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**Israel's Investigation and Prosecution of Ideologically Motivated Offences
Against Palestinians in the West Bank**

Israel has a deep commitment to the rule of law. This characterizes Israel's approach to law enforcement in areas of the West Bank still under its responsibility according to the Oslo Agreements. In recent years, Israel has taken extensive measures to prevent violence in general - and against Palestinians in particular. In addition, efforts have been made to investigate criminal complaints and to prosecute perpetrators when appropriate. In particular, Israeli officials, including high-ranking politicians and senior officials from law-enforcement bodies, have declared an unequivocal zero-tolerance policy towards the phenomenon of "price-tag" offences by Israeli extremists against Palestinians.²

In recent years, Israeli authorities made considerable efforts to enhance law enforcement in the West Bank, which have led to a significant decrease in ideologically-based offences and an increase in the number of investigations and the rate of prosecution. These efforts included the establishment of designated taskforces, increased allocation of funds, and the addition of professional manpower.

This document focuses on offences against Palestinians that were allegedly committed by Israelis; nonetheless it is important to keep in mind that the vast majority of Israelis and Palestinians residing in the West Bank are law-abiding. Moreover, ideologically-motivated offences committed against Palestinians are a small percentage of overall offences committed in the West Bank and also represent a small portion of specifically ideologically-motivated offences in the West Bank, as the majority of such offenses are committed by Palestinians

¹ **Current as of August 2019**

² The term "price-tag" refers to the phenomena of acts of violence by certain Israeli extremists in the West Bank seeking "to exact a price" against Palestinians in response to IDF measures to remove illegal outposts or in response to Palestinian violence against settlers.

See also Noam (Dabul) Dvir *President Rivlin slams 'price tag' attack on mosque as terror*, YNet News (Oct. 14, 2014), available in <http://www.ynetnews.com/articles/0,7340,L-4580600,00.html>; Yoav Zitun, *Ya'alon: Price Tag is terror, perpetrators can expect zero tolerance*, YNet News (Aug. 1, 2014), available at <http://www.ynetnews.com/articles/0,7340,L-4474504,00.html>;

Oranit Etzer, *Minister: Outraged Yitzhar Rioters 'Unrestrained Criminals'*, Arutz Sheva (Aug. 4, 2014), available at: <http://www.israelnationalnews.com/News/News.aspx/179400>;

[Ariel Ben Solomon, Lahav Harkov, Netanyahu says 'Price Tag' attacks go against our values](#), Jerusalem Post, (Apr. 30, 2014), available at <http://www.jpost.com/National-News/Netanyahu-says-Price-Tag-attacks-go-against-our-values-350963>.

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against Israelis. Israel invests considerable law enforcement efforts to investigate alleged offences committed by Palestinians, including ideologically-based offences, termed “security offences.”

**Cases Investigated by the Police Involving Allegations of Nationalistic -based Offences
Committed by Israelis and Palestinians (2017- 2018)**

| Year | Cases investigated by the <u>Judea and Samaria Police District</u> involving allegations of nationalistic -based offences and public disorder offences committed by Israelis | Cases investigated by the <u>Judea and Samaria Police District</u> involving allegations of nationalistic-based offences committed by Palestinians. |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2017 | 183 (47 of which, are allegations of nationalistic-based offences. Of the total number, only 29 cases were opened for offences conducted against Palestinians – 15.8%) | 609 |
| 2018 | 100 (60 of which, involve allegations of nationalistic -based offences. Of the total number, only 68 cases were opened for offences conducted against Palestinians (40 of which are public disorder offences)) (Until July 2018) (30.4%) | 229 |
| 2019 | 31 (Of the total number, only 21 cases were opened for offences conducted against Palestinians) (Until May 2019) | 87 (Until May 2019) |
| Total | 314 | 925 |

Source: Israeli Police, July 2019.

Law Enforcement Authorities

The Israel Police operates in those areas of the West Bank remaining under Israeli control. It is responsible for investigating crimes committed in the West Bank, including offences committed by Israeli citizens. The Judea and Samaria Police District (hereinafter: the “District”) consists of 1,100 trained policemen, including police investigators who are fluent in Arabic. Given the importance the Israeli Government places on law enforcement in the

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West Bank, and the unique challenges associated with the complex legal and factual situation, in recent years, Israel has created special units and designated taskforces within the existing law enforcement authorities to bolster the effectiveness of law enforcement in the West Bank.

For example, in March 2013, the Nationalistic-Motivated Crimes Unit (hereinafter: NMCU), a special police unit, was established within the District for the purpose of policing ideologically-based offences and “price-tag” offences. This special unit currently employs 60 police officers (with an additional support team of approximately 20 auxiliary police officers). This Unit was assigned to deal with extreme offences of Nationalistic-Motivated Crimes that are committed in other districts, whilst coordinating with the national investigation and intelligence division. This Unit is currently fully operational. The unit works in cooperation with other Israel Police units, the Israel Security Agency (hereinafter: “ISA”), the Israel Defense Forces (hereinafter: “IDF”) and the Ministry of Justice. The NMCU is responsible for investigating, collecting evidence, and gathering intelligence.

The NMCU within the Israel Police makes considerable efforts to prevent and investigate ideologically-based offences, and to prosecute perpetrators. Upon completion of an investigation, and based on the severity of the crimes involved, cases are transferred to the Prosecution Division of the Israel Police or the State Attorney’s Office.³ When a sufficient evidentiary basis exists, indictments are issued. Since its foundation, the NMCU has conducted dozens of overt and covert investigations into potential areas of friction between Israelis and Palestinians and its intelligence-gathering capabilities have grown significantly.

In addition, there exists an inter-agency team tasked with overseeing the law enforcement of crimes related to incitement, violent uprisings, and ideological crimes in the West Bank. This team has worked for nearly two decades to improve inter-agency coordination and cooperation, and to monitor criminal proceedings against suspects and defendants of such offences. This team is headed by a Deputy State Attorney and includes representatives from the Office of the State’s Attorney, the ISA, the Police, and the IDF. Furthermore, the District also has a special desk within its Intelligence Department that is in charge of obtaining information regarding ideologically-based offences. As part of the measures taken to support

³ The division of responsibilities between the State Attorney’s Office and the Prosecution Division of the Israel Police is based on the gravity of the offences. In general, the latter is authorized to prosecute misdemeanors (offences carrying a sentence of up to three (3) years).

