

**בצלם**  
**B'TSELEM**

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**HUMAN RIGHTS**

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**VIOLATIONS**

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**IN THE OCCUPIED**

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**TERRITORIES**

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**1992/1993**

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# בִּצְלֵם

## מרכז המידע הישראלי לזכויות האדם בשטחים

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بیتسيلم\* مركز المعلومات الاسرائيلي

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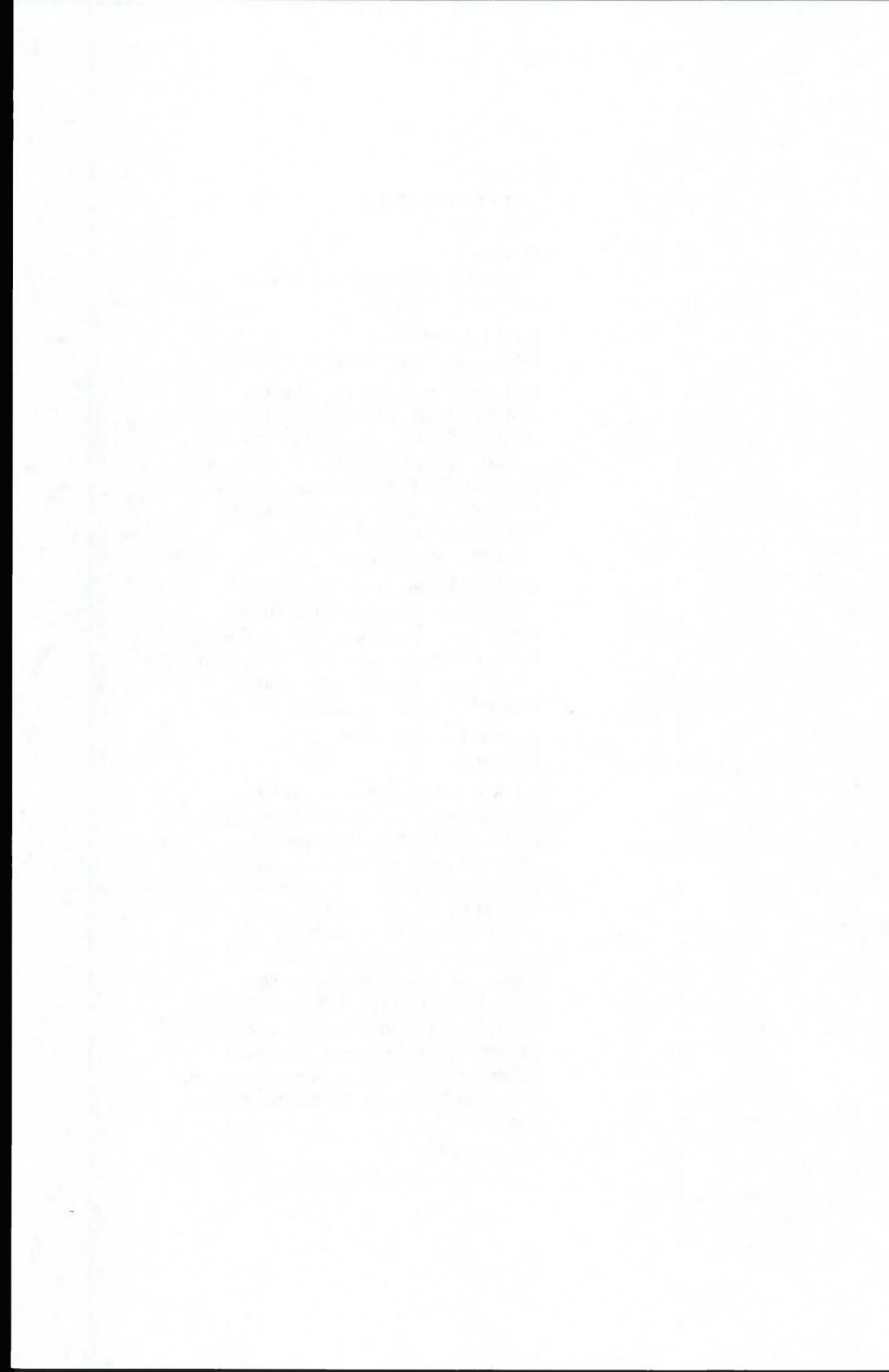
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**B'Tselem**, The Israeli Information Center for Human Rights in the Occupied Territories, was established in February 1989 by a group of lawyers, writers, doctors, academics, journalists, and Knesset members.

**B'Tselem**, through its extensive documentary work, seeks to bring human rights abuses in the occupied territories to the attention of the Israeli public and policy-makers, and to counter the pervasive phenomenon by which human rights issues are pushed to the rear of the Israeli public consciousness.

**B'Tselem** assures that all its data are meticulously researched. Information is published only following in-depth field research carried out by staff fieldworkers. Fieldwork results are cross-checked with relevant documents (e.g. medical), official versions of the given incident, foremost that of the IDF Spokesperson's Office, and information from other sources, including Israeli, Palestinian and other human rights organizations.

**B'Tselem** was created out of a deep commitment to and concern for the humanistic character of the State of Israel, and the belief that respect for human rights and security concerns are not mutually exclusive.

**B'Tselem**, as a human rights organization, concentrates most of its efforts on the attempt to change the Israeli government's policy in the occupied territories, and to hold the government to its obligation to abide by international standards which arises out of Israel's role as the *de facto* authority in the territories. This notwithstanding, it should be clear that **B'Tselem** strongly opposes human rights abuses perpetrated by any party. **B'Tselem** thus vigorously condemns attacks on innocent Israeli civilians by Palestinians, attacks on innocent Palestinians by Israeli civilians, and torture and summary execution of Palestinians suspected of collaboration with the Israeli authorities by Palestinians.

**B'Tselem** maintains that the Israeli government in the territories, by virtue of its being an occupying military government, violates basic rights of the population, such as freedom of conscience and expression, freedom of association, and the right to vote and be elected to the government of their land.

The perpetuation of Israeli rule in the territories for over a generation intensifies and aggravates these violations.

**B'Tselem** calls for an end to the Israeli military rule in the territories. An elected civilian body must replace the current regime, within the framework of a peace agreement that addresses and stipulates protection of the rights of all involved.



Photograph

# INTRODUCTION

## A. Preface

**B'Tselem's** third summarizing report deals with human rights violations in the occupied territories during the fifth and sixth years of the Intifada – from December 9, 1991 through December 8, 1993.<sup>1</sup> The report surveys most of the serious violations that occurred during this period, and includes detailed statistics as well as testimonies recorded by **B'Tselem**.

From the beginning of the Intifada on December 9, 1987 through December 8, 1993, more than 2,000 people were killed in the occupied territories: **1,095** Palestinians were killed by security forces (including **242** children age sixteen and under); **58** Palestinians were killed by Israeli civilians; **57** Israeli civilians were killed by Palestinians; **44** members of the Israeli security forces were killed by Palestinians; and **25** Palestinians were killed by Palestinian collaborators. According to the Associated Press, **771** Palestinians were killed from the beginning of the Intifada to the end of November 1993 by Palestinian activists for suspected collaboration with the authorities; according to the IDF Spokesperson's data, **942** were killed on such grounds during this period.<sup>2</sup> Thousands more were injured by security forces' gunfire or by other means.<sup>3</sup>

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1. The Intifada began on December 9, 1987. An "Intifada year" in this report refers to the period beginning December 9 and ending December 8 of the following year. Thus, the first Intifada year is the period beginning on December 9, 1987 and ending on December 8, 1988; the second Intifada year is the period beginning December 9, 1988 and ending on December 8, 1989, and so forth.

2. In addition, in six Intifada years **115** people were killed within the Green Line: **54** Israeli civilians by Palestinian residents of the occupied territories; **21** Palestinians by Israeli civilians; **21** Palestinians by the security forces, (see note regarding this figure in Chapter One of this report, p. 23) and **19** security force members by Palestinians.

3. **B'Tselem** does not have statistics on the number of wounded, due to objective difficulties which make documentation nearly impossible. The term "wounded" is not easily defined, and it is difficult to track the number of wounded in the field after every clash in the occupied territories. The United Nations Relief and Welfare Agency (UNRWA) documents as "wounded" anyone admitted to its clinics, whether they arrived to receive first aid or were transferred to a hospital in serious condition. IDF data is only partial as the soldiers generally do not know the number of wounded after an incident, and the IDF relies, as far as we know and as IDF Spokesperson's announcements indicate, primarily on reports regarding hospitalization or treatment received.

During six Intifada years, **434** houses were completely demolished as a punitive measure, and **314** others were completely sealed. **Sixty-nine** houses were completely destroyed by massive shooting in the course of operations against wanted persons, during which dozens more were damaged. **Four hundred eighty-one** Palestinians were deported from the territories. More than 100,000 were detained and jailed, thousands of them held in detention without trial (administrative detention). Internationally prohibited interrogation methods were employed against many detainees. Extended periods of curfew were imposed on Palestinians in different areas of the occupied territories. Certain populations were subject to restrictions such as limitations on movement and withholding of various permits, applied according to sweeping criteria such as age group or area of residence.

The past two years have seen some improvement in a number of areas:

Since the current government came into power in July 1992, apparently no houses have been demolished by military order as punishment for security offenses. The number of Palestinian prisoners, including administrative detainees, has dropped. In addition, the overall number of curfew days imposed on Palestinians, especially in the West Bank, has decreased.

Easing of restrictions – defined by Israel as "gestures of good will" towards the Palestinians as part of the peace negotiations – included the return of deportees, the release of prisoners and the re-opening of houses and alleyways that had been sealed by the security forces. It has also been reported that some restrictions on travel abroad and entering Israel have been eased. Policy changes have been made regarding family unification, publication of a number of previously banned Palestinian newspapers has been permitted, and some economic restrictions have been eased.<sup>4</sup> Details regarding some of the various improvements are included in the relevant chapters of this report.

Several of these positive changes were the result of appeals submitted to the High Court of Justice (HCJ) against government policy. Many are partial and late adjustments in policy and practice which, as human rights violations, were unjustified from the outset.

Alongside the easing of certain restrictions over the past two years, human rights violations in the occupied territories have continued. In a number of areas, the situation has deteriorated.

**Fatalities:** In the past two years the number of Palestinians killed by security forces has risen dramatically, as compared to the previous two

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4. According to a letter from Oded Ben-Ami, Communications Consultant to the Minister of Defense, January 18, 1994, in response to B'Tselem's inquiry.

years. During the first half of the sixth year of the Intifada, the number of Palestinians killed by security forces was double that of both the parallel period in the fifth year, and the second half of the fifth year. The number of children age 16 and under killed during the first half of the sixth year (37 children) was seven times the number during the first half of the previous year.<sup>5</sup> During the second half of the sixth year, eight Palestinian children were killed by security forces in the occupied territories.

**Deportation:** In the beginning of the sixth year of the Intifada, 415 Palestinians were deported to Lebanon following attacks against members of the security forces by Islamic activists. The mass deportation, which was executed in contravention to the explicit prohibition in the Fourth Geneva Convention and in disregard of fundamental legal principles, was one of the largest-scale violations in recent years and of the Intifada overall.

**Demolition and Sealing of Houses:** While the Rabin government has apparently ceased demolition of houses as a punitive measure for security violations, house sealings based on security pretexts have continued. Since September 1992, the security forces have adopted a new procedure of directing massive gunfire (especially anti-tank missiles) at homes thought to be housing fugitive wanted persons. Though many dozens of houses have been destroyed or damaged during such procedures, only in a small portion of the cases were wanted persons apprehended.

**Nightly Curfew:** Alongside the decrease in the overall number of days of curfew in the occupied territories, the regular nightly curfew in the Gaza Strip continues.

**Closure:** In the middle of the sixth year, following an increase in attacks against Israelis, a closure of unspecified duration was imposed on the Palestinian residents of the occupied territories. No satisfactory solutions were provided for the population adversely affected by the closure, particularly those who earn their livelihood in Israel and could not continue to do so because of the closure.

**Interrogation Methods:** Human rights organizations continue to receive complaints regarding torture and severe ill-treatment during the interrogation of Palestinians, despite the affidavit submitted by the Head of the GSS to the HCJ in April 1993, according to which new restrictions had been introduced in GSS interrogation procedures.

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5. Due to the large number of children killed during this period, **B'Tselem** published an information sheet on this subject and launched a public campaign. See **B'Tselem**, *The Killing of Palestinian Children and the Open-Fire Regulations*, Information Sheet, June 1993.

**Military Courts:** The military court system in the occupied territories does not meet accepted standards. Very often proceedings are unreasonably prolonged. During the extension of detention by military judges, the principle of public trial is not maintained, and proceedings often take place without the detainee being represented. Military judges are subordinate to the military system, as are the prosecutors. Courts rely heavily on defendants' confessions, many of which are questionable due to the strong suspicion that they were elicited through violent means.

**Separation and Reunification of Families:** The Israeli authorities continue to disregard the right of Palestinian residents of the occupied territories to family unification. This policy leads to the separation of couples, children and other relatives. Israel recently announced that restrictions in this area will be eased, but it is still early to assess their implementation.

**Treatment of the Population:** Respect for the dignity of human beings is a basic human principle on which the Geneva Conventions were founded. In their day-to-day contact with Palestinian residents of the territories, members of the security forces often behave in a degrading and disrespectful manner. Unnecessary and unjustifiable force is employed all too often.

**Discrimination in Law Enforcement:** The principles of equality in the eyes of the law and equal protection of the law for all without discrimination are grossly violated in the occupied territories. In many instances, following attacks by Palestinians or with no connection to such attacks, Jewish settlers have executed "retaliatory actions" in Palestinian towns and villages. These actions are characterized by window-breaking, shooting at solar water heaters, damaging vehicles and uprooting trees. Throughout the Intifada, violent incidents between Palestinians and Israelis have often resulted in injuries and even fatalities. The Israeli authorities have demonstrated impotence in contending with settler violence. IDF and police efforts to prevent violent acts by settlers or to apprehend those involved have been minimal and weak. B'Tselem's data indicate that violent crimes by settlers have often not been investigated at all, while other cases have been under investigation for lengthy periods of time and closed with no suspects brought to trial. Sentences, when handed down, have been generally extremely light. This is completely contrary to the law enforcement policy *vis-a-vis* Palestinians. Following an attack by a Palestinian on an Israeli, curfew, often lasting days, is routinely imposed on Palestinian towns and villages in the area of the attack. Intensive searches and arrests are carried out and homes of suspects have often been demolished or sealed. Palestinians tried for such offenses are punished to the full extent of the

law. **B'Tselem** recently released a comprehensive report on this subject (**Law Enforcement vis-a-vis Israeli Civilians in the Occupied Territories**, March 1994.)

**Killing, Torture and Cruel Punishment of Suspected Collaborators:** Severe and widespread human rights abuses have been perpetrated by activists identified with various Palestinian political organizations, against Palestinians suspected by them of collaboration with the Israeli authorities. The term "collaborator" has been widely defined by these activists to include, *inter alia*, criminal offenders and those whose conduct is considered immoral. During the Intifada, hundreds of Palestinians have been killed by Palestinians on suspicion of collaboration, and many have been tortured during interrogation by Palestinian activists. Forms of cruel punishment, such as shooting at and breaking limbs, have been employed. **B'Tselem** views these acts as blatant abuses of the most basic human rights, and has published a comprehensive report on this phenomenon (**Collaborators in the Occupied Territories: Human Rights Abuses and Violations**, January 1994.)

### ***The September 1993 Declaration of Principles***

On September 13, 1993, near the end of the sixth year of the Intifada, the State of Israel and the PLO signed an agreement which, if implemented, will lead to significant changes in the situation in the occupied territories. However, the agreement as phrased neglects the issue of human rights, and does not guarantee respect of human rights by either side. A Human Rights Committee, established as part of the negotiations prior to the signing of the agreement, met several times and then suspended its work. The role human rights will play, both in the written accords and on the ground, is uncertain. The signing of the declaration does not exempt Israel from its responsibilities regarding human rights in the territories. As long as Israel has full or partial control over the occupied territories, the Israeli government is responsible for the well-being, security and welfare of their residents, and is obligated at all times to respect the rights of the population. At the current stage it is imperative to guarantee respect for human rights by the governing body in the territories during the transition period, be it Israeli or Palestinian.

## B. Human Rights and International Law - Overview

The dynamic development of international human rights law began after World War II, following the horrific acts perpetrated during the war. There has since been growing universal recognition of human rights as a matter of international concern which transcends a nation's internal law.<sup>6</sup> Human rights may be described as a "wall preventing injury [to people] by the state."<sup>7</sup> These are "those rights inherent in our nature, and without which we cannot live as human beings. Human rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on humankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection."<sup>8</sup> The State, as the greatest potential violator of these rights, controlling the means and systems for enforcement (i.e. police, military, courts, prisons) is the first and foremost addressee of the demand to respect human rights. Thus the term "human rights violations" usually refers to violations by the authorities specifically, as opposed to one individual's transgressing the rights of another.

