

“These Matters are Unpleasant”

The Operation of the Ministerial Committee on Access to Restricted Archival Material

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“A regime which takes upon itself the authority to determine what is good for the citizen to know, will eventually also determine what is good for the citizen to think; and there is no greater contradiction for a genuine democracy, which is not ‘guided’ from above.”

HCJ 243/62 Israel Film Studios Ltd. v. Gary
IsrSc 16(4) 2407, 2416 (1962) (translation by Yeshiva University, Cardozo Law, VERSA).

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Introduction

A special ministerial committee, chaired by the Minister of Justice, is empowered by law to approve decisions made by the Chief State Archivist to block the declassification of archival records whose restricted access period has expired but that the Chief State Archivist believes should be kept closed due to concerns of national security or foreign relations. The committee began operating in the early 1980s but has done little since, and so far, few documents and files have been kept sealed with its approval. The materials the committee has sealed, however, (sometimes without legal authority, as shown below), are critical to the study of Israel's history, particularly events and policies important for understanding the roots and evolution of the Israeli-Palestinian conflict.

As the findings of prolonged research conducted by Akevot Institute and presented in this report show, the Ministerial Committee on Access to Restricted Archival Material (hereinafter: Ministerial Committee) concentrates mainly on preventing the declassification of archival records relating to the Nakba and war crimes committed during Israel's 1948-9 War of Independence. The result is that important records about key historical events continue to be concealed from the public today - seventy years after the war - under the pretext of national security and foreign relations concerns. This practice limits the possibility of engaging in a complex, fact-based discussion about history. It produces a distorted history of Israel's early statehood and harms public and political debate in the country.

The practice described in this report concerns the prevention of access to historical records deposited in the two governmental archives in Israel that are open to the public - the Israel State Archive (ISA) and the IDF and Defense Establishment Archive (IDEA). The report lists several documents and specific topics that have remained closed and inaccessible to the public for decades and exposes the roots of the policy of concealment and secrecy. It demonstrates that concern for Israel's image and other political interests drive the practice rather than pertinent, legitimate reasons that permit - and sometimes necessitate - delaying the declassification of archival records.

This practice joins two other levels of systemic and institutionalized concealment of archival records in Israel, both of which were covered in previous reports released by Akevot Institute. One practice, exposed in a report released in July 2019 - **SILENCING: DSDE's Concealment of Documents in Archives**, takes place in public non-governmental archives throughout the country. The report presented the findings of prolonged research conducted by Akevot Institute showing that the Director of Security of the Defense Establishment (DSDE, also known by its Hebrew acronym *Malmab*), a department within the Ministry of Defense, had been operating without legal authority since 2002 to deny public access to certain archival materials stored in non-governmental public archives. One of the outcomes of this practice has been the concealment without legal authority of records concerning the events of Israel's War of Independence, particularly the displacement of the Palestinian population during and after the war.¹

¹In an interview for a feature story written by Hagar Shezaf for Haaretz newspaper based on the findings of the Akevot Institute report, Yehiel Horev, former head of the DSDE, commented on the benefit of imposing confidentiality on historical documents, including the ones already cited in academic literature: "I don't remember the document you're referring to, but if he [Historian Benny Morris]

Another more prevalent and more significant practice used to conceal records stored in governmental archives – rejecting the applications of archive users to declassify records – was described in detail in the report **Point of Access: Barriers for Public Access to Israeli Government Archives**, released by Akevot Institute in April 2016. Some applications are denied on false pretenses (misrepresenting protected interests as precluding the declassification of certain records²); others are denied pursuant to decisions made by officials without legal authority, such as preventing the declassification of materials past their restricted access period³ without going through the process stipulated in Section 10(c) of the Archive Law, which is the focus of the current report.

Government Archives: A Legacy of Concealment for Improper Reasons

For many years, the criteria guiding decisions on the declassification of archival materials in government archives (first IDEA and then also ISA) included explicit provisions that prevented granting public access to archival materials that could hurt the image of the state, the IDF, and

quoted from it and the document itself is not there [i.e., the archive where Morris says it is], then his facts aren't strong. If he says, 'Yes, I have the document,' I cannot argue with that. But if he says that it is written there, that could be true and it could be false. If the document was already outside and was sealed in the archive, I would say that's folly. But if someone quoted from it – there's a night and day difference in terms of the validity of the evidence he cited [...] When the state imposes confidentiality, the published work is weakened, because [the researcher] doesn't have the document [...] If someone writes that the horse is black, if the horse isn't outside the stable, you can't prove that it's really black." Hagar Shezaf, "Burying the Nakba: How Israel Systematically Hides Evidence of 1948 Expulsion of Arabs," **Haaretz weekend magazine**, English Edition, July 5, 2019 (available at <https://akvt.in/BuryingNakba>).

² One example is ISA File G-5430/1: A researcher with Akevot Institute ordered several files at the ISA reading room (still active at the time) at 10:50 A.M. on March 31, 2016. Two hours later he received a response by email that two of the files were sealed. With respect to one file, G-5430/1, entitled *Jaffa-General; Jaffa Housing*, the researcher replied that based on the available information about the file, it contained materials produced between April 1948 and July 1950, meaning the most recent records were more than 66 years old. Therefore, given the provisions of Section 9(e) of the Access Regulations, the maximum restricted access period for the file had expired, and its declassification was requested once more, based in part on the fact that the summary of its content indicates clear historical, research, and public interest in the material it contains. About an hour and a half later, another answer came stating that a review by the director of the declassification department revealed that, "the material in question was closed for access for reasons of privacy. The confidentiality period is 70 years." The researcher ordered the file again in December 2019, and it arrived in June 2020, containing 185 scanned pages, none of which had been redacted in part or in full. Upon a close review of the file, which addressed actions taken concerning the city of Jaffa after its conquest in 1948 no basis was found for the contention made in 2016 that the material it contained could violate anyone's privacy. It appeared that the contention was made solely to deny access to the file on false pretenses.

³ An example is the case of alleged massacres in Khan Yunis and Rafah in 1956. In September 2020, a researcher with Akevot Institute asked IDEA to allow public access to all materials related to the occupation of Rafah and Khan Yunis in 1956, and specifically, to a file that was open in the past containing records of the suspected killing of civilians in Rafah by the IDF at that time. On December 21, 2020, IDEA provided a response stating: "Please find below a response to the requests you made to IDEA to declassify and allow public access to files - Rafah, Khan Yunis and the Local Population in 1956 - the Rafah Incident - **the subject matter is not cleared for declassification**" (emphasis added). Since the restricted access period on this material has expired (see next chapter), IDEA and its staff have no authority to deny declassification at their own discretion.

its commanders. In 1988, around the time IDEA began declassifying materials and granting access to researchers outside the security establishment, Dr. Zehava Ostfeld, Deputy Director of IDEA at the time wrote a document that was intended to frame the discretion given to officials working on declassifying archival materials in IDEA.⁴ The document, entitled “List of Sensitive Topics due to Security, Foreign Policy and Privacy Concerns,” or “The Topics Document” for short, is essentially a catalog of issues defined as “topics that remain sensitive today,” and should be kept inaccessible to the public. Examples were provided for each such topic.⁵

One of the “topics” was given the title, “material that may damage the reputation of the IDF as an occupying force without moral principles.” Three examples were provided for this “topic,” first among them: “violence directed against the Arab population and acts of cruelty (killing, murder outside of battle conditions, rape, robbery, looting).”⁶ The Deir Yasin Affair was listed under the heading “matters that could arouse public and political controversy.”⁷

⁴ According to a letter from IDEA to the Acting Chief State Archivist, the list was based on the “document approved by the Vardi Commission” (The letter, dated April 17, 1989, can be found in State Archive File G-7977/7). The commission in question was the “Commission for Setting Criteria for the Declassification of Archival Materials” (produced between 1948 and 1957) headed by Major General Refael Vardi. Dr. Ostfeld was the commission’s coordinator. Minister of Defense Yitzhak Rabin accepted the recommendations of the Vardi Commission in July 1988. However, as later noted by the State Comptroller, the Topics Document itself that was presented to the Vardi Commission by IDEA was rejected by the Commission and never approved by the Minister of Defense. The State Comptroller found, however, that IDEA, “had included the Topics Document in its protocols, pronouncing that its criteria would determine what documents from the years 1948-1956 (and not just 1948) would be declassified for public access. [IDEA] even notified various agencies within the Ministry of Defense, the Chief State Archivist, and researchers who contacted it that the Ministry of Defense had approved these criteria, even though it had not. Use of the criteria included in the Topics Document narrowed the conditions for the declassification of archival materials and prevented the declassification of records that could have been declassified according to the criteria determined by the Minister of Defense in 1988.” State Comptroller, **Annual Report 50B for 1999 and the 1998 Fiscal Year** (2000), p. 714 (Hebrew).

