaria, and will bring for decision by the political echelon the possible means of action for implementing the changes.

## **2. Payment of Minimum Wage**

The Order Concerning Employment of Workers in Certain Places (Judea and Samaria) (number 967), 1982 (henceforth: Order Concerning Employment of Workers), issued by the IDF Commander in Judea and Samaria, determined that a person employed in an Israeli settlement in Judea and Samaria "is eligible to receive from his employer wages that are not less than minimum wage, and also will be eligible for a cost of living raise, all according to their validity in Israel from time to time." A settlement for the matter of the Order is any of the settlements in Judea and Samaria – regional councils and settlements in the area of the regional councils – that were established by orders of the military commander and demarcated in maps signed by him. According to the statutory provisions of the Order Concerning Employment of Workers, an employer who employs a person in contravention of the statutory provisions of the order is liable to receive a fine or one year imprisonment.

The Employment Staff Officer<sup>22</sup> in the Civil Administration, who serves as the responsible official in the matter of the Order Concerning Employment of Workers, wrote in June 2006 in the matter of the need to apply the necessity of paying minimum wage in Judea and Samaria also outside of the Israeli settlements, that it "will represent an equal basis for fair competition between factories operating in identical fields, when the situation today is a structural situation of unfair competition due to differences in salary payments, and on the other hand will create the possibility to absorb Israeli workers in factories outside of the (Israeli) settlements."

In the amendment made in the Order Concerning Employment of Workers in November 2007 and which became valid in January 2008, it was determined, amongst other things, that the statutory provision of the order obligating payment of a wage to a worker that is not less than minimum wage will be applicable "also to the employment of a resident of the region or a person, according to the matter, when the employment is conducted by an Israeli employer in the region, even outside of the (Israeli) settlement (in Judea and Samaria)." This amendment was done, amongst other reasons, on the backdrop of the inapplicability of the statutory provisions of the original order concerning the employment of Israeli and Palestinian workers outside of the area of the Israeli settlements in Judea and Samaria and amongst them in the industrial zones under Israeli administration and on the backdrop of the High Court of Justice ruling in the "Kav Laoved" matter.

From the force of the appointment of the Employment Staff Officer in the matter of the Order Concerning Employment of Workers, he is the responsible for conducting supervision and enforcement of the

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<sup>22</sup> The Employment Officer is professionally subordinate to the Ministry of Industry, and administratively to the Head of the Civil Administration, and his activities are coordinated with the Officer for the Economy.

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existence of the statutory provisions of the order and for this he was given, amongst other things, every authority and every appointment granted him in accordance with the Jordanian labour law to the Minister of Social and Labour Matters (henceforth: the Jordanian Labour Minister) and to the workers of his office.

An Israeli employer interested in employing Palestinian workers in Judea and Samaria is required to submit to the Employment Staff Officer a signed request, on which he will note the details of the workers he requests to hire for the purpose of issuing a labour license for each of them (henceforth: employment permit). The request includes the declaration that “non-compliance with the statutory provisions in accordance with the law or security legislation concerning employment of workers and their employment conditions, will also result in addition to every statutory provision in law and the security legislation the annulment of the permit (employment) or its non-renewal.”

In the conducted audit we see that the Civil Administration and Ministry of Industry did not conduct ongoing examinations of the factories in the industrial zones under Israeli administration in Judea and Samaria, in order to enforce the obligation to pay minimum wage on the Israeli employers in Judea and Samaria. See details below:

In February 2006 a discussion was held concerning enforcement of the payment of minimum wage to Palestinians employed in the Israeli settlements in Judea and Samaria, headed by the then Deputy Government Legal Advisor and representatives of the Ministry of Justice, Ministry of Industry, the Military Legal Advisor and the Civil Administration. The Employment Officer of the Civil Administration noted in this meeting that the Civil Administration is not able to enforce the statutory provisions of the Order Concerning Employment of Workers and the obligation to pay minimum wage to Palestinian workers employed in Israeli settlements in Judea and Samaria, and he has not the necessary personnel to conduct enforcement in this subject. The Deputy Government Legal Advisor summarized in this same meeting that the Enforcement Department of the Support Unit for Foreign Workers (henceforth: support unit) in the Ministry of Industry will enforce the statutory provisions of the order in this subject.

In April 2006 the Employment Staff Officer signed the letter of appointment authorising the labour supervisors of the support unit to serve as supervisors in the matter of enforcing the obligation to pay minimum wage in Judea and Samaria, in accordance with the Order Concerning Employment of Workers.

In the government decision of 13.4.08 it was determined that the Ministry of the Interior will establish a support unit under the name “Population, Migration and Border Passage Authority” (henceforth: Migration Authority), and that the support unit in the matter of foreign workers in the Ministry of Industry will be transferred to the Ministry of the Interior. On 15.6.08 the government decided that enforcement of labour laws in areas concerning the guarantee of Palestinian workers’ rights will remain under the Ministry of Industry. In June 2010 responsibility for enforcing the obligation to pay minimum wage in Judea and Samaria, in accordance with the Order Concerning Employment of Workers, was transferred from the support unit to the Enforcement Department of the Administration of Organising and Enforcement of the Ministry of Industry.

The State Comptroller’s Office remarks that in light of the transfer of authority for enforcing the obligation to pay minimum wage in Judea and Samaria in accordance with the Order Concerning Employment of Workers in Judea and Samaria from the support unit to the Enforcement Department, the

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Employment Staff Officer should have acted to amend the appointment letter of the work supervisors from April 2006.

In the audit we see that from April 2006 and until June 2010 the support unit in the Ministry of Industry conducted ongoing audits on the subject of paying minimum wage in only four out of some 20 industrial zones in Judea and Samaria: Barkan, Ariel-West, Mishor Adumim and “Mesila”. The support unit and Employment Staff Officer did not determine a procedure that would organise the division of labour between them and the means of working in everything related to enforcement activities in Judea and Samaria, which are common to work supervisors of the support unit and the Employment Staff Officer, including the exchange of information between them. We further see that the support unit and Employment Staff Officer did not act to determine a common enforcement policy and priorities in the matter of supervision and enforcement of the order’s regulations.

Concerning the activities of the Enforcement Department we see that beginning from June 2010 and until June 2011, the department did not conduct ongoing audits in the matter of the obligation to pay minimum wage of the industrial factories under Israeli management in Judea and Samaria, in accordance with the directives of the Order Concerning Employment of Workers, and that its actions on this topic were primarily conducted following complaints. We further see that the Employment Staff Officer and the Enforcement Department did not determine a procedure to arrange the division of labour and the means of working in everything related to the common enforcement activities for work supervisors of the Enforcement Department and the Employment Staff Office, including the matter of transferring information between the two, and that the two bodies have yet to determine a shared enforcement policy and priorities in the matter of supervision and enforcement of the directives of this order.

In the topic of enforcement of minimum wage, the Head of the Economy Branch wrote in October 2010 to the Head of the Civil Administration and his Deputy, amongst other things, that in the past it was agreed by the Government Legal Advisor that the support unit must also implement enforcement of the employment of Palestinian workers in Judea and Samaria; however due to a lack of personnel and security problems “review of the employment of Palestinian workers in Judea and Samaria has not been conducted for several years, apart from two audits that were conducted in the past year... We receive reports today of the inappropriate employment of Palestinians inside of the settlements... today, documented supervision of the payment of minimum wage and social rights is not conducted for the employment of Palestinian workers in the settlements, similar to the employment of Palestinian workers inside of the Green Line... this non-conduct of supervision... and the absence of control and actual enforcement, result in the expansion of improper phenomena of real harm to the fundamental rights of the Palestinian workers and invites international criticism.”

The Ministry of Industry responded to the State Comptroller’s Office from October 2011 that it prepared a new authority for the work supervisors which would soon be signed by the Minister of Industry, and that he “is consolidating a procedure of working methods in everything concerning the parallel authorities existing for the department and the Staff Employment Officer.” It was further noted that “following the opinion of the legal advisor (of the Ministry of Industry) from 2007 concerning the Givat Ze’ev High Court of Justice ruling (“Kav Laoved” matter), and in consideration of the inter-ministerial work headed by the Deputy Legal Advisor concerning the enforcement of labour laws in Judea and Samaria, a rethinking is being conducted concerning the enforcement authorities in Judea and Samaria.”

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The State Comptroller's Office remarks with severity that with the absence of the necessary audit in the industrial zones under Israeli management of Israeli employers on the subject of paying minimum wage, harm is likely to be caused to the wages of the Palestinian workers and their rights. Additionally, non-enforcement of the Order Concerning Payment of Minimum Wage is liable to result in unfair competition between factories which fulfill the obligation to pay minimum wage and those which pay wages less than minimum wage. The State Comptroller's Office notes that non-enforcement of the law in these subjects harms the image of the state of Israel and its status in international public opinion, and presents it as a state which does not take care to enforce the law and protect the rights of Palestinian workers employed by Israeli employers in Judea and Samaria.

In the opinion of the State Comptroller's Office, COGAT and the Civil Administration must act in coordination with the Ministry of Industry to enforce the Order Concerning Employment of Workers, in order to ensure that the wages of the workers employed by Israeli employers in Judea and Samaria will not be less than minimum wage.

### 3. Workplace Safety and Hygiene

The actions in the fields of workplace safety and hygiene are intended to ensure the well-being and health of workers in their places of work, to protect property and equipment and to prevent economic damages.

According to data of the Civil Administration, in June 2011 there were 23,485 valid employment permits for Palestinians employed by Israelis in Judea and Samaria, primarily in the area of construction (12,908), industry (6,051), services (2,792) and agriculture (1,617). 25% (5,809) of them were for Palestinians employed in the industrial zones under Israeli administration who were employed in the fields of industry such as metal, chemicals, plastics, furniture, textile and food. As noted, in 2009 some 4,100 Israeli workers were employed in the fields of industry in Judea and Samaria. Some of the factories hold and use dangerous materials in the meaning of the Workplace Safety Regulations (Safety, classification, packing, notation and labeling of packages edition), 1998.