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security forces on the ground in their crime-prevention efforts in the West Bank, the District has an assigned Border Police Company at its disposal.

Investigation and Prosecution in the West Bank

Complaints

Complaints or information that gives rise to suspicion of a criminal offence are transferred to the relevant investigative police units in the District. Each police station in the District is staffed with an officer fluent in Arabic in order to ensure the proper handling of complaints from Palestinians. Besides the investigations prompted by specific complaints, the Israeli Police initiates its own investigations based on intelligence collected about possible offences or threats.

The Investigative Process

As a general rule, regardless of the severity of the offence, whenever there exists a suspicion that an ideologically-based offence has occurred, a team made up of an investigator, a crime scene investigator, and a detective is called to the crime scene.

A number of practical difficulties can complicate the process of surveying a crime scene, collecting evidence, and obtaining witness testimonies to be used in court. First, immediate arrival at the crime scene is not always possible. For example, the entry into Area A or B of the West Bank requires security coordination with the Palestinian Authority and a military escort. Sometimes, entry to a specific area at a certain point in time is difficult due to violent demonstrations or other security risks. In addition, many complaints are filed only after a considerable amount of time has passed since the alleged offence occurred, which makes it challenging to obtain forensic and other evidence. In certain cases, there may also be reluctance, on the part of victims and witnesses, to cooperate with the Israel Police, which further complicates the investigative process. Notwithstanding these difficulties, the Israel Police takes its responsibilities seriously and ensures to undertake investigations that sufficiently fulfill its obligations, as evidenced in the figures presented in this document.

After the completion of the investigation process, additional difficulties may be encountered by the prosecution authorities, such as when the complainant fails to appear in court to testify which requires withdrawal of the indictment. Considerable efforts are being made in order to

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overcome, to the extent possible, some of these practical difficulties. For example, in order to facilitate Palestinian access to courts in Israel, the State provides transportation from Area A of the West Bank to courts in Israel.

In addition, District investigators undergo training exercises on how to maintain crime scenes and gather forensic evidence, including visual and other documentation. Similar training is provided to IDF soldiers and policemen from the Border Police. Moreover, the Israel Police conducts training exercises for Palestinian Police officers as part of its cooperation with the Palestinian Authority's Civil Police.

The Use of Illegal Association Restrictions as a Legal Tool

In order to facilitate investigation efforts by the authorities, on August 13, 2013, the Minister of Defense declared that any association of persons - unionized or not, including any group, cell, social partnership, section, or similar association - that uses the name "price-tag" or any other derivative with a similar meaning is an "illegal association" pursuant to Regulation 84 of the *Defense (Emergency) Regulations* of 1945. Under this classification, a "price-tag" offence can be regarded as a security-related offence that, in certain circumstances, allows for special law enforcement measures to be taken, subject to judicial review. Defining "price-tag" perpetrators as engaging in an "illegal association" attests to Israel's unequivocal stance against these phenomena and, on the practical level, provides law enforcement and security services with appropriate measures to act against them.

The Counter-Terrorism Law 5776-2016

On June 15, 2016, as part of Israel's ongoing battle against terrorism, the GOI enacted the *Counter Terrorism Law 5776-2016*. This detailed and carefully-designed new law is part of an effort to provide law enforcement authorities with more effective tools to combat modern terrorist threats while incorporating additional checks and balances necessary to safeguard against unreasonable violations of individual human rights. The Law provides, among other things, updated definitions of "terrorist organization", "terrorist act" and "membership in a terrorist organization", detailed regulations for the process of designating terrorist organizations, and enhanced enforcement tools, both criminal and financial. This Law nullifies current legislation in the field of counter-terrorism. It does not create discrimination on the grounds of race, color, decent or national or ethnic origin and does not subject individuals to racial or ethnic profiling or stereotyping.

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The Authorities for Prevention of Internet Use for the Commission of Offenses Law 5777-2017

This July 2017 law, authorizes the courts to issue an order for blocking access to a website or for its removal from the internet. Such an order will be issued if it is crucial for the prevention of an ongoing offense set in the Law's addendum, such as offences relating to prostitution, pedophilia, gambling and drugs and dangerous substances. This law enables the courts to issue of three kinds of orders: (a) an order for restricting the access to the relevant website; (b) an order for restricting the possibility of locating the relevant website; (c) an order for the removal of a website from the internet – provided that the relevant site is stored on a server in Israel or is under the control of a person who is in Israel. According to Section 2 of this law, a District Court's judge that was authorized by the District Court's president may issue an order for restricting the access to a website, if that website belongs to a terrorist organization as defined by the *Counter Terrorism Law*, and the access restriction is required for the prevention of that site future activity. The aim of the Law is to supply law enforcement authorities with additional tools to, *inter alia*, combat terrorism in the virtual world, as part of the overall ongoing efforts on the matter.

Prosecution

Upon the completion of an investigation, a decision is made by a senior Israel Police officer whether to transfer the case to the prosecution authorities or to close it. If the case is transferred to the prosecuting authorities, after reviewing the evidence gathered, it is for the prosecution to decide whether there is a sufficient basis to file an indictment - *e.g.*, sufficient evidence to establish a reasonable basis for conviction.

The decision to close a case is made in accordance with applicable laws and guidelines, upon a determination, for example, that there is insufficient evidence or that there is no public interest in pursuing the case. Unlike other districts where an Israel Police officer of the rank of Chief Inspector may be authorized to close a case, in cases of ideologically-based offences handled by the District, only the State Attorney's Office or the Head of the Prosecution Division of the Israel Police is authorized to close a case. The exception to this rule is where the perpetrator of the alleged crime is unknown, in which case a senior investigator of the rank of Chief Superintendent is authorized to close the case. In any event, any decision to

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close a case can be appealed to the Attorney General, whose decision can be further reviewed by means of direct petition to the Supreme Court of Israel, sitting as the High Court of Justice.