⁵ A copy of the Topics Document was provided to Akevot Institute after three years of effort. The ISA denied Akevot Institute access to files deposited by the ISA itself that concern IDEA for some time. Akevot Institute researchers asked to access these files as part of their research into declassification policy in governmental archives. After a reshuffle in the top ranks of the ISA and after our application to declassify files from the ISA repository went into processing, the declassification of files concerning IDEA (according to their title) was still delayed on the grounds that the ISA had to consult with IDEA regarding declassification. Some of these files were later declassified, but many documents inside them were redacted without pertinent justification, including the Topics Document (in one of the files provided to Akevot Institute, the last page of the Topics Document is not redacted, apparently in error). After Akevot Institute appealed to the Chief State Archivist, redactions in files concerning IDEA abated, and Akevot Institute received an unmarked copy of the Topics Document, bearing the date September 1988.

⁶ Two more examples provided for this “topic” were: “Violence between commanders and soldiers, violation of holy sites (desecration of churches, mosques, and cemeteries). It is not clear why “violence between commanders and soldiers” was included as an example under this heading. It may have been an editing error.

⁷ The context in the document: “unpublished materials regarding the Etzel and Lehi.” The Etzel (the Hebrew acronym for National Military Organization in the Land of Israel, known in English also as the

The heading, “materials related to the Jewish-Arab conflict that remain a national security concern today,” was followed by a slew of examples, including “expulsion of Arabs,”⁸ “institution of policies against the return of Arabs into the country,” “evacuation of communities and residents (Majdal),” “demolition of villages,” and more (see annex A). Atrocities committed by individuals or small units during operation (“Hiram-Lahis”) were listed under “special operations.”⁹ Shmuel Lahis’ name also appears in the first example listed under the heading “special affairs,” as “the Lahis Affair,” followed by “the Riftin Report, in-camera trials of resistance organizations, the Khalisa trial,¹⁰ Teddy Eitan, Weingarten A.A., espionage trials, the Dawayima massacre - security trials AND commissions of inquiry [...]”

Declassification criteria in government archives have been changed over the years:¹¹ The “Topics Document” has not been used by the ISA for many years, and IDEA has also instituted other criteria for the declassification of archival records that do not include the improper provisions that guided it in the past.¹² Nevertheless, a review of materials that have been kept sealed over the years by decision of the Ministerial Committee shows that this process is still used to deny access to records pertaining to issues previously listed in the Topics Document,

Irgun), and the Lehi (Hebrew acronym for Fighters for the Freedom of Israel) were two of the three pre-independence underground organizations that fought the British Mandate.

⁸ Further details were provided for this example: “**Expulsion of Arabs**: Retaliation against infiltrators, orders to harm infiltrators even in cases of doubt; orders on capitulation by Arabs.” (Hebrew) (emphasis in original).

⁹ Shmuel Lahis, then a company commander with the 22nd Battalion of the Carmeli Brigade, was accused of the murder of dozens of civilians in the village of Hula, in Lebanon, in two separate incidents, on October 31 and on the next day November 1, 1948. Lahis was convicted in a court-martial of murdering 15 people (in the second incident, on November 1). Lahis was sentenced to seven years in prison. Following an appeal, his sentence was commuted to one year and on Independence Day 1950 President Chaim Weizmann revoked the prison sentence altogether. In 1955, Lahis was pardoned by President Yitzhak Ben Zvi.

¹⁰ This refers to the trial of three soldiers accused of murdering four Palestinian women in July 1948. The women were apprehended on lands of Khalisa village in the Upper Galilee (now Kiryat Shmona) and handed over to the accused soldiers. The trial ended with all three acquitted for lack of evidence.

¹¹ According to the State Comptroller, in 1990, the management of IDEA updated the criteria to prohibit the declassification of materials concerning, among other things: “[...] The reputation of the IDF, and its commanders and the state and its officials; the IDF’s combat ethics; adherence to ‘purity of arms’; [...] and more (State Comptroller, **Annual Report 47 for 1996 and the 1995 Fiscal Year** (1997), p. 895, (Hebrew)). In 1995, at IDEA’s suggestion, the Chief State Archivist adopted the Topics Document, such that at least some of its criteria guided declassification work at the ISA (State Comptroller, **Annual Report 50B**, p. 714 (Hebrew)). In June 1996, the document listing declassification criteria at IDEA was updated, and the provision on protecting the image of state institutions and figures was omitted. At the same time, a provision barring the declassification of “special affairs and confidential matters the state has an interest in keeping sealed,” was added. The State Comptroller remarked that the vague language of the provision “opens the door to denying declassification for improper reasons” (State Comptroller, **Annual Report 47**, p. 896 (Hebrew)).

¹² The current version of the Access Regulations, dating from 2010, includes provisions on the discretion to be used when declassifying archival records that are still under the restricted access period, as well as provisions regarding the reasons that can justify keeping records sealed past the restricted access period under the procedure set forth in Section 10(c) of the Archive Law. Additionally, IDEA has a criteria document that no longer contains the improper provisions previously included in the Topics Document. The ISA has evaded instituting clear internal protocols to guide declassification workers for many years.

including records from the early days of the state that could damage the IDF's reputation and expose wrongdoings and actions, some of which amounted to war crimes. Some of these records were specifically mentioned in the Topics Document as material to remain confidential such as Deir Yasin, the Riftin Report, Dawayima, and the Lahis Affair. In each of these cases, it is difficult to see how the release of old documents about events that took place seventy or more years ago, or discussions regarding state policies directed to Palestinian citizens, could raise substantive concerns of harming Israel's national security or foreign relations many decades after their occurrence. Like the operation of the DSDE in public archives, the mechanism of the Ministerial Committee is utilized in practice as another means of maintaining the closure of records kept in government archives long past their restricted access period. This concealment results in the distortion of the recorded history of the Israeli-Palestinian conflict.

Section 10(c) of the Archive Law: The Mechanism of Keeping Archival Records Sealed Past their Restricted Access Period

10. (a) Any person may review archival materials deposited in the archive, but this right may be limited by regulations. The limitation may apply according to the type of archival record and according to a fixed period of time from its creation.

(b) [...].

(c) (1) With respect to the subsection herein, the Government shall appoint a committee of three ministers.

(2) The State Archivist, with the approval of the committee, may mark archival material as secret - for reasons of harm to national security or foreign relations, and as confidential - for reasons of the privacy of the individual. The Archivist may, with the consent of the council, take such action for other reasons.

(3) The Archivist may impose special restrictions on access to archival records of the aforesaid types.¹³

Opening for public access of archival material deposited in government archives - ISA, IDEA, and others¹⁴ ("declassification") - is regulated under Section 10 of The Archive Law, 1955 and in The Archive Regulations (Access to Archival Material Held in the Archives), 2010 (hereinafter: "Access Regulations").