Over the years, an extensive network of conventions, declarations and international systems for the promotion and protection of human rights has developed. International human rights conventions express agreement between states regarding human rights norms to be guaranteed and maintained. Enforcement systems for these norms include convention-based committees dealing with various human rights issues, and international courts authorized to debate and rule in human rights claims. UN human rights committees and courts operate worldwide, while regional systems - which have been established in the Americas, Europe and Africa - address human rights on a regional level<sup>9</sup>. The regional systems have formulated human rights declarations

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6. See Amnon Rubinstein, **Constitutional Law of the State of Israel**, 4th edition, Schocken Publishing House Ltd., Tel Aviv, 1991, p. 701. (Hebrew)

7. *Ibid.*, p. 702.

8. **Human Rights - Questions and Answers**, United Nations, New York, 1987, p. 4.

9. Some of the systems require a state's agreement to the judicial authority of the committee or the court. Israel, which is a member of the UN system only (as there is no local regional system), has not accepted the judicial and decisive authority of the UN Human Rights Committee created under the International Covenant on Civil and Political Rights, or that of the Hague International Court.

and conventions and established enforcement networks parallel to those of the UN.<sup>10</sup>

Three major human rights instruments adopted by the UN which received high standing in international law comprise what is termed the "International Bill of Human Rights." These are the 1948 Universal Declaration of Human Rights (which, though not a convention but rather a declaration by the world's nations, is considered a universally legally-binding document); the 1966 International Covenant on Economic, Social and Cultural Rights; and the 1966 International Covenant on Civil and Political Rights, and its Optional Protocol.

**The Universal Declaration of Human Rights** prohibits discrimination of any kind and proclaims that all beings are born free and equal in dignity and rights. The declaration proclaims the right to life, liberty and security of person, a primary right necessary for the realization of the other rights. It prohibits slavery and servitude, torture and cruel, inhuman or degrading treatment or punishment, and arbitrary arrest, and proclaims the right to be recognized as a person before the law, the equality of all people before the law and their entitlement to equal protection of the law and to a fair and public hearing by an impartial and independent tribunal. Among other rights proclaimed in the Declaration are the right to establish a family without limitations due to race, nationality or religion; and freedom of conscience, thought and religion.

**The two 1966 Covenants** emphasize the obligation and responsibility of state parties to promote and protect human rights, adding two collective rights: the right of all peoples to self-determination, and their right to use their natural resources as they see fit, while "in no case may a people be deprived of its own means of sustenance."<sup>11</sup> Each of the covenants goes into greater detail in the area it covers.<sup>12</sup>

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10. For a discussion of the UN system and regional systems, see T. Buergenthal, **International Human Rights in a Nutshell**, West Publishing House, Minnesota, 1988.

11. Israel is party to the two 1966 conventions but not to the optional protocol of the International Covenant on Civil and Political Rights. This protocol details systems for enforcing the convention, including the procedure of submitting individual complaints to the UN Human Rights Committee, established under the covenant. As Israel is not a party to the protocol, complaints cannot be brought against it before the committee under this procedure.

12. For details, see texts of the Covenants. For background on human and civil rights and international human rights law, see **Human Rights and Civil Liberties in Israel - A Reader**, Ruth Gavison and Hagai Schneider, eds. The Association for Civil Rights in Israel, Jerusalem, 1991. (Hebrew)

Additional UN international human rights conventions include the International Convention on the Elimination of All Forms of Racial Discrimination (adopted by the UN in 1965, went into effect in 1969); the Convention on the Elimination of All Forms of Discrimination against Women (adopted 1979, effective 1981); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 1984, effective 1987)<sup>13</sup>; the Convention on the Rights of the Child (adopted 1989, effective 1990), and numerous others.

International law also sets specific norms for wartime, which lay down the "red lines" not to be overstepped by a party to an armed conflict or by an occupying power. These norms are addressed, *inter alia*, in the 1907 Hague Regulations and the four 1949 Geneva Conventions.

The Hague Regulations, which detail the rules of war on land, are accepted as customary international law, thus obligating all states, be they party to the Regulations or not. The Regulations stipulate that it is the duty of an occupying power to "guarantee public order and security" in the occupied territory, and to prohibit use of collective punishment against a civilian population.

The four 1949 Geneva Conventions comprise the bulk of humanitarian law applying in armed conflict and military occupation. Of these, the Fourth Geneva Convention (the Convention Relative to the Protection of Civilian Persons in Time of War), is the most relevant to the issues addressed in this report.<sup>14</sup>

The Fourth Geneva Convention defines as "protected persons" those "who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals."<sup>15</sup> The Convention prohibits, *inter alia*, acts of violence against protected persons, taking protected persons hostage, outrages upon personal dignity, reprisals and collective punishment, and mass or individual deportations. The Convention also sets minimal standards of due process in criminal trials against protected persons. Among its many guarantees are free passage for medicines, medical equipment and food, protection of children, communication between members of a

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13. Though Israel ratified this convention, it made a reservation regarding Article 28, according to which it does not recognize the authority of the Committee Against Torture to examine reports on the use of torture and to execute confidential investigations where necessary.

14. Israel is a party to the Geneva Conventions but not to their protocols, which broaden their scope.

15. From Article 4 of the Fourth Geneva Convention.

family dispersed as a result of conflict, protection of property, and treatment of prisoners.

The formulators of international human rights law took into consideration states of emergency or political instability. They determined that only under very specific conditions may a state impose restrictions upon human rights. For example, the Covenant on Civil and Political Rights stipulates that a state may limit certain rights in "time of public emergency which threatens the life of the nation," but only to the extent strictly required by the exigencies of the situation. Such restrictions may not involve discrimination based on race, color, gender, language, religion or social origin, and may not contradict the state's obligations according to international law. The state wishing to restrict certain rights must inform all states party to the Covenant. However, even when all of the above conditions are met, a state is categorically prohibited from limiting certain fundamental rights: the right to life, freedom from torture and cruel, inhuman or degrading treatment or punishment, freedom from enslavement, freedom from imprisonment for debt, freedom from retroactive punishment, the right to be recognized as a person before the law, and freedom of conscience, thought and religion.

The laws of war and humanitarian law apply specifically during "abnormal" situations. Thus no deviation from the Hague and Geneva Conventions may be justified by the existence of extenuating circumstances. In the context of the territories it is important to note in addition that these "special circumstances" have existed for over a generation.

### **C. Human Rights in the Occupied Territories and the Authorities' Position**

The Israeli authorities explain most of their actions in the occupied territories as measures necessary for maintenance of security. While it is true that the last two years have seen an augmentation of violence on the part of Palestinians against Israelis, even imperative and justifiable security needs cannot warrant human rights violations and injuries which are either unnecessary under the circumstances or disproportionate to the threat which they purport to counter.

In nearly all of the appeals submitted to the HCJ over the years by Palestinian residents of the occupied territories, the Court has tended to accept the claims of the authorities and to avoid involvement in their

decisions. Professor David Kretchmer writes: "As an authority of the State, the court cannot serve as a neutral element in a conflict between the State and an external element, particularly if that element is considered an enemy of the State."<sup>16</sup> In this situation, "the judicial system is not eager to place itself in a situation in which it may be blamed for harming State or public security. In the short term, the decision not to intervene in another agency's decision is safer than the decision to intervene."<sup>17</sup>

Most of the measures employed by Israel against Palestinian residents of the occupied territories (such as deportation, house sealing and demolition, detention, administrative detention, curfew, closure, restricting exit from and entry into the territories, closing of institutions, etc.) are based on the Defence (Emergency) Regulations of 1945, or on security legislation.

The Defence Regulations, issued in 1945 by the British Mandate authorities, grant the authorities (originally the Mandate High Commissioner) extensive powers. These regulations include drastic and severe means of punishment, many of which contradict legal principles accepted in any modern legal system, and contravene international human rights norms.<sup>18</sup> The Israeli authorities' position is that these regulations remain in effect to date because they were part of the local law prior to the Six-Day War.<sup>19</sup> According to the Proclamation on the Law and Administration Ordinance issued by the Military Governor on June 7, 1967, local law remains in effect "insofar as it does not in any way conflict with the provisions of this Proclamation or any other proclamation or order which may be issued by me, and subject to

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16. Professor David Kretchmer, "HCJ Review of House Demolition and Sealing in the Occupied Territories," **The Klinghoffer Book of Public Law**, ed. Yitzhak Zamir, the Hebrew University of Jerusalem, Henry Sacher Institute for Legislative and Comparative Legal Research, 1993, p. 308. (Hebrew)

17. *Ibid.* p. 310.

18. Some of the Defence Regulations are still valid in Israel as well, though they are not enforced.

19. The position that the regulations are part of local law in the West Bank has been contested. According to one view, the Defence Regulations were not in effect in the West Bank on the eve of the Six Day War, because they were annulled in 1952 by the Jordanian Constitution. In order to cast aside all doubts, the IDF determined, in (Military) Interpretation Order (Additional Regulation), (No. 5) (No. 224) 5728-1968, that the Defence Regulations apply in the West Bank. It is not clear that the military commander had the authority to "revive" the Defence Regulations in the West Bank, if they had been previously annulled. See **Studies in Civil Rights in the Administered Territories: The Legal and Administrative System**, The Association for Civil Rights in Israel, Jerusalem, 1985.

modifications resulting from the establishment of government by the Israel Defense Forces in the Region." [English version from Meir Shamgar (ed.) **Military Government in the Territories Administered by Israel 1967-1980: The Legal Aspects**, Vol I., Hebrew University, Jerusalem, 1982, p.450]

Security legislation consists of a series of orders issued by military commanders during the years of the Israeli military rule in the territories. Issuance and publication of procedures are carried out within the military, without prior public discussion or external parliamentary supervision.<sup>20</sup> The executive branch in the occupied territories (the military commanders) is also the legislative branch, enjoying exclusive discretion. Since 1967, security legislation has expanded to touch on almost all aspects of Palestinian life in the occupied territories.

As stated, the Hague Convention is recognized as part of customary international law, thus obligating all states. The position of the Israeli government regarding the Fourth Geneva Convention is that although Israel is party to the Convention, it is not bound by it since it does not consider the territories occupied. The HCJ has approved the use of measures which contravene the Convention, such as house demolition and deportation employed mostly according to powers granted in the Defence Regulations. This position has been explained in that the Geneva Convention does not restrict the authorities in exercising their authority according to local law, of which the Defence Regulations are a part. This approach contradicts a view accepted by scholars of international law, and the underlying intention of the Geneva Convention, that the restrictions on the occupying power override the authority given them in the local law.<sup>21</sup>

Israel has nonetheless declared that it takes upon itself to respect the "humanitarian provisions" of the Fourth Geneva Convention, though it has never specified which provisions the term indicates. Local and international human rights organizations hold the view that all of the Convention's instructions are humanitarian in nature, and that Israel is bound by the Convention in the occupied territories, and obligated to respect its provisions without any reservations.

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20. See Dr. Menachem Hofnung, **Israel – Security Needs vs. The Rule of Law**, Nevo Publishing House, Jerusalem, 1991, p. 296. (Hebrew)

21. See David Kretchmer, *op cit.*, p. 318.



*Photograph by Nitsan Shorer*

## Fatalities

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

– Article 6 of the International Covenant  
on Civil and Political Rights

**B'Tselem** gathers information on every Palestinian killed by the security forces in the occupied territories (beyond the "green line") and carries out independent research on most cases of death.<sup>22</sup> This chapter includes data on the number of Palestinians killed in the territories by security forces, analyzed according to year, location, cause of death, and age. Also included are data on Palestinians killed by Israeli civilians, and Israelis (both civilians and security forces personnel) killed by Palestinians. Data in these categories include fatalities within the green line as well.<sup>23</sup> The chapter also includes IDF and Associated Press data on the number of Palestinians killed by other Palestinians for suspected collaboration with the authorities.

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22. All West Bank figures in this report include East Jerusalem.

23. Discrepancies between the total numbers of fatalities in this report and previous reports are due to new information obtained through continuing investigations of prior cases.

## A. Figures

### 1. *Palestinian Fatalities*

#### a. **Palestinians Killed by Security Forces in the Occupied Territories**

From the beginning of the Intifada to December 8, 1993, **1,095** Palestinians were killed by security forces, **662** in the West Bank and **433** in the Gaza Strip.<sup>24</sup> **Two hundred and forty-two** of those killed were age 16 and under, and of these, **65** were children under 13. **Two hundred and eighty-five** Palestinians were killed by security forces in the occupied territories during the first year of the Intifada, **299** in the second year, **128** in the third year, **97** in the fourth, **120** in the fifth year and **166** in the sixth (see Table A).

After a decrease in the number of fatalities by security forces in the third year in comparison to the second year, and again in the fourth as compared to the third, the number of fatalities rose by some 24 percent in the fifth year as compared to the fourth. The sixth year saw an increase of some 38 percent in fatalities as compared to the previous year. In the first half of the sixth year (from December 9, 1992 to June 8, 1993) the number of fatalities by security forces in the occupied territories rose sharply: 122 Palestinians were killed by security forces, of them 37 children age 16 and under.

#### **Age**

Palestinians killed by security forces during the Intifada between the ages of 17 to 24 comprised 55.7 percent of the total killed. In each of the six Intifada years over half were in this age group. Children age 16 and under comprised 22.1 percent of those killed during the Intifada. In the fifth year children comprised almost 16 percent of the Palestinians killed in the territories by security forces; in the sixth year their number rose to approximately 27 percent (see Table C).

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24. Twenty of the fatalities occurred in detention facilities, and are calculated according to the place of residence of the detainee or prisoner prior to imprisonment, and not according to the location of the detention facility. This is the reason for what appear to be discrepancies between tables a/b and table f.

### Cause of death

Almost 97 percent of Palestinians killed by security forces during the Intifada – **1,062** people – were killed by live gunfire, including plastic and rubber bullets. **Fifteen** were beaten to death, **14** died (not from gunfire) in custody (nine of them during or subsequent to interrogation), and **four** deaths were brought about by other causes (see Table E).

### Area

Some 60 percent of Palestinians killed by security forces in the occupied territories in six Intifada years were residents of the West Bank, and the remaining 40 percent were residents of the Gaza Strip. In each of the first five years of the Intifada the number of Palestinians killed in the West Bank was considerably higher than that of those killed in the Gaza Strip (from 51 percent higher to over double). In the fifth year fatalities in the West Bank were some 60 percent higher than those in the Gaza Strip, but in the sixth year the number of fatalities in the Gaza Strip was some 76 percent higher than that in the West Bank. During the six years of the Intifada, the Nablus District saw more Palestinians killed than any other West Bank area (155 in six years, some 23 percent of the total of Palestinians killed in the West Bank). In the fifth year, the Jenin District saw the highest number of fatalities by security forces in the West Bank. In the sixth year the number of fatalities in the Ramallah District was highest among the districts in the West Bank (see Table F).

### b. Palestinians Killed by Security Forces within the Green Line

During six Intifada years, **21\*** Palestinian residents of the occupied territories were killed by Israeli security forces within the Green Line.

First Year	Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year	Total
1	1	1	5	2	11	<b>21</b>

\* 11 of these were killed by Israeli forces near the Egyptian border, possibly on the Egyptian side. Precise information on the exact location of the shooting is unavailable.