**Normative basis for labour safety and hygiene laws in Judea and Samaria:** At the foundation of labour safety laws in Judea and Samaria stand the Jordanian legal statutory provisions, which refer to the topic "health, safety and comfort." The Jordanian labour law determines the authorities of the ministers responsible for implementing the law, and amongst them the Jordanian Minister of Labour whose authorities include, amongst others, the authority to appoint labour supervisors.

In the framework of the security legislation, the IDF forces commander in Judea and Samaria will apply part of the Israeli legislation concerning labour laws on labour relations between Israeli employers and Israeli workers in the areas of the Israeli settlement in Judea and Samaria via its addition to the statutes of the regional councils (Judea and Samaria), 1979, and the regional council statutes (Judea and Samaria), 1981 (henceforth: council statutes). To these statutes were not added some of the laws at the foundation of labour safety laws in Israel, such as the Order of Safety at Work (combined version), 1970, the Law of Organisation of Supervision at Work, 1954, and their applicable sub-legislation.

In Israel the Service for Supervision of Work was established from force of the Law for Organisation of Supervision at Work, which functions as an administrative department in the Ministry of Industry (henceforth: Department of Supervision). The roles of the Department of Supervision in accordance with

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this law are primarily: to supervise fulfillment of the directives of the statutory provision which is implemented under authority of the Minister of Industry; to supervise the safety, professional hygiene and welfare in work places, and to instruct workers and employers. The primary laws in the subjects of safety and occupational hygiene at work – including numerous statutes and orders that were issued from their authority – for whose enforcement the Department of Supervision is responsible, are: Law of Organisation of Supervision at Work and the Directive of Safety at Work.

Actions of the Department of Supervision in the fields of workplace safety and hygiene are intended to reduce the dangers to workers, and to ensure that the employers are implementing the necessary actions to protect the well-being and health of the workers. The Department of Supervision conducts supervision and enforcement actions of the safety laws through work supervisors, whose role is to visit work places under their supervision, to identify in them safety failures and to instruct the holders and the employers concerning the means they must take to remove these failures, in order to prevent work accidents.

**Enforcement of Workplace Safety and Hygiene Laws:** To implement the directives of labour laws in Judea and Samaria, including laws of workplace safety, the Head of the Civil Administration appointed a Staff Officer for Labour Matters. By power of the appointment he was given, amongst other things, every authority and every appointment provided in accordance with the law to the Jordanian Labour Minister and the workers of his ministry. In the beginning of 2005 the Deputy Head of the Civil Administration decided that the position of Staff Officer for Labour Matters would be annulled<sup>23</sup>, and that his authorities and fields of responsibility would be transferred to the Staff Officer for Employment in Judea and Samaria who is responsible for, amongst other things, the issuance of employment permits for Israeli employers who request to employ Palestinians in Israel and Judea and Samaria. The Staff Officer for Employment Unit (henceforth: Employment Unit) provides service to the public of employers through four employment centres functioning in Judea and Samaria, and it has seven workers.

From the audit we see that the job description of the Staff Officer for Employment includes responsibility and authority in matters of employment, but does not include responsibility and authority in matters of work, including in the topic of supervision of workplace safety. Moreover, we see that the Employment Unit does not have workers whose job is defined as supervision of the areas of workplace safety, and it does not conduct supervision in this area. In the audit we see that until August 2010, the Civil Administration employed an advisor and supervisor for workplace safety and hygiene in the framework of external sourcing for the implementation of review of safety in Israeli factories in Judea and Samaria, but from August 2010 and until conclusion of this audit, June 2011, the Civil Administration did not conduct a review of the workplace safety and hygiene in the factories under Israeli administration in Judea and Samaria, in order to ensure the well-being and health of the workers there.

The Knesset Special Committee for Examining the Problem of Foreign Workers (henceforth: the committee), chaired by then MK Ran Cohen (henceforth: committee chairperson) conducted in June 2007 a meeting in which it was discussed, amongst other things, enforcement of workplace safety and hygiene laws concerning employers in Judea and Samaria. Representatives of the Department of Supervision of the Ministry of Industry (henceforth: representatives of the supervision department), who participated in

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<sup>23</sup> It was determined in 2005 that the Civil Administration would annul a number of personnel positions, amongst them the Staff Officer for Work Matters.

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the meeting, noted to the committee that in contravention to the supervision which they conduct in Israel, “there is no activity by us (in Judea and Samaria) on an organized and ongoing basis due to a lack of resources and indecisiveness in the matter.” It was further noted that the safety and hygiene laws in Israel do not apply to Judea and Samaria, and prominent legislative gaps exist in this field in contrast to the legislation in this field in Israel and due to a lack of ensuring the supervision actions, no enforcement is conducted at all in the area of workplace safety and hygiene in Israeli factories in Judea and Samaria.”

In an additional session of the committee from July 2008, the committee chairperson noted that from the perspective of workplace safety and hygiene in Israeli factories in Judea and Samaria “the situation is most terrible” and “borders on total lawlessness.” Representatives of the Supervision Department noted in this same session that department supervisors do not act in Judea and Samaria. The Employment Staff Officer noted in this same session that the topic of supervision of workplace safety laws “remains as an addendum” and he implements “what is urgent and acute.”

Committee chairperson wrote in July 2008 to the Government Legal Advisor and the Coordinator of Government Activities in the Territories at that time, that “from the discussion (in the committee) a difficult situation of a lack of enforcement of safety and hygiene laws and a lack of compatibility of the legislation and arrangements in the areas of Jewish settlement in Judea and Samaria for Israeli employers in Judea and Samaria...the committee calls on the Government Legal Advisor, the Central Command Commander and the (government) activities coordinator in the territories, to quickly reach an arrangement in the topic and a summary of the means for applying and enforcing all the labour laws, including the workplace safety and hygiene laws, on the Palestinian workers employed by Israeli employers in Judea and Samaria.”

In wake of the letter by the committee chairperson from July 2008, the Deputy Government Legal Advisor requested the response of the Legal Advisor of the Ministry of Industry and the Legal Advisor of Judea and Samaria. The legal advisors responded in September 2008 that “already today there exist difficulties in enforcing the existing arrangements...following signature of the Interim Agreement the Civil Administration’s Unit for Workplace Supervision was dismantled...the Employment Staff Officer...is the sole authority who deals with the area of workplace safety and hygiene in Judea and Samaria and this is only partially...the authority supposed to deal with enforcing safety and hygiene in Israeli settlement in Judea and Samaria is the Supervision Unit of the Ministry of Industry, but in practice this has not been arranged.”

The Legal Advisor of Judea and Samaria sent in September 2008 to the Legal Advisor of the Ministry of Industry a suggested draft legislative amendment concerning adoption of the workplace safety laws applicable in Israel in the area of Israeli settlement in Judea and Samaria. In the draft was written that “there exists a clear need to conduct a new comprehensive arrangement in the area of workplace safety laws in Judea and Samaria (at least as it pertains to **Israeli employers**)...amendment of the proposed legislation will therefore be an **additional step** (in continuation of arranging the area of minimum wage) during the overall adoption, with the necessary changes, of Israeli labour laws in Judea and Samaria (emphasis in original). It should be noted that he requests the comments of the Ministry of Industry’s Legal Advisor to the suggested legislative amendment, and that “upon receipt of the comments, we will present the legislative amendments before the Deputy Legal Advisor of the Government (consulting), while conducting consultations for the purpose of bridging the gaps of positions (as much as they will

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exist). In continuation, with receipt of his position, and subordinate to it, we will act to pass the amendments for approval of the IDF Commander in Judea and Samaria.”

In October 2008 an “interim response” was sent from the Office of the Legal Advisor to the Government (consulting) to the letter of the committee chairperson, in which it was written “a draft was recently prepared by the military prosecutor of security legislation concerning adoption of the workplace safety laws...in the area of Judea and Samaria (in the area of the Israeli local councils and even outside of the areas of settlement). The proposed legislation was sent for review to the Legal Advisor of the Ministry of Industry. “

In January 2009 the Legal Advisor for Judea and Samaria wrote to the legal Advisor of the Ministry of Industry that “we have yet to receive your comments to the proposed legislation concerning this important topic...in the backdrop to promoting the proposed legislation stand the difficulties...resulting from the non-existence of the appropriate statutory infrastructure for enforcing workplace safety laws in the Israeli settlements in Judea and Samaria.”

Up to the time of the audit, June 2011, more than 2.5 years after the Legal Advisor to Judea and Samaria sent his proposed for legislative amendment to the Legal Advisor of the Ministry of Industry, it has yet to receive a response.”

The Deputy Government Legal Advisor (consulting), Mr. Melchiel Blass, said in his response to the Office of the State Comptroller from September 2011, that when he “requested to enquire the reasons for which the Ministry of Industry does not promote treatment of the aforementioned legislative amendment (staff work on the topic of adopting workplace safety laws)”, the Legal Office of the Ministry of Industry replied in July 2009 that “the problem is lack of resources.” It was further noted that “when the Ministry of Industry did not advancement treatment of the proposal to adopt workplace safety laws in Judea and Samaria for its own reasons, it is not possible to place responsibility for this on the Ministry of Justice.”

The IDF responded to the State Comptroller’s Office from October 2011 that despite the reminders sent by the Office of the Legal Advisor of Judea and Samaria to the Legal Office of the Ministry of Industry, the latter recently responded to correspondence of the Legal Advisor of Judea and Samaria from January 2009 only in 2011, and the response noted that “in accordance with the priorities of their office (Ministry of Industry), they will examine the proposal toward the end of 2011.”

In October 2010 the Head of the Economy Branch wrote to the Head of the Civil Administration and his deputy, that “also in the area of safety all the bodies contacting (us) on behalf of workers perceive the Civil Administration as responsible for the management and enforcement of the workplace safety statutes and more than once our organization is listed in legal petitions as those legally accused due to failures in implementing enforcement.”