Section 10(a) of the Archive Law establishes the basic principle whereby any person, without discrimination, is entitled to access government archives (in other words, the ISA and its

¹³ Section 10 of The Archive Law.

¹⁴ Several governmental archives formally act as branches of the ISA, even though in practice, they operate as part of the institutions that established them, and the staff at the helm of the ISA have no practical ability to intervene in their operations, including policy on allowing public access to records. They include IDEA, the General Security Service (GSS) Archive, the Mossad Archive, the Israel Atomic Energy Commission Archive, and the Israel Institute for Biological Research Archive. The archives of the heritage centers commemorating former prime ministers of Israel, David Ben Gurion, Menachem Begin, and Yitzhak Rabin, established in legislation, are also formally branches of the ISA.

branches) and review material stored therein; the same phrase also establishes the authority to restrict access through regulations.

The Access Regulations, enacted pursuant to Section 10(a) of the Archive Law, were first introduced in 1966. They have been amended several times over the years and replaced with a new version in 2010. The Access Regulations center around arrangements pertaining to access to archival material stored in the ISA and its branches, and stipulate restricted access periods and arrangements for the proactive release of records for public access (“declassification”), whether after the expiration of the restricted access period or in response to a request from the public while the restricted access period is still in force.¹⁵

Restricted access periods stipulated in the current version of the Access Regulations range from 15 to 90 years, depending on the content of the material and its source. The default restricted access period is 15 years from the time the material was produced (and for documents contained in a document file - from the date of the most recent document in the file) unless the origin or content of the archival record in question is restricted under Schedule 1 of the Access Regulations, which lists maximum restricted access periods range from 20 to 90 years.¹⁶

Where the depositor, after having reviewed the materials for which the restricted access period has elapsed, believes the records in question should remain inaccessible to the public, they may ask the State Archivist to invoke the procedure prescribed in Section 10(c) of the Archive Law. According to this section, the Chief State Archivist may, at the depositor’s request, classify records whose restricted access period has expired as “secret” or “confidential,” enabling the Archivist to impose further restrictions on access. Prior to imposing such restrictions, the Chief State Archivist must obtain the approval of the Ministerial Committee on Access to Restricted Archival Material. The Ministerial Committee has the authority to approve the State Archivist’s classification of the material as “secret” or “confidential,” thereby denying access beyond the restricted access period set in the regulations.

The power vested in the Ministerial Committee is limited to approving a decision made by the Chief State Archivist regarding the classification of the materials. The law does not give the

¹⁵ For a discussion of the provisions of the Archive Law and Access Regulations on access to archival materials still within the restricted access period, see Chapter 1 of Akevot Institute report **Point of Access: Barriers for Public Access to Israeli Government Archives** (April 2016) (hereinafter: Point of Access).

¹⁶ Several examples of restricted access periods stipulated in Schedule 1 of the Access Regulations: 20 years for transcripts of confidential meetings of Knesset committees; 25 on “foreign relations” material created by government ministries; 30 for archival records produced by the Israel Police, the Israel Prison Service, the Ministry of Public Security, as well as some material produced by the IDF and the Ministry of Defense. Security Cabinet decisions and transcripts are under a 50-year restricted access period, as is “material concerning security matters” produced by the Ministry of Defense, the IDF, and other agencies. Material vaguely described as “private and personal documents” is under a 70-year restricted access period. Raw intelligence material was put under a 90-year restricted access period (in the most recent amendment to the Access Regulations), as was material produced by security agencies listed in Schedule 2 of the Access Regulations: the GSS, the Mossad, the Israel Institute for Biological Research, the Israel Atomic Energy Commission, and the “nuclear research facilities.” The Minister of Defense was given powers to list by order, which will not be made public, additional security agencies and IDF units whose archival records would be put under a 90-year restricted access period.

committee any authority to determine matters such as how long records can be kept sealed or make any other decision. Furthermore, the Committee often appears to exceed its legal authority, both with respect to setting the duration of restricted access and regarding other decisions it makes.

The Ministerial Committee on Access to Restricted Archival Material: Background

The Ministerial Committee on Access to Restricted Archival Material was established following a 1981 amendment to the Archive Law.¹⁷ The amendment was designed to replace the previous arrangement, whereby the Supreme Council of Archives (composed mostly of archive experts) had the power to make decisions that pertain in part to sensitive material with national security or foreign relations implications. During the process of drafting the amendment, several suggestions were made as to who would have the power to approve special restrictions like the Prime Minister, a group of ministers, or a combination of ministers and a Knesset committee chair. The decision ultimately reached was to assign this function to a government-appointed ministerial committee.¹⁸

During the deliberations that preceded the amendment, concern was voiced over the transfer of authority to approve special restrictions by government officials. One cause for concern was the possibility of decisions being influenced by extraneous considerations. Another was that ministers sitting on the committee would be too busy with affairs pertaining to their ministries and would not be able to carry out their committee functions.¹⁹

Meetings of the Ministerial Committee are, in fact, rare. **Government archives have devised alternative ways - some lacking legal basis - to prevent the public from accessing materials for which the legally mandated restricted access period has expired.** For instance, government archive staff take it upon themselves to deny the declassification of files whose restricted access period has expired without asking for the State Archivist's approval, and consequently also without the approval of the Ministerial Committee. Archive staff also redact parts of files, and IDEA staff specifically routinely deny applications to access records past their restricted access period without referring to the appropriate channels prescribed in the Archive Law.²⁰

¹⁷ The committee's title may be misleading as its legal powers are confined to accepting or rejecting a recommendation by the Chief State Archivist to deny access to materials that are past their restricted access period, as opposed to allowing access to "classified" materials or materials still under the restricted access period stipulated in the Access Regulations.

¹⁸ Ziona Raz, Opening Archival Records for Public Access, **Archive: A Reader for Archiving and Documenting** 1 (1987), pp. 50-52 (Hebrew). The committee has been filled twice since 2008. The last committee members, appointed by the 34th Government, were Minister of Justice Ayelet Shaked, Minister Yuval Steinitz, and Minister Miri Regev. Resolution 58 of the 34th Government, "Ministerial Committee for Permission to Access Classified Archival Records" (June 7, 2015). The 35th Government (given the Knesset's confidence on May 17, 2020) never appointed members to the committee.

¹⁹ Ziona Raz, *ibid.*

²⁰ State Comptroller, **Annual Report 70C** (2020), pp. 337-338 (Hebrew).

The Ministerial Committee's Main Focus: Hiding War Crimes and Other Incidents from 1948/9

As part of the research conducted for this report, Akevot Institute filed Freedom of Information inquiries to the Prime Minister's Office (PMO) and the Ministry of Defense, requesting a list of records that remain closed for public access at IDEA and the ISA through the mechanism stipulated in Section 10(c) of the Archive Law (i.e. by decision of the Chief State Archivist with the approval of the Ministerial Committee). The information was provided in May 2019. This information and supplementary research conducted by Akevot Institute indicate that the vast majority of ISA and IDEA materials that remain confidential thanks to this mechanism concern documentation of war crimes and the displacement of civilians during the 1948 War, as well as the origins of Israel's policy regarding its Palestinian citizens formulated at that time.

The following pages provide descriptions of the materials and files that remain sealed by the decision of the Ministerial Committee pursuant to the mechanism stipulated in Section 10(c) of the Archive Law. The list is based on details provided to Akevot Institute in response to Freedom of Information inquiries and on supplementary research by Akevot Institute researchers.