**Table A: Palestinians Killed by Security Forces in the Occupied Territories (by month)**

Month	First Year			Second Year			Third Year			Fourth Year			Fifth Year			Sixth Year		
	Gaza	West Bank	Total	Gaza	West Bank	Total	Gaza	West Bank	Total	Gaza	West Bank	Total	Gaza	West Bank	Total	Gaza	West Bank	Total
Dec.(From 9.12)	14	8	22	8	18	26	4	8	12	7	2	9	0	3	3	13	5	18
January	13	4	17	6	15	21	2	9	11	7	9	16	2	4	6	8	7	15
February	4	26	30	6	8	14	5	3	8	0	7	7	6	3	9	13	9	22
March	5	38	43	12	10	22	2	8	10	3	5	8	4	12	16	14	7	21
April	18	26	44	11	18	29	6	3	9	2	4	6	5	6	11	11	5	16
May	4	13	17	18	18	36	16	8	24	3	9	12	7	7	14	21	6	27
June	4	8	12	12	9	21	0	7	7	0	3	3	1	6	7	3	2	5
July	4	18	22	12	18	30	1	3	4	0	5	5	5	5	10	3	6	9
August	10	14	24	14	13	27	0	1	1	3	5	8	1	5	6	3	2	5
September	8	8	16	6	15	21	1	3	4	1	9	10	2	5	7	5	4	9
October	3	21	24	10	20	30	3	30	33	2	6	8	5	8	13	4	1	5
November	4	6	10	1	12	13	2	1	3	0	4	4	4	9	13	8	5	13
Dec. (to 8.12)	1	3	4	3	6	9	0	2	2	0	1	1	4	1	5	0	1	1
<b>Total</b>	<b>92</b>	<b>193</b>	<b>285</b>	<b>119</b>	<b>180</b>	<b>299</b>	<b>42</b>	<b>86</b>	<b>128</b>	<b>28</b>	<b>69</b>	<b>97</b>	<b>46</b>	<b>74</b>	<b>120</b>	<b>106</b>	<b>60</b>	<b>166</b>

**Fatalities since the beginning of the Intifada:**

**Gaza Strip: 433**

**West Bank: 662**

**Total: 1095**

**Table B: Palestinian Children Killed by Security Forces in the Occupied Territories (by month)**

Month	First Year			Second Year			Third Year			Fourth Year			Fifth Year			Sixth Year		
	Under age 13	Age 13-16 (incl.)	Total	Under age 13	Age 13-16 (incl.)	Total	Under age 13	Age 13-16 (incl.)	Total	Under age 13	Age 13-16 (incl.)	Total	Under age 13	Age 13-16 (incl.)	Total	Under age 13	Age 13-16 (incl.)	Total
Dec. (From 9.12)	0	5	5	1	3	4	0	3	3	0	0	0	0	0	0	1	4	5
January	0	2	2	2	5	7	0	2	2	0	5	5	0	0	0	1	2	3
February	2	5	7	0	4	4	0	2	2	1	2	3	1	0	1	1	8	9
March	0	3	3	3	1	4	1	0	1	0	2	2	0	1	1	3	4	7
April	0	5	5	3	7	10	1	2	3	0	2	2	0	1	1	3	3	6
May	0	5	5	2	6	8	1	7	8	1	2	3	0	2	2	3	4	7
June	0	2	2	2	3	5	2	1	3	0	2	2	0	1	1	1	0	1
July	0	3	3	4	6	10	0	1	1	0	1	1	1	1	2	1	1	2
August	1	3	4	4	9	13	0	0	0	0	2	2	0	0	0	0	1	1
September	2	1	3	4	2	6	0	1	1	1	1	2	0	1	1	0	2	2
October	1	3	4	3	2	5	0	2	2	1	1	2	0	4	4	0	0	0
November	2	1	3	0	2	2	0	0	0	0	0	0	2	1	3	0	2	2
Dec. (to 8.12)	0	3	3	1	0	1	0	0	0	0	0	0	1	2	3	0	0	0
<b>Total</b>	<b>8</b>	<b>41</b>	<b>49</b>	<b>29</b>	<b>50</b>	<b>79</b>	<b>5</b>	<b>21</b>	<b>26</b>	<b>4</b>	<b>20</b>	<b>24</b>	<b>5</b>	<b>14</b>	<b>19</b>	<b>14</b>	<b>31</b>	<b>45</b>

**Fatalities since the beginning of the Intifada:**

**Under age 13: 65**

**Age 13-16 (incl.):177**

**Total: 242**

**Table C: Age of Those Killed**

	First Year		Second Year		Third Year		Fourth Year		Fifth Year		Sixth Year		Total	
	Num.	%	Num.	%	Num.	%	Num.	%	Num.	%	Num.	%	Num.	%
to age 12 (incl.)	8	2.8	29	9.7	5	3.9	4	4.1	5	4.2	14	8.4	65	5.9
13-16 (incl.)	41	14.4	50	16.7	21	16.4	20	20.6	14	11.6	31	18.7	177	16.2
17-24 (incl.)	157	55	172	57.5	65	50.8	53	54.6	73	60.8	90	54.2	610	55.7
25-34 (incl.)	55	19.3	32	10.7	22	17.2	15	15.5	23	19.2	26	15.7	173	15.8
35-44 (incl.)	11	3.9	7	2.4	4	3.1	3	3.1	3	2.5	2	1.2	30	2.7
45 and over	13	4.6	9	3.0	11	8.6	2	2.1	2	1.7	3	1.8	40	3.7
<b>Total</b>	<b>285</b>	<b>100</b>	<b>299</b>	<b>100</b>	<b>128</b>	<b>100</b>	<b>97</b>	<b>100</b>	<b>120</b>	<b>100</b>	<b>166</b>	<b>100</b>	<b>1095</b>	<b>100</b>

**Table D: Palestinians Killed by Undercover Units**

First Year	Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year	Total
5	26	8	28	46	23	<b>136</b>

**Table E: Palestinians Killed by Security Forces - Cause of Death**

Cause	First Year	Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year	Total
Shooting	269	293	125	96	117	162	1,062
Beatings	12	2	1	0	0	0	15
Died in Prison (non-shooting)	2	3	2	1	3	3	14
Other (electrocution, brick injury to head, thrown from a moving vehicle, explosion of a building)	2	1	0	0	0	1	4
<b>Total</b>	<b>285</b>	<b>299</b>	<b>128</b>	<b>97</b>	<b>120</b>	<b>166</b>	<b>1,095</b>

**Table F: Palestinians Killed in the Occupied Territories - District**

District \ Year	Bethlehem	Jenin	Hebron	Tulkarm	Jericho	East Jerusalem	Ramallah	Nablus	Gaza	Detention Facilities	Total
First Year	9	49	28	26	0	1	26	51	91	4	285
Second Year	23	22	23	30	0	1	24	56	115	5	299
Third Year	5	15	5	11	1	23	11	14	40	3	128
Fourth Year	2	24	11	8	0	1	9	13	28	1	97
Fifth Year	5	29	8	11	0	2	6	9	46	4	120
Sixth Year	3	11	12	5	0	2	14	12	104	3	166
<b>Total</b>	<b>47</b>	<b>150</b>	<b>87</b>	<b>91</b>	<b>1</b>	<b>30</b>	<b>90</b>	<b>155</b>	<b>424</b>	<b>20</b>	<b>1,095</b>

### c. Palestinians Killed by Palestinians for Suspected Collaboration

According to the Associated Press, from the beginning of the Intifada to November 30, 1993, **771** Palestinians were killed by Palestinians for suspected collaboration with the Israeli authorities:

In 1987 **one** Palestinian was killed for suspected collaboration.

In 1988 **21** were killed.

In 1989 **143** were killed.

In 1990 **159** were killed.

In 1991 **154** were killed.

In 1992 **204** were killed.

In 1993 (until November 30) **89** were killed.

According to the IDF Spokesperson's office, the number of Palestinians killed for suspected collaboration during this period (December 9, 1987 to November 30, 1993) is **942**.<sup>25</sup>

### d. Palestinians Killed by Palestinian Collaborators

From the beginning of the Intifada to December 8, 1993, **25** Palestinians were killed by collaborators.

First Year	Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year	Total
2	5	6	9	3	0	<b>25</b>

### e. Palestinians Killed by Israeli Civilians

#### In the Territories

From December 9, 1987, to December 8, 1993, **58** Palestinians were killed by Israeli civilians, **51** in the West Bank and **7** in the Gaza Strip. The number rose dramatically during the sixth year compared with the fifth.

First Year	Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year	Total
15	14	11	7	1	10	<b>58</b>

Fifty-four of those killed were shot. One was killed when a stone was thrown at his car. Two were beaten to death (in both cases charges

<sup>25</sup> Data transmitted to **B'Tselem** by telephone by the IDF Spokesperson's Office, January 5, 1994.

were brought against the same Israeli civilian, who was hospitalized for psychiatric treatment after it was determined that he was mentally ill.) One was killed by a grenade thrown in the butcher's market in the Old City of Jerusalem.

### **Within the Green Line**

In six Intifada years, 21 Palestinians were killed by Israeli civilians within the Green Line.

First Year	Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year	Total
5	2	10	2	0	2	<b>21</b>

Thirteen of those killed were shot. Three were burned to death in a shack where they were lodging. Three were killed by stones thrown at them. One was stabbed. One was beaten to death.

## **2. Israeli Fatalities**

### **a. Israeli Civilians Killed by Palestinian Residents of the Occupied Territories**

#### **In the Territories**

From the beginning of the Intifada to December 8, 1993, 57 Israeli civilians, including three children, were killed by Palestinians in the territories. Thirty-seven were killed in the West Bank and twenty in the Gaza Strip. In addition, two tourists were killed by Palestinians in the territories.

In the fifth year of the Intifada, the number of Israeli civilians killed in the territories by Palestinians rose compared with the previous year, and in the sixth year their number more than doubled as compared to the fifth.

First Year	Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year	Total
5	4	4	7*	11	26	<b>57</b>

\* During this year two tourists were also killed in the territories.

Twenty-eight of those killed were shot. Sixteen were stabbed. Two were beaten to death. Five were burned to death by the explosion of a molotov cocktail. Five were run over. One was killed by detonation of an explosive device.

### **Within the Green Line**

From the beginning of the Intifada to December 8, 1993, 54 Israeli civilians, including two 15-year-old girls, were killed within the Green Line by Palestinian residents of the territories.

First Year	Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year	Total
3	17*	6**	13	8	7	54

\* During this year, three tourists were also killed in Israel by a Palestinian.

\*\* During this year, one tourist was also killed in Israel by a Palestinian.

Thirty-five of those killed were stabbed. Ten Israelis and three tourists were killed when a public commuter bus (Egged bus 405) was sent tumbling into a ravine off the Jerusalem/Tel-Aviv Highway by an attacker who took hold of the wheel. Four were shot to death. One was killed in an explosion. Three were beaten to death. One died of asphyxiation.

### **b. Security Force Personnel Killed by Palestinians**

#### **In the Territories**

During the Intifada, 44 members of the security forces were killed by Palestinians, 26 in the West Bank and 18 in the Gaza Strip. During the fifth year this number rose dramatically compared with the previous year.

First Year	Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year	Total
2	8	2	2	12	18	44

Thirty-four of those killed were shot. Five were stabbed. Two were killed by a stone or block thrown at them. One was burned to death by a molotov cocktail. One was killed by detonation of an explosive device. One was stoned and the car he was driving was set on fire with him inside.

### Within the Green Line

In six Intifada years, 19 members of the security forces were killed within the Green Line by Palestinian residents of the territories. The sixth year saw a large increase in this number as well.

First Year	Second Year	Third Year	Fourth Year	Fifth Year	Sixth Year	Total
0	5*	2	4	0	8**	19

\* Ilan Saadon was kidnapped on May 3, 1989 and pronounced dead by the IDF although his body was never found.

\*\* Nissim Toledano was kidnapped within the Green Line and killed in an unknown location.

Five of those killed were shot. Five were stabbed. Three were killed in the attack on Egged bus 405, mentioned above. Four were run over. One was killed by detonation of an explosive device. The exact cause of one of the deaths is unknown; the body has not been located.

### B. Shooting in Non Life-Threatening Situations

In the past two years, security forces have continued to use lethal gunfire against Palestinians who did not endanger their lives. **B'Tselem** has warned repeatedly of the dangers of the IDF Rules of Engagement in the territories in non life-threatening situations. Moreover, it appears that even these regulations are not observed. This conclusion emerges not only from **B'Tselem's** investigations, which often present a different picture from that appearing in the announcements of official spokespersons, but also from examination of the spokespersons' announcements themselves, according to which many of those killed were shot to death during execution of firing regulations which are not intended to be lethal.

The IDF Rules of Engagement in the territories stipulate that use of gunfire is permitted only as a final recourse, where other measures were either inefficient or not executable. The regulations allow that "a soldier may use his weapon only in case of *immediate* life danger posed to him or to others, and when he cannot efficiently defend himself from the attacker other than by use of his weapon. The gunfire is meant to hit the attacker only, to the extent necessary to prevent the danger. Gunfire may be employed only while the danger exists." "Life danger" is defined as "real danger of death of a person or severe bodily injury."

In the case of an attack by live weapon or sharp implement, the regulations allow shooting "to hit the body of the attacker," during the attack or beforehand. "when overt actions express an intention of immediate attack by live weapon or sharp implement (such as drawing firearms or a grenade, cocking a gun, lighting a molotov cocktail, throwing a makeshift explosive device, running towards a person brandishing a knife)." In addition, regulations issued in July 1993 allow shooting "to hit the body" if a person, after attacking with a live weapon, escapes with the weapon in-hand. The same applies for a person escaping after attacking with a non-live weapon, if there exists immediate danger that he will attack again.

**B'Tselem** believes there is no justification for shooting to kill in the case of an escaping armed person unless he poses immediate and real life danger. An armed person is indeed potentially dangerous, but precisely for such a case the regulations allow use of live fire in the "procedure for apprehending a suspect." While **B'Tselem** has often criticized the *de facto* implementation of the "procedure for apprehending a suspect," there is no doubt that in such cases it is preferable to lethal fire.

There are a number of open-fire procedures, such as the "procedure for apprehending a suspect," "firing plastic [bullets] towards a central agitator," "opening of fire as part of the procedure for apprehending a suspicious vehicle," and "firing in the course of dispersing riots," which permit non-lethal shooting only. Firing according to these procedures is restricted and may be aimed at most towards the legs or, in the case of a "suspicious vehicle," at the wheels of a vehicle, and only after other means, such as tear gas and warning fire, have been attempted to no avail.

According to regulations, the "procedure for apprehending a suspect," for example, may only be used against a person regarding whom there is a well-founded suspicion that he has been involved in a dangerous crime, and who refuses to obey a soldier's orders to halt. The procedure is meant to comprise three stages: a warning call in Arabic, a warning shot in the air in single-fire mode after verifying that the shooting will not entail injury to person or property, and lastly, gunfire in single-fire mode directed towards the legs. Aiming towards the suspect's upper body is forbidden. Nonetheless, hundreds of deaths have been caused during the Intifada by execution of this procedure.

Regulations issued in July 1993 amended the "procedure for apprehending a suspect" for cases in which an attacker escapes without a weapon, and cannot be apprehended by other means. In such a case, the new regulations allow shooting directly at the legs, without the preliminary warning call and warning shot. In **B'Tselem's** opinion, this is illegal, as the stages of the "procedure for apprehending a suspect"



*Photograph by: R. Magnus*

were meant to guarantee that escaping persons receive adequate warning that if they do not halt, they risk being shot in the legs.

Shooting according to the "procedure for apprehending a suspicious vehicle" is permitted in certain situations, and is not meant to be lethal. The regulations define a "suspicious vehicle" as either: a. a vehicle whose driver does not heed an order to halt, and there is a real suspicion that one or more of the passengers is suspected of a dangerous crime, and there are reasonable grounds to assume that the driver intentionally ignored the order to halt; or b. a vehicle that attempts to break through a roadblock. The regulations forbid shooting at a vehicle unless the roadblock is clearly visible and illuminated at night, so that a driver may perceive it from a distance sufficient to allow him to slow down and stop. The regulations also forbid shooting at a vehicle that reached the roadblock, then turned around and escaped, unless there is tangible suspicion that one or more of the passengers is involved in a dangerous crime. It is also forbidden to open fire when it is clear or can be assumed that the car turned around for reasons "not relating to security matters." Yet during the Intifada, dozens of persons were hit by shots fired at a "suspicious vehicle."

Over the past two years, there have been nineteen incidents in the territories in which people were killed by gunfire fired at automobiles. In eleven of these cases, in which fourteen people, including two four-year-old children, were killed, neither the driver nor the passengers posed life danger. Among those killed were an Israeli policeman who did not stop at a roadblock, and was shot by soldiers who apparently assumed that he was Palestinian.<sup>26</sup>

As for a large portion of the shooting deaths in the territories, the IDF Spokesperson has stated that many were shot "during dispersion of riots." According to regulations, when riots are not posing a threat to life, the security forces must call for the demonstrators to disperse. If they do not disperse, means such as tear gas, "rubber" bullets and water jets may be used. Only after these means have failed may the commander of the force fire into the air or order that this be done. According to regulations, "the person firing must make certain that the gunfire will not injure any person, structure or object." If the crowd does not disperse following the firing in the air, the regulations allow for the firing of plastic bullets or for execution of the "procedure for apprehending a suspect." In most of these cases, the official spokesperson's statement does not adequately clarify on which

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26. In other similar incidents, fire was opened at vehicles driven by Israeli civilians. On April 26, 1993, for instance, two Israeli civilians were injured by fire aimed at their vehicle. The automobile of an Israeli citizen from Ganei Tal in the Gaza Strip was struck by soldiers' bullets under similar circumstances on November 26, 1993.

regulations the firing soldiers were acting. According to **B'Tselem's** investigations and other sources, hundreds of Palestinians have been killed during the Intifada in demonstrations, many of which were not life-threatening.