Judea and Samaria District - Police Cases Regarding Allegations of Ideologically-Based Offences Committed by Israelis

In 2019 (until July), 31 cases were investigated by Israel Police in the District involving allegations of ideologically-based offences committed by Israelis. Of this number, four (4) indictments were served (two (2) of these indictments were served in cases in which the complaint was received prior to 2019). In one (1) case a verdict was issued by the relevant Court. Of the total number of cases, four (4) cases are currently being reviewed by the Police Prosecution Department or the State Attorney's Office and 15 cases are still under investigation. Also, of the total number of cases, 11 cases were closed (unknown offender).

As noted above, 21 cases of the total number of cases in 2019 (until July - 31 cases) involve allegations of nationalistic-based offences committed by Israelis against Palestinians and others (the Police or the IDF for example). Of this number, two (2) indictments were served (one (1) of these indictments was served in a case in which the complaint was received prior to 2019). Also, of the total number, two (2) cases are currently being reviewed by the Police Prosecution Department or the State Attorney's Office and nine (9) cases are still under investigation. Nine (9) cases were closed (unknown offender).

In 2018, 100 cases were investigated by Israel Police in the District involving allegations of ideologically-based offences committed by Israelis. Of this number, nine (9) indictments were served (two (2) of these indictments were served in cases in which the complaint was received prior to 2018). In one (1) case a verdict was issued by the relevant Court. Of the total number of cases, 16 cases are currently being reviewed by the Police Prosecution Department or the State Attorney's Office and 23 cases are still under investigation. Also, of the total number of cases, 59 cases were closed – six (6) for lack of evidence, one (1) for lack of public interest and 51 for reason of unknown offender.

As noted above, 68 cases of the total number of cases in 2018 (100 cases) involve allegations of nationalistic-based offences committed by Israelis against Palestinians and others (the Police or the IDF for example). Of this number, five (5) indictments were served (two (2) of these indictments was served in a case in which the complaint was received prior to 2018). In

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one (1) case a verdict was issued by the relevant Court. Also, of the total number, nine (9) cases are currently being reviewed by the Police Prosecution Department or the State Attorney's Office and 18 cases are still under investigation. 40 cases were closed – three (3) for lack of evidence and 37 for reason of unknown offender.

During the first half of 2019, 17 restraining orders against 16 Israelis (among them four (4) minors), were issued prohibiting their presence in the West Bank, and seven (7) restriction orders were issued against seven (7) Israelis (among them two (2) minors), prohibiting their presence in specific areas in the West Bank. During 2018, 45 restraining orders against 30 Israelis (among them 19 minors), were issued prohibiting their presence in the West Bank, and 18 restriction orders were issued against 18 Israelis (among them 11 minors), prohibiting their presence in specific areas in the West Bank. Also, during 2017, Israeli authorities issued one (1) administrative detention order against an adult Israeli citizen and 55 restraining orders against 40 Israelis (among them minors), prohibiting their presence in the West Bank.

Cases Investigated by the Israel Police in the West Bank Involving Allegations of Disturbance of the Public Order and Ideologically-Based Offences Committed by Israelis– by Case Status (2017-2019 (until July))

| Police Cases | 2017 | 2018 | 2019 |
|------------------------------------------------------------------------------------|-------------|-------------|-------------|
| Cases opened – Total | 183 | 100 | 31 |
| Indictments Filed (including on cases opened prior to indicated year) | 45 | 9 | 4 |
| Cases heard by the relevant Court | 6 | 1 | 1 |
| Cases under review of the Police prosecution department of State Attorney's Office | 62 | 16 | 4 |
| Cases still under investigation | 10 | 23 | 15 |
| Cases Closed – Lack of Evidence | 32 | 6 | 0 |
| Cases Closed – Lack of Public Interest | 16 | 1 | 0 |
| Cases Closed – Unknown Perpetrator | 56 | 51 | 11 |
| Cases Closed – Total | 104 | 51 | 11 |

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Source: Israeli Police, July 2018.

Cases Investigated by the Israel Police in the West Bank Involving Allegations of Ideologically-Based Offences Committed by Israelis against Palestinians – by Case Status (2017-2019 (until July))

| Police Cases | 2017 | 2018 | 2019 |
|------------------------------------------------------------------------------------|-------------|-------------|-------------|
| Cases opened – Total | 29 | 68 | 21 |
| Indictments Filed (including on cases opened prior to indicated year) | 4 | 5 | 2 |
| Cases heard by the relevant Court | 1 | 1 | 0 |
| Cases under review of the Police prosecution department of State Attorney's Office | 2 | 9 | 2 |
| Cases still under investigation | 6 | 18 | 9 |
| Closed – Lack of Evidence | 7 | 3 | 0 |
| Closed – Lack of Public Interest | 0 | 0 | 0 |
| Closed – Unknown Perpetrator | 13 | 37 | 9 |
| Cases Closed – Total | 20 | 40 | 9 |

Source: Israeli Police, July 2018.

In 2019, the cases opened by the Police concerning Israeli suspects involved in disturbance of public order and ideologically-based offences against Palestinians included 16 allegations of security offences, 16 allegations of offences against property (including 16 allegations of malicious damage to property); ten (10) allegations of offences against public order; four (4) allegations of bodily harm (all of assault offences).

In 2018, the cases opened by the Police concerning Israeli suspects involved in disturbance of public order and ideologically-based offences against Palestinians included 45 allegations of security offences, 56 allegations against property (including 51 allegations of malicious damage to property, four (4) allegations of ideologically-motivated arson, and two (2) allegations of arson); 40 allegations of offences against public order; 12 allegations of bodily harm (including ten (10) allegations of assault).

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Cases Investigated by the Israel Police in the West Bank Involving Allegations of Disturbance of Public Order and Ideologically-Based Offences Committed by Israelis against Palestinians – by

Type of Offence (2017-2019 (until July))*

| Alleged Offences | 2017 | 2018 | 2019 |
|-------------------------------------------|------|------|------|
| Security Offences | 19 | 45 | 16 |
| Offences against Property | 34 | 56 | 16 |
| Offences against a person and bodily Harm | 18 | 12 | 4 |
| Offences against Public Order | 25 | 40 | 10 |

Source: Israeli Police, July 2018.