Ministry of Minority Affairs files

In the early 1980s, the Arab Affairs Adviser at the PMO asked to close for public access the scores of files produced by the Ministry of Minority Affairs, which operated in the early years of Israeli statehood. The request came after an official with the Arab Affairs Adviser's Office had reviewed the files ahead of declassification.²¹ In a discussion at the Supreme Council of Archives, the Chief State Archivist at the time described the files in question as "relating, in one way or another, to the expulsion of Arabs or cultivation of land considered abandoned property, and often, these matters are unpleasant."²² The Chief State Archivist questioned the reasoning for the decision to close the files for public access. He did not believe revealing the information in question would hurt national security or foreign relations. He also noted that the information contained in the files indicated they relate in part to "expulsions" (which he claimed the government vehemently opposed) and "actions taken by local commanders, sometimes very important commanders, prominent in our political sphere."²³ The Chief State Archivist brought the matter to the Ministerial Committee, which on May 6, 1985, decided, **contrary to the Chief State Archivist's position**, that the files would remain sealed due to national security and foreign relations concerns. After another request from the Chief State Archivist, this time in his capacity as Head of the Supreme Council of Archives, the Ministry of

²¹ As noted, the authority to request not to declassify materials that are past their restricted access period lies with the "depositor" - the entity that deposited the material in the ISA. In this case, the Office of the Arab Affairs Adviser at the PMO replaces the original depositor - the Ministry of Minority Affairs - which was closed in 1949.

²² Supreme Council of Archives Meeting Transcripts, May 29, 1985 (Hebrew). Hashomer Hatzair Yad Yaari Archive file 40-19.7.

²³ Quoted in Ziona Raz, see supra note, 18, p. 52.

Defense appointed a committee that ultimately ordered the declassification of 80 files, but 40 of them remained sealed due to objections raised by the Ministry of Foreign Affairs.²⁴

This decision made in May 1985 was the Committee's very first since its establishment in December 1983, and it already exceeded the powers given to it under the Archive Law to approve (or deny) a decision by the Chief State Archivist to declare archival records as "secret" or "confidential."

The Ya'akov Shimshon Shapira Report

In 1984 historian Dr. Benny Morris, applied for access to Ministry of Justice File 25/1/0 at the ISA. The file contains a report authored by Israel's first Attorney General, Ya'akov Shimshon Shapira, on the orders of Prime Minister David Ben Gurion, who empowered Shapira to check whether, "The lives of Arab residents of the Galilee and the south had been harmed by soldiers or the military in contravention of the accepted laws of war," during Operations Yoav and Hiram (between October 15 and November 1, 1948). The Chief State Archivist at the time, Avraham Ellsberg, contacted the Ministry of Justice Deputy Director General asking for a decision on whether to grant Morris's request and open the file for access. "The report of the Attorney General dated December 1, 1948, regarding the outcomes of the investigation includes not just a description of the horrific events, as made familiar in other documents, but also the names of witnesses," Chief State Archivist Ellsberg wrote attaching a copy of the Shapira Report.²⁵ The Ministry of Justice responded that it did not have the staffing capacity to go through the file. Morris eventually petitioned the High Court of Justice, demanding access to the material. Following the legal challenge, several days before the hearing scheduled in the petition, the Chief State Archivist submitted a memo to the Ministerial Committee in which he described the contents of the file as "records of the same type closed for access regarding the Ministry of Minority Affairs." The Archivist added a request for approval of his decision to mark the file "secret" due to national security and foreign relations concerns.²⁶ The committee was urgently convened for a meeting within several days with only one member present, Minister of Justice Avraham Sharir, who said for the record that the Minister of Defense and Minister Moshe Arens had informed him of their position that the material should be marked secret. The Ministerial Committee approved the Chief State Archivist's decision to mark the material as "secret" without citing any reasons.²⁷ At the High

²⁴ *ibid.*, pp. 52–53. Akevot Institute does not have the full list of 40 Ministry of Minority Affairs files that have been closed, but they appear to be included in the ISA's Classified Records Catalogue. In November 2019, the ISA introduced the option of requesting access to files listed in this catalog, which number about 251,000. Akevot Institute researchers have asked for access to the Ministry of Minority Affairs files listed in the catalog. The declassification is progressing slowly.

²⁵ Letter of Chief State Archivist Avraham Ellsberg to Ministry of Justice Deputy Director General Yehuda Shapira, February 17, 1985 (Hebrew). ISA File G-7321/1.

²⁶ Chief State Archivist Memo to Ministerial Committee, October 9, 1986 (Hebrew). ISA File G-7320/51.

²⁷ Benny Morris's petition was filed on September 9, 1986. Ministerial Committee for Permission to Access Classified Archival Records, Decision SH/2 Ministry of Justice: Arab Affairs - Commission of Inquiry regarding Arabs and Minorities, October 14, 1986 (Hebrew). ISA File G-7320/51, see Annex C.

Court hearing held several days later, Dr. Morris withdrew the petition after the court remarked that “the decision of the Ministerial Committee brings us to a legal impasse.”²⁸

Since 2015, Akevot Institute has been trying to gain access to the same file Benny Morris asked to access back in 1986. The Ministry of Justice – the file’s depositor – has recently stated in response to a communication from Akevot Institute, that it had reviewed the file and granted approval for its release for public access. Responding to the Akevot’s follow-up, the Chief Archivist said the Ministry of Justice did not in fact examine the report itself, as it was removed by one of the ISA employees from the file before it was handed to the Ministry of Justice for declassification. According to the Archivist, the employee did so under the assumption “there was no chance” the report would be declassified. The Archivist added that after this was discovered the report was provided to the Ministry of Justice, which has not yet communicated its declassification decision to the ISA.

The Deir Yasin File

Fourteen years passed until the next time the issue of confidentiality of archival material was brought to the Ministerial Committee. In March 2000, the Attorney General’s Office held a meeting to discuss whether to seal a report produced by the Haganah about the Deir Yasin massacre and a number of photographs documenting the aftermath, after a researcher asked to access the materials. During the meeting, attendees noted that a related document file had been opened for public access at IDEA ten years prior. The discussion ended with a decision that, “weighing the factors, it has been determined that there is no room to grant access to materials related to this painful and charged affair beyond what has already been declassified and which might not have been declassified today. **The matter concerns the image and reputation of the State of Israel** and elements which, in the opinion of nearly all participants in the discussion, may harm the country’s foreign relations. This is not the time to allow the widespread publication of such sensitive material in this matter.”²⁹

The Ministerial Committee convened eight months later, on December 4, 2000, and approved keeping the records sealed for one year. In a subsequent Ministerial Committee discussion held in February 2002, the committee extended confidentiality by five more years. In 2007, filmmaker Neta Shoshani asked the ISA for access to “reports, written records from the Haganah and a collection of photographs” regarding the Deir Yasin massacre. The Ministerial Committee heard the position of the Chief State Archivist and representatives from IDEA, the Ministry of Justice, and the Ministry of Foreign Affairs and noted that “issues involving Israel’s foreign relations that are tied to the events of 1948 have not been resolved and the conflict has not yet reached its end,”³⁰ and extended confidentiality by five more years. Shoshani challenged the decision in a High Court petition she filed together with journalist Gidi Weitz

²⁸ Memo from Tamar Haker, State Attorney’s Office to Dr. Ellsberg, Chief State Archivist, October 19, 1986 (Hebrew). ISA File G-7320/51. In 1997, Morris contacted the Chief State Archivist once again with a request to access the material. The Chief State Archivist at the time, Evyatar Frizel, denied the request.

²⁹ Adv. Ya’akov Shapira, Assistant Attorney General. Summary of discussion dated March 7, 2000, with respect to Application for Public Access to Archival Records (Mostly Visual) relating to the Deir Yasin Affair (Hebrew). Emphasis added. ISA File G-13336/1.