## C. Testimonies

The following are testimonies taken by **B'Tselem** which describe some sample cases where lethal gunfire was executed in a non life-threatening situation.

### *1. Muayyed Saleh Fallah Dahoud Bani Shamsah*

Muayyed Saleh Fallah Dahoud Bani Shamsah, 18, resident of Beita village in the Nablus District, was killed by IDF gunfire in Beita on May 17, 1993. According to testimonies given by village residents to **B'Tselem** fieldworker Bassem 'Eid on May 28, 1993, Bani Shamsah spoke on the morning of May 17 from the loudspeaker of the village mosque and announced the presence of soldiers at the village's western entrance. During the incident in which Bani Shamsah was killed, five other young people were wounded. One was transferred by soldiers to Tel HaShomer Hospital in the Tel-Aviv area, and the other wounded were taken to al-Ittihad Hospital in Nablus by residents of the village. Among the wounded was Samir Jabar Dweikat, 13, who was shot in his left leg. In his testimony to **B'Tselem**, Dweikat stated that on the day of the incident, the pupils in his class left school earlier than usual:

I left my house in order to see the soldiers. I arrived at the mosque. I saw several young people, including Muayyed, standing on the roofs of the houses. They signalled that the soldiers had entered the girls' school, which is about 200 meters from the mosque.

The youth, along with some ten others, threw stones at the soldiers while moving east. The group then fled to the village cemetery. After approximately ten minutes, the youths on the roofs signalled to them that the military jeeps were leaving the village and that they could leave the cemetery. Some of the soldiers hid in the home of one of the village residents, Fahed Abu 'Amar, 57 years old, as he testified:

I heard knocking on the house gate, and my daughter-in-law opened the door. Three soldiers entered the house and signalled, drawing fingers to their mouths, for her to be quiet. One of the soldiers instructed us in Arabic to sit in one room and not to

... speak... . The house has a door letting out onto the second story, which is under construction. The soldiers entered the stairwell and locked this door behind them. In the stairwell there are two small windows through which one can see the road which passes east of the village.

About five minutes after the soldiers entered my house, I heard firing and loud echoes in the house. I realized the shots were being fired out of the windows in the stairwell. After the soldiers left, I found ten bullet shells in the stairwell.<sup>27</sup>

Abu 'Amar stated that after the shooting, he saw through the window three soldiers treating a wounded person on the ground. A military ambulance arrived later, and two wounded people were placed inside.

Samir Dweikat described in his testimony the course of events after the youths had thought that the soldiers left the village:

We decided to return the way we came. We walked along the road. Suddenly I heard shots. I felt that I was wounded. I turned around and ran back. I walked several hundred meters and then some young people placed me in a car. There were three other wounded youths with me in the car. The car took us to al-Ittihad Hospital.

***IDF Spokesperson's Announcement, May 17, 1993:***

*An Arab youth from the village of Beita in the Nablus District was killed. Two youths, one about seventeen years old and the other about fifteen years old, were seriously injured, and another three youths, age thirteen, fourteen and sixteen, were moderately injured today around 12:15 by IDF soldiers' gunfire, after they had thrown stones at them and not obeyed their orders to halt. As a result of this, the seventeen-year-old was seriously injured in his abdomen. He died of his wounds while being treated by a military doctor. The sixteen-year-old youth, who was moderately injured in his leg, was taken by military ambulance to a Jerusalem hospital. The rest of the wounded were taken to al-Ittihad Hospital in Nablus by Arab residents. The IDF is investigating the incident.<sup>28</sup>*

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27. **B'Tselem** fieldworker Bassem 'Eid estimates the distance between the small windows in the stairwell of Abu 'Amar's house and the location where Samir Dweikat was wounded as 65 meters.

28. On October 13, 1993, the Chief Military Advocate General's Office, in response to **B'Tselem's** inquiry, wrote that the investigation of the incident had not yet been completed.

## **2. Salem Fakhri Salem Mustafa**

Salem Fakhri Salem Mustafa, age 18, was killed by IDF gunfire on August 13, 1993, in the village of Jaljiliyah in the Ramallah District. Mustafa is the first Palestinian in this village killed by security forces since the beginning of the Intifada. Residents of the village reported that in the evening hours of the day prior to the incident, youths from the village threw stones at military jeeps which passed through the village on their way to the nearby village of Abwein. The jeeps continued on their way to Abwein, where a man wanted by the security forces was later apprehended. Jaljiliyah residents estimated that the soldiers' entrance into the village on August 13 was connected to the events of the previous day. In testimony taken by **B'Tselem** fieldworker Bassem 'Eid on August 17, 1993, Ibrahim 'Abd al-Qader 'Abd al-Qatuf, age 36, a resident of Jaljiliyah, stated:

On August 13, 1993, around 16:30, I was sitting at home with my wife. My brother, Moti'a, age 38, entered the house and said that there were soldiers across from the house, near the terraces. I approached the window and saw a soldier standing on the stone terrace. I heard one shot. I looked in the direction from which I heard the shot and saw a young man running north, his back towards the soldiers. The young man fell. The distance between me and the soldier was about twenty meters, and the distance between the soldier and the young man that had fallen was about 150 meters.

When the young man fell, I left the house and heard more gunfire. I approached the soldier who had fired and stood facing him. He was bald (his entire head was shaven) and thin. His face was light-skinned and freckled. He ordered me to leave. I told him that the man who had fallen was my son, so that he would let me approach him. I went with the soldier, who aimed his weapon at me, and reached the place where the young man had fallen. He was lying on his back. I identified the young man who had fallen as my cousin, Salem.

### ***IDF Spokesperson's Announcement, August 13, 1993:***

*Bakri Salam Waijiya (sic), approximately eighteen years old, a resident of the village of Jaljulyah (sic) in the Ramallah area, was killed today at approximately 17:00 by IDF soldiers' gunfire in the village of Jaljulyah after he had thrown stones at an IDF force and did not respond to the soldiers' calls to halt. As a result of the*

gunfire, he was severely injured in his abdomen. A military doctor administered on-site medical treatment, but he [the injured man] died of his wounds shortly thereafter. The IDF is investigating the incident.

### **3. Muhammad Bassem a-Salhi and Yasser Ahmad Hassan al-Majdelawi**

Muhammad Bassem a-Salhi, 10, and Yasser Ahmad Hassan al-Majdelawi, 19, residents of the Nusseirat refugee camp in Gaza, were killed by an undercover unit's gunfire on March 22, 1993. In testimony given to **B'Tselem** fieldworker Suha 'Arraf on April 2, 1993, camp resident Akram 'Abd al-Qader Khalil Taharawi, age 22, stated:

On March 22, 1993, at approximately 15:30, I was standing on the balcony of my house, on the third floor. Four masked people appeared on the street and began hanging up circulars. A white Peugeot 404 approached from the northern side of the street and moved towards the center of the street. The masked men stopped it. Five young men got out of the car and another climbed out of the trunk. The five were dressed in civilian clothing, while the young man who emerged from the trunk was in uniform. They fired at the masked men.

I saw the soldiers fire at Yasser when he was about seven meters away from them. He ran west. Another young man, who was about four meters from the soldiers, was shot. He was hit in his leg, and the soldiers caught him. A third youth stood next to a wall, approximately twenty meters from the soldiers. He was shot in his arm and caught by the soldiers.

Yasser, who was bleeding, stopped a truck in the street and got in. The truck took off. The soldiers continued firing at the truck and hit its windows. Only one of the young men managed to get away with no injury.

Many youths gathered in the area and began throwing stones at the soldiers, who started shooting.

Muhammad was standing next to the cemetery, which is approximately forty meters from my house, facing it. He was struck in the eye by the shots fired towards the masked men and fell to the ground. The incidents continued for approximately half an hour and no one paid attention to him. Once the army had left the area, I approached him along with several young men, and we saw that he was dead.

We called for a doctor, who certified Muhammad's death. We took him to the camp infirmary and from there to Shifa Hospital in Gaza. Residents of the camp took his body from the hospital, and he was buried that day in the cemetery next to which he had been killed.

***IDF Spokesperson's Announcement, March 23, 1993:***

*Yesterday, in the late afternoon, an IDF force encountered a group of masked men in Nusseirat engaged in writing slogans and incitement. Several of the masked men were armed with non-live weapons. The force executed the "procedure for apprehending a suspect" which included gunfire. One of the masked men was caught, wounded in the leg. Two others were severely injured and were evacuated by an Arab ambulance. One of them, a member of the Sarhan family, was taken to Shifa Hospital, and the other, 'Abd a-Rahman Bassem Subhi Salah, born in '82, was taken to a hospital in Israel. Both of the wounded died of their injuries.*

**4. Bassam Muhammad Sa'id al-Wazaifi**

Bassam Muhammad Sa'id al-Wazaifi, 18, resident of Nablus, was killed by security force gunfire on March 24, 1993. 'Abd a-Rahman Muhammad Matar Dab'ai gave the following testimony to **B'Tselem** fieldworker Bassem 'Eid on March 28, 1993:

On March 24, 1993, at around 7:15 a.m., I was travelling in my car to my uncle's family to celebrate the holiday of 'Eid al-Fitr. I was driving on Faisal Street, the main street, where I encountered a traffic jam. I stopped and waited. I saw a young man running on the sidewalk, from east to west. Two soldiers in uniform were running after him, calling for him to stop. The young man did not stop. The soldiers fired towards him when they were about three meters from him and four meters from my car. He fell on his face.

After the young man fell, the soldiers approached him. One soldier turned the young man onto his back with his foot and saw that he was dead. The soldiers returned and headed east. When the soldiers had left, I got out of my car and approached the place where the young man was lying. I saw two holes where bullets had entered the young man's back. He was dead. Local residents took the young man to the hospital where he was pronounced dead.

**IDF Spokesperson's Announcement, March 24, 1993:**

*Bassem Hamad Muhammad Sa'id al-Wazati (sic), resident of Nablus, approximately 18 years old, was killed this morning at about 7:30, by IDF soldiers' gunfire while throwing stones at an Israeli bus passing through the city of Nablus. The incident occurred as a number of Arab residents were throwing large stones at an Israeli bus which was passing by. Soldiers riding in the bus' accompanying vehicle called for the stone throwers to halt. When their calls were not obeyed, the soldiers fired at them and as a result the Arab was killed, as stated. His body taken by local residents to al-Ittihad Hospital from where it was snatched. The IDF is investigating the incident.*

During 1993, the organization Israeli-Palestinian Physicians for Human Rights (PHR) received a number of complaints from Palestinians injured by security forces' gunfire, who were hospitalized in Israel or in the territories and were requested to pay the hospitalization fees. The Civil Administration refused to cover the costs, claiming that the responsible authority was the Defense Ministry's Claims Division. According to PHR, the Claims Division does not adequately address the problems of Palestinians requiring medical care following injuries by the security forces. In contrast, hospitalization costs of wanted persons in custody are covered by the detaining authority (IDF or IPS). In a letter from July 26, 1993, PHR director Neve Gordon wrote to the Director of the Defense Ministry, David Ivri, asking him to solve this problem at the policy level. Some five months later, MK Naomi Hazan sent an additional query. The Defense Ministry responded that a new procedure had been decided upon, to be implemented January 2, 1994, "according to which as long as the injured person is a Palestinian regarding whom an Israeli physician has determined that a local medical facility is unable to offer medical assistance due to the severity of his injury, and because of which it is necessary to transfer him to hospitalization in a facility in Israel, the Defense Ministry will reimburse the Israeli facility as stated for the medical expenses incurred, irrespective of the question as to what branch of the security establishment should bear the costs."

On August 25, 1993, **B'Tselem** wrote a letter to the Military Advocate General's Office requesting information regarding the investigation of the case. In response, Lt. Nadav Weissman, assistant to the Chief Military Prosecutor, stated in a letter dated October 12, 1993, that al-Wazaifi "threw large stones at a moving vehicle, thus endangering civilian lives... . The gunfire was executed from a distance of approximately fifteen meters, after the deceased failed to obey a number of calls to halt, and did not halt even after warning shots had been fired in the air and towards his legs (the first shots did not strike the deceased). It must be noted that the gunfire towards the deceased was executed in mid-chase under a shower of stones which were thrown at the soldiers by the deceased's companions. Under these circumstances, it was found that the gunfire was justified and that there was no negligence in the soldiers' behavior. It should be noted that after he was hit, the soldiers began to treat the deceased. However, the stone-throwing towards them, which continued and endangered their lives, caused them to leave the area. The soldiers stated that at the time they left the location of the incident, it appeared that the deceased had already died."

**B'Tselem** again wrote to the IDF Military Advocate General and requested clarification of this response, regarding, among other things, at which stage of the "procedure for apprehending a suspect" al-Wazaifi was killed. In his response, dated October 27, 1993, Lt. Nadav Weissman wrote: "After one of the soldiers fired towards his legs and missed his target, additional shots were fired towards his legs, which unfortunately caused his death... . The deceased had a special additional chance to halt at the soldiers' call, knowing that his escape involved concrete personal danger. Choosing to continue running, he thus reinforced the soldiers' suspicion regarding him. They then fired again towards his legs. Of course, there was no defect in the soldiers' actions. Opening fire in such a situation is completely justified and was executed according to all the rules."

### **5. Mustafa 'Ali Mussa 'Ubeidat**

Mustafa 'Ali Mussa 'Ubeidat, age 22, a resident of Jabal Mukabbar in Jerusalem, was injured on October 10, 1992, by Border Patrol gunfire on Salah a-Din Street in East Jerusalem. He died of his wounds on October 16, 1992 at al-Muqassad Hospital in East Jerusalem. The

following is a testimony given to **B'Tselem** by Roly Rozen, a reporter who was an eye-witness to the incident:

On Saturday, October 10, 1992, at approximately 13:30, I was standing on Salah a-Din Street opposite the Ministry of Justice, after covering a women's demonstration being held there in identification with hunger-striking Palestinian prisoners. The demonstration began at the Red Cross building. During the demonstration, two young men were arrested and held in a Border Patrol jeep, number M20-483. The demonstration was dispersed by police and Border Patrol personnel by the shooting of tear gas grenades. Afterwards, a number of women gathered around the jeep and attempted to convince the Border Patrol men to release the men who had been arrested. There were shouts and shoving, and at one point, one of the Border Patrol men fired a tear gas grenade towards the crowd, apparently in an attempt to disperse the women. A young Palestinian man who was in the area caught the grenade and threw it back. The gas fumes struck the Border Patrol men. The crowd which had gathered applauded the young man. It was evident that one of the policemen had been injured by the gas since he was rubbing his eyes. I was standing on the other side of the street and kept my eye on the injured policeman. I saw the young man who had thrown the grenade lying on the ground and being beaten by two policemen. Everything happened very quickly, and at a certain point, a Border Patrol men who was standing next to the jeep - I do not know if it was one of the two who had beat the young man - shot the youth who was lying on the ground at the time. I did not see any attempt on the part of the Palestinian youth to grab the policeman's weapon.

Eye-witness Bassmah Barghouti, 27, a resident of the village of Kubar in the Ramallah area, gave her testimony to **B'Tselem** fieldworker Bassem 'Eid on October 27, 1992:

The procession, which set out from the Red Cross building at about 11:00, headed towards Salah a-Din Street. Mounted soldiers had arrived and began to disperse the march with batons. Border Patrol men also arrived, and began firing tear gas grenades towards those participating in the march. Many of the participants dispersed. The Border Patrol men caught two young men who had taken part in the march, and a group of women, including myself, attempted to intervene. One of the Border Patrol men told us that if we did not move away, he would throw tear gas at us. Mustafa 'Ubeidat was standing next to me while I spoke to the Border Patrolmen. We did not agree to disperse and one of the Border Patrol men threw a tear gas

grenade at us. Mustafa caught the gas grenade and threw it back towards the Border Patrol men. Three of them chased him, caught him and laid him down on the ground. One of the Border Patrol men sat on Mustafa's chest and began to slap him in the face. I attempted to push the soldier who was sitting on Mustafa's chest, but the policeman shoved me and knocked me to the ground. One of the Border Patrol men kicked Mustafa.

I saw a third Border Patrol man aim his gun towards Mustafa and as the Border Patrol man who was sitting on Mustafa got up and continued to kick him, the one aiming the gun fired one shot. This took place approximately half a meter from me. Immediately after the shot, the three Border Patrol men got into the jeep and left. They did not take the two young men they had arrested. I approached Mustafa and took off his shirt to see where he was hit. He was pressing his hands into his stomach and was unsuccessfully attempting to open his belt. Another young man, two women and I placed Mustafa in a private car, which took him to al-Muqassad Hospital.