Note that some cases may appear in more than one (1) category.

This State commitment is exemplified by the recent Supreme Court decision to harshen the punishment of the offender in the following case: On July 2015, an indictment was filed in the Nazareth District Court (Cr.C.57576-07-15) against two (2) defendants (Yinon Reuveni (Defendant No. 1) and Yehuda Asraf (Defendant No. 2)). According to the indictment, prior to June 17, 2015, Defendant No. 1 conspired with other persons, whose identity is unknown (hereinafter: "the others"), to set fire to the Church of the Multiplication of the Loaves and Fish in Nahum Village in order to harm sanctities of the Christian faith. In addition, both defendants conspired that Defendant No. 2 will transfer his car to Defendant No. 1, knowing that the car will be used to commit an offence with a racial or hostile motive towards a religion motive. Defendant No. 1 was charged with arson under aggravated circumstances, defacing real estate with a motive of hostility against the public, conspiracy for committing a crime, conspiracy for committing other offences, using a car in the commission of a crime obstructing a police officer and violation of a legal order. Defendant No. 2 was charged with providing means for the commission of a crime and conspiracy for committing other offences. On July 3, 2017, Defendant No. 1 was convicted by the Court and Defendant no. 2 was acquitted of all the charges against him. On December 12, 2017, Defendant No. 1 was sentenced to four (4) years imprisonment (from the day of his initial arrest), 12 months suspended imprisonment for a period of three (3) years, six (6) months suspended imprisonment for a period of three (3) years, compensation to the Church in the sum of 50,000 NIS (13,500 USD) and a fine of 5,000 NIS (1,350 USD). As of January 2017, the GOI had transferred 1.5 Million NIS for the complete renovation of the Church. Following this sentence, two (2) appeals were filed against the verdict and sentence, one by the defendant which focused on the admissibility of the two (2) main pieces of evidence in the case and the

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other by the State against the leniency of the sentence. On August 16, 2018, the Supreme Court rejected the defendant's appeal, and accepted the State's appeal, noting, *inter alia*, that "the characteristics of this case are more severe than in other cases that were mentioned in regard to the sentence. Apart from the fact that this is an arson committed from a religious-ideological motive, it was specifically aimed at harming a historic religious center that is a central symbol of the Christian religion in Israel." **The Court therefore, increased the defendant sentenced from four (4) to five and a half (5.5) years imprisonment** (without changing the other components of the sentence) (Cr. Ap 6928/18 *The State of Israel v. Yehuda Asraf* (16.8.18)).

Another such example is the recent Supreme Court decision to harshen the punishment against two (2) defendants who were convicted and sentenced in the frame of a plea bargain that did not include the sentence by the Jerusalem District Court. In this case, according to the indictment, on November 28, 2014, Shlomo Tweeto (Defendant No. 1), Nachman Tweeto (Defendant No.2) and a third person (Yitzhak Gabay) conspired to set fire to a bilingual school in Jerusalem and deface real estate in protest against assimilation and co-existence between Jews and Arabs. According to the indictment, on November 29, 2014 around 18:00 the three made the necessary preparations, including buying gasoline, equipping themselves with a lighter, black spray paint, etc. and drove to the school. They broke into the school through a window, Defendant No. 1 and the third person entered different classrooms and poured gasoline while Defendant No. 2 sprayed racial slurs on walls outside the classrooms. After Defendant No. 1 exited the school, the third person set fire to the classrooms and they all ran to their car and escaped.

Following an investigation of this case and indictment of the three men, the Jerusalem District Court convicted Defendant No. 1 for arson and defacing real estate and sentenced him to 24 months imprisonment, 8 months suspended imprisonment for a period of three (3) years, a fine of 1,500 NIS (375 USD) and compensation to the school in the sum of 10,000 NIS (2,500 USD). Defendant No. 2 was convicted of arson, defacing real estate and incitement to violence (for publication of terrorist organizations' symbols and content inciting violence and racism on his Facebook account) and was sentenced to 30 months imprisonment, 10 months suspended imprisonment for a period of three (3) years, and compensation to the school in the sum of 15,000 NIS (3,750 USD). (Cr.C. 4001-05-15 *The State of Israel v. Shlomo Tweeto et. al.* (22.7.15)). The State decided to appeal this sentence to the Supreme Court, stating among

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other things, that the sentences are too lenient and do not reflect the substantial damage to the social values that were harmed, the aggravated circumstances in which these offences were committed and the need to deter others from committing such offences. The Court raised both defendants' sentences by an additional 8 months imprisonment, stating, *inter alia*, that "with their actions the defendants harmed the entire society. Acts such as these may increase tension and inflame hatred between various groups in the population. They [...] harm values of tolerance, equality and co-existence". Justice Rubinstein added that "Anyone who considers engaging in such acts should know that the punishment will be severe. The State of Israel is a Jewish and Democratic state and anyone who sets fire to those who seek co-existence between Jews and Arabs, even if he/she disagrees with them, harms not only Israel's democratic values but its Jewish values as well, and instead of acting through tolerance and peace, he/she wages war and inflames hatred. This court and all courts have the duty to fight that". (Cr.A. 5794/15 *The State of Israel v. Shlomo Tweeto et. al.* (31.1.16)). The third person in this case, Yitzhak Gabay, was tried separately from the other two defendants since he claimed that his confession was inadmissible. After deliberation on this matter, the Court rejected this claim, and in the frame of a plea bargain that included the defendant's confession, convicted him for arson of the bilingual school in Jerusalem, defacing real estate in protest against assimilation and co-existence between Jews and Arabs, possession of a knife, incitement to violence, incitement to racism and support of a terrorist organization. The Court sentenced the defendant to 36 months imprisonment, 14 months suspended imprisonment, and ordered him to pay 10,000 NIS (2,500 USD) as compensation to the school. (Cr.C. 31351-12-14 *The State of Israel v. Yitzhak Gabay* (01.12.15)).