³⁰ Cited in the judgment in H CJ **10343/07 Haaretz Newspaper Publishing LTD. et al. Ministerial Committee for Permission to Access Classified Archival Records et al.**, judgment dated May 24, 2010 (Hebrew).

and Haaretz daily newspaper. The court dismissed the petition in May 2010 but ruled that since one member of the Ministerial Committee gave his decisions in advance and never attended the meeting, “there is reason to convene the Committee [again] early,” for an additional discussion before the five-year period expired.

The issue of the Deir Yassin records was presented to the Ministerial Committee again in February 2017, and confidentiality was again extended by five years, until February 2022.

39 pages of government meeting minutes

In 1995 the ISA allowed public access to minutes of government meetings from 1948 and 1949, but many sections were redacted in the copies made available to the public. In his book, *Tikun Ta'ut* (Correcting a Mistake), Benny Morris described the nature of these sections: “Nearly all the material that remains sealed concerns the expulsion of Arabs, the destruction of Arab villages, looting, pillaging, rape, and murder by Haganah and IDF soldiers.”³¹

Although the sections were redacted in 1994-1995, it was not until a Ministerial Committee meeting in December 2000 that the confidentiality of 39 pages (in full or in part) of government meeting minutes from 1948 and 1949 was approved. In some instances, entire sections of a discussion were redacted; in others, single paragraphs.³² According to information provided to Akevot Institute by the PMO on December 4, 2000, the Ministerial Committee decided that the relevant parts of the minutes would remain “secret” for one year, and, during its February 3, 2002 meeting, extended the confidentiality for five years until February 2, 2007. Although the Ministerial Committee’s approval to mark the sections “secret” expired 14 years ago, they remain redacted.

It is important to note that the list of the 39 segments that the Ministerial Committee approved marking as “secret,” as provided to Akevot Institute in response to a request under the Freedom of Information Act, does not include all materials redacted by ISA staff in the minutes of meetings held by the interim government in 1948-9. A review of the minutes

³¹ Benny Morris, **Correcting a Mistake: Jews and Arabs in Palestine/Israel, 1936–1956** (Tel Aviv: Am Oved 2000) (Hebrew), p. 133.

³² Government meeting minutes dated [May 26, 1948](#) (Hebrew): Section F of the agenda - the heading and the entire discussion that follows are redacted, pp. 45-54; Government meeting dated [June 9, 1948](#) (afternoon) (Hebrew): Section H of the agenda - the heading and the entire discussion that follows are redacted, pp. 14-25; Government meeting dated [June 16, 1948](#) (Hebrew): pages 4-6 and sections on pages 28-29 are redacted; Government meeting minutes dated [June 20, 1948](#) (Hebrew): a section on pages 13-14 is redacted; Government meeting dated [June 27, 1948](#) (Hebrew): sections on pages 2-3 are redacted; Government meeting dated [July 14, 1948](#) (Hebrew): Section C of the agenda - the heading and pages 34-37 are redacted; Government meeting minutes dated [July 18, 1948](#) (Hebrew): Discussion under section E of the agenda is redacted - but the heading remains visible: The Arab Population in Abandoned Areas and its Property, pp. 39-41; Government meeting dated [March 27, 1949](#) (Hebrew): A section on page 33, part of a discussion concerning the distress of orchard growers is redacted. This section is most likely redacted as it concerns the fate of orchards whose Palestinian owners had been displaced. Some of these meeting minutes contain redacted sections that were not mentioned in the Ministerial Committee’s decision.

uploaded to the ISA website shows that additional sections redacted in the 1990s remain redacted to this day.³³

Ten documents from IDEA

In that same December 2000 meeting of the Ministerial Committee, another collection of documents was also classified for one year. These documents were described to Akevot Institute as “ten documents from IDF and Security Establishment archive - all of the military documents dating from the War of Independence.”³⁴ In a conversation with Akevot Institute, former Chief State Archivist Dr. Yaakov Lazowick said that to the best of his recollection, all or some of the documents pertained to the “Saison,” which predates the War of Independence.³⁵

In February 2002, the Ministerial Committee extended the confidentiality of these documents for five more years, until February 2, 2007. Though the confidentiality period has expired, the documents remain sealed and have not been released for public access yet.³⁶

The Riftin Report

IDEA holds a file containing the concluding report of an investigation conducted by Yaakov Riftin, a member of the Security Committee,³⁷ at the request of David Ben Gurion. The investigation centered on allegations of serious crimes committed by Haganah members. IDEA file contains the report Riftin submitted to Ben Gurion as well as 35 annexes - likely records from the investigation Riftin used to write the report.³⁸

The Riftin Report was first brought to the Ministerial Committee in 2004 after journalist Shlomo Nakdimon asked to have the records declassified. The declassification teams at the ISA and IDEA sought to prevent its declassification, and the Chief State Archivist at the time, Yehoshua Freundlich, asked the Government Secretariat to convene the Ministerial Committee to approve his decision to mark the report “secret” and “confidential.” In a background document the Chief State Archivist prepared later, he listed the reasons for his decision to keep the records sealed. The first reason cited was the protection of individual privacy. The report lists the names of perpetrators and victims. The Chief State Archivist maintained that releasing these names would be a violation of their privacy. Under the Access

³³ On April 25th, 2021, Akevot Institute wrote to the Chief State Archivist, asking to remove the redactions from parts of the government transcripts from 1948-1949. Responding the same day, the Chief Archivist said the redacted parts will undergo a declassification process. Email correspondence between Akevot’s Lior Yavne and the Chief Archivist, April 25th, 2021. An examination by Akevot in September 2021 found that the redacted sections of the transcripts were not yet declassified.

³⁴ Letter from Shaked Friedrich Levtov, Prime Minister’s Office Freedom of Information Unit to Lior Yavne, Akevot Institute Executive Director. **Archival Records at the ISA barred from release for public access under Section 10(c) of the Archive Law.** May 16, 2019 (Hebrew).

³⁵ Conversation between Akevot Institute and Yaakov Lazowick, September 22, 2019. The “Saison” is a name for actions taken by the Haganah against the Irgun between December 1944 and February 1945 to suppress Irgun activities against the British Mandate.

³⁶ On August 8th, 2021, Akevot Institute wrote to the IDEA Director, asking to declassify the documents.

³⁷ The Security Committee, headed by David Ben-Gurion, oversaw the operation of the Haganah and its membership and included representatives of the Jewish Agency and the Yishuv’s Jewish parties.

³⁸ For more on the Riftin Report, see [Concealing Archival Material from 1948: The case of the Riftin report](#) on the Akevot Institute website.

Regulations in force at the time, the records would be closed for a period of 70 years. The second reason listed was a violation of national security, as mention of atrocities such as the murder of prisoners “could cause unrest and perhaps even acts of vengeance.” Third, the Chief State Archivist stated adverse effects on foreign relations as a reason, “since some of the acts, primarily the murder of prisoners, as well as others, were a violation of international law.” Another factor was that some of the atrocities were perpetrated against Polish defectors, which “is a highly sensitive matter that could damage relations between the two countries.”³⁹

On June 30, 2004, the Chief State Archivist’s decision was brought to the Ministerial Committee, which convened in absentia with only two of its members present: the chairman, Minister of Justice Yosef Lapid, and Meir Shitrit, who was serving as a minister in Ministry of Finance.⁴⁰ Shitrit was in favor of approving the Archivist’s decision. Lapid objected. The decision was not upheld as there was no majority. The two ministers agreed, “in any event,” to remove the names mentioned in the report and delay the implementation of the decision for a week.⁴¹ Minister Shitrit said he would appeal and bring the decision to the government plenum. When the Deputy Government Secretary explained that a decision made by a statutory ministerial committee could not be appealed before the government plenum, Minister Shitrit asked for the decision to be reconsidered by the full panel of the Ministerial Committee.