According to the Police Spokesperson's announcement following the incident, 'Ubeidat was shot when he resisted arrest and attempted taking the weapon of the policeman who fired. A photographer for Viznews who was at the location filmed the incident on video. In the film it is evident that 'Ubeidat was shot while lying on the ground. The policeman who fired was charged with manslaughter and perjury, and his trial is still taking place.

## **6. Ibrahim Muhammad 'Abd a-Razeq Yassin**

Ibrahim Muhammad 'Abd a-Razeq Yassin, age 47, resident of Bal'a village in the Tulkarm District, was killed by IDF gunfire on June 5, 1993. Village resident Nasser Saleh Ibrahim Nasser, age 17, stated in his testimony to **B'Tselem** fieldworker Bassem 'Eid on June 7, 1993:

On June 5, 1993 at approximately 10:00, I arrived at the land located at the entrance to the village, to collect the last of the harvest from Ibrahim a-Razeq Yassin's field, for animal feed. On the way to the field four military jeeps passed me. When Ibrahim arrived, I asked him if he had seen the jeeps and he said yes. I finished gathering from the field, mounted my donkey and rode towards the village. Ibrahim stayed on his land.

When I was about 200 meters away from the plot, I heard shouting and gun shots. I stopped the donkey and looked back. I saw Ibrahim running, and four soldiers chasing him while

shooting. The distance between the soldiers and Ibrahim was about 25 meters. I ran towards the soldiers. I saw a jeep on the road, and a soldier inside it. I told the soldier that the man they were chasing was deranged. The soldier made me lie on the ground, on my back, and searched me. Afterwards he made me get up and put me in the jeep. One of the soldiers that had chased Ibrahim got in the jeep and drove into the fields. The soldier sitting next to me tied my hands behind me with a plastic cord. He also produced a piece of cloth with which he wanted to blindfold me, but three additional soldiers, who arrived from the direction of the fields, wouldn't let him. One of them took a scissors out of his pocket and cut the plastic cord from my wrists. One of the soldiers asked me if I know the man in the field. I said I did, that he was my neighbor and that he was deranged. The soldiers told me to go home, in Arabic, and wouldn't answer when I asked if something had happened to Ibrahim. On the way home I saw the four military jeeps I had seen before, leave the village.

***IDF Spokesperson's Announcement, June 5, 1993:***

*An IDF force, during routine operational activity in Balla village east of Tulkarm, identified this morning, close to 10:30, a suspicious Arab resident. The force called for him to halt, and when he did not respond, the procedure for apprehending a suspect was executed and the commander of the unit fired at him. As a result of the shooting, the suspect was critically wounded and shortly afterwards died of his wounds. The IDF is investigating the details of the incident.*

## Chapter Two

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# Handling of Complaints and Law Enforcement Regarding Violations Committed by Security Forces

This chapter deals with the handling of cases in which security forces are suspected of causing unjustified injury to Palestinians in the territories. Cases involving IDF soldiers are investigated and processed internally within the IDF by the Military Criminal Investigation Division of the Military Police (CID), Examining Officers, and the IDF Military Advocate General. Where members of the Border Patrol or police are suspected of illegal acts, the police is responsible for investigation, and in some cases, the investigation is transferred to the Police Investigations Department in the Ministry of Justice. Complaints against GSS agents have in the past been investigated by the GSS itself. Shortly following the period surveyed in this report, the law was amended to authorize the Police Investigations Department to investigate complaints against GSS interrogators.<sup>29</sup>

In every case of "unnatural death" in the territories, the CID is responsible for conducting an investigation whether or not an appeal or complaint has been submitted. This is in addition to in-the-field debriefing by the commanders soon after the incident. The CID transfers its conclusions to the IDF Military Advocate General, which may open legal proceedings if it finds sufficient evidence indicating deviation from IDF regulations.<sup>30</sup>

In general, in order for an investigation of non-fatal injuries to be opened, a formal complaint must be submitted to the IDF Military Advocate General by the injured parties, their attorneys, human rights organizations, Members of Knesset or other parties.<sup>31</sup> The IDF Military

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29. The amendment was made in January 1994.

30. From the IDF Spokesperson's response to *The Killing of Palestinian Children and the Open-Fire Regulations*, B'Tselem Information Sheet, June 1993, pp. 20-21.

31. According to information submitted by the IDF Military Advocate General to the State Comptroller, few complaints had been registered by the end of 1988, most of them through the Red Cross. In 1989, the number of complaints increased, partly as a result of the activities of civil and human rights organizations. For the years 1990-1992, the Military Advocate General provided the State Comptroller with more detailed information which stated that 531 complaints were transferred for investigation in 1990, 402 in 1991, and in 1992, until the beginning of September, more than 200 complaints were received and transferred for investigation. State Comptroller's 1993 Report. no. 43, p. 878.

Advocate General is supposed to examine every complaint and to transfer those cases which appear to involve criminal violations to an investigative body. A minority of complaints are transferred to the CID, while most are reviewed by an Examining Officer, appointed by the Regional Manpower and Personnel Officer.<sup>32</sup> After examination by one of the investigative bodies, the case is returned to the IDF Military Advocate General with recommendations.

The Military Advocate General has the authority either to order that a case be tried in a military court, that disciplinary hearings be held, or that the file be closed with no legal action.<sup>33</sup> According to IDF Spokesperson's data presented in *Ha'aretz* daily on October 28, 1993, 183 indictments were submitted against 260 soldiers and officers for "Intifada offenses" up to October 1993. Among those facing charges were 58 officers, 202 soldiers in compulsory service and four civilian IDF employees. Two hundred and twenty-five defendants were convicted, 25 were acquitted, and the cases of ten officers and soldiers were pending. Of the convictions, 140 were for violent crimes against Palestinians, 70 for crimes against property, and the remainder, for offenses such as insults and degrading or inappropriate behavior. *Ha'aretz* cited a source from the Military Advocate General's office as stating that nearly thirty soldiers were serving sentences in IDF detention facilities for "Intifada offenses." Military sources stated that as of October 1993, there were no soldiers serving sentences for serious offenses.<sup>34</sup>

## **A. Findings of the State Comptroller's 1993 Report**

During the period between October and December 1991, the State Comptroller's Office investigated the activities of the Legal Advisor's Unit in the Military Prosecutor's Office in Nablus, Jenin and Ramallah and of the IDF Military Advocate General in the Central Command. The following are excerpts from the findings of this investigation as summarized in the State Comptroller's 1993 report:<sup>35</sup>

2. [...] The work of the Examining Officers, who generally have no legal training or knowledge in the field of investigation, is

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32. *Ibid.*

33. In addition, in several incidents, cases were transferred to the civilian system since the suspect had completed his military service and was therefore no longer subject to the Military Jurisdiction Law.

34. *Ha'aretz*, October 28, 1993.

35. State Comptroller's 1993 Report, no. 43, pp. 879-880.

often superficial, and the number of instances in which cases are transferred to the Military Advocate of the Central Command as they should be is extremely small. This phenomenon exists despite clear and detailed instructions on the appointment notice of the Examining Officer and despite special instructions for investigation issued by the Military Advocate of the Central Command, which only a few of the Examining Officers bother to follow.

[...] In many cases, the Examining Officer deems it sufficient to photocopy the operations journal and attach it to the file, and does not take testimony, not even from complainants; in many cases, the Examining Officer's summary report does not at all correspond to the evidence found in the file. In such circumstances, there are repeated requests on the part of the Military Advocate of the Central Command to complete investigation files, often causing the investigation to be prolonged for more than a year and decreasing its effectiveness.

The Examining Officers often encounter a lack of cooperation on the part of persons and agencies in the field, which makes their work very difficult. An example is the common claim that the operations journal from the day of the said incident has been lost. In other instances, soldiers called as witnesses do not appear to give testimony, although they have been repeatedly summoned.

From a memo prepared by the Military Advocate of the Central Command's Office in October 1991, it appears that the problem in the function of the Examining Officers stems primarily from their not being professional investigators with the appropriate skills. The investigation is often marginal to their normal primary work. This superficial work makes proper completion of the investigation and locating those responsible more difficult, and serves as an obstacle as the State attempts to defend itself against damage claims or appeals to the HCJ.

3. [...] In many instances, many investigation files were closed because the investigators could not locate the soldiers involved in the incident about which the complaint was registered... . The commanders' attitude towards instructions issued by the Military Advocate of the Central Command calling for disciplinary hearings is lenient. This is expressed in the light punishments given to those found guilty in this sphere.

5. [...] According to data from the Military Advocate of the Central Command, most of the cases dealing with unnatural death of local residents resulting from operational activities were closed at the recommendation of the Military Advocate of the

Central Command after it was found that the soldier acted according to the Rules of Engagement. In some of the cases, the Advocate instructed that they be brought before disciplinary hearings for a slight deviation from the Open-Fire Regulations.

8. An examination by the State Comptroller's Officer in September 1992 regarding several of the cases being handled by the Military Advocate of the Central Command revealed that the handling of many cases had not been completed even though much time had passed since the incident. Many cases had been closed by the Military Advocate of the Central Command as a result of the following deficiencies: the investigation was not executed soon after the incident, and the passing of time since the incident made it difficult to investigate and to locate soldiers involved; many Examining Officers' files returned by the Central Advocate to the Examining Officers for completion of details which were lacking were either not returned, or returned after a long delay, often years later; there was a significant delay in checking many vital details, which undermined the possibility of thoroughly checking the incident; the written record of events, managed by the military units in the area, often did not allow for identification of the suspected soldiers; there was a lack of cooperation and failure to appear on the part of witnesses, including IDF soldiers; operations journals of the military units about which the complaints were registered were not found.

The State Comptroller's findings, as presented in the report, reinforce many of the charges made by **B'Tselem** and other organizations. **B'Tselem** has criticized the quality of investigations, their being prolonged beyond acceptable lengths of time, the tendency to close investigation files without taking action, as well as the lenient approach, at times to the extent of cover-ups, in the case of apparent abuses by soldiers against Palestinian residents of the territories.

**B'Tselem** follows the investigations of the Military Advocate General and other authorities in cases of death of Palestinians in the territories, and focuses on incidents in which testimonies indicate that the gunfire was executed in non life-threatening situations.

On December 21, 1993, the daily *Yediot Aharonot* reported that the IDF was conducting reenactments of Intifada-related incidents for the purpose of defending itself in hundreds of civil suits initiated by Palestinians who were injured by security forces during the Intifada. On December 23, 1993, attorney Dan Assan wrote to Brigadier General Ilan Schiff, requesting that at this opportunity teams from the Military Advocate General's Office be instructed to locate and re-open the hundreds of criminal files, opened during the Intifada following Palestinians' complaints, which were later closed by the office because involved soldiers or units were not located, or for similar reasons. Assan attached to his letter several complaints by Palestinians given to him by the Gaza Team for Human Rights and Israeli-Palestinian Physicians for Human Rights, regarding which no file was opened or no response was received.

## **B. Follow-Up of Investigations and Law Enforcement Regarding Deaths of Children**

During six Intifada years, 65 Palestinian children age twelve and under were killed by security forces in the territories. In all cases but one, the cause of death was gunfire.<sup>36</sup> All cases but three, in which the children were shot by members of the police or Border Patrol, involved IDF soldiers. Below is a list of these cases and the status of the investigation file concerning their deaths.<sup>37</sup>

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36. Bader Muhammad Sa'id Karadeh was injured on December 10, 1988 when thrown off a jeep, and died of his wounds on December 18, 1988.

37. The information regarding the status of files is based on the following documents: a. An article published on October 16, 1989 in *Al HaMishmar* daily, listing the death cases documented by **B'Tselem** of Palestinian minors killed by the security forces and the IDF Spokesperson's response to every incident; b. The IDF Spokesperson's response, (June 5, 1990) to **B'Tselem's** request for updates; c. The IDF Spokesperson's responses (April 14, 1992 and April 23, 1992) to an additional request for updates; d. The IDF Spokesperson's response (January 20, 1994) to **B'Tselem's** query dated August 25, 1992; e. Letters and specific announcements by the IDF Spokesperson or, in a few of the cases, from other officials. In a number of other cases, the information is based on press reports.

**B'Tselem** wrote to the IDF Spokesperson on August 25, 1992, regarding all the incidents up to July 1992 which were in various stages of investigation or in which the status of the file was unclear. In January 1994, after sending a number of follow-up memos, we received a partial response regarding only seven of the dozens of cases referred to in our letter. The IDF Spokesperson wrote that the response addresses only cases from 1992 and onwards, as "this is the limit of our ability to locate death cases which occurred during the first years of the Intifada." Many of the earlier cases which appear on the list are therefore not updated.

***In the first three years of the Intifada, 42 children age twelve and under were killed:***

**The First Year (December 9, 1987 – December 8, 1988)**

**1. Tamer Jalal Dasuqi, age 10.**

Injured in the head by IDF gunfire on February 3, 1988, in Burqa village in the Nablus District. Died of his wounds on February 6, 1988. The file was closed with no legal steps taken.

IDF Spokesperson: "The soldiers fired according to the open-fire regulations when they were exposed to life-danger."

**2. Nassrallah 'Abd al-Qader Nassrallah, age 12.**

Killed by IDF gunfire on February 20, 1988 in Tulkarm. The file was closed with no legal steps taken.

IDF Spokesperson: "The soldiers fired according to the open-fire regulations."

**3. Yusef Dammaj, age 12.**

Killed by IDF gunfire on August 13, 1988 in the Jenin refugee camp.

IDF Spokesperson: "An IDF soldier was given a disciplinary hearing for failing to follow regulations for firing plastic bullets."

**4. Rami Khalil Abu Samra, age 10**

Killed by IDF gunfire on September 14, 1988 in the Zeitun neighborhood in Gaza City.

IDF Spokesperson: "A written comment was entered for the officer who opened fire justifiably but not according to the open-fire regulations."

**5. Nahil Tukhi, age 12.**

Injured in her head on September 17, 1988 in the al-Am'ari refugee camp in the Ramallah District. Died of her wounds on September 23, 1988. The file was closed with no legal steps taken.

IDF Spokesperson: "Fire according to regulations."

**6. Diya Jihad Fayez Muhammad, age 5.**

Killed by IDF gunfire on October 18, 1988 in Nablus. The file was closed.

IDF Spokesperson: "His death cannot be attributed to the gunfire. However, a reserve sergeant was charged in the Northern Command's military court with illegal use of a weapon. The reserve soldier was sentenced to three months in prison and two years suspended sentence."

**7. Usama Ahmad Abu Ghanaima, age 3.**

Killed by IDF gunfire on November 9, 1988, in the Shuja'iyah neighborhood in Gaza City. The file was closed.

IDF Spokesperson: "The gunfire was executed according to the operational regulations for plastic bullets. The child, who was drawn into the riot, was hit by gunfire aimed towards the primary agitators."

**8. Shnewar Muhib 'Abd a-Rahman Hamayel, age 12.**

Injured in his head on November 19, 1988 in the village of Beita. in the Nablus District. Died of his wounds on November 22, 1988.

IDF Spokesperson: "Charges were pressed for causing death by negligence. Lt. Oded Cohen-Pur was convicted by the military court of the Northern Command of illegal use of a weapon and was reprimanded."<sup>38</sup>

**The Second Year (December 9, 1988 – December 8, 1989)**

**9. Bader Muhammad Sa'id Karadeh, age 12.**

Injured in the head on December 10, 1988 in Nablus. Died of his wounds on December 18, 1988. According to our information, his injury was caused by being thrown out of a jeep by IDF soldiers. The file was closed with no legal steps taken.

IDF Spokesperson: "It is not possible to link the soldiers' behavior to his death. The youth jumped from a house, and died as a result."

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38. *Ha'aretz*, May 10, 1990.

**10. 'Abd a-Salam Ahmad Habaiba, age 11.**

Killed by IDF gunfire on January 12, 1989 in Tulkarm.

IDF Spokesperson: "The incident was investigated and transferred to the Military Advocate for assessment."

A request for an update, sent on August 25, 1992, was denied.

**11. Hinadi Abu Sultan, age 12.**

Injured in the head on January 10, 1989 in the Shati refugee camp in the Gaza Strip. Died of her wounds on January 14, 1989.

IDF Spokesperson: "The incident was investigated and transferred to the Military Advocate for assessment."

A request for an update, sent on August 25, 1992, was denied.

**12. Samer Muhammad 'Aruri, age 12.**

Killed by IDF gunfire on March 19, 1989 in Silat al-Harhiya in the Jenin area. The file was closed.

IDF Spokesperson: "It is impossible to connect his death to the gunfire executed at that location. However, the soldiers were reprimanded for illegal use of weapons (independent of the death of the boy)."