Both sides appealed to the Supreme Court in regard to the sentence. The State claimed among other things, that the lower court's sentence is too lenient and does not reflect the substantial severity of the arson and the threat still posed by the defendant. On September 28, 2016, after hearing both sides and receiving additional information about the defendant, the Court raised the defendant's sentence by additional 4 months (from 36 to 40 months imprisonment) (Cr.A. 401/16 *The State of Israel v. Yitzhak Gabay* (28.9.16)).

Recent Examples of Criminal Cases Involving Ideologically Based Offences in the West Bank

1. On December 30, 2018, three (3) minors from the "Fruit of the earth" Yeshiva in 'Rahelim' were arrested on suspicion of murder/manslaughter of Aisha Rabi in the

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circumstances of a terrorist act. A few days later, two (2) other yeshiva students were arrested with the same suspicion. On January 24, 2019, an indictment was filed against the 16-year-old yeshiva student in the Lod District Court for the manslaughter of Aisha Rabi in circumstances of a terrorist act (alongside two (2) additional offenses - stone throwing at vehicles in aggravated circumstances of a terrorist act and malicious damage to property in aggravated circumstances of a terrorist act). Together with the indictment, his detention was requested until the end of the proceedings (the other two (2) suspects were released during the interrogation due to lack of sufficient evidentiary basis in their case). On May 7, 2019, the District Court handed its decision to the parties regarding the *prima facie* evidence, in which it determined that there are *prima facie* evidence of considerable "weight" and "strength" to prove the minor's guilt, without any concrete weakness in the evidence. At the end of the hearing, the District Court ruled that the minor pose high threat, but that this threat may be reduced by "detention in electronic cuffs" - full house arrest with electronic cuffs with the full supervision of two (2) supervisors at all times (among them his parents and his brothers and sisters), all in addition to high financial guarantees. After receiving an opinion according to which the cuffing installation was possible, the Court completed its decision and ordered the transfer of the minor from detention to detention under the abovementioned conditions. At the State request, the implementation of this decision was delayed. Both sides filed appeals to the Supreme Court against the decision of the District Court – both the State and the defense appealed the decision of detention by handcuffing, and the defense also appealed the existence of *prima facie* evidence. Both appeals were rejected by the Supreme Court and therefore the Defendant was transferred to detention by handcuffing on May 19, 2019. A number of reading hearings were held, and currently the case is scheduled for response to the indictment on September 9, 2019. The case is heard before the panel of three (3) judges, since the offense of manslaughter under circumstances of a terrorist act.

2. On January 3, 2016, the Central District Attorney's Office filed an indictment with the Central District's Court, against two (2) defendants: Amiran Ben-Uliel (Defendant No. 1), aged 21 and a minor defendant (Defendant No. 2), aged 17. Amiran Ben-Uliel was indicted for three (3) counts of murder - the murder of the three Dawabshe family members (the parents Sa'ed and Riham and Ali-Sa'ed, aged 18 months) in the village of Duma, attempted murder of an additional Dawabshe family member (Ahmad Dawabshe, aged 4) and additional offences of attempted murder and arson committed with a racist

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motive. Defendant No. 2 was indicted for conspiracy to commit murder with a racist motive, malicious damage with a racist motive and additional offences, among them the arson of the Dormition Abbey.

According to this indictment, following the murder of Malachi Rosenfeld by Palestinians in June 2015, both defendants conspired to take their revenge against Arabs and kill people. Defendant No. 1, made the necessary preparations, including the preparation of a bag with two bottles filled with a flammable liquid, a lighter, a matchbox, gloves and black spray paint. On the relevant day he then went to meet defendant No. 2 in a specific location, however, since he did not meet defendant No. 2 there, he decided to continue on his own. According to the indictment, defendant No. 1 tied a shirt around his head and donned his gloves; he then looked for indications for an inhabited house, sprayed "revenge" and "long live the messiah" on the house and threw an incendiary device into the house with the intent of killing its residents. This house was empty. Defendant No. 1 then immediately turned to the home of Sa'ed and Riham Dawabshe, carrying the second incendiary device. After unsuccessful attempts to open two windows, he managed to open the window of the bedroom in which the family was sleeping. Defendant No.1 then lighted the incendiary device, threw it through the window and escaped, killing three family members (the parents, Sa'ed and Riham and Ali-Saed aged 18 months) and causing severe burns to Ahmad Dawabshe, aged 4. Currently Defendant No. 1 is under arrest until the end of the proceedings. The verdict in his regard is scheduled to the end of 2019. Defendant No. 2, who was a minor at the time of the commission of the offences confessed to an amended indictment, that include conspiracy to commit an arson, setting fire of a taxi in Yassouf village, arson of a warehouse in a close vicinity to a residential house in the village of Akrabe and damage to 11 vehicles in Beit-Tzafafa. The Court accepted his confession and requested, due to his age at the time of the offences, a probation service survey in his regard. This defendant did not confess to the offence of membership in a terrorist organization, which is being heard by the Court. His verdict is scheduled to September 2019.

On January 3, 2016, an additional indictment was also filed against Yinon Reuveny, aged 20, and a 17 year old minor, for involvement in other terrorist incidents. All four (4) defendants were also indicted for membership in a terrorist organization.

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These two indictments are the outcome of a thorough investigation conducted by the ISA and the Israeli Police (Judea and Samaria District). The filing of the indictments was approved by the Attorney General and the State Attorney. These cases are still pending before the Court.