On July 11, 2004, the committee held a repeat hearing in which Gidon Ezra, who was appointed Acting Minister of Tourism just days before, was present. This panel of the Committee decided to classify the file as “secret” and “confidential” for one year.⁴² In March 2006, the committee convened again to discuss the fate of the file - with new members after a change of government. The Chief State Archivist presented the recommendations of the declassification teams, which had been presented to the previous members as well, and noted his position that the reasoning considered by the Ministerial Committee at the time was still valid. The Archivist noted that “all relevant historical information regarding this affair – the fact that such acts occurred, the public outcry around them, the fact that a committee was appointed and that conclusions were drawn, all appear in literature, and the further disclosure the researcher is seeking is of sensational, personal details that add nothing to the historical presentation.”⁴³ The new members of the Committee decided to ask for the opinions of the Ministry of Foreign Affairs and the Ministry of Defense regarding the possible impact on national security and foreign relations should the Riftin Report be publicized.⁴⁴ The committee reconvened on July 7, 2006, and again decided to approve confidentiality for five years.

³⁹ Letter from Yehoshua Freundlich, Chief State Archivist to Arye Zohar, Deputy Government Secretary, Riftin Report – Ministerial Committee Discussion. February 26, 2006 (Hebrew). ISA File G-14665/3.

⁴⁰ The other committee member was the Minister of Tourism, a portfolio held at the time by Prime Minister Ariel Sharon.

⁴¹ Transcript ARC/1 of the Ministerial Committee for Permission to Access Classified Archival Records, June 30, 2004 (Hebrew). ISA File G-14665/3.

⁴² Transcript ARC/2 of the Ministerial Committee for Permission to Access Classified Archival Records, July 11, 2004 (Hebrew). ISA File G-14665/3.

⁴³ Letter from Freundlich to Zohar, supra, note 39.

⁴⁴ Transcripts of Ministerial Committee Meeting, July 11, 2006, File G-14665/3.

The Riftin Report once again returned to the Ministerial Committee in 2017. The Chief State Archivist at the time, Dr. Yaakov Lazowick, favored allowing public access to the IDEA file containing the report and its annexes. Given Dr. Lazowick's position, the fact that the matter was brought to the Ministerial Committee lacked legal authority.⁴⁵ Dr. Lazowick concluded the detailed explanation he gave for his position on declassifying the Riftin Report and another file (The Refugee Study - see below) by stating, "The State of Israel is strong. Israeli society is strong. There is no reason not to allow its citizens to freely research records of its bygone wars." The IDEA administration objected to the declassification of the report and the Refugee Study file, providing its reasons in classified letters to the members of the Committee. The Committee discussed the two files, along with the Deir Yasin file (see above), over three different sessions held between September 2016 and February 2017. The Committee ultimately decided - as noted, against the Chief State Archivist's position and without legal authority - to keep the three files sealed for five more years, until February 4, 2022. An application filed by Akevot Institute under the Freedom of Information Act to receive copies of the committee session transcripts, the reports submitted to it, and the names of the individuals present during the session was rejected on the grounds that the requested materials were "secret."⁴⁶

Akevot Institute researchers located another copy of the Riftin Report (without the annexes) at the Yad Tabenkin Archive prior to the 2017 decision by the Ministerial Committee. Yad Tabenkin is a public archive, independent of the ISA, and is therefore exempt from the provisions of Section 10 of the Archive Law. In November 2017, Akevot Institute submitted the copy of the Riftin Report it had located for review by the Israeli Military Censor ahead of publication on the institute's website. After several months and a number of reminders, Akevot Institute received the copy back with the stamp "on hold" on each of its pages, meaning the document could not be published before a final decision was made by the Military Censor.

The censor's handling of Akevot's request to publish the Riftin Report was covered in Ofer Aderet's story in Haaretz newspaper in July of 2018, which cited the report extensively. After the story's publication, Akevot Institute's director met with a senior official at the censor's office, who said the office was holding off on its review of the report because of the Ministerial Committee's decision and not blocking its publication due to its own professional assessment. In August 2020, Adv. Avner Pinchuk, from the Association for Civil Rights in Israel, contacted the Israeli Military Censor on behalf of Akevot Institute, clarifying the censor's office had an obligation to review the material presented to it for inspection regardless of decisions by other authorities.

Following this letter, the censor's office did perform a review of the Riftin Report and, in November 2020, three years after receiving the copy – approved in writing that there was "no censorship impediment to publishing the report." The [report was published](#) on the Akevot Institute website in February 2021 (including an English translation of the complete report). Akevot Institute contacted the Chief State Archivist and the director of IDEA, asking to declassify the file stored in IDEA, which includes the 35 annexes Riftin used for the report.

⁴⁵ As noted, the provisions of Section 10(c) of the Archive Law instruct that the committee's authority is confined to approving (or rejecting) a decision made by the Chief State Archivist to seal archival records.

⁴⁶ Response of the Freedom of Information Act Implementation Officer at the Ministry of Justice, Adv. Michal Tene to Freedom of Information Application filed by Akevot Institute researcher, Dr. Noam Hofstadter, July 11, 2017 (Hebrew).

IDEA File 681-922/1975 - The Refugee Study

Historian Shay Hazkani contacted IDEA in 2014 with a request to access a 50-year-old file purportedly containing a copy of a report commissioned by David Ben Gurion from Israeli researchers regarding the reasons for the “refugee flight” in 1948.⁴⁷ Hazkani’s request was denied, even though the restricted access period on these records, created in 1964, had expired. In 2016, the issue was brought before the Ministerial Committee.

As noted, the Chief State Archivist favored allowing public access to the file, contrary to the opinion of the IDEA Director.⁴⁸

In a meeting of the Ministerial Committee, chaired by Minister of Justice Ayelet Shaked, representatives from the Ministry of Foreign Affairs and the Ministry of Defense submitted a report objecting to the file’s release. According to the press, “[t]he Foreign Ministry noted that releasing it could affect Israel’s ability to deal with future negotiations with the Palestinians or decisions by the UN Security Council on core issues of a permanent arrangement like the refugee issue.”⁴⁹ In February 2017, the Committee decided to extend the confidentiality of IDEA file 681/922/1975 for five years. Given the Chief State Archivist’s position that the file should be opened for access, this decision was also made without a legal basis.

The Ministerial Committee: A Tradition of Sealing Archival Records Without Legal Authority

The overview provided thus far shows that most of the issues brought to the Ministerial Committee since its inception dealt with the state’s actions toward Palestinians in 1948. Over the years, the committee discussed a handful of other matters regarding policy guidelines to introduce when the Access Regulations were silent on the type of records in question.⁵⁰

⁴⁷ Shay Hazkani wrote about his research: Shay Hazkani, “[Catastrophic Thinking: Did Ben-Gurion Try to Rewrite History?](#)”, **Haaretz English edition**, May 18, 2013.

⁴⁸ Lazowick provided his reasoning in a memo released as an annex to his report on the declassification of archival materials in state archives. Dr. Yaakov Lazowick, **The State of Access to Records in the ISA and its Branches**, December 2017 (ISA) (Hebrew). Annex 4: Chief State Archivist for a Ministerial Committee discussion regarding two files from the War of Independence, October 1, 2014. The report is accessible on the ISA website (Hebrew): <https://www.archives.gov.il/archives/Archive/0b071706853411a1/File/0b071706857e5efb>.

⁴⁹ Barak Ravid, “[Citing National Security, Israel Likely to Keep Army File on Palestinian Refugees From 1948 Sealed](#)”, **Haaretz English edition**, September 20, 2016. As noted, an application filed by Akevot Institute under the Freedom of Information Act to receive copies of the committee session transcripts, the reports submitted to it, and the list of session attendees was rejected.