**13. Ahmad Ahdayed, age 11.**

Killed by IDF gunfire on March 22, 1989 in Danabeh in the Tulkarm area.

IDF Spokesperson: "An officer was reprimanded for illegal use of a weapon."

**14. Amjad Hashem Nassrallah, age 4.**

Killed by police gunfire on March 27, 1989 in Beit Qad in the Jenin district. The file was closed. In response to a query by the Association for Civil Rights in Israel, the Police Inspector stated on April 23, 1989: "The policeman is suspected of negligent firing."

Israel Police on April 25, 1993: "The investigation file was closed by the State Attorney's Office due to lack of evidence."<sup>39</sup>

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39. Letter from Chief Inspector Yoni Tzioni, head of the Investigation and Prosecution Division of the Investigations Department in the Israel National Police, to B'Tselem.

**15. Mahmud Muhammad Dib Nabhan, age 12.**

Killed by IDF gunfire in Jabalya in the Gaza Strip on April 9, 1989. The file was closed.

IDF Spokesperson: "Firing was in accordance with regulations. It is impossible to determine with certainty from where and from what gunfire he was hit."

**16. Mahmud Suleiman Raba'i, age 10.**

Killed by IDF gunfire on April 16, 1989 in Samo'a in the Hebron district.

IDF Spokesperson: "1. A soldier was indicted for causing death by negligence. 2. Another soldier received a written comment on illegal use of a weapon. 3. An officer was reprimanded, with no connection to the death of the local." The [first] soldier, Rafael Ben-Lulu, was acquitted of manslaughter and was found guilty of illegal use of a weapon. He was sentenced to four months' imprisonment to be served by public service, and demoted.<sup>40</sup>

**17. 'Izzam 'Omar Hassan, age 8.**

Killed by IDF gunfire in the Tulkarm refugee camp on April 26, 1989.

IDF Spokesperson: "An officer received an administrative reprimand for illegal use of a weapon."

**18. Samer Muhammad Mar'i, age 9.**

Injured in the eye by IDF gunfire on April 26, 1989 in the Tulkarm refugee camp. Died of his wounds on May 1, 1989.

IDF Spokesperson: "The Military Advocate instructed that an officer be given a disciplinary hearing for illegal use of a weapon."

A request for an update, sent on August 25, 1992, was denied.

**19. Milad Anton Shahin, age 12.**

Killed by IDF gunfire in Bethlehem on May 5, 1989.

Sgt. Maj. Louis Novinski was indicted at the military court of the Northern Command for illegal use of a weapon. He was convicted of this offense and sentenced to three months' imprisonment to be served through public service, three months' suspended sentence, and demotion to the rank of corporal.<sup>41</sup>

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40. *Hadashot*, December 14, 1989; *Ha'aretz* December 29, 1989.

41. Letter from Minister of Defense Yitzhak Rabin, to MK Yair Tsaban, March 15, 1990.

**20. Ghaleb Samhana, age 11.**

Killed by IDF gunfire in Nablus on June 8, 1989. The file was closed with no legal steps taken.

IDF Spokesperson: "The file was closed because of the real threat to the lives of the soldiers at the time of the incident."

**21. Hassam 'Awwad, age 7.**

Killed by IDF gunfire in the Jabalya refugee camp in the Gaza Strip on June 10, 1989. The file was closed.

IDF Spokesperson: "The file was closed at the instruction of the Military Advocate, without any legal steps being taken, due to real threat to the lives of the soldiers at the time of the incident."

**22. Khalil 'Awwad al-Batran, age 12.**

Killed by IDF gunfire in the village of Idna in the Hebron District on July 2, 1989. The file was closed.

IDF Spokesperson: "It is impossible to link his death to the gunfire executed at that location. However, soldiers were brought to disciplinary hearings for disregarding the regulations for weapon use."

**23. Aiman Ramzi Badran, age 12.**

Killed by IDF gunfire on July 6, 1989 at the 'Askar refugee camp in the Nablus District.

The file was closed, according to the IDF Spokesperson, "due to the lack of a causal link between the use of rubber bullets and the death of the boy. A soldier received a written comment on not keeping the minimum distance in using rubber bullets."<sup>42</sup>

**24. Iyyad Hassan al-Babli, age 11.**

Injured in his head on July 8, 1989 by IDF gunfire in Rafah in the Gaza Strip. Died of his wounds on July 19, 1989.

No CID file was opened.

**25. 'Ata Muhammad Musallem a-Nadi, age 12.**

Killed by IDF gunfire in the Balata refugee camp in the Nablus District on July 31, 1989.

No CID file was opened.

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42. Letter from Lt. Yuval Horn, of the Military Advocate General's Office, to B'Tselem, September 18, 1990.

**26. Fayez 'Ayyash Nasser, age 12.**

Killed by IDF gunfire in the Jabalya refugee camp in the Gaza Strip on August 6, 1989. The file was closed.

IDF Spokesperson: "An officer received a written comment for failing to follow the open-fire regulations, with no connection to the death of the local."

**27. Yusef Razi Salameh, age 6.**

Killed by IDF gunfire in the Shati refugee camp in the Gaza Strip on August 9, 1989. The file was closed with no legal steps taken.

IDF Spokesperson: "As the circumstances of the boy's death cannot be discovered, the Military Advocate ordered to close the investigation file. The child was killed in circumstances not sufficiently clarified."

**28. Butheina Adib Hiju, age 3.**

Killed by IDF gunfire in the Khan Yunis refugee camp in the Gaza Strip on August 12, 1989.

IDF Spokesperson (April 1992): "The circumstances of the incident were not sufficiently clarified. The Military Advocate ordered that the investigation file be returned to the CID."

A request for an update, sent on August 25, 1992, was denied.

**29. Jadallah al-'Aqer, age 11.**

Killed by IDF gunfire in the Rafah refugee camp in the Gaza Strip on August 23, 1989. The file was closed with no legal steps taken.

The Minister of Defense's Office: "The use of rubber bullets was executed from a proper distance and under justified circumstances."<sup>43</sup>

**30. Muna Ibrahim a-Tamam, age 12.**

Killed by IDF gunfire in Nablus on September 2, 1989. The file was closed with no legal steps taken.

IDF Spokesperson: "The source of the gunfire and the person who fired were not located."

**31. Akram Zaki Hamdan, age 12.**

Killed by IDF gunfire in Khan Yunis on September 8, 1989. The file was closed with no legal steps taken.

IDF Spokesperson: "The gunfire was according to regulations."

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43. Letter from Assistant to the Defense Minister, Haim Israeli, to B'Tselem. March 30, 1990.

**32. Fahed 'Abd al-Karim Shteivi, age 12.**

Killed by IDF gunfire in Qadum in the Tulkarm District on September 10, 1989.

IDF Spokesperson: "The Military Advocate ordered that a soldier be indicted for illegal use of a weapon."

A request for an update, sent on August 25, 1992, was denied.

**33. 'Atallah Sa'id Tufaha, age 12.**

Killed by IDF gunfire in Nablus on September 15, 1989. The file was closed with no legal steps taken.

IDF Spokesperson: "Due to the throwing of bricks and stones at the soldiers during the incident."

**34. Nazzar 'Atiyya al-Furani, age 3.**

Injured in the head by IDF gunfire in the Shati refugee camp in the Gaza Strip on October 12, 1989. Died of his wounds on October 15, 1989. The file was closed.

**35. Qassem 'Abdallah Abu Libdeh, age 8.**

Injured in the head in the Khan Yunis refugee camp on October 13, 1989. Died of his wounds on October 16, 1989. The file was closed with no legal steps taken.

IDF Spokesperson: "The gunfire itself was executed according to the open-fire regulations."

**36. 'Abdallah Abu al-'Araj, age 12.**

Injured by gunfire in Dir al-Balah in the Gaza Strip on October 19, 1989. He died of his wounds on October 24, 1989. The file was closed with no legal steps taken.

The Minister of Defense's Office: "The gunfire was executed according to regulations after tear gas was fired to no avail."<sup>44</sup>

**37. Sabah Ahmad 'Abdallah Ma'alusha, age 10.**

Killed by IDF gunfire in the Shati refugee camp in the Gaza Strip on December 3, 1989. The file was closed.

IDF Spokesperson: "Nonetheless, the Military Advocate ordered that an officer be brought to a disciplinary hearing for illegal use of a weapon during the incident."

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44. Letter from Haim Israeli to B'Tselem, April 19, 1990.

**The Third Year (December 9, 1989 – December 8, 1990)**

**38. Shuqri Husni Barakat, age 10.**

Killed by IDF gunfire in Tulkarm on March 20, 1990. The file was closed with no legal steps taken. IDF Spokesperson: "Nothing unusual was found regarding the gunfire executed by the two soldiers."

**39. Yusef 'Atiyya Kishawi, age 11.**

Injured by gunfire on April 22, 1990. Died of his wounds on the following day.

IDF Spokesperson: "The Military Advocate instructed that an officer be brought to a disciplinary hearing for the offense of negligence in performing his duty in the army, as he did not brief the soldiers in the force under his command regarding the regulations for using rubber bullets. In addition, the Military Advocate instructed to order another officer to appear before his commander for administrative reprimand for an offense of deviating from authority. A request for an update, sent on August 25, 1992, was denied."

**40. Mustafa 'Awwad al-Fajam, age 8.**

Injured by police gunfire in Khan Yunis in the Gaza Strip on May 23, 1990. Died of his wounds the following day.

The Israel Police: The investigation was transferred to the Southern District's Military Advocate.<sup>45</sup>

**41. Ahmad Salameh, age 10.**

Killed by IDF gunfire in the old 'Askar refugee camp in the Nablus District on June 5, 1990.

IDF Spokesperson: "The Military Advocate instructed that the investigation material be transferred to the Attorney General, as the soldier involved in the incident was no longer subject to the Military Jurisdiction Law. The reservist's trial began in February 1993 in the Magistrate's Court in Netanya, where he was charged with causing death by negligence."<sup>46</sup>

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45. Letter from Chief Inspector Yoni Tzioni, head of the Investigation and Prosecution Division of the Investigations Department in the Israel National Police, to B'Tselem, April 25, 1993.

46. *Ha'aretz*, February 2, 1993. The Ministry of Justice informed us in a letter dated February 10, 1994, that summations of the legal proceeding were submitted on February 2, 1994.

**42. Zahiya 'Abd al-Karim al-Masimi, age 9.**

Injured in the Tulkarm refugee camp on June 23, 1990. She died of her wounds on June 25, 1990. The file was closed with no legal steps taken.

IDF Spokesperson: "There was no way to find a legal connection between the gunfire executed by the officer and the girl's death. The Military Advocate found that the girl's presence in the line of fire could not have been foreseen."

Of the 42 death cases of children age 12 and under, from the beginning of the first year until the end of the third year:

- \* In two cases, no CID file was opened.
- \* Nineteen cases were closed without any action being taken. In each case, one of the following reasons was provided: "gunfire according to regulations," "no connection found between the gunfire and the death," "lack of evidence," "lack of possibility of discovering the cause of death," "the source of the gunfire or who fired it could not be found." In some of the cases, no reason was mentioned.
- \* In fifteen cases, legal proceedings in military courts or disciplinary hearings were held (against at least seventeen soldiers and officers) regarding deviation from the open-fire regulations, and not regarding the death of the child. At least five soldiers were reprimanded (in five different incidents), four received written comments, one was sentenced to three months' imprisonment to be served in public service, three months' suspended sentence and demotion, and another soldier was sentenced to three months' suspended sentence. In other cases the results of the proceedings (usually disciplinary) are unknown to us.
- \* In three cases soldiers were brought to trial for causing death through negligence. Two (in separate cases) were ultimately convicted only of illegal use of a weapon: one was reprimanded, and the other was demoted and sentenced to four months' imprisonment to be served in public service. As far as we know, the trial of the third is still taking place in the Magistrate's court in Netanya.
- \* The remainder of the cases are awaiting the Military Advocate's rendering of an opinion or completion of the investigation.

***During the last three years of the Intifada, 23 children age 12 and under were killed in the territories.***

**The Fourth Year (December 9, 1990 – December 8, 1991)**

**43. Bassam 'Issa Muhammad al-Jaruz, age 11.**

Killed by IDF gunfire on February 10, 1991.

Status of investigation unknown.

**44. Nidal Taisir 'Inabus, age 12.**

Injured in Nablus on April 28, 1991. Died of his wounds on May 1, 1991. The file was closed with no steps taken.

IDF Spokesperson: "The firing of the plastic bullet by the officer involved was standard and according to the regulations. An autopsy was not performed on the body of the deceased, and there was no possibility of determining with certainty whether his death was caused by IDF soldiers' gunfire."

**45. Rami 'Abd al-'Atif Aqtifan, age 12.**

Injured by IDF gunfire in Sheikh Radwan in the Gaza Strip on September 26, 1991. He died of his wounds on September 28, 1991.

Lt. Oren Be'eri was charged in the Jaffa military court with causing death by negligence. In addition, it was reported in the press that the battalion commander was suspected of giving conflicting reports regarding the incident.<sup>47</sup> In November 1992, the Ministry of Defense paid the deceased's family damages totalling NIS 20,000 in an out-of-court settlement.<sup>48</sup>

**46. Salim Bashir al-Hindi, age 10.**

Killed by IDF gunfire in the Shati refugee camp in the Gaza Strip on October 6, 1991.

As of April 1992, the CID was still investigating the case.

A request for an update, sent on August 25, 1992, was denied.

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47. *Yediot Aharonot*, November 27, 1992, and according to information received orally from the correspondent, Eitan Mor.

48. *Hadashot*, November 10, 1992.

**The Fifth Year (December 9, 1991 – December 8, 1992)**

**47. Jalal Sanallah, age 12.**

Killed by IDF gunfire in the 'Ein Beit al-Ma refugee camp in the Nablus District on February 5, 1992.

As of April 1992, the case was still under investigation. A request for an update, sent on August 25, 1992, was denied.

**48. Na'im Kamal Na'im Isma'il Abu Amuna, age 3 years and eleven months.**

Killed in an automobile by IDF gunfire in Khan Yunis in the Gaza Strip on July 24, 1992.

The battalion commander and the regiment commander were reprimanded and received written comments for not properly instructing the troops regarding the open-fire regulations.<sup>49</sup> Three soldiers who were involved in the shooting were acquitted by the CID after it was determined that they were not familiar with the regulations that stipulate that one should not fire at an escaping vehicle unless armed wanted people are identified therein. The CID recommended that the battalion commander and the regiment commander be tried for not conveying instructions they received from the regional brigade to their soldiers.<sup>50</sup>

IDF Spokesperson: "It was decided not to take legal measures against the shooters, and moreover, it was impossible to confirm with full certainty which one of them hit the deceased. However, from the CID investigation it appears that the soldiers who shot received no briefing on the stricter open-fire regulations in effect at the time in the area, which restricted the use of the procedure for apprehending a suspect at roadblocks. Due to this oversight, the Military Advocate General recommended that four officers between the ranks of Captain and Colonel be reprimanded."

**49. Amjad 'Abd a-Razeq Jabar, age 12.**

Killed by gunfire of undercover IDF soldiers from the Duvdevan Unit, at the a-Ram junction in the Ramallah District on November 23, 1992.

The commander of the force, a first lieutenant, was removed from duty.<sup>51</sup> An IDF debriefing, conducted by Brig. Gen. Moshe Yaalon, determined that the commander unjustifiably fired his pistol from a distance of 15-20 meters.<sup>52</sup> It was reported that the officer who had

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49. *Ha'aretz*, July 27, 1992.

50. *Hadashot*, September 8, 1992.

51. *Hadashot*, January 24, 1992.

52. *Ha'aretz*, January 25, 1992.

fired would remain in the Duvdevan Unit in a different capacity. The officer's investigation was concluded in December 1992.<sup>53</sup>

The Military Advocate General: "At the conclusion of the case's investigation it was decided to press charges against an officer from the "Duvdevan" Unit. The officer was convicted of causing the death of the youth, and received as punishment one year's imprisonment, six months of which were suspended sentence, and demotion to the rank of sergeant."<sup>54</sup>

**50. Mahmud Muhammad Steiti, age 12.**

Killed in the above incident (number 49).

The IDF does not take responsibility for the child's death.

**51. 'Amar Yusef Abu a-Sharah, age 12.**

Killed by Border Patrol gunfire in the Sheikh Radwan neighborhood in Gaza City on December 1, 1992.

Status of investigation unknown.

**The Sixth Year (December 9, 1992 – December 8, 1993)**

**52. Rana Tharwat Muhammad Abu Tiyyur, age 9 years and eleven months.**

Killed by IDF gunfire in the Khan Yunis refugee camp in the Gaza Strip on December 19, 1992.