In January 2011 a meeting was held on the topic “safety in Judea and Samaria”, headed by the Executive Director of the Ministry of Industry, Mr. Sharon Kedmi, and with the participation, amongst others, of the Director of the Enforcement Department and the Staff Officer for Employment of the Civil Administration. The Director of the Enforcement Department noted in the meeting that “the department will find it difficult to fulfill the legal requirements without an increase in personnel and resources.” In the

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summary of this same meeting it was written that the topic will enter the work plans of the department and will be given preferential treatment in the framework of the limitations.

The Ministry of Industry responded to the State Comptroller's Office from October 2011 that the findings highlighted by the State Comptroller in this audit reflect "the situation known to the Department of Enforcement about the work in the industrial zones in Judea and Samaria." Also today the Department of Enforcement has a chronic lack of manpower and has no, at this time, capacities and supervision resources to expand its actions beyond the Green Line." The Ministry of Industry further noted "that the department is in a process of expansion and filling positions; however this is a slow and long process, and as noted will serve to close numerous gaps that have occurred over the years."

The State Comptroller's Office remarks to the Civil Administration and the Ministry of Industry about the continued failure for years of the lack of substantial supervision and enforcement in the field of safety and hygiene in Israeli factories in Judea and Samaria, which has to point to ongoing disregard for human life. This conduct does not meet proper government procedures, and it places in real danger the well-being, health and lives of the workers in the industrial zones. The Civil Administration, which is responsible for ensuring the rights of the residents of Judea and Samaria, with involvement of COGAT and together with the Ministry of Industry and the Ministry of Justice, should act expediently to apply the appropriate laws in the field of workplace safety: to ensure ongoing enforcement of the law on Israeli employers in Judea and Samaria, together with ensuring the supervisory activities, in order to ensure the well-being and health of all the workers employed in Judea and Samaria – Israelis and Palestinians."

### 4. Insurance of Palestinian Workers

In 1976 the Order Concerning Insurance for Workplace Injuries (Judea and Samaria) (number 662), 1976 (henceforth: Order Concerning Insurance) was legislated, for the sake of "conducting proper government and protecting the rights of workers in the region." According to the directives of the order, "an employer will not employ a worker unless he has a valid policy issued in accordance with the directives of this order concerning the worker for coverage as mandated." The punishment determined for violation of the order is one year of imprisonment, a fine or both. It was further determined in the order that the regional commander would appoint an "authority" for the purposes of insuring these workers, and that "a policy for coverage of mandatory insurance coverage will not be issued unless the conditions and including in this the cost of insurance will be approved first by the authority after consultation with the supervisor<sup>24</sup>."

In 2005 the amendment to the Law of National Insurance (combined version), 1995 (henceforth: Law of National Insurance) became valid, which determines that the directives of the National Insurance Law which relate to insurance for workplace injury, with mothers' insurance and workers' rights insurance in cases of bankruptcy and dismantlement of a corporation will apply, amongst others, to a Palestinian worker employed by an Israeli in military sites or in the areas of Israeli settlements in Judea and Samaria. In this matter the representative of the Legal Advisor of Judea and Samaria wrote to the Staff Officer for Employment that there is nothing in the application of the aforementioned amendment to the National Insurance Law to detract from the obligation of an Israeli employer in Judea and Samaria to insure his

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<sup>24</sup> The "supervisor" is one appointed by the region's commander to implement the Order Concerning the Law of Work (Workplace Injuries) (Judea and Samaria) (number 663), 1976.

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workers with a policy for workplace injury in accordance with the Order Concerning Insurance, in places in which their employment is outside of the areas of Israeli settlement. It will be noted that in Judea and Samaria, tens of Israeli places of employment exist which are not in the area of Israeli settlement, and in which thousands of Palestinians are employed.

From the audit we see that the Civil Administration did not appoint an “authority” for the purposes of insurance matters, did not enforce the order’s directives on Israeli employers and did not conduct supervision so that Israeli employers would indeed acquire insurance policies for the Palestinian workers they employ outside of the area of Israeli settlements in Judea and Samaria, as mandated by the order.

The State Comptroller’s Office remarks that in light of the importance of the topic of workers’ insurance in their places of employment, and in order to ensure insurance coverage of all Palestinians employed by Israeli employers in Judea and Samaria, the Civil Administration must enforce the directives of the Order Concerning Insurance.

### **Securing Industrial Zones**

In the industrial zones of Judea and Samaria work thousands of Palestinians and Israelis. For example, in the Barkan industrial zone work some 3,000 Palestinians and some 2,500 Israelis. Some of the industrial zones in Judea and Samaria are situated in the heart of Israeli settlements and close to the settlers’ homes. There are factories and businesses in the industrial zones which operate 24 hours a day for seven days a week, in which Palestinian workers are also employed.

The Civil Administration holds overall responsibility for security in Judea and Samaria, which includes the security of the industrial zones via the territorial military brigades. Civil security firms generally conduct the ongoing security in the industrial zones under Israeli administration in Judea and Samaria, under supervision of the local military security coordinator, or under responsibility of the security officer employed, generally, by the local council. In the framework of security activities the security companies conduct, amongst other things, a check of the Palestinian workers and the prevention of entry to those for whom their employers do not have employment permits in their names, and a check of the vehicles entering the industrial zones and leaving them.

From the Civil Administration documents we see that the industrial zones under Israeli administration represent a security weak point, and they are liable to serve as a target for enemy terrorist activity such as attacks and kidnappings of Israelis located there. In the past there occurred several terror attacks in the industrial zones and their surrounding areas, which included the placing of bombs, shooting and the penetration of a terrorist with an explosive belt through the entrance of the “Mesila” industrial zone and murder by gunshot of two Israelis who stood close to the gate. The Civil Administration commander noted in this matter that “the sole way to prevent (the attack) was to meet the rules and procedures agreed upon on the subject of securing and daily activities of the place between the brigade, the Civil Administration and owners of the factories in the industrial zone.”

It should be noted that in the industrial zones in Judea and Samaria are factories which possess stocks of multi-purpose material which are liable to assist enemy agents in preparing explosives for conducting attacks in Israel and Judea and Samaria. In this matter it is appropriate to emphasise that goods whose source is the industrial zones under Israeli administration and whose destination is Israel do not require

examination in one of the “back to back” passages while being transferred to Israel. In these passages a full security check is conducted by, amongst other things, the implementation of technological means, such as x-rays of goods and sniffer.

Following are the findings in the matter of security in the industrial zones under Israeli administration in Judea and Samaria:

### **1. Security Components**

In the statutory regulations<sup>25</sup> of the industrial zones in Judea and Samaria, approved by the High Planning Committee of the Civil Administration in Judea and Samaria<sup>26</sup>, it was determined in the chapter “security components” that the initiator of the industrial zone plan is obligated to establish the following security components: net fence, peripheral lighting, peripheral path, guard house and gate; it was further determined in the regulations that the security components will be established in accordance with technical blueprints to be determined by the Home Front Command and that building permits will not be issued by the authority authorized for this, until it is presented with a permit of the Home Front Commander or the Defence Officer of the Judea and Samaria Division that the necessary security components were established.

In the framework of the staff work conducted by the Central Command on the subject of security regulations in the industrial zones in Judea and Samaria, a representative of the Judea and Samaria Legal Advisor expressed his opinion in October 2008 on the subject of “securing the industrial zones and quarries,” and wrote that from the authority of the Order Concerning Taking Security Measures (Judea and Samaria) (number 1447), 1996 (henceforth: Order Concerning Taking Security Measures), wide authority is given to the military commander to order the taking of security measures toward a person, land or property, if in his opinion these means are required to preserve the security of the residents of Judea and Samaria or one located there, their property or the public order, and the order authorizes the military commander to prohibit a person from making use of land or property as long as the security measures he has ordered have not been established. The representative of the Legal Advisor of Judea and Samaria further wrote in his opinion that security measures the establishment of which the military commander is able to order and impose on a person “are numerous and varied”, such as: establishment of a fence, paving of a patrol road, fixing of lights, and that it appears that from force of his authority he is able to give orders for the taking of security measures, such as placing of a guard or security check in the entrance to an area. The Order Concerning the Taking of Security Measures even authorizes the military commander to determine who is responsible for the expenses of the security measures, and from his authority he can impose these expenses, in all or in part, on the land or property owner or on a person in whose possession the security measures exist.

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<sup>25</sup> The statutory regulations are an inseparable part of the urban plan which contain details such as the division of territories, special conditions, lists of purposes, building uses and limitations, environmental instructions, etc.

<sup>26</sup> The High Planning Committee of the Civil Administration is the highest planning instance in Judea and Samaria, and its decisions obligate the various planning authorities in Judea and Samaria. Its position is similar to that of the National Committee for Planning in Israel.

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The audit team inspected seven industrial zones in Judea and Samaria in April, May and June 2011, and saw that in two of them the necessary use of security measures was not taken; in three some of the security components were lacking in accordance with the building plan; in three were even found vehicles with Palestinian license plates entering the areas without inspection; and in four there was no inspection of those entering the area of the industrial zones.

The IDF responded to the State Comptroller's Office from October 2011 as follows: "in a large number of industrial zones the security components do not exist, which harms the security effectiveness; To complete what is lacking requires a substantial budgetary investment; in general the responsibility for the topic lies with the other government ministries; An analysis of the security threats and needs puts as a top command priority the employment and investment of resources to protect the settlements and education institutions, which also suffer from a lack of budget to complete all the security components; The Central Command conducts a threat assessment policy which is the product of ongoing command work according to which priorities are set." The IDF further noted that it was agreed between the Central Command and Civil Administration that "in the framework of the approval of establishment of industrial zones in Judea and Samaria, an emphasis on the topic of security components will be given as a condition to completing the approval procedure. Additionally, in the framework of the actual establishment of the industrial zones, the meeting of financing of the plans for security components presented in the planning stage will be examined; in these days work of the divisions in mapping all the industrial zones is being completed, including the rewriting of the security files for these areas."

In the opinion of the State Comptroller's Office, considering the existing security circumstances in Judea and Samaria, it is appropriate that the IDF, Central Command, COGAT and the Civil Authority, in cooperation with the Ministry of Industry and the relevant local councils in Judea and Samaria, will expediently examine how to take care of the existing gaps in the area of security components in the industrial zones under Israeli administration in Judea and Samaria, and will implement the results of their examination in accordance with an organized and financially-backed plan.