⁵⁰ It seems that the Ministerial Committee serves as a convenient solution when decisions need to be made on the declassification of archival materials, even in cases that go beyond the narrow powers the committee is granted under the law that constituted it. So, for instance, the committee has made decisions about criteria for declassifying government meeting minutes (1994); filled a lacuna in the Access Regulations that do not stipulate a restricted access period on government meeting minutes - namely, a blanket determination that these minutes were “secret” and “confidential” and approval of

As stated above, the powers of the Ministerial Committee established under Section 10(c) of the Archive Law are extremely limited. It may only approve or reject a decision made by the Chief State Archivist to mark archival records as “secret” for reasons of national security or foreign relations, or as “confidential” for reasons of privacy. However, from its very beginning, Chief State Archivists have used the Committee to shift their decision-making responsibility regarding public access to sensitive materials onto politicians. This was in fact already the case in the very first matter brought to the Ministerial Committee in 1985: the opening of Ministry of Minority Affairs files. The Chief State Archivist at the time believed the records should be opened for public access, contrary to the position of the Arab Affairs Adviser who wanted to keep the Ministry of Minority Affairs files sealed because they “mention the expulsion of Arabs, the confiscation of Arab property and acts of cruelty committed against the population by soldiers.”⁵¹ Instead of exercising his authority and rejecting the position of the Arab Affairs Adviser, thereby opening the records, the Chief State Archivist brought the matter to the Ministerial Committee for a decision.

Over the years, the ISA developed a practice of asking the Ministerial Committee to make decisions that are, in fact, under the Chief State Archivist’s authority. So, for example, the previous Chief State Archivist, Yaakov Lazowick, referred the requests to declassify the Riftin Report and the Refugee Study to the Ministerial Committee. He provided members of the Committee with his detailed position that there was no justification for keeping the records sealed and that the requests to open them for public access should be granted.⁵² Because the Archivist did not think the records should be sealed, there was in fact no need to bring the matter to the Ministerial Committee. The Archivist had the authority to make that decision.

The Ministerial Committee rarely convenes. From 2007 to 2016 - nearly a decade - it did not convene at all; it has convened only twice since, in 2017 and 2018. The Ministerial Committee has not convened to discuss the confidentiality of archival records under Section 10(c) of the Archive Law since February 2017.⁵³ The 35th Government (sworn in in May of 2020) never appointed a committee. During this time, Akevot Institute researchers and at least two other researchers have been told that the four matters listed below would be referred to the Ministerial Committee once it convenes. In the interim - which in some cases has been years - work on the declassification of the requested archival records has been “on hold.” In the current state of affairs, denying access to archival material on the grounds that a decision is

declassification criteria (1994); a discussion on policy regarding requests to access classified archival records made by civil servants (1996). Additionally, in 2018, the committee discussed the declassification of materials related to the Yemenite Children Affair at the request of Minister of Justice Ayelet Shaked.

⁵¹ Ziona Raz, *supra* note 18, pp. 50-52. Ziona Raz noted that “The Chief State Archivist did not agree to this [sealing the files] because he did not find it to fit what the Archive Law requires: confidentiality due to national security or foreign relations concerns.”

⁵² Dr. Lazowick’s opinion on the matter was released as an annex to his report on the declassification of archival materials in state archives. See *supra* note 48.

⁵³ While the Ministerial Committee was convened by Minister of Justice Ayelet Shaked in August 2018 to discuss archival records regarding the Yemenite Children Affair, this meeting was called at the request of Minister Shaked after a request from the Ahai Forum for the Families of Abducted Yemeni and Balkan Children, rather than under the Archive Law. Letter from the Office of the Minister of Justice, “Ministerial Committee for Permission to Access Classified Archival Records (August 12, 2018) - Proposed Agenda,” July 25, 2018 (Hebrew).

in the hands of the Ministerial Committee – a committee that was not appointed and it is unknown if and when it will convene – is a violation of the applicants' right to access information. A constitutional right that has been recognized in jurisprudence as derived from freedom of expression.

Conclusion

The Archive Law establishes that any person, without discrimination, has the right to access government archives and consult its holdings. That is the rule: full access to all deposited materials. The law also stipulates the option of restricting this universal right to access in accordance with regulations, which prescribe limitations according to the types of records and predetermined timeframes. In other words, restricted access periods can be set according to the type of archival record, which are listed in Schedule 1 of the Access Regulations. This is the rule (universal access) and the exception to the rule (restricted access periods set in regulations). However, the Archive Law stipulates another mechanism designed for special cases in which opening archival records for public access continues to raise substantive concerns over possible harm to national security, foreign relations, or individual privacy. This mechanism – the Ministerial Committee – was the focus of this report.

It is not disputed that there are particular cases in which archival records should remain sealed even after their restricted access period, for example: secret military tactics and methods that are still in use or details that could expose informants used by the security forces. However, as presented in this report, a review of the topics and materials that have been sealed pursuant to a decision made by the Chief State Archivist with the approval of the Ministerial Committee, or by the committee itself shows that these are not normally the topics that are kept sealed. Instead, the mechanism stipulated in Section 10(c) of the Archive Law has been used over the years to hide materials from the 1948 War concerning serious offenses perpetrated against civilians – in some cases war crimes - or to the development of state policy and practice with respect to the country's Palestinian citizens.

Using terms like “national security,” “foreign relations,” and even “privacy” to justify decisions to keep decades-old records sealed, are meritless. Israeli law offers no “privacy” protection for individuals who committed war crimes in their military capacity. Exposing the Riftin Report, which mentions the killing of Polish citizens in the 1940s, did not really jeopardize Israel's diplomatic relations with the Polish government in 2017. Palestinians living in Israel and outside it do not need the information contained in Ministry of Minority Affairs files from 1948-9 to know the story of their uprooting and forced exile. Exposing existing records about the origins of the Palestinian refugee problem will not really harm national security.

The rationale for hiding archival records is the same rationale that guided the Topics Document from the late 1980s (which was itself sealed until recently): avoiding “public and political controversy,” averting damage to the reputation of the IDF (“as an occupying force without of moral principles”), and preventing the publication of Israeli records on the displacement of Palestinians in 1948 including, how these refugees were barred from returning and how their villages were destroyed, as well as documents relating to the state's treatment of its Palestinian citizens. Although officially the Topics Document has been out of use for many years, it is plain to see that in practice, many archival records - including the

documents and affairs the Topics Document mentions by name - are hidden to this day in government archives.

This is how countless pages of archival records are being kept from the public and remain confidential, without any legal authority to do so. While the law gives the Ministerial Committee very narrow authority - to approve or reject the Chief State Archivist's decision to keep records sealed past their restricted access period - Chief State Archivists have used this mechanism to unburden themselves of some of the onerous responsibility they carry and defer difficult decisions on sealing records to elected officials. These records concern painful, key affairs in Israel's history - Deir Yasin, the killing of civilians during Operation Yoav and Operation Hiram, the fate of citrus orchards belonging to Palestinians displaced in 1948, the establishment of a Military Government to rule over Palestinian citizens of Israel, and more.

The ongoing secrecy is not intended to protect state interests externally, but rather internally. It is intended to shield the military's reputation and impede record-based discourse about the origins of the Israeli-Palestinian conflict. This concealment does more than obstruct historians. It has a tangible impact on the current academic, public, and political discourse within Israel. It is designed to preserve the sterile, distorted official state narrative on the foundations of the Israeli-Palestinian conflict, and as such, has a real and decisive influence on its horizons.

This type of systematic concealment accompanies a simpler and more prevalent method of concealing archival records in Israel whereby low-level officials working on declassification take it upon themselves, sometimes in consultation with their superiors, to refrain from releasing "sensitive" archival records whose restricted access period has expired. They do so without following the provisions of Section 10(c) of the Archive Law, meaning without having the Chief State Archivist make the decision to mark the records "secret" or "confidential." In these cases, the individuals who apply for declassification are told that the material is sealed (with or without mention of the reason: security, foreign relations, or privacy) and are never provided with the justification required by law. This is the most common method for concealing archival records. As the previous Chief State Archivist, Dr. Yaakov Lazowick, explained to Akevot Institute researchers, the mechanism stipulated in Section 10(c) is used only when the persons applying for access are particularly persistent, when they cannot be deterred by the vague pronouncement that the record is "sealed" or the obscure citing of "national security matters," and when they are familiar with the provisions of the Archive Law and Access Regulations to know that junior officials are not authorized to conceal records that are past their restricted access period.