3. On October 20, 2014, an indictment was filed with the Petah Tikva Magistrate Court (Cr.C. 26986-10-14) against two (2) Israelis, Dor Ovad and Oleg Klimakovic, alleging that on October 11, 2014, the Defendants were involved in a violent attack against Palestinians during the olive harvest. The attack allegedly occurred within an area that had been declared a Closed Military Zone⁴ in the village of Kfar Yusuf. The Defendants were later allegedly involved in a physical altercation with security forces that were called to the scene. The Defendants were charged, *inter alia*, with assault causing actual bodily harm based on racial motivation, malicious damage to property based on racial motivation, violation of a lawful order and assaulting and obstructing a public servant. On March 30, 2015, both defendants were convicted and sentenced. Defendant no. 1 was convicted, among other offences, for violating a lawful order, prohibited entry into a closed military area, assaulting and obstructing a public servant and assaulting a police officer. He was sentenced to 12 months imprisonment, concurrent imprisonment of 6 months due to a prior case, four (4) months suspended imprisonment for a period of three (3) years for specific offences and two (2) months suspended imprisonment for a period of three (3) years for any other offence. Defendant no. 2 was convicted, among other offences, for violating a legal order, prohibited entry into a closed military area, obstructing a public servant, assaulting a police officer and escape from legal custody. This defendant was sentenced to five (5) months and 12 days imprisonment and four (4) months suspended imprisonment for a period of three (3) years for specific offences and two (2) months suspended imprisonment for a period of three (3) years for any other offence.⁵
4. On July 20, 2014, two (2) indictments were filed in the Jerusalem District Court against three (3) Israelis: Adiv Asraf, Yosef Idan Shirazi (Cr.C. 38225-07-14), and Eliran Nahum (Cr.C. (Jer) 38265-07-14). The indictments alleged that the defendants conspired, on several occasions between June 21 and 24, 2014, to commit what is known as a “price-tag” offence. The defendants allegedly spray-painted racial slurs in several locations in

⁴ For more information on Closed Military Zones, see *infra* “Prevention of Criminal Activity.”

⁵ Cr.C. (Petah Tikva) 26986-10-14, *The State of Israel v. Oved and Klimakovic* (30.3.15).

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Ma'ale Adumim. They also allegedly obtained batons and waited with the hope of attacking Palestinian by-passers at an entrance to Ma'ale Adumim. The defendants were charged with defacing real-estate based on racial motivation and with publication of racist incitement. Asraf and Nahum were also charged with attempted assault based on racial motivation. One of the defendants, Shirazi, has been remanded to custody until the conclusion of proceedings in another case. In regard to Yosef Idan Shirazi, the parties reached a plea bargain, according to which, the defendant will confess to an amended indictment and will be convicted. No agreement was reached in regard to the sentence. In the frame of the plea bargain, this defendant confessed to two (2) offences of defacing real-estate based on racial motivation and two (2) offences of publication of racist incitement. On February 1, 2016, Yosef Idan Shirazi was convicted and sentenced to six (6) months imprisonment to be served as community service and 14 month suspended imprisonment for a period of two (2) years. In regard to Adiv Asraf, on September 9, 2015, the parties reached a plea bargain, according to which, the defendant will confess to an amended indictment and will be convicted. No agreement was reached in regard to the sentence. In the frame of the plea bargain, this defendant confessed to defacing real-estate and attempted assault based on racial motivation. On April 14, 2016, the Court convicted the defendant according to the plea bargain and sentenced him to six (6) months imprisonment (since the defendant already served two (2) months imprisonment, the Court ordered that the remaining four (4) month will be served as community service) as well as three (3) months suspended imprisonment for a period of three (3) years. (Cr.C. (Jer) 38225-07-14, *The State of Israel v. Adiv Asraf et. al.* (14.4.16)).

In regard to the separate case against Eliran Nahum, on February 13, 2019, the defendant was convicted by the Jerusalem District Court in defacing real-estate out of racial motive, publication of incitement to racism and attempted assault under aggravated circumstances out of a racial motive. On April 29, 2019, the defendant was sentenced to four (4) month community service, four (4) months suspended imprisonment for a period of two (2) years and a fine of 5,000 NIS (1,350 USD). (Cr.C. 38265-07-14, *The State of Israel v. Eliran Nahum* (29.4.19)).

5. On February 5, 2014, two (2) indictments were filed in the Central District Court, against three (3) Israelis -- one against Yehuda Landsberg and Yehuda Savir (Cr.C. 8751-02-14), and another against Benjamin Richter (Cr.C. 8718-02-14). According to the indictments,

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the defendants embarked on arson and destruction activities during the night of November 18, 2013. The defendants' actions, aimed at Palestinian residents in Pura'ta and other villages, were intended to destroy local Palestinian property. The defendants were charged with conspiracy to commit a crime based on racial motivation, arson and attempted arson, defacing real-estate based on racial motivation, and attempt to commit malicious damage based on racial motivation. Richter allegedly violated the terms of his house arrest and was therefore also charged with violation of a lawful order. As part of a plea bargain, on November 30, 2014, the Central District Court convicted Landsberg and Savir of conspiracy to commit a crime based on racial motivation, defacing real-estate based on racial motivation, and arson. On December 21, 2014, the Court sentenced Landsberg and Savir to 30 months imprisonment, a 12-month suspended sentence for a period of three (3) years, and payment of compensation to the complainant in the sum of 15,000 NIS (3,950 USD).⁶

Also as part of a plea bargain, the third defendant, Richter, was convicted on December 25, 2014, of conspiracy to commit a crime based on racial motivation, defacing real-estate based on racial motivation, arson, and violation of a lawful order. On February 4, 2015, the Court sentenced Richter to 36 months imprisonment, a 12-month suspended sentence for a period of three (3) years, and ordered him to pay compensation to the complainant in the sum of 15,000 NIS (3,950 USD).⁷

The court noted that the Israeli legislature intended to express the severity of offences based on racial motivation because these offences “undermine the foundations of law and the democratic essence of the State of Israel.”⁸

The court referred to memoranda it had received from the Ministry of Foreign Affairs and the ISA and stated that they demonstrate:

"the enormous damage of these offenses, and their contribution to the deterioration of the relationship between Israel and the Palestinians, the nurturing of continued hostility between the conflicting sides, as well as the status of Israel in the international community".⁹

⁶ Cr.C. (Central) 8751-02-14 *The State of Israel v. Landsberg*.

⁷ Cr.C. (Central) 8718-02-14 *The State of Israel v. Richter*.

⁸ *Id.*, at ¶ 23.

⁹ *Id.*, at ¶ 23.