### **2. Declaration of Industrial Zones as Closed Military Area**

From authority of the Order Concerning Security Directives (Judea and Samaria) (number 378), 1970 (henceforth: Order Concerning Security Directives)<sup>27</sup>, the IDF commander in Judea and Samaria signed in June 2002 the declaration Concerning Closing of Territory which determines that the area of Israeli settlements in Judea and Samaria, including the industrial zones under Israeli administration, are a closed military zone, and that "no person will enter the closed zone or will remain there, without a permit from the military commander or one appointed by him and in accordance with the conditions of the aforementioned permit." It was further determined in the directives of the declaration that they do not apply to Israelis. In the declaration it is noted that the matter is necessary for security reasons and in light of the special security circumstances prevailing in Judea and Samaria. The order's directives determine that violation of the directives of the declaration or violation of the conditions of the permit given according to it, are criminal violations with a penalty of five years imprisonment.

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<sup>27</sup> It will be noted that on 2.5.10 the Order Concerning Security Directives (combined version) (Judea and Samaria) (number 1651), 2009 came into effect and which replaces several orders, amongst them the Order Concerning Security Directives.

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In accordance with the directives of the declaration, a Palestinian worker must receive a permit from the military commander or one appointed by him for the purpose of entering the industrial zones under Israeli administration in Judea and Samaria, while his employer must according to the directives of the Order Concerning Employment of Workers receive an employment permit in the name of the Palestinian worker from the Employment Bureau of the Civil Administration.

The audit team examined implementation of a number of aspects in the directives of the declaration concerning the industrial zones under Israeli administration, and also the activities of the enforcement bodies concerning enforcement of the directives of the declaration, and found a number of failings in the area of security, as follows:

- a. The industrial zones of Karnei Shomron, Emanuel, "Ale Zahav" and Maale Efrain lack a security infrastructure for the prevention of entry of people within the closed military zone, such as a peripheral fence or gate which can be used as a control point, and as such the ability to attain the goals of the declaration concerning the closed zone is harmed.
- b. The Declaration Concerning Closed Military Zone does not define the term "industrial zones under Israel management" and does not define the geographic area of the industrial zones included in them, and in this manner it is not possible to know what is the area over which the directives of a closed military zone apply (as detailed above in the section "definition of industrial zones under Israeli administration").
- c. Documents of the Civil Administration and the territorial brigades show that in some of the industrial zones in Judea and Samaria, Palestinian workers without employment permits are employed. The State Comptroller has already dealt with this matter in the 2005 report<sup>28</sup>, in which it was noted that in Israeli settlements and in the industrial zones in Judea and Samaria, numerous Palestinians without employment permits are employed, and that this necessitates correction.

The State Comptroller's Office remarks that with the absence of appropriate infrastructures for security components, as seen in the audit, it is not possible to enforce the directives of the Order Concerning Closing Zone, and in these circumstances the Declaration of Closed Zone are liable to be meaningless. Moreover, the Central Command, which is responsible for security in Judea and Samaria, must examine the military needs for securing the industrial zones under Israeli administration, and to determine according to them the additional infrastructure means and defence components necessary for this requirement, and to examine the appropriate means for financing the expenses of their establishment and maintenance and to act for their implementation.

The State Comptroller's Office further remarks that allowing the entry of Palestinians into the industrial zones under Israeli administration without employment permits has security impacts which are liable, amongst other things, to endanger those in the industrial zone. The Central Command must supervise in a manner to ensure that the industrial zones under Israeli administration in Judea and Samaria will function in accordance with the directives of the Declaration Concerning Closed Zone, in order to ensure the well-being of those located there.

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<sup>28</sup> State Comptroller's Office, Yearly Report 56a (2005), "Activities of the Civil Administration in the Area of Judea and Samaria", p. 246.

### 3. Security Trustees

Between Israel and Judea and Samaria function six goods passages (“back to back” passages) defined in the Announcement Concerning Determination of Goods Transit Points which are determined by authority of the Order Concerning Transfer of Goods (Judea and Samaria) (number 1252), 1988. As noted, the Announcement Concerning Determination of Goods Transit Points necessitates transferring goods in commercial amounts, as defined in the announcement, intended to reach Israel from Judea and Samaria via the “back to back” passages in which a full security examination is conducted, amongst others by the implementation of advanced technological means with the goal of preventing the smuggling of weapons and terrorists into Israel. This obligation does not apply to goods whose source is in “industrial zones under Israeli administration” or an Israeli settlement or military facility, which can pass through any of the passages between Judea and Samaria and Israel<sup>29</sup>.

From documents of the Civil Administration we see that removal of goods from the industrial zones under Israeli administration in Judea and Samaria to the territory of the state of Israel raises concerns in a number of areas, first and foremost in the security area: fear of smuggling terrorists or weapons from Judea and Samaria to Israel, or an attack via a ‘dummy vehicle’ – an Israeli vehicle is liable to serve as target of attack. There also exists the concern of exploiting the industrial zones under Israeli administration to “launder goods” (see below in the section about “Laundering Goods in the Industrial Zones”) whose source is Palestinian, thus by-passing the directives of the Announcement Concerning Determination of Goods Transit Points which obligate the transfer of goods in the “back to back” passages<sup>30</sup>, as noted.

In November 2008 then Commander of the Central Command, Major General Gadi Shamni, conducted a discussion on the topic of the industrial zones in Judea and Samaria, in which it was agreed that the Legal Advisor of Judea and Samaria must act to immediately legislate the appointment of a security trustee for each factory in accordance with the criteria agreed upon.

In June 2009 the IDF commander in Judea and Samaria signed an Order Concerning Security Arrangements in the Industrial Zones (appointment of security trustee) (Judea and Samaria) number 1640, 2009 (henceforth: Order Concerning Appointment of Security Trustee). The order determines, amongst other things, that the military commander is able to order a factory owner in one of the industrial zones under Israeli administration in Judea and Samaria which are appointed in this addition to the order, to appoint a security trustee who is an Israeli citizen, with military or security experience sufficient for the supervisor<sup>31</sup>, and who passed a security clearance in accordance with the demands of the supervisor. Further determined in the order are the obligations of the factory owners and the security trustees in the industrial zones under Israeli administration in the fields of security and protection. In the second addition to the order it was determined, amongst other things, that the

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<sup>29</sup> Except for agricultural produce in commercial quantities which can only be transferred through some of the passages.

<sup>30</sup> The State Comptroller dealt with this topic in the Yearly Report 61a (in the report “most confidential”) on the topic of “Activities of the Passages between Israel and Judea and Samaria.”

<sup>31</sup> The one responsible according to the order is a Staff Officer of the Civil Administration.

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security trustee must check the vehicles and drivers in all stages prior to loading of the goods, to instruct the drivers concerning movement in main arteries located only in Area C.

For the purpose of implementing the Order Concerning Appointment of Security Trustee, the Officer of Operations in the Civil Administration published a directive concerning "Security Trustee in Industrial Zone" (henceforth: Central Command directive) in which the directives of the order are detailed and the authorities in the Central Command responsible for its implementation are noted. In accordance with the directive, the Central Command is to be the connecting and coordinating body vis-à-vis the factory managers, and the divisions operating in the framework of the Central Command must "issue an operational and complementary directive and ensure its knowledge and implementation amongst the forces in ongoing security activities, with an emphasis on the checkpoints and passages in which transfer of goods from the industrial zones will be done, and the operational divisions will once every quarter implement an audit in the industrial zones in order to enforce the existence of this procedure."

The State Comptroller's Office examined the subject of appointment of security trustees in the industrial zones under Israeli administration which function in Judea and Samaria and found the following deficiencies:

- a. Upon signing of the order, in June 2009, and also upon conclusion of the audit, June 2011, some 20 industrial zones under Israeli administration functioned in Judea and Samaria. In contrast, in the Order Concerning Appointment of Security Trustees, only nine industrial zones under Israeli administration were defined on which the directives of the order are applicable. It was not found that the Central Command examined if the Order Concerning Appointment of Security Trustees must also be applied to the other industrial zones.

The Central Command, as the body responsible for implementation of the Order Concerning Appointment of Security Trustees, in cooperation with the Legal Advisor of Judea and Samaria, must examine the need to expand the Order Concerning Appointment of Security Trustees to additional industrial zones.

The IDF noted in response to the State Comptroller's Office from October 2011 that in light of this audit, all of the industrial zones will be included in the order and not only the nine large, central ones.

- b. The Central Command has no procedure for transmitting information to the operators of the passages between Judea and Samaria and Israel, including names of the factories under Israeli administration in Judea and Samaria and the security trustees who are supposed to function in them, in order to permit the operators of the passages to ensure that goods arriving to the passages from the Israeli industrial zones are indeed approved by the security trustee.

The State Comptroller's Office remarks that implementation of such a procedure will contribute to a shortening of check time at the passages by focusing the check on goods arriving from factories to which security trustees were not appointed, which will result in an increase in the level of security check and the service provided at the passages.

In this matter the Land Passage Authority of the Ministry of Defence, responsible for implementation of some of the transit points between Israel and Judea and Samaria, wrote in response to the State

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Comptroller's Office from July 2011, that it did not receive from the Central Command details concerning the security trustees appointed in accordance with the Order Concerning Appointment of Security Trustee, and that it does not know of these appointments, and in this situation it is not within its capacity to ensure the existence of supervision over goods leaving the factories in the industrial zones.

- c. Even following publication of the Order Concerning Appointment of Security Trustee, the Central Command did not determine which factories require a security trustee. From data of the Efraim Territorial Brigade we see that in the Barkan industrial zone security trustees were appointed to 27 factories of the 188 factories functioning there; in the Karnei Shomron industrial zone, security trustees for two of some 30 factories were appointed.
- d. The divisions functioning in Judea and Samaria did not issue a complementary operational procedure as required in the Central Command directive on the subject of security trustees.