Herein too lies a partial solution: archive users - academic researchers, civil society activists, documentary filmmakers, journalists, and others - should become familiar with the provisions of the Archive Law and Access Regulations and should not hesitate to challenge declassification officials and archive management. At the same time, the archives themselves and especially the directors bear the brunt of the responsibility. They must accept that keeping archival records closed is not a legitimate tool to be wielded in order to prevent criticism and block historical, public, or political debate. Confidentiality should be mandated only when there is real, substantive concern over potential harm to the important interests of national security, foreign relations, or the privacy of the individuals named in the records. The use of these causes should be limited and precise, not expansive and generalized. Israeli history cannot remain sealed only because "these matters are unpleasant."

Annex A: Excerpts from the “Topics Document”

English translation by Akevot Institute

3. Material that may damage the reputation of the IDF as an occupying force without moral principles:

- Violence directed against the Arab population and acts of cruelty (killing, murder outside of battle conditions, rape, robbery, looting).
- Violence between commanders and soldiers.
- Violation of holy sites (desecration of churches, mosques, and cemeteries).
- Criminal acts – theft, looting, forgery, and withholding evidence.
- Security offenses – collaboration with hostile elements and espionage.
- Atrocities against Jewish women (rape).
- Atrocities committed by IDF brigades (Hula, Khalisa, ‘Elut, Dawayima, etc.).
- Caricatures about units connected to atrocities and criminal offenses (89, 92, 300) and mutinies (Moriya, Air Force).

4. Materials related to the Jewish-Arab conflict that remain a national security concern today:

- Expulsion of Arabs: retaliation against infiltrators, orders to harm infiltrators even in cases of doubt, orders on capitulation by Arabs.
- Institution of policies against the return of Arabs into the country.
- Evacuation of communities and residents (Majdal).
- Transfer of population with details of security considerations and approval of security officials; return to previous residences.
- Administrative detention, illegal arrests.
- Violence against POWs in violation of the Geneva Convention (killing); failure to heed white flags.
- Destruction of villages.
- Property and land confiscations; absentee property – transcripts and decisions.
- Bombing of civilian facilities (bombing of refugee camp hospital, Gaza, al-Bureij).

[...]

10. Special Affairs

The Lahis Affair; the Riftin Report; in-camera trials of resistance organizations; the Khalisa trial; Teddy Eitan, Weingarten A.A., espionage trials, the Dawayima massacre - security trials and commissions of inquiry (commission of inquiry on Casualty Department, Monitoring Department reports, commissions of inquiry into affairs, hospital burnings, embezzlement).

Annex B: Opinion of Chief State Archivist Yehoshua Freundlich on the Riftin Report, 2006

[on official State Archivist letterhead]

February 26, 2006

To: Arye Zohar, Deputy Government Secretary

From: Yehoshua Freundlich, State Archivist

Dear Sir,

Re: Riftin Report – Ministerial Committee discussion

Ahead of the discussion by the Ministerial Committee with respect to the Riftin Report, I wish to provide a summary of the state of affairs.

In February 1948 i.e. prior to independence, Ben Gurion contacted Yaakov Riftin, a member of the Yishuv Security Committee (a public body charged with overseeing the Yishuv's security institutions, the equivalent of the modern-day Foreign Affairs and Defense Committee), informing him as follows: *"I have received complaints and serious allegations regarding acts of vengeance and lawlessness among some members of the [Haganah] and the Palmach: robbery of Arabs, murder of Arabs and Poles for no reason, or without sufficient reason, and in any case, without trial... cases of theft, embezzlement, torture of Arabs ... and the like."*

Ben Gurion tasked Yaakov Riftin with looking into the matter, and on March 1, Riftin submitted a detailed report about these acts. In many cases, the report names the perpetrators and the victims.

The affair was known to the public. It received mention in Ben Gurion's diary and research (Yoav Gelber's book *Shorshey HaHavazelt* [The Lily's Origins]). These mentions were generalized and did not include the names of victims and perpetrators or any further details.

Following a request from a researcher to view the original report, the matter was discussed by the Ministerial Committee on Access to Restricted Archival Material on July 11, 2004. The Committee decided to extend the confidentiality of the record for one more year and revisit the issue then.

The Committee considered the recommendations of the expert staff at IDEA and ISA, which recommended maintaining the confidentiality of the report for the following reasons:

1. The report violates privacy as it contains the names of perpetrators and victims, sometimes in great detail. The Declassification Regulations require such details to be kept confidential for 70 years.
2. The report presents a national security concern as it contains individual mention of atrocities and the names of victims and perpetrators, including the murder of individuals who had POW status, which may cause unrest and perhaps even acts of vengeance.

3. The report presents a foreign relations concern as several of the acts carried out, particularly the murder of POWs, and other acts may be a breach of international law. This is joined by another factor, which is that some of the atrocities were committed against Polish defectors. This is a highly sensitive matter that could damage relations between the two countries.

Following a renewed application from the researcher, the committee is asked to revisit the issue.

The Chief State Archivist has reviewed the report once more and has found that all reasons underlying the previous decision remain valid.

The Chief State Archivist also wishes to note that the fact that the acts were committed prior to independence and by bodies that were not Israeli state institutions has no effect, as these bodies (the Haganah, Shai), continued to operate during statehood, and in fact, provided the foundation for Israeli state institutions.

The Chief State Archivist also believes that all relevant historical information regarding this affair – the fact that such acts occurred, the public outcry around them, the fact that a committee was appointed and that conclusions were drawn, all appear in literature, and the further disclosure the researcher is seeking is of sensational, personal details that add nothing to the historical presentation.

Therefore, the Chief State Archivist suggests continuing to label the report “secret” in terms of national security and foreign relations and “confidential” in terms of privacy, for at least 70 years from the date of authorship, i.e., until 2018.

Another option is to redact the problematic portions of the report. However, in such a case, there is concern that the concealed portion would be larger than the open portion, and it is doubtful that the persons who submitted the application or other applicants are expecting such a solution.

Sincerely,

[signed]

Yehoshua Freundlich

State Archivist

Annex C: Decision of Ministerial Committee on Shapira Report, 1986

[on official Government Secretariat letterhead]

Jerusalem, October 14, 1986

Confidential.

To : Prime Minister

Minister of Justice

From : Deputy Government Secretary

I respectfully bring to your attention Decision No. SH/3 of the Ministerial Committee on Access to Restricted Archival Material under Section 10(c) of the Archive Law – 1955, from its meeting dated Tuesday, October 14, 1986:

SH/3 Ministry of Justice File – Arab Affairs
Commission of Inquiry regarding Arabs and Minorities – No. 25/10: -
Request of the Chief State Archivist dated Friday, October 9, 1986

Resolved:

- a. The Ministerial Committee on Access to Restricted Archival Material under Section 10(c) of the Archive Law – 1955 makes note that the notice provided by the Minister of Justice that the Minister of Defense and Minister M. Arens had informed him of their position that the archival records that are the subject of this discussion should be marked secret;
- b. Pursuant to the above – based on Section 10 (c) (2) of the Archive Law – 1955, approves marking the material contained in Ministry of Justice File Arab Affairs Commission of Inquiry regarding Arabs and Minorities – No. 25/10 as secret.

Sincerely

[signed]

A. Lisansky

Copy: ✓ Chief State Archivist
Deputy State Attorney (Legal Counsel)