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6. On March 8, 2013, an indictment was filed in the Jerusalem Magistrate Court (Cr.C. 16277-03-13), against Dor Ovad, an Israeli, alleging that on March 4, 2013, near Shiloh, the defendant damaged and spray-painted racial slurs on vehicles belonging to Palestinians. After the Police arrived at the scene, the defendant allegedly tried to resist arrest; a search revealed that he was in possession of two knives, a brass knuckle and tear gas. On December 26, 2013, pursuant to a plea bargain, the Jerusalem Magistrate Court convicted him of the offences of malicious damage based on racial motivation, interference in the performance of police duty, and unlawful possession of a knife and brass knuckles. The Court sentenced him to 12 months' imprisonment (which included a previous suspended sentence) and a six (6) months suspended sentence for a period of three (3) years.¹⁰

Prevention of Criminal Activity

In addition to investigating and prosecuting perpetrators, Israeli authorities take extensive measures to deter and prevent ideologically-based offences, based on intelligence information. These efforts include administrative measures, such as orders denying certain Israeli nationals access to various areas in the West Bank. In 2015, Israeli authorities issued 36 administrative restraining orders against Israelis (among them Israeli minors), prohibiting their presence in the West Bank, and four (4) Israelis were under administrative detention. In 2014, 13 administrative restraining orders were issued. In 2013, 19 such orders were issued. In past years, the Supreme Court of Israel, sitting as the High Court of Justice, denied several petitions challenging the legality of such orders filed by Israeli nationals who were the subject of these orders. The Court held that while these administrative orders infringed upon certain individual rights, in weighing the balance between these rights and security concerns, the orders were necessary to maintain law and order in the West Bank.¹¹

In addition, the Military Commander of IDF Forces in the West Bank is authorized to declare a specific area as a Closed Military Zone if necessary in order to protect public order and

¹⁰ Cr.C. (Jer) 16277-03-13 *The State of Israel v. Oved* (26.12.13).

¹¹ See, for example, H.C.J. 4101/10 *Akiva Hacohen v. The Commander of the IDF Forces in Judea and Samaria* at P. 19-22 (1.7.10); H.C.J. 1052/05 *Federman v. The Commander of the Central District* (23.2.05); H.C.J. 7772/05 *Adler et. al. v. Major General Yair Naveh et. al.* (23.8.05); H.C.J. 7191/06 *Albert v. The Commander of the IDF Forces in Judea and Samaria, Major General Yair Nave et. al.* (5.12.06); H.C.J. 7489/06 *Gruner v. The Commander of the IDF Forces in Judea and Samaria et. al.* (13.11.06).

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security.¹² This Order may be applied, as required, to Israelis, Palestinians, or both. The South Hebron Hills region, certain places in the Valley of Shiloh, and other locations have been declared Closed Military Zones because the Military Commander has deemed them as friction sites prone to ideologically-based offences.

Furthermore, at the end of 2011, the Ministry of Education ordered the closure of the *Dorshei Yehudecha* yeshiva high school in Yitzhar due to the involvement of both students and staff in acts of violence against Palestinian civilians and Israeli security forces. The Ministry of Education also decided to cut financial support to the Yeshiva *Od Yosef Chai* for similar reasons.¹³ During 2014, the Military Commander of IDF Forces in the West Bank seized and took hold of the Od Yosef Chai Yeshiva, enabling the IDF to control a major center for “price-tag” offences and other violent activities. Subsequently, there has been a significant reduction in “price-tag” offences in the West Bank.

Israeli authorities have also continued their substantial efforts to prevent criminal acts against Palestinians during the annual olive harvest in the West Bank.¹⁴ The olive harvest is considered by the Military Commander to be a major annual occurrence. Thus, the IDF takes measures to provide security arrangements for the harvest, *inter alia*, by issuing injunctions, providing soldiers with specific instructions and training, coordinating meetings and maintaining regular dialogue with certain human rights organizations. In the past, military and police personnel conducted field visits in advance of the harvest in order to locate potential areas of friction. The IDF also prevented access of Israelis to certain areas, reinforced military and police forces before and during the olive harvesting season and provided security forces to accompany workers in certain places where there was substantial potential for disturbances in agricultural activity due to land ownership disputes.

Law Enforcement against Ideologically Based Offences in Israel

As described above, Israel has made a concerted effort to improve law enforcement in the West Bank and to put a stop to “price-tag” offences in the West Bank. Unfortunately, the

¹² Article 90 of Decree of Security Provisions, *Security Provisions Order [Consolidated Version] (Judea and Samaria)*.

¹³ Chaim Levinson, *Ministry closes Yitzhar school over violent attacks*, Ha'aretz (2.11.11), available at www.haaretz.com/print-edition/news/ministry-closes-yitzhar-school-over-violent-attacks-1.393217.

¹⁴ See *Olive Harvest in Judea and Samaria*, Civil Administration in Judea and Samaria (8.8.18), available at https://www.moag.gov.il/yhidotmisrad/teum_kishur/teum_shamron/%D7%A4%D7%A8%D7%A1%D7%95%D7%9E%D7%99%D7%9D/Publications/Documents/Olive_teum.pdf (in Hebrew)