Status of investigation unknown.

**53. Shirin Hassan 'Odeh, age 11.**

Killed by IDF gunfire in the Jabalya refugee camp in the Gaza Strip on January 16, 1993.

Status of investigation unknown.

**54. Hayil Yusef Muhammad Abu Makhmir, age 12.**

Injured by IDF gunfire in the Khan Yunis refugee camp in the Gaza Strip on January 29, 1993. He died of his wounds on February 1, 1993.

The Military Advocate General: "The circumstances of the death are being examined by the Military Advocate General's Office. When the decision is complete, we will forward you the main findings."<sup>55</sup>

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53. *Ha'aretz*, November 29, 1992 and December 1, 1992.

54. Letter from Lt. Nadav Weissman, Assistant to the Chief Military Prosecutor, to **B'Tselem**, February 24, 1994.

55. Letters from Lt. Nadav Weissman to **B'Tselem**, August 17, 1993 and December 2, 1993.

**55. Safa'a (Hoda) Ishaq Salah Siyaj, age 4.**

Injured by IDF gunfire on March 13, 1993 in Hebron. She died of her wounds on the following day. The file was closed.

The Military Advocate General: "After the conclusion of the investigation, the evidence was examined by the Military Advocate General's Office, and it was determined that the soldiers' discretion was not unreasonable."<sup>56</sup>

**56. Maher Na'im 'Abd a-Razeq al-Majaidah, age 7.**

Killed by IDF gunfire in Khan Yunis in the Gaza Strip on March 20, 1993.

The Military Advocate General: The file is still being investigated by the CID.<sup>57</sup>

**57. 'Abd a-Rahman Bassam Subhi a-Salibi, age 10.**

Killed by IDF gunfire in Nusseirat in the Gaza Strip on March 22, 1993.

The Military Advocate General: The file is still being investigated by the CID.<sup>58</sup>

**58. Raida 'Omar 'Abd Rabu al-Qarah, age 12.**

Killed by IDF gunfire in Bani-Suheila in the Gaza Strip on April 8, 1993.

The Military Advocate General: The circumstances of the incident are still under investigation.<sup>59</sup>

**59. Muhammad Mahmud Abu Shawish, age 12.**

Killed by IDF gunfire in Nusseirat in the Gaza Strip on April 21, 1993.

Status of investigation unknown.

**60. Ahmad Nazmi Subhi Hamdan, age 12.**

Killed by IDF gunfire in Khan Yunis in the Gaza Strip on April 26, 1993.

The Military Advocate General: Charges were pressed in the military court against the soldier who fired for causing death by negligence.<sup>60</sup>

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56. Letters from Lt. Nadav Weissman to **B'Tselem**. August 16, 1993 and December 5, 1993.

57. Letter from Lt. Nadav Weissman to **B'Tselem**. October 13, 1993.

58. Letter from Lt. Nadav Weissman to **B'Tselem**. October 13, 1993.

59. Letter from Lt. Nadav Weissman to **B'Tselem**. September 27, 1993.

60. Letter from Lt. Nadav Weissman to **B'Tselem**. October 13, 1993.



The Military Advocate General: The Military Advocate General's Office has not yet finished processing the case.<sup>61</sup>

**63. Ahmad Hassan 'Ali al-Kurdi, age 10.**

Killed by IDF gunfire in the Shati refugee camp in the Gaza Strip on May 17, 1993.

The Military Advocate General: The case is still under investigation by the CID.<sup>62</sup>

**64. Amin Muhammad 'Amar, age 12.**

Killed by IDF gunfire in al-Bureij refugee camp in the Gaza Strip on June 9, 1993.

The Military Advocate General: The case is still being investigated by the CID.<sup>63</sup>

**65. Izzat 'Amar Matar, age 10.**

Injured by IDF gunfire on July 18, 1993 in the Jabalya refugee camp in the Gaza Strip. Died of his wounds on July 20, 1993.

Status of investigation unknown.

As for the **23** death cases of children age 12 and under since the beginning of the fourth year of the Intifada to the end of the sixth, the information is incomplete: most are either still under various stages of investigation, or we have yet to receive a response as to the status of the investigation file, if one has been opened. According to our information, **three** files were closed without any legal steps taken. In **one** file disciplinary action was taken against the commanders of soldiers who fired. **Four** soldiers were charged in military courts with causing death by negligence. In **one** of these cases the officer convicted of death by negligence was sentenced to a year's imprisonment, of which six months were suspended sentence, and demotion to rank of sergeant.

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61. Letter from Lt. Nadav Weissman to **B'Tselem**, October 12, 1993.

62. Letter from Lt. Nadav Weissman to **B'Tselem**, October 13, 1993.

63. Letter from Lt. Nadav Weissman to **B'Tselem**, October 13, 1993.

Regarding the cases of death of children twelve years of age and younger, it is remarkable to note the number of cases which were closed with no action being taken, including two cases in which no file was opened, though the children were shot by IDF soldiers.

A response often received was that the investigation was closed "regarding anything connected to the death of the child." though proceedings (generally disciplinary) were held against the soldier who fired, again "with no connection to the death of the child." In these incidents the charges were generally of "illegal use of a weapon" or of "deviation from procedure." It seems unreasonable that although a child was shot and killed by IDF gunfire in a specific incident, it was claimed that there was no connection between the child's death and the proceedings against the soldier. In incidents where proceedings were completely disconnected from the child's death, they generally concluded with a written comment or a reprimand for the soldier.

The above list includes only children twelve years of age and younger, who, it can be assumed, posed no life danger to the soldiers. Moreover, one might have expected that those responsible for enforcing the law would treat the deaths of children with particular attention and care. However, in these incidents, the statistics speak for themselves and clearly indicate a tendency not to bring the full rigor of the law to bear.



## DEPORTATION

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

– Article 49 of the Fourth Geneva Convention

In June 1993, **B'Tselem** published a report which discusses in detail the issue of deportation of Palestinians from the occupied territories and, specifically, the deportation of 415 Palestinians in December 1992 (see **B'Tselem, Deportations of Palestinians from the Occupied Territories and the Mass Deportation of December 1992**).

Since 1967, well over 1,000 Palestinians have been deported from the occupied territories. In six years of Intifada **481** Palestinians have been deported, **66** of them during the first five years. In the sixth year, **415** Palestinians were deported to Lebanon in the mass deportation of December 1992. The pretexts for deportation have generally been agitation, political subversion, and activities in prohibited organizations.

The deportation of Palestinian residents of the occupied territories is executed by the authority of Regulation 112 of the Defence (Emergency) Regulations, 1945. This Regulation authorizes the regional commander (originally the Mandate High Commissioner) "to make an order under his hand... requiring any person to leave and remain out of Palestine... . A person with respect to whom a deportation order is made shall... so long as the order is in force remain out of Palestine." The deportee has generally not been convicted of any crime; the order may be implemented without prior judicial hearing in which evidence against him is presented to a judge. The candidate for deportation and his attorney are not permitted to examine the evidence on which the deportation decision was based. At most, if an appeal is made to the HCJ and the deportation candidates' attorney so demands, the evidence may be presented to a judge during the HCJ proceedings.

Regulation 112 was rescinded within Israel in 1979 by passage of the Emergency Powers Act (Detentions).

## A. The Prohibition in International Law and the High Court of Justice

Deportation, viewed by both Palestinians and the Israeli authorities as an especially harsh measure, is a severe human rights violation. The deporting country unilaterally renounces its responsibilities towards the deportee, who is left without income or protection. He is forcibly removed from his environment and family, while no other state is obligated to grant him refuge.

Deportations contravene international law, specifically Article 49 of the Fourth Geneva Convention, which unequivocally prohibits such a measure (see box, above).<sup>64</sup> According to the HCJ's interpretation as expressed by HCJ Justice Shamgar in the 'Afu decision, the prohibition stipulated in Article 49 does not apply to Israel's deportations of Palestinians from the territories:

The drafters of the Convention had in mind mass deportations for extermination, mass population shifts for political or ethnic reasons, or transfer for forced labor. This is the "purpose of the legislation" and the relevant context...<sup>65</sup>

This interpretation conflicts with the plain language of Article 49. Furthermore, it is not reconcilable with the article's legislative history.<sup>66</sup>

In the 'Afu case, Justice Gabriel Bach determined that Article 49 does not pertain only to mass deportations:

The language of Article 49 of the Fourth Geneva Convention is clear and unequivocal. The combination of the words "individual or mass forcible transfers, as well as deportations," with the phrase "regardless of their motive," leaves no room for doubt, in my opinion, that the article applies not only to mass deportation but also to the deportation of individuals, and that the prohibition is meant to be a blanket one, sweeping and without reservations... .

Nonetheless, Justice Bach reached the same conclusion as Justice Shamgar regarding non-applicability of Article 49 to the territories, due

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64. In HCJ 698/80 *Qawasmeh et al. v. the Minister of Defense et al.*, Piskei Din 35(1) 617. Justice Haim Cohn wrote that deportation violates customary international law which the military commander's order cannot override.

65. HCJ 785/87, 845, *'Afu v. IDF Commander*, Piskei Din 42(2) 4, p. 61.

66. See **B'Tselem, Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992**. "Excerpts from the Written Arguments Submitted by the Association for Civil Rights in Israel," pp. 83-84.

to his view that Article 49 is not part of customary international law but is rather "at most an addition to the conventional international rules."<sup>67</sup>

Justice Shamgar's interpretation in the 'Afu case currently guides the HCJ, which views the execution of deportations as a legitimate use of the military commander's authority under Regulation 112. In the January 1993 HCJ decision regarding the mass deportation of December 1992, the Court determined that the deportation of 415 detainees was not a mass deportation but rather a "collection of personal orders."

## B. The Right to be Heard

In every administrative decision, particularly one which constitutes a severe violation of rights, it is incumbent upon the authorities to hear the affected party's claims against the decision. Israeli courts have often emphasized the right to be heard as a basic legal tenet and one of the principles of natural justice.

Regulation 112 stipulates that a deportation candidate has the right to be heard before an advisory panel which includes military judges, and officers appointed by the military judges who signed the deportation order. The recommendations of the committee are considered recommendations only and are not binding on the military commander.<sup>68</sup>

In 1980, the HCJ ruled in the Qawasmeh case that the right to appeal must be given to a deportee *prior* to deportation.<sup>69</sup> After appealing to the advisory panel, the candidate for deportation may contest the decision before the HCJ. In the December 1992 deportation, not one of the hundreds of deportees was given the opportunity to contest his deportation before an advisory panel, and the deportation was carried out secretly, so as to circumvent the authority of the HCJ. Nonetheless, the HCJ did not invalidate the deportation.

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67. 'Afu, *ibid.*, p. 77.

68. The advisory panels' hearings were held *in camera* in contradiction to the principle of public hearings. Following a petition by ACRI, (HCJ 120/92 *Sami 'Atiyeh Samhadana et al. v. the Advisory Panel of the IDF Commander in Judea, Samaria and the Gaza Strip et al.*), the HCJ ruled on January 12, 1992 that the meetings of the panels must be open to the public, because of the right of the public to be informed, and in light of the petitioners' right to due process.

69. HCJ 320/80, *Qawasmeh et al. v. the Minister of Defense et al.*, Piskei Din 35(3) 113.

### C. Data

#### ***Palestinians Deported by Military Order (under Regulation 112) during the Intifada (December 1987 - December 1993)***

Intifada year	No. of deportees
First	32
Second	26
Third	0
Fourth	8
Fifth	0
Sixth	*415
<b>Total</b>	<b>481</b>

\* All deported on December 17, 1992, for a period of up to two years. (This period was halved in February 1993, following an agreement between the United States and Israel)

These figures include only deportations that were executed. The actual number of deportation orders issued is greater. For example, in January 1992, deportation orders were issued against twelve Palestinians immediately following the incident in which Doron Shorshan, a resident of the Kfar Darom settlement, was shot and killed in the Gaza Strip. The deportation candidates' appeals to the military committees were rejected, except for that of Iyyad Jodeh. The remaining eleven petitioned the HCJ which issued an interim order postponing the deportation. Before the hearing, the Office of the Military Advocate General and the Office of the Attorney General proposed that the deportation candidates leave the territories for three years and that the deportation orders against them be rescinded. In July 1992, when the Rabin government took office, the new Justice Minister, David Liba'i, voiced his objection to deportation based on its inefficacy as a deterrent and its illegality under international law.<sup>70</sup> On August 24, 1992, the government announced that the eleven deportation orders would be rescinded and replaced by administrative detention orders.

70. See, for example, *Davar*, *Hadashot*, *Ma'ariv*, August 20, 1992.

The above figures also do not include "deportation agreements for limited periods." An example of the use of such deportations is the a-Najah case in July 1992, when a number of armed Palestinians wanted by security forces took refuge at a-Najah University at a time when hundreds of students were on campus.<sup>71</sup> The security forces placed the university under siege for four days and forbade those located inside from exiting without being checked. On July 17, 1993 the Coordinator of Activities in the Territories and the Head of the Civil Administration reached an agreement with Palestinian representatives, according to which six wanted men were removed from the university by Red Cross representatives and deported to Jordan for three years.

According to press reports, about ten "deportation agreements for limited periods" of three to five years were reached in the months prior to the a-Najah incident. Most of these agreements involved Palestinians who had turned themselves in to the security forces and were wanted for crimes other than the killing of Jews.<sup>72</sup> It was later reported that from December 1992 until May 1993, six additional wanted Palestinians who turned themselves in were deported under the terms of such an "agreement."<sup>73</sup>

In the course of the peace negotiations, thirty veteran deportees expelled for political activity during the first years after the Six Day War were allowed to return. Part of this group returned at the end of April 1993 and the remainder at the beginning of May 1993.

According to press reports during 1993, several additional Palestinians deported during the first years of Israeli rule in the occupied territories were allowed to return. These deportees had appealed to the advisory panel of the Regional Commander.<sup>74</sup>

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71. According to students, there were six wanted persons at the university, while the Coordinator of Activities in the Territories, Dani Rothschild, cited nineteen.

72. *Ma'ariv*, July 20, 1992.

73. *Ma'ariv*, May 7, 1993.

74. In 1987, Attorney Leah Tsemel's petition to the HCJ requesting that veteran deportees be allowed to appeal to the advisory panel for permission to return to the territories, was accepted. One such petitioner was Majed Muhammad Sa'id Salameh of Razalah village in the Jenin district, deported in 1970 for activities in the PLO. After the request remained pending before defense officials for a number of years, Salameh's return was approved in February 1993, and he entered the territories on February 14, 1993. (*Al HaMishmar*, *Davar*, *Hadashot*, *Jerusalem Post*, February 15, 1993). In September 1993, six other veteran deportees who appealed to the advisory panel were allowed to return. (*Al HaMishmar*, *Ha'aretz*, September 6, 1993).

The authorities' agreement to return some veteran deportees is clouded over by the December 1992 deportation by the same government of 415 Palestinians associated with the Hamas and the Islamic Jihad.<sup>75</sup>

#### **D. The Mass Deportation of December 1992**

Press reports in the spring of 1989 stated that the IDF was examining the possibility of expediting deportation procedures by denying the right to prior hearing, and allowing the deportee's attorney to appeal *ex post facto*, without the deportee being present. In January 1992, Chief of Staff Lt. Gen. Ehud Barak proposed to the Knesset Defense and Foreign Affairs Committee that Palestinians be deported for limited periods (rather than open-endedly as had been the practice until then), stating that this would allow for larger-scale and more frequent use of deportation, while avoiding eliciting sharp international criticism or the need for lengthy hearings. At the time, the proposal sparked opposition from the Military Advocate General and other army figures, and among politicians.

In July 1992, representatives of the IDF General Staff recommended to Prime Minister and Minister of Defense Yitzhak Rabin that deportation not be used in the future. As mentioned above, the eleven deportation orders pending against Palestinian residents of the occupied territories were converted to administrative detention orders.

During the first two weeks of December 1992, six members of the security forces were killed by Palestinian residents of the occupied territories. One was Border Patrol policeman Nissim Toledano, kidnapped on December 13 by members of the Hamas organization and later stabbed and strangled to death. After Toledano's body was found, some 1,300 Palestinians were taken into custody in a massive wave of arrests, and Prime Minister Yitzhak Rabin announced on December 15 that Israel intended to use harsh measures against the Hamas.

On the morning of December 16, 1992, the Israeli government decided to deport to Lebanon that night hundreds of people, "agitators, those inhabitants of the areas who in their activities endanger human life, or who agitate to such activities." It was decided that the

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75. The UN Security Council unanimously voted (res. no. 799) to condemn the deportation in that it violated Israel's obligations under the Fourth Geneva Convention, and called for the deportees' immediate return.

deportation take place "without prior notice," for a period of up to two years.<sup>76</sup> IDF authorities forbade the release of any information regarding the deportation decision and its execution. Two "temporary deportation orders," one issued in the West Bank and the other in the Gaza Strip, were to serve as the normative basis for the mass deportation. The orders stipulated that unlike ordinary deportation, temporary deportation orders were implementable immediately upon issue. Only after the deportation, through a representative, could the deportee appeal to special committees which would be established for this purpose.

In the evening, as the normative orders were issued, two mass deportation orders were being issued in the West Bank and three in the Gaza Strip. The deportation orders included a total of 486 names. Four hundred and eighteen Palestinians were loaded onto buses, blindfolded and with their hands tied.<sup>77</sup> No notice was given to their families, and as stated in the order for temporary deportation, they were not given time to appeal the decision or to petition the HCJ. Most of the deportees were taken from detention facilities where they had been held since the last wave of arrests, while others were taken from their homes.

The buses, headed for Lebanon, were stopped during the night by decision of Supreme Court Justice Aharon Barak to delay the deportation until the HCJ hearing, following two petitions filed that night. Attorneys Leah Tsemel and Andre Rosenthal had petitioned on behalf of some of the deportees, and Justice Barak issued an interim order specific to the petitioners. Later that night another petition was submitted by attorneys Joshua Schoffman and Dana Briskman of the Association for Civil Rights in Israel, in ACRI's name, contesting the legality of the deportation, following which Justice Barak issued a general interim order.

At 5:00 a.m. the following morning, the hearing on the petitions began before three HCJ judges, and continued before a seven-judge panel. In the course of the hearing, 35 people were taken off the buses and were returned to jail or to their homes. Thirty-two others were placed on the buses in their stead.

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76. Quoted from the Cabinet's decision. All Cabinet ministers voted in favor of the decision, except for Minister of Justice David Liba'i, who abstained.

77. B'Tselem's information indicates that the orders for a least some of the Gaza Strip deportees were signed after the deportees had already been placed on the buses. See **B'Tselem, Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992**, pp. 49-50.

After a fourteen-hour hearing, which included the testimony of Chief of Staff Ehud Barak and others, the HCJ decided unanimously to cancel the interim order and to allow execution of the deportation. The hearing on the legality of the deportation was postponed until January 17, 1993.

The deportees were driven to the Zumriyah Pass at the northernmost point of the "security zone" near Marj a-Zahur. The Lebanese Army prevented the deportees from continuing north, and they were left in an area between Lebanese and Israeli-controlled territory. Israel and Lebanon both claimed that the deportees were under the other's responsibility. The Lebanese set up a dirt barrier to prevent the deportees from entering Lebanese territory, while the Israelis blocked the Zumriyah Pass and mined the road leading to it, in order to prevent them from returning. A number of petitions were filed with the HCJ demanding that the deportees be returned because of the threat posed to their lives. These petitions were rejected by the judges, who accepted the State's argument that the deportees were now the responsibility of the Lebanese.

On December 21, 1992, the deportees marched to the Zumriyah Pass but turned back after the South Lebanon Army fired a number of shells at them. For several days, representatives of the Red Cross and UNWRA were allowed to bring food, tents, mattresses, heaters, and medical and other equipment to the area, and a camp was set up. Afterwards, the Lebanese authorities decided to prohibit further provision of food and equipment from Lebanese territory, and even returned a number of deportees who had been hospitalized in Lebanon to the tent encampment. The deportees continued to receive supplies regularly from residents of nearby villages.

On December 25, 1992, the Israeli Cabinet resolved, by a vote of eight to six, not to allow provision of humanitarian assistance to the deportees through the territory under Israeli control.

On December 28, 1992, the IDF Spokesperson announced that ten of the deportees had been deported by mistake and would be allowed to return. Bassem Suyuri, a sixteen-year-old Hebron youth, who the authorities admitted had been deported by mistake, was returned on January 9, 1992. Zuheir a-Lubeidah, a kidney patient from Nablus, was flown to a hospital in the "security zone." On January 13, 1993, Attorney General Yosef Harish informed the HCJ that six additional Palestinians had been deported by mistake and would be allowed to return. In all, fourteen deportees whose deportations were recognized as mistakes were returned. Another five were returned due to illness.

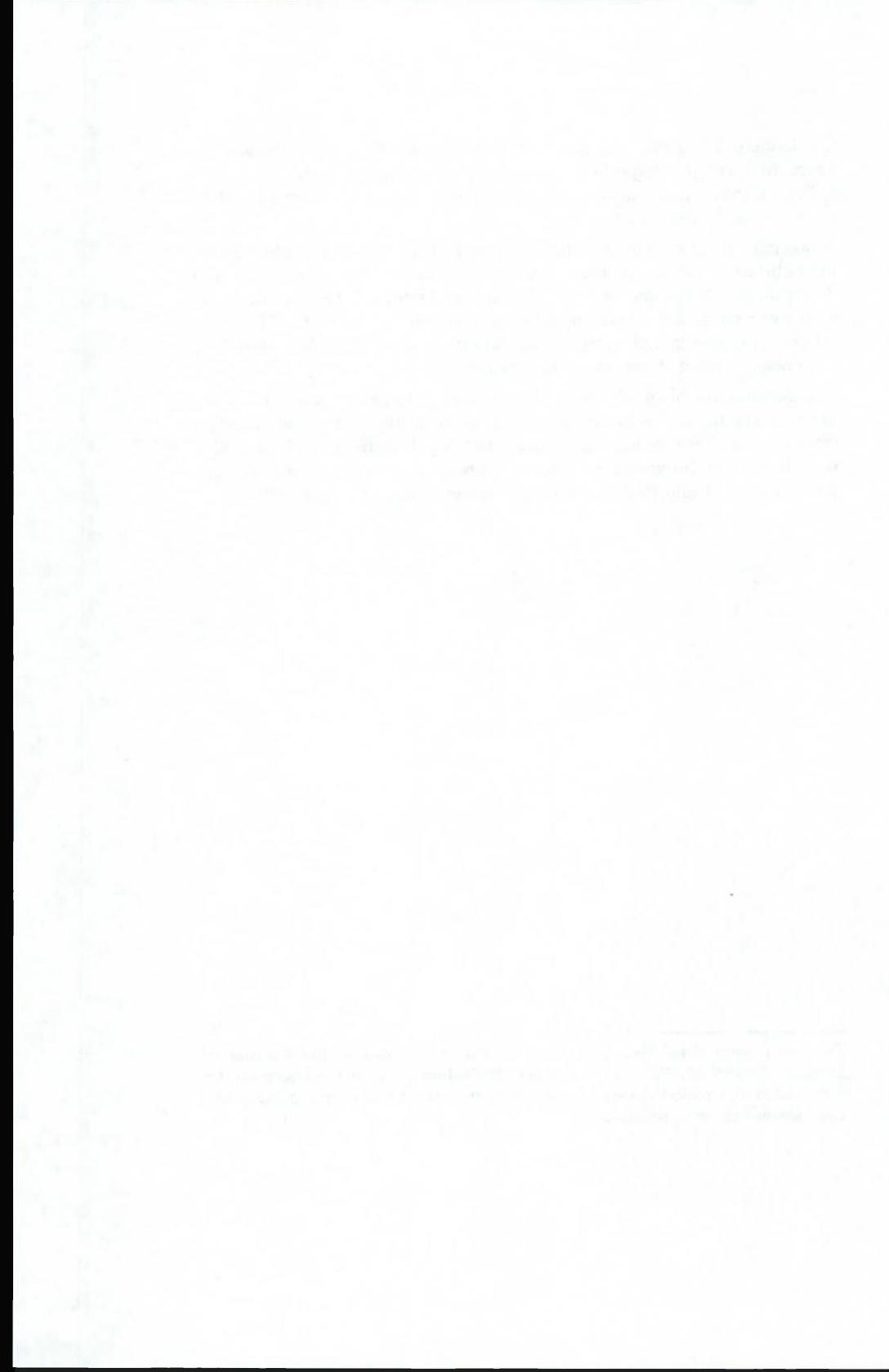
On January 28, 1993, the seven HCJ justices decided that although the normative orders regarding temporary deportation were void, the individual deportation orders, since they were based on Regulation 112 as well, were valid.

Following an agreement reached between Israel and the United States in February 1993, it was decided to halve the length of the deportation. According to the Ministry of Defense, 181 of the 189 who were permitted to return did so on September 9, 1993. The eight others remained in Lebanon, apparently because of their fear that long sentences awaited them upon their return.<sup>78</sup>

The deportation of hundreds of Palestinians to Lebanon was one of the most severe human rights violations in the past two years, transgressing international prohibitions and accepted legal principles. It involved punishment of hundreds of people without due process and without presentation of any evidence linking the deportees to illegal activities.

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78. Letter from Oded Ben-Ami, Communications Advisor to the Minister of Defense, January 18, 1994, in response to B'Tselem's inquiry. On December 15, 1993 (after the period covered in this report), 197 of the 215 deportees who were allowed to do so returned.



## HOUSE DEMOLITION AND SEALING

No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all forms of intimidation... are prohibited.

– Article 33, Fourth Geneva Convention

Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.

– Article 17 (1) and (2), Universal Declaration of Human Rights

Demolition and sealing of homes is one of the harshest means of punishment used against Palestinian residents of the occupied territories. To the best of our knowledge, this method of punishment is unique to Israel and is not used by any other country in the world.<sup>79</sup> Demolition and sealing have been used primarily against homes of Palestinians suspected of committing or attempting to commit violent crimes against members of the security forces, Israeli citizens or Palestinians suspected of collaborating with Israel.

The authorities are not obligated to prove the suspect's guilt prior to demolition or sealing, and these measures have usually been executed prior to trial. In most cases, the suspect is already detained at the time of the demolition or sealing and will generally serve an extensive sentence, so that the actual injured parties are the members of the household, who have not been suspected of any crime. Demolition and sealing of homes inhabited by family members, or by people other than the person against whom the measure is ostensibly being used, is clearly collective punishment. These measures have also been used while the suspect was still wanted and had not been apprehended, and

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79. For more information on house demolition and sealing see **B'Tselem, House Demolition and Sealing**, September 1989, and **B'Tselem, Human Rights Violations in the Occupied Territories 1990/91**, pp. 31-46.

in some cases even after he was killed.<sup>80</sup> The suspect is generally not the owner of the home destroyed or sealed but rather a son or relative of the owner. Houses rented by suspects or by their families have also been sealed.

House demolition and sealing are executed by a military order signed by the regional military commander, by the power of Regulation 119 of the Defence (Emergency) Regulations, 1945. This regulation authorizes a military commander to issue an order for confiscation and demolition of property, from which he has reason to suspect that a firearm has been illegally discharged or an explosive device has been thrown, "or of any house, structure or land situated in any area, town, quarter or street the inhabitants or some of the inhabitants of which he is satisfied have committed, or attempted to commit, or abetted the commission of, or been accessories after the fact to the commission of, any offence against these Regulations involving violence or intimidation or any Military Court offence... ."

As the order also includes confiscation of the land on which the house was built, the family is prohibited from building an alternative residence on the site. Families whose homes have been demolished or sealed have generally received a tent from UNWRA or from the Red Cross. In at least one incident, a tent set up on the ruins of a demolished house was destroyed by security forces.<sup>81</sup>

International law prohibits destruction of property except "where such destruction is rendered absolutely necessary by military operations." (Article 53 of the Fourth Geneva Convention.) "Military operations" are defined by the International Committee of the Red Cross as "the movements, manoeuvres, and other actions taken by the armed forces **with a view to fighting.**" [emphasis in the original], conditions which do not exist in punitive house demolition or sealing.

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80. For example, on November 15, 1992, the home of Ahmad Sa'id Abu 'Aziz, 19, suspected of involvement in the attack on Moti and Moli Biton in which Moti Biton was killed, was sealed. The house was sealed before Abu 'Aziz was apprehended (*Davar*, November 16, 1992). On January 22, 1990, the home of the family of Yosef Nardawi of Hableh village in the Qalqilyah District was sealed. Nardawi was wanted by the security forces when the sealing took place and was killed that April while preparing an explosive device. On February 26, 1990, the home of the Aiman Muhsein a-Roza's family was sealed. A-Roza had been killed by soldiers' gunfire on November 9, 1989. For other incidents of houses demolished after the suspect had already been killed, see *Ha'aretz*, May 21, 1989.

81. On November 1, 1990, the home of 'Omar Sa'id Abu Sirhan's family was demolished. Sirhan had killed three Israelis in Jerusalem. After the house was demolished, the family twice erected tents, some distance from the ruins of the house. In both incidents, the security forces destroyed the tents.

## A. Data

During six Intifada years, **434** houses in the occupied territories were completely demolished on security pretexts, 243 of them in the West Bank and 191 in the Gaza Strip. **Three hundred and fourteen** houses were completely sealed during the Intifada on security pretexts, 232 of them in West Bank and 82 in the Gaza Strip.

During the fifth year of the Intifada, **eight** houses were demolished in the occupied territories on security pretexts, four in the West Bank and four in the Gaza Strip. Since the Rabin government came into power in the middle of the fifth year, apparently no houses were demolished under Regulation 119. However, the use of house sealing was not halted. During the past two years, **48** houses were completely sealed (36 in the West Bank and 12 in the Gaza Strip), **21** of them in the sixth year. (For statistics on the number of complete demolitions and sealings by year, see tables on pp. 82-83.)

Since the beginning of the Intifada, **35** houses were **partially** demolished and **102** others were **partially** sealed:

In the first year, **19** houses were partially demolished; **17** were partially sealed.

In the second year, **five** houses were partially demolished; **21** were partially sealed.

In the third year, **seven** houses were partially demolished; **12** were partially sealed.

In the fourth year, **four** houses were partially demolished; **21** were partially sealed.

In the fifth year, **ten** houses were partially sealed.

In the sixth year, **21** houses were partially sealed.

All of the homes partially demolished during the Intifada were in the Gaza Strip. Fifty-five of the partial sealings were in the West Bank, 47 in the Gaza Strip.

In August 1992, Prime Minister and Minister of Defense Yitzhak Rabin announced that, as part of the peace negotiations, houses of those whose "hands were not drenched in blood and who did not commit hostile terrorist actions," which had been sealed prior to the Intifada, would be opened.<sup>82</sup> The Ministry of Defense has informed us that in the period from June 1992 until the end of 1993, 43 sealed houses were

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82. *Davar*, September 8, 1992.

opened (42 in the West Bank and one in the Gaza Strip). as "gestures of good will."<sup>83</sup>

In **B'Tselem's** view, the opening of a home sealed through the violation of basic legal principles and the trampling of fundamental rights is not a gesture of good will but an obligation. In addition, the number of houses opened was minuscule relative to the hundreds of sealings, partial or complete, executed in the occupied territories.

## **B. Advance Notice and the Right to Be Heard**

The owner of a house regarding which a demolition order has been issued may appeal to the military commander within 48 hours. The authorities must notify the owners of the intention to demolish the house and of their right to appeal. An HCJ decision of July 30, 1989 regarding a petition by ACRI ruled that in every instance of house demolition, potential injured parties must be given the opportunity to appeal to the HCJ prior to execution of the demolition.<sup>84</sup> This court ruling also determined that in cases deemed by the authorities to be particularly severe, a house may be sealed immediately, prior to hearing on the demolition. The HCJ determined one exception to the right to be heard: the case of an immediate military-operational necessity, in which the authorities may execute the demolition without delay.<sup>85</sup>

After reservist Amnon Pomerantz was stoned and burned to death in al-Bureij refugee camp on September 19, 1990, the military commander decided upon immediate demolition of buildings in the camp. This demolition was not executed according to Regulation 119 but rather as an imperative military operation for the purpose of widening the camp's main street. ACRI petitioned the HCJ, claiming that the injured

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83. Letter from Oded Ben-Ami, Communications Advisor to the Minister of Defense, dated January 18, 1994. The letter also stated that during the same period, 83 alleyways sealed by the security forces had been opened, 41 in the West Bank and 42 in the Gaza Strip.

84. HCJ 358/88, *the Association for Civil Rights in Israel v. OC Central Command*, Piskei Din, 43 (3), p. 529.

85. The court gave as an example for such an exception, an operational activity in which there is a need to remove an obstacle, to overcome resistance or to respond to an attack on the military or civilians taking place at that time "or such circumstances where the authorized authority sees a need for immediate operational action."

parties were entitled to be heard prior to the demolition. The court determined that the right to be heard is broad and not restricted to demolitions under Regulation 119, but annulled the interim order which had been issued to prevent the demolition, accepting the position of the military commander that this was a life-preserving action which could not be delayed. Therefore the right to be heard was not upheld in this instance.<sup>86</sup> This