The State Comptroller's Office remarks that in the circumstances described above, there exists a substantial security danger both to those in the Israeli industrial zones in Judea and Samaria and also to residents of Israel, who are liable to be exposed to attempts to bring in weapons whose source is in the industrial zones in Judea and Samaria into Israel and to conduct attacks in Israel. The State Comptroller's Office notes that the urgency to which the Central Command commander related the need to issue legislation to arrange the appointment of security trustees, as detailed above, does not sit with the ongoing situation in this topic.

The State Comptroller's Office further remarks that the Central Command must determine the factories for which there exists a need to appoint a security trustee and to ensure they will be appointed, and to arrange the existence of a procedure for the transfer of information concerning appointment of security trustees in the Israeli industrial factories in Judea and Samaria from the Central Command to the operators of the passages between Judea and Samaria and Israel.

The IDF noted in response to the State Comptroller's Office from October 2011 that "a meeting was conducted between the Land Passage Authority and authorities in Judea and Samaria to refresh (knowledge of) the procedure and strengthen the ongoing contact between authorities in Judea and Samaria and the Land Passage Authority," and that "in these days an operational team in cooperation with a representative of the Land Passage Authority will refresh, enforce and strengthen the security trustee directive in the industrial zones through an expansion to all industrial zones currently absent from the Order of Security Trustee, which is valid today."

- e. **"Laundering of Goods" from the Industrial Zones:** As noted, in accordance with the Announcement Concerning Determination of Goods Transfer Points, it is possible to transfer from Judea and Samaria to Israel goods whose source, amongst others, is in "industrial zones under Israeli administration", not via the "back to back" passages but via the other passages in which the implemented check of goods is partial.

From the audit we see that the lack of a definition of the concept of goods whose source is in "industrial zones under Israeli administration" in the Announcement Concerning Determination of Goods Transfer Points, the lack of a procedure for transferring information from the Central Command to the operators of the passages, and also the non-appointment, as noted, of security trustees in the factories, resulted in an

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expansion of the phenomenon in which goods whose source is Palestinian are transferred to Israel via industrial zones under Israeli administration as goods whose source is Israel, not via the “back to back” passages – a phenomenon dubbed “laundering of goods.” Details as follows:

In October 2008 a representative of the Legal Advisor of Judea and Samaria wrote to the Head of the “Colour Rainbow and Seam” Administration in the Central Command as follows: Head of the Central Command is authorized according to the Order Concerning Transfer of Goods to institute regulations for the organising of removal of goods from Judea and Samaria and it is ostensibly possible to determine in them that “removal of goods to Israel from Israeli industrial zones... will be done with a permit only and via the transfer point that will be defined for this purpose (for example the passage point which functions in the “back to back” method in which there exists an optimum examination infrastructure), unless the body requesting to remove the goods will meet a list of reasonable security demands which will be determined and will thus be allowed to remove it from additional passage points (which do not function with the “back to back” method). He further added that “in this way of conditioning the removal (of goods) to Israel not via the “back to back” passages in such a way that there will be a meeting of certain conditions, it is possible to raise security demands in relation to places in which goods exist,” and amongst them the demand for the appointment of a security trustee.

In December 2009 the Land Passage Authority contacted the Central Command and Civil Administration and warned that at the passages operated by the IDF and in which Land Passage Authority supervisors are stationed in order to assist in the professional identification of goods passing through them from Judea and Samaria to Israel, “goods whose origin is most definitely not Israeli” pass. The Land Passage Authority further wrote that in the Karnei Shomron Industrial Zone, textile businesses function for which there exists concern that they serve as a “transit point” for Palestinian goods arriving to Israel from Judea and Samaria not via the “back to back” passages.

This document of the Land Transit Authority summarises the discussion held with the Central Command in July 2010 on the aforementioned subject and it will be noted that the Central Command instructed the immediate implementation of the Order Concerning Appointment of Security Trustees in industrial zones under Israeli administration. Additionally, the discussion focused on the lack of criteria for defining goods as goods whose source is an “Israeli settlement”, and examples were raised of the difficulty in implementing the existing directives concerning the Announcement Concerning Determination of Goods Transfer Points, which permits the existence of the phenomenon of “laundering goods,” as follows: textile goods of Palestinian manufacture are brought to the industrial zones for the purpose of classification, ironing and packaging, and leave for Israel as goods whose source is in the “industrial zones under Israeli administration” with a delivery certificate of an Israeli factory; Palestinian finished furniture is transferred to Israel via Israeli delivery certificates issued by Israeli businesses.

Also raised in this same discussion were examples of the absence of enforcement capacity on Israeli businesses in Judea and Samaria which transfer goods from Judea and Samaria to Israel as goods whose source is in “industrial zones under Israeli administration” despite clear findings that this is not their source. In the discussion it was agreed, amongst other things, that the Civil Administration would draft a proposal for determining criteria according to which it is possible to determine if the source of the goods is Israeli, and to determine exceptions in this matter. It was also agreed “to promote the passages order (in the aspect of authorities of the Passages Authority workers to classify goods and act on the ground).”

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In the document of the Land Transit Authority from April 2011 on the aforementioned subject is written that enforcement of the directives of the Order Concerning Determination of Goods Transfer Passages “is not effective” as long as there does not exist any control of Israeli businesses which transfer goods from Judea and Samaria to Israel. Via an authorized authority which is supposed to examine how these businesses meet these demands, and to confirm the transfer of goods exiting from there to Israel. It was further written in this document that “the phenomenon of economic and security smuggling is expanding, and renders the goods passages (“back to back” passages) useless and represents a security danger.” It was found that at the time of completion of the audit, June 2011, no change occurred in this matter.

The State Comptroller’s Office remarks that the phenomenon of “laundering goods” represents a danger to those located in the industrial zones and also to the residents of Israel, in wake of the fear of smuggling weapons from Judea and Samaria to Israel in the framework of transferring goods not via the “back to back” passages. Additionally, this phenomenon is liable to also possess aspects from the area of proper governance and integrity.

In the opinion of the State Comptroller’s Office, due to the security importance of the subject, and as it also possesses aspects of proper governance and integrity, the Central Command Commander and Head of the Civil Administration must give attention to this phenomenon and act to prevent it, amongst other ways via determination of the factories in the industrial zones under Israeli administration in Judea and Samaria which are required to employ a security trustee, and appointment of security trustees in these factories. Additionally, the concept of goods whose source is in “industrial zones under Israeli administration” must be defined and the authorized authority for implementing supervision and control over the factories meeting these rules must be determined.

The Land Transit Authority noted in response to the State Comptroller’s Office from August 2011 that the recommendation of the State Comptroller’s Office for arranging the subject of security trustees in the industrial zones “will assist in limiting the phenomenon of “laundering goods” in general, and for more effective action of the Land Transit Authority at the passages in particular.”

The IDF responded to the State Comptroller’s Office from October 2011 that in accordance with recommendations of the State Comptroller’s Office and existing staff work in the Central Command, it will act quickly to increase supervision over the procedure of “laundering goods” via audits in the industrial zones and examinations in the Israeli passages in cooperation with the Land Transit Authority.

### **Military Security Coordinators’ Activities**

A majority of the military coordinators of ongoing security are employed by the local authority in Judea and Samaria in which they reside, and are subordinate to it from an administrative perspective, and from a military perspective they are subordinate to the IDF and military law. In light of this there exists a concern that the military security coordinators will have difficulty in fulfilling their duty in the best possible manner: on the one hand, they have the responsibility to enforce the security directives which must be taken during the employment of Palestinian workers, including the prevention of entry of Palestinian workers into Israeli factories without employment permits and without meeting the directives and security means that must be undertaken; and on the other hand they know, as workers of the local authority, that the local authority enjoys financial income from these same factories which employ

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Palestinians, and as such it is possible they will be requested to display consideration to the factories and to be less stringent about fulfilling the security demands.

This matter also came up in a meeting on the topic of industrial zones under Israeli administration which was conducted by the Efraim Brigade Commander in December 2007 with participation of the military security coordinators and the security officers who act in the Territorial Brigade's zone. In this meeting, the participants raised the topic of "the existing tension for military security coordinators between the demand to check Palestinian workers without permits (employment permits) and on the other hand pressure of the authorities that the businesses will operate without hindrances."

The State Comptroller has already dealt with the matter of employing military security coordinators in the report published in 2005<sup>32</sup> as follows: "IDF documents demonstrate that the double subordination of military security coordinators creates at times difficulties in fulfilling their jobs, as at times there exist a conflict of interests between security needs and the needs of the local authority which employs them." It was further noted in this same report that the IDF responded to the State Comptroller's Office that "usually the military security coordinator chooses to act in accordance with the settlement interest (the employer), as it is clear to him that conflict with the employer is liable to result in his termination."

The State Comptroller's Office remarks that an employment permit also represents authorization that the holder of the permit is not prevented from entering the industrial zone under Israeli administration for security reasons. For this reason, the aforementioned double subordination of the military security coordinators, which creates for them difficulty in fulfilling their duty, is liable to result in the entry of Palestinian workers and their employment without employment permits. This is serious and liable to represent, amongst other things, a security danger. The Central Command, as the military body holding responsibility for security of the industrial zones in Judea and Samaria, should review this topic, whose security importance is great, and to act in cooperation with the Civil Administration to enforce the law, through reference to the difficulties standing before the military security coordinators in fulfilling their duty.

The aforementioned in the section on security of industrial zones under Israeli administration points to failings, some of which are serious, which represent a danger to the security of those in the industrial zones and to the residents of Israel, due to the existing concern of passage of terrorists and weapons in the framework of transferring goods from Judea and Samaria to Israel not via the "back to back" passages. The IDF must act to correct these failings, and to supervise in a manner that will ensure that security of the industrial zones will be implemented in accordance with the directives determined.

### **"Mesila" Industrial Zone**

The "Mesila" Industrial Zone is located west of Tulkarem and east of the Nitzanei Oz Interchange. Part of it is located in the jurisdiction of Tulkarem and part in the jurisdiction of the Samaria Regional Council. Planning of the "Mesila" Industrial Zone commenced in the early 1980's by the Civil Administration in an area of some 85 dunams, and following this tens of authorization and rental contracts were signed between the Supervisor of Abandoned Property in Judea and Samaria and private entrepreneurs for a

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<sup>32</sup> State Comptroller, Yearly Report 56a (2005) "Activities of the Civil Administration in Judea and Samaria", p. 260.

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period of 49 years for the purpose of work and industry. Planning of the industrial zone was only completed in the 1990s: the Central Planning Office of the Civil Administration prepared an urban building plan for the industrial zone that was approved in December 1994 (henceforth: the plan). The area of the industrial zone in accordance with the plan is 228 dunam. As we will see, from July 2009 the Civil Administration has worked on preparing a new urban building plan for the “Mesila” Industrial Zone (for this subject see below).

**Area of the Industrial Zone:** Head of the Samaria Regional Council, Mr. Gershon Mesika, noted in response to the State Comptroller’s Office from September 2011 that the “Mesila” Industrial Zone is not included in the municipal boundary of the Samaria Regional Council. In order that it be included in the municipal boundaries, the regional (military) commander must declare this in an order to which a municipal boundaries map is attached. This has not been done to date, and the council recommends that this indeed be done following arrangement of the necessary municipal infrastructures and following approval of the updated urban building plan.” In response to the Head of the Samaria Regional Council, as noted, the Civil Administration responded to the State Comptroller’s Office from November 2011 in this matter that “only the Northern part of the (Mesila) Industrial Zone is included in the Samaria Regional Council and as such an amendment to the municipal boundaries is required to include the entire industrial zone in the municipal boundaries (of the Samaria Regional Council)...this procedure is dependent on statutory arrangements of the industrial zone.”

The State Comptroller’s Office audited aspects related to the activities of the industrial zone, and the findings are as follows:

### 1. Arranging the Activities of the Factories

From the audit we see that the existing building and infrastructures in the “Mesila” Industrial Zone do not match the plan that was approved in 1994, and that the buildings were constructed without building permits, occasionally while taking over lands. According to the document of the Civil Administration from January 2011, factory owners in the industrial zone took over some 25 dunams of privately owned Palestinian land and some 25 dunams of state lands. We also found that factory owners who rented the territory from the Supervisor of Abandoned Property in Judea and Samaria rented buildings to others (sub-letting) without permission of the Supervisor (of Abandoned Property).

The need to arrange the activities of the industrial zone came up during numerous discussions conducted by the Civil Administration in recent years. The Economy Branch Officer in the Civil Administration noted in a letter from June 2005 to the Head of the Civil Administration as henceforth detailed: this is an industrial zone which, at the time of its establishment, and afterwards during its functioning, “fell between the cracks” and the authorities did not enforce the directives of the law; “Mesila” is a prosperous industrial zone which provides a livelihood to the factory owners and hundreds of Palestinian workers, and Israel has an interest that it continue to function, together with enforcement of the law there.

In a discussion conducted in the Civil Administration in November 2007 the existing problems in “Mesila” were discussed, as follows: the industrial zone operates without a management authority; buildings were constructed not in accordance with the valid plan; structures were built on privately-owned Palestinian lands; an absence of fundamental infrastructures such as sewage, water and roads, which does not permit the Civil Administration to provide building permits; sub-rentals without arrangements with

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the Civil Administration; forcible takeover of lands that were allocated to other renters; employment of Palestinians without employment permits; entry of Palestinians to the seam zone is open without a sufficient security check; and damage to the environment. In the discussion summary, the Deputy Head of the Civil Administration ordered a number of steps to arrange the activities of “Mesila”, amongst them the conduct of a survey concerning ownership of lands and their registration status in the land registry, a mapping of the existing situation concerning building violations, and the taking of decisions concerning structures for which demolition orders must be issued.

In July 2009 the Civil Administration published a tender for planning of the “Mesila” Industrial Zone, and in December 2009 the tenders committee of the Civil Administration selected a planning company for implementing the work. At the time of concluding this audit, June 2011, the planning work of the “Mesila” Industrial Zone continued.

In August 2010 a meeting was conducted between the Deputy Head of the Civil Administration and additional authorities in the Civil Administration with the factory owners, during which the Deputy Director of the Planning Office of the Civil Administration presented milestones for rehabilitating the “Mesila” Industrial Zone, amongst which include: drafting a new plan; receiving all the necessary permits, including hearings in the sub-committee for objections; allocation of land in accordance with the new plan; determination of a municipal authority that would be responsible for the industrial zone; establishment of an administration for the industrial zone for control and enforcement in the industrial zone; and establishment of infrastructures and development by the factory owners.

A document of the Civil Administration from March 2011 notes that in the wake of a visit by the Head of the Civil Administration in the “Mesila” Industrial Zone, the Head of the Civil Administration announced to the factory owners who invaded private lands that they have an extension until May 2011 to evacuate the lands, or to arrange the situation in the lands registry, and if they will not do this the Civil Administration will take action to enforce removal of all intrusions onto private lands.

According to data of the Central Unit for Supervision of the Civil Administration (henceforth: Supervision Unit) from 2005 until June 2011, 35 files were opened concerning final orders for stop work orders and demolitions. It was found that 10 of them are awaiting implementation and 16 are awaiting approval of the Head of the Civil Administration. In nine of the remaining files demolition took place.

The IDF responded to the State Comptroller’s Office from October 2011 that “as of the end of 2006 numerous meetings were conducted between Civil Administration figures and various entrepreneurs operating in relation to the industrial zone, and in their framework it was clarified to the entrepreneurs that plan number 194 (the approved construction plan for the “Mesila” Industrial Zone) does not permit the provision of building permits, as construction in the area of the industrial zone does not fit the directives of the plan, and does not even meet the fundamental condition determined for it, for example implementation of common infrastructures and provision of sewage solutions. According, the authorities acting in the industrial zone must act for the planning arrangement of the place, via submission of a new plan.”

The State Comptroller’s Office severely remarks that the neglect of numerous years in dealing with the “Mesila” Industrial Zone has resulted in a situation in which it is not possible to implement the original plan and a new plan is required which will correspond to the existing situation, and even this has yet to be

completed. The Central Command, COGAT and the Civil Administration did not act, in essence, as required and expected, via all the authorities responsible for enforcement of the law in Judea and Samaria in order to enforce the law in the “Mesila” Industrial Zone for years, until the creation of an intolerable situation of expansive activities which stands in contravention to the law. In the framework of this activity, structures were built in the “Mesila” Industrial Zone without building permits and at times by taking over private lands of Palestinians and state lands, and without the existence of basic infrastructures, which are an essential and basic condition for the functioning of an organized industrial zone, and through deviation from the approved plan.

### **2. Treatment of Environmental Quality**

In September 2010 the Staff Officer for Environmental Quality in the Civil Administration published a report, which included findings he raised during a patrol conducted by a team from his office at the “Mesila” Industrial Zone in August 2010. Failings were raised in the report, including: absence of treatment of industrial waste in all of the industrial zone; treatment of sanitation waste was done via cesspits; in a number of factories there existed odor hazards; waste accumulations harm the landscape and represent a danger of land contamination from leachates. In the factories failings were found such as: cooling of one of the big factories in the industrial zone was done through the pouring of freshwater on the roof, which results in the wastage of large amounts of water; the possession of dangerous materials in an open and unmarked area and not within a structure; flowing of leachates from waste stored in the open, which represents a most serious hazard; the recycling of tanks without appropriate treatment of the remaining dangerous materials in them.

In a patrol conducted by the audit team in the “Mesila” Industrial Zone in May 2011 it was found that the industrial zone is most neglected: large piles of waste and junk are dispersed throughout it, the road which intersects it is bumpy, between the factories there exists almost no development infrastructures, such as roads and pavements, which is liable, amongst other things, to harm the ability of emergency vehicles to reach the area in case of attack or disaster. In the western side of the industrial zone exists a drainage canal which contained sewage water, and in another place sewage was seen flowing on the ground.

The State Comptroller’s Office remarks that at the conclusion of the audit, June 2011, the Civil Administration had yet to take care of the findings raised in the report of the Environment Officer, including those noted as most serious and which must be treated urgently. Moreover, as noted, the Civil Administration provided the factories in the “Mesila” Industrial Zone permits to employ workers despite their activities without vocation permits and without building permits. The Central Command, COGAT and the Civil Administration must take care via the supervision and enforcement authorities in Judea and Samaria of the topics related to environmental quality of “Mesila” as expediently as possible, in order to prevent the continued existence of the hazards.

### **3. Rehabilitation of the Access Road to the Industrial Zone**

A city building plan determines directives for planning concerning the subject of roads, such as in the matter of the length and width of the sidelines, and the limitations applicable to their surroundings, such as the minimal distance it is possible to construct a building from a road. These plans are intended, amongst other things, to permit the best possible use of a road, and to permit in case of need its future expansion.

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As noted, in December 1994 a city building plan was approved for the industrial zone and in accordance with the plan, access to the “Mesila” Industrial Zone was founded on a road that passed from east of the industrial zone, located partially in the Palestinian city of Tulkarem, and from which access roads split to the factories in the area of the industrial zone.

Beginning from 2004 another road, located on the western side of the industrial zone in the area of Judea and Samaria (henceforth: western access road) has served as the sole access point to the “Mesila” Industrial Zone, which also serves IDF forces.

From the audit we see that the western access road which served originally as a security road, does not appear in the building plan, and does not meet the transportation and engineering criteria required from a transportation pathway to an industrial zone. We further see that the Ministry of Defence transferred to the association which unites some of the rights holders in the “Mesila” Industrial Zone (henceforth: the association) a payment for implementation of road repair works not in accordance with the rules determined in the law of Tenders, 1992 (henceforth: Law of the Requirement of Tenders) in which it is determined that “the state, every government corporation... will not make a contract for implementation of work in goods or property, or implementation of work, or acquisition of services, unless in accordance with a public tender which provides every person an equal opportunity for participation. The details as follows:

In a meeting conducted in January 2008 and headed by the Head of the Unit for Settlement and National Infrastructure of the Ministry of Defence (henceforth: Settlement Unit) it was agreed that the Ministry of Defence would transfer NIS 300,000 to the association “for the purpose of repairing the road due to damage caused from activities of the seam zone.”

The Head of the Settlement Unit noted in response to the State Comptroller’s Office from August 2011 that during the discussion from January 2008, it was agreed to transfer NIS 300,000 from the Seam Zone Administration following negotiations with the factory owners and the association, and that this was not an instruction of the Head of the Settlement Unit but a summary between the Seam Zone Administration and representatives of the industrial zone. It was further noted that the Settlement Unit did not transfer monies from its budget to repair the western road and that “it was a coordinating authority between the bodies.”

We see from the documents that during 2008 an “agreement for compensation for damages caused during construction of the “obstacle” was signed between the Ministry of Defence and the association, and it was determined that the Ministry of Defence would pay the association “which manages the activities in the industrial zone and is willing to implement the works necessary to repair the road” a total of NIS 246,650 in addition to value added tax. In 2009 the Ministry of Defence transferred the payment to the association in accordance with the agreement.

From the audit we see that the Ministry of Defence did not demand in the agreement that as a condition for payment the necessary permits be shown to it for conduct of the works on the western access road, but made due with a demand from the association that the latter declare that “from its perspective there is no legal or other prohibition to conducting the works required for repairing the road, and that the association declares that the road repair works will be done only after receiving all the permits, authorizations and permissions necessary in accordance with law which will be obtained by it and on its responsibility.”

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The State Comptroller has already expressed his opinion in this matter in a previous report published in 2003<sup>33</sup>, that there exists a need “to desist from assisting in funding from state monies the activities in land, the use of which has not been permitted and not organized by law.” Moreover, the State Comptroller noted in the report published in 2009<sup>34</sup> that the transfer of monies from the state treasury to a body such as an association “is possible in the framework of a business transaction or as support, and the manner of implementation of these activities is organized in law. A business transaction must be anchored in an organized and signed contract and to meet the directives of the Law Requiring Tenders, and support from the state budget must be done in accordance with the procedure for submitting a request for support from the state budget and in accordance with tests for the distribution of support funds according to the Law of Budget Foundation, 1985.”

It will be noted that in accordance with the Jordanian “Law of Planning Cities, Villages and Buildings number 79 1966,” planning and development works are included in the actions necessary for receipt of a license, and according to the law it is not possible to commence work, whose work requires a license, without the license.

From the audit we see that no license was issued for paving the western access road.

It should be noted that transfer of a government budget whose designation is infrastructure works which are conducted not in accordance with the necessary permit in law is incompatible with the June 2003 instruction of the then Government Legal Advisor, Mr. Eliyakim Rubenstein, to the legal advisors of the government ministries, in the matter “use of resources – illegal outposts” in which it was determined that “it must be ascertained that allocation or transfer of government money will be done following an examination that the land was allocated according to law and that all building permits were provided according to law by the authorized authorities.”

The Legal Advisor to the security system, Attorney Ahaz Ben Ari, noted in response to the State Comptroller’s Office from September 2011 that due to an error, the correspondence from the Legal Advisor of Judea and Samaria from August 2010 was not taken care of on the subject of repairing the western road, and that he intends to examine how it occurred that an agreement was signed for payment of compensation without the involvement of his office and “how the payment was transferred solely on the basis of a declaration by the association that the road works would be conducted only following receipt of the permits necessary by law.” He further added that he “would examine the possibility and justification for demanding return of the monies paid to the association.”

The State Comptroller’s Office remarks that the Ministry of Defence must take care to follow the Law of Tenders, and that funding for projects and financial assistance be given only after all the permissions and permits required in accordance with law are presented. The transfer of government funds for infrastructure work not implemented in accordance with the required permit and not in accordance with the Law of Tenders, represents a violation of the principle according to which state authorities must desist from supporting activities which are not legal.

<sup>33</sup> State Comptroller, Yearly Report 54a (2003) “Aspects of Actions of the Minister of Defence Assistant for Settlement, Infrastructure and Development Areas”, p. 52.

<sup>34</sup> State Comptroller, Reports of the Audits of the Local Government for 2008, p. 507.

#### 4. Order for Land Confiscation

According to international law, the occupier of a territory is able, following completion of the occupation and a continuation of the situation of belligerent occupation which justifies military use of land, to confiscate land needed for military use, and this is with no connection to the question of its ownership. Land confiscation is done according to a confiscation order issued by the military commander of the area. According to the procedure of the Infrastructure Branch of COGAT in the matter of “land confiscation for military needs in Judea and Samaria”, land is not to be confiscated in Judea and Samaria and is not to be used without the agreement of its owners, unless this is necessary for essential military needs.

In March 2004 the IDF commander in Judea and Samaria signed a land confiscation order (henceforth: confiscation order), for the purpose of establishing a wall on the eastern side of the industrial zone within the area of a land strip under Palestinian ownership. To the confiscation order was attached a map signed by the IDF commander in Judea and Samaria, which details precisely the territory confiscated for military purposes. According to the confiscation order and the map attached to it, which represents an integral part thereof, the land strip for the length of some 236 metres and the width of some 5 metres was declared as confiscated land for military necessities.

Documents of the Central Command and the Civil Administration show that upon 2003 completion of the security wall west of the industrial zone, the need arose for construction of a wall to the east of the industrial zone which would separate it from Tulkarem, and also serve as a shield from direct shooting from the east. In April 2003, Head of the “Colour Rainbow and Seam” Administration of the Central Command dealt with this subject, writing that “the Central Command is aware of the special situation of the industrial zone..which results from its location on the outskirts of the city of Tulkarem and east of the Trans-Israel Highway. The proposed solution for security of the industrial zone, which is located to the east of the primary seam barrier, is establishment of security components to the east of the area (industrial zone) and military activities along the road...between Tulkarem and the industrial zone. In accordance with our proposal, factory owners will bear the costs of establishing the wall and the security system will bear the costs of establishing and running the electronic and indicative arrangement in the barrier.”

In March 2004 the Infrastructure section of the Civil Administration issued instructions for implementation of the confiscation order, noting that “the Central Command/ ‘Derech Aheret’ project team must ensure non-deviation from the area of the aforementioned order during works to execute the order” and the Supervision Unit of the Civil Administration must participate “in implementing the order in coordination with the other authorities and to document implementation of the works in accordance with the personnel capacities and other limitations and to also ensure non-deviation from the areas of the order.”

The following findings were made by the audit:

The works to establish the wall and the expenses-bearer for its establishment were private bodies: factory owners and the association. Civil Administration authorities who visited “Mesila” in July 2004 discerned implementation of works in deviation from the confiscation order, and warned in a letter from that same day and directed to numerous authorities, amongst them the Central Command, COGAT and the Civil Administration, that “the works being implemented in the area are not implemented in accordance with

the agreement and the route that was given,” and that “people in the area of their own volition decided to “appropriate” to their area hothouses and cultivations of Palestinian residents.”

In June 2004 the Sub-Committee for Supervision of the High Planning Committee<sup>35</sup> issued, via the supervision unit, a stop work order. A representative of the Legal Advisor of Judea and Samaria wrote on this topic in July 2004 that construction of the wall “is done through a deviation from the area of the confiscation order, and invasion into private Palestinian land.” In December 2005, after the sub-committee for supervision discussed the topic, a final stop work and demolition order was issued with the demand “to halt the actions and use of the land and to demolish the building and/or any change done to the aforementioned property in contravention of the directives and to return the situation back within seven days from the day of issuing this warning. After the aforementioned time if you will not act as required, all legal measures against you will be taken, including demolition of the structure and everything necessary to return the situation back at your expense.” In this matter the following is noted:

- a. Until conclusion of this audit, June 2011, with the passing of six years since issuance of the demolition order, the Civil Administration has not executed it, and the private land remains illegally confiscated.
- b. From documents of the Supervision Unit we see that a large part of the wall was constructed on a route different from that approved in the confiscation order, in a manner in which the wall delimits within the area of the industrial zone private Palestinian agricultural land the size of 2.5 dunam. We further see that in the area of land that was illegally annexed, with the passing of several months, a building was constructed, and due to this same building the sub-committee for supervision issued a final stop work and demolition order. As of conclusion of this audit, June 2011, more than six years from the issuance of the demolitions – it has yet to be executed.
- c. The confiscation order was signed for the period until 31.12.05 and was not since renewed, even though the land confiscation in practice continued even after conclusion of the audit, June 2011. It will be noted that limitation of the validity of a confiscation order is done with the intention that during the period, the military commander will consider continuation of the necessity of the land confiscation vis-à-vis the ongoing harm to the land owners.

It will be noted that the State Comptroller’s Office remarked in the report published in 2005<sup>36</sup> that “as land confiscation via confiscation orders harms private property, and as such the authority and use of it are limited to defined circumstances, it is appropriate to act with extra caution, through a reexamination of the continued existence of the special circumstances for which the orders were issued.”

The State Comptroller’s Office remarks on the serious fact that the Civil Administration did not execute its obligation to demolish the illegal construction of the wall after the sub-committee for supervision of the High Planning Committee issued final stop work and demolition orders, and this points to a helplessness of the Central Command and the Civil Administration, which are responsible for enforcing

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<sup>35</sup> The sub-committee possess supervision and enforcement authorities in the subjects of planning and construction in Judea and Samaria through the Jordanian planning law.

<sup>36</sup> State Comptroller, Yearly Report 56a (2005), “Actions of the Civil Administration in Judea and Samaria,” p. 211.

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the law in Judea and Samaria. These bodies must act together, with the involvement of COGAT, in order to enforce the law in this matter.

### “AleI Zahav” Industrial Zone

The “AleI Zahav” Industrial Zone is located in the jurisdiction of the Samaria Regional Council, and nine factories operate within it. The area of the industrial zone is some 491 dunams and according to data from the Civil Administration, in June 2011 there were 149 valid employment permits for Palestinians employed by Israelis in this industrial zone. Concerning the area of the industrial zone, an authorization agreement was signed between the Supervisor of Abandoned Property in Judea and Samaria and the Division of Settlement of the World Zionist Organisation (WZO), which rented the land to the factory owners. The agreement was signed for a period of 49 years beginning from April 1989. The following notes are made in the audit:

At the time of the audit’s conclusion, June 2011, the “AleI Zahav” Industrial Zone functioned without an approved urban building plan, and all the factories located in it functioned without building permits and without employment permits; in the industrial zone there are no development infrastructures or sewage infrastructures, which represents an environmental hazard. The details:

In December 1999 the Civil Administration published for deposit the urban building plan for the “AleI Zahav” Industrial Zone, the goal of which was to alter the designation of the regional master plan from an agricultural area to an industrial area with public, commercial and service buildings. The Planning Committee of the Civil Administration transferred the plan for approval to the political echelon in July 2003 but, as evident from the Civil Administration documents, the plan was not approved.

From the audit we see that although the plan for establishing the “AleI Zahav” Industrial Zone was not approved, during the years the authorities allowed Israeli entrepreneurs to establish industrial factories there with no building plan and no building permits.

The State Comptroller’s Office sent a summary of the audit findings concerning activities of the factories the factory owners in the “Mesila” and “AleI Zahav” industrial zones. One of the factory owners in the “AleI Zahav” Industrial Zone wrote in response to the State Comptroller’s Office from September 2011 that he signed a development and rental agreement with the World Zionist Organisation – the Division of Settlement, and as such he is obligated to establish his factory on the land and to supply through it employment to the area’s residents. He further explained that due to the lack of an urban building plan he has been prevented from meeting the demand for approval of construction, and that the absence of a sewage infrastructure forced him to establish a closed sewage system. A response in this spirit was also received from one of the factory owners in the “Mesila” Industrial Zone.

In June 2009 the Head of the Samaria Regional Council, Mr. Gershon Mesika, wrote to the then Head of the Civil Administration, Brigadier Yoav Mordechai, that “there are numerous intruders in the territory.”

In a December 2009 document of the Organisation of Cities for Environmental Quality in Samaria are detailed the environmental hazards whose source is factories in the “AleI Zahav” Industrial Zone, including, amongst others: air pollution, flow of sanitation water and sewage whose source is the washing of equipment on land; lack of toilets in some of the factories; absence of treatment for dust emissions, such as that from processing marble.

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From the audit we see that the Samaria Regional Council is not enforcing the laws of planning and construction via the special committee (local) for planning and construction in Samaria. The Head of the Municipality wrote to the Officer for Environmental Quality in the Civil Administration in February 2010 that the industrial zone “lacks an urban plan and as such the Samaria Regional Council has no authority of enforcement in the industrial zone. The situation today is that the obvious must be done. The place is functioning without permits... (there is a) spreading of waste (which) contaminates the land and (there are no) sewage solutions for the factories. In the area there is a factory... which instead of taking away its waste burns it on site and thus pollutes the air and represents a danger to the entire settlement.”

In a June 2011 visit conducted by the audit team in the “AleI Zahav” Industrial Zone, it was not found that a change has occurred in the situation. There are no development and sewage infrastructures in the industrial zone and no paved access paths for the factories located in it.

The Settlement Division of the World Zionist Organisation noted in an October 2011 response to the State Comptroller’s Office that over the years it has attempted to promote the urban planning plan in order to legally arrange continued construction in the industrial zone, and has allocated budgets for this. It further noted that in recent years a number of invaders have installed themselves in the territory, amongst them criminal elements, and that it lacks the tools to prevent invasions and illegal building; and that “it will be prepared to act in every legal way requested and/or demanded, both to advance the planning and to prevent illegal activities.”

Organisation of Cities for Environmental Quality in Samaria noted in a September 2011 response to the State Comptroller’s Office in the matter of the environmental hazards whose source is the factories in the “AleI Zahav” Industrial Zone, that “the coordinator of industry in the organization acts in the area of control of factories in the AleI Zahav Industrial Zone ,although the area does not have an urban plan and this is in accordance with our position that there must be enforcement of the demands in the field of environmental quality, even when there is not a valid plan.”

A representative of the Legal Advisor of Judea and Samaria wrote an opinion in August 2009 that was sent to various authorities in the Civil Administration, in which it was determined that the area of the “AleI Zahav” Industrial Zone is located on state lands and a majority of it in the jurisdiction of the Samaria Regional Council, and therefore the special committee (local) for Planning and Building in Samaria is able to employ planning enforcement authorities vis-a-vis Israelis, in relation to the area of the plan located in the jurisdiction of the Samaria Regional Council.

Following correspondence of the State Comptroller’s Office from April 2011, the Head of the Infrastructure Area of the Civil Administration announced to the State Comptroller’s Office in July 2011 that in this month it issued a clarification to the local authorities in Judea and Samaria concerning their authorities in supervision and enforcement, and from this it is clear that the special committee (local) for Planning and Building in Samaria is able to implement planning enforcement authorities vis-a-vis Israelis.

The State Comptroller’s Office remarks that the aforementioned clarification of the Head of the Infrastructure Area of the Civil Administration in the matter of the authorities given to heads of the local authorities to supervise and enforce was sent to the local council heads only two years after issuance of a legal opinion from the Legal Advisor of Judea and Samaria in this matter. This, although it knew that the Samaria Regional Council had not enforced the law in the “AleI Zahav” Industrial Zone for years, and

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that the municipal head believed that the municipality had no authority to do so. In light of the aforementioned opinion of the Legal Advisor of Judea and Samaria and the instructions of the Head of Infrastructure Area, as noted, concerning the authorities of supervision and enforcement of the local authorities in Judea and Samaria, the Samaria Regional Council must act accordingly and the Civil Administration must ensure this.

Head of the Samaria Regional Council, Mr. Gershon Mesika, noted in response to the State Comptroller's Office from September 2011 that until September 2007 the municipality had no authority to enforce the planning and construction laws in places in which there was no valid urban planning plan, as only in October 2007 the special committees for planning and building received appointment by the Head of the Civil Administration, which authorized them to enforce the law in the areas of settlement even if there was no valid urban plan. He further added "that the industrial zone and its buildings were mostly built prior to the time in which the local committee was authorized to enforce the law. Accordingly it is not possible, with all due respect, to expect the committee, which inherited this situation, to demolish eight industrial factories" and that "with arrangement of activity in the industrial zone, first by legally approving the urban plan by the High Planning Authority, the council and Committee for Planning and Construction can implement their work and finish arranging the Alei Zahav Industrial Zone as required and mandated."

The State Comptroller's Office remarks that the continuation for years of a situation in which factories are operating in the "Alei Zahav" Industrial Zone outside of the framework of an urban plan and without building permits and employment permits, represents a serious blow to the rule of law and public interests. Moreover, the Civil Administration even provided these factories with permits to employ Palestinian workers. The fact that in the industrial zone there are no development infrastructures and sewage infrastructures, which results in damage to the environment, is serious. It is appropriate that the Head of the Civil Administration, with involvement of the Central Command Commander, COGAT and in cooperation with the Legal Advisor of Judea and Samaria and the Samaria Regional Council, act to arrange the activities of the industrial zone and in parallel to act to enforce the law there.

### **Summary and Recommendations**

Industrial zones under Israeli administration were established on lands managed by the Supervisor of Abandoned Property in Judea and Samaria, which allocates the land to bodies working in settlement in Judea and Samaria. To the industrial zones under Israeli administration in Judea and Samaria must be attributed, amongst other things, economic and security importance, as providing employment to Israelis and Palestinians.

In the audit, weighty findings were raised related to a harming of the rights of workers employed in the industrial zones under Israeli administration. This is expressed in the absence of care in conducting ongoing audits of the Civil Administration and the Ministry of Industry, Trade and Employment of the Israeli employers on the subject of paying minimum wage, which resulted in the phenomenon of harming the wages of Palestinian workers; in the lack of substantial supervision and enforcement in the topic of workplace safety and hygiene, which can lead to real danger to the health and lives of the workers in the industrial zones; and in not arranging the insurance of workers for workplace injuries. The lack of care in these subjects harms the image of the state of Israel and its position in international public opinion as a

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state which enforces the law and protects the worker rights of Palestinians employed by Israelis in Judea and Samaria.

Due to the importance of the topic of workers' rights, its sensitivity and political and economic meanings which attend to it, it is appropriate that COGAT and the Head of the Civil Administration, in cooperation with the Ministry of Industry, will act to enforce the regulations of the law which exist in the aforementioned topic in Judea and Samaria. It is also appropriate that the Head of the Civil Administration, COGAT, the Ministry of Industry and the Legal Advisor of Judea and Samaria will act expediently with the Ministry of Justice to examine amendments required in security legislation concerning labour laws in Judea and Samaria, and will bring about a ruling of the political echelon concerning the possible means of action for implementing the changes.

The serious defects which were raised in the topic of securing the industrial zones represent a security breach which is liable to endanger those in the industrial zones and the residents of Israel due to concern of smuggling weapons and terrorists from Judea and Samaria to Israel. The commander of COGAT, in cooperation with the Head of the Civil Administration, must act to correct these defects, including to arrange the nomination of security trustees, and to act to limit the phenomenon of "goods laundering".

COGAT, the Ministry of Industry and the Civil Administration must act decisively against the phenomena of taking over private property and of state lands, and the establishment of buildings without building permits in the "Mesila" and "AleI Zahav" industrial zones – a phenomenon which represent a serious breach of the rule of law – and to arrange the functioning of the "Mesila" and "AleI Zahav" industrial zones in accordance with the law. Additionally, the Civil Administration and the Samaria Regional Council must examine in a detailed manner all the necessary arrangements in the subject of the environment in each factory and to act to implement them, and also to act to establish the necessary infrastructures in each of these industrial zones, such as sewage and drainage.

From this report we see that enforcement of the law in the industrial zones under Israeli administration in Judea and Samaria in all of the areas examined is not at all sufficient. It is appropriate that the Government Legal Advisor give his opinion on the aforementioned in this report, including violations of the law.

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Translated by Connie Hackbarth, Alternative Information Center (AIC).