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recent deterioration in the security situation has resulted in a volatile environment that has contributed to the increase of ideologically-based offences within Israel. Both Jews and Arabs have been the victims of these despicable offences. One of the most egregious recent examples was the kidnapping and murder of a sixteen-year-old Palestinian, Muhammed Abu Khdeir as claimed “revenge” for the abduction and murder of three (3) Israeli teenagers by Hamas terrorists in June 2014. Following an intensive investigation of Abu Khdeir's murder by the Police, the State filed an indictment in the Jerusalem District Court against three (3) Israelis, two (2) of them minors.¹⁵ On November 30, 2015, the Court convicted both minor defendants in the murder of Abu Khdeir and determined that defendant No. 1 was also involved in the murder, however, due to a last minute psychological opinion that was served; the Court decided to postpone the decision in his regard. On February 4, 2016, the Court sentenced Defendant No. 2 (minor) to **life imprisonment**, additional three (3) years imprisonment to be served concurrently, compensation of 5,000 NIS (1,300 USD) to the family of the boy the three tried to kidnap and compensation of 30,000 NIS (7,800 USD) to Abu Khdeir's family. In addition the Court sentenced Defendant No. 3 (minor) to **21 years imprisonment**, one year suspended imprisonment and compensation of 30,000 NIS (7,800 USD) to Abu Khdeir's family, On April 19, 2016, after reviewing psychiatric expert opinions provided by both sides, the Court accepted the opinion provided by prosecution and rejected the expert opinion provided by the defense, and noted, *inter alia*, that at the time of the incident, defendant No. 1 was not in a psychotic state, he understood what he was doing and was responsible for his actions. The Court therefore noted that defendant No. 1 was the initiator of these acts and convicted him for Abu Khdeir's murder, in addition to kidnapping for the purpose of murder, assault causing grave bodily harm and attempted arson. On May 3, 2016, the Court sentenced Yossef Haim Ben David to **life imprisonment, an additional 20 years imprisonment to be served concurrently**. Ben David was also sentenced to compensation of 20,000 NIS (5,260 USD) to the family of another boy the three had tried to kidnap and compensation of 150,000 NIS (39,500 USD) to Abu Khdeir's family. (Jerusalem District Court, S.Cr.C. 34700-07-14, *The State of Israel v. Yossef Haim Ben David* (19.4.2016)).

¹⁵ For detailed information on this case, see Criminal Proceedings in the Murder of Mohammad Abu-Khdeir, State of Israel, Ministry of Justice, The Legal Counseling and Legislation Department (International Law) (Jan. 29, 2015), available at <https://www.justice.gov.il/Units/YeutzVehakika/InternationalLaw/MainDocs1/Criminal%20Proceedings%20in%20the%20Murder%20Case%20of%20Mohammad%20Abu-Khdeir.pdf>.

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Prosecution of Ideologically-Based Offences which Took Place in Israel

In response to the growing phenomenon of ideologically-based offences, Israel has adopted a more stringent enforcement policy. The following are some recent examples of charges filed against Israelis for ideologically motivated offences against Arabs in Israel:

1. On September 19, 2017, the Be'er-Sheva Magistrate Court convicted a defendant for several offences of prohibited publication of incitement to racism and incitement to racism or terrorism, after he opened a Facebook group to which he uploaded materials inciting to violence against Arabs. After hearing both parties, the Court convicted the defendant, Lior Cohen, in all the charges against him. On July 7, 2019, the Court sentenced the defendant to six (6) months imprisonment and additional previous suspended sentence against him of three (3) months imprisonment – 9 months imprisonment in total that will be served by community service, 12 months suspended imprisonment for a period of three (3) years and probation supervision order for a period of six (6) months. The Court took into account, among other things, the sincere remorse expressed by the defendant, the rehabilitation process the defendant went through, his understanding of his actions, the close supervision of the Adult Probation Service and the positive social worker's survey in his regard. The Court noted, *inter alia*, that the Defendant's statements in his Facebook publications were of a racist dimension and included calls for physical violence against the Arab population, however, due consideration should be given to that fact that the number of viewings and likes these publications received were insignificant and very low. (Cr.C. 41705-08-14 *The State of Israel v. Lior Cohen* (7.7.19)).
2. On March 3, 2019, the Be'er-Sheva Megistrate Court convicted a defendant for two (2) offences of incitement to violence and two (2) offences of prohibited publication of incitement to racism, which included 12 publications of incitement to violence and 27 publication of incitement to racism in total. According to the indictment, following the abduction and murder of Gilad Michael (16), Yaakov baftali frankel (16) and Ayal Ifrah (19) by terrorists in 2014, the defendant decided to establish a Facebook page in order to upload various contents inciting to violence and racism against Arabs. The defendant uploaded many publication which received wide exposure, and the page served as a platform for others who wrote supportive or similar publications. In addition, on June, 30, 2014 the defendant established another Facebook account in order to publish publications and ideas calling for violence and incitement against Arabs, which he did on many

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occasions. Also according to the indictment, on July 2, 2014, following the abduction and murder of Muhamad Abu Khdeir (16), the defendant published a call to conduct additional such abductions and murders against Arabs. Following this publication his additional account was blocked by Facebook. The defendant opened an additional account in which he published numerous inciting publications and call for revenge against Arab. The defendant is yet to be sentenced (Cr.C. 712-08-14 *The State of Israel v Shlomi Avraham* (3.3.19)).

3. On November 5, 2018, the Be'erSheva District Court sentenced a defendant who was convicted in the frame of a plea arrangement of attacking Arab men on several occasions and even stabbing one of his victims out of a racial motive, for meeting with Jewish women. The amended indictment contained four (4) counts which, *inter alia*, included offences of causing severe harm under aggravated circumstances and possession of a knife, assault under aggravated circumstance (several offences), assault that causes actual bodily harm under aggravated circumstance, injury under aggravated circumstance – all out of a racial motive (some of them conducted with other persons). The Court determined that the defendant did not operate out of personal difficulty or distress but rather of racial ideology that should be condemned. It was further noted that the offences in this case inflict severe harm to core-social values of human dignity of every person, including the protection of personal safety and are of extreme severity. The Court stated that the harm caused for these basic protected values is of great severity, since it exceeds the matter of the individual victims and concern wider circles - in this case the Arab population . The Court sentenced the defendant to five and a half (5.5) year imprisonment and nine (9) month suspended imprisonment for a period of three (3) year regarding any offence for which he was convicted. (S.Cr.C. 35048-04-17 *The State of Israel v. Raz Amitzur* (5.11.18)).

Conclusion

Israel is fully committed to fighting racist and ideologically-based violence, including against Palestinians. Israel has implemented, and continues to implement, its policies of upholding law enforcement in the West Bank and in Israel. These efforts are based on Israel's respect for the fundamental principles of democracy and the rule of law. The comprehensive efforts made by law enforcement authorities attest to Israel's commitment. Thus far, these efforts have proven to be successful in containing ideologically-based offences against Palestinians

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in the West Bank. Israel is committed to continuing its efforts on this front by investigating and prosecuting alleged offences, with the hope of preventing further offences in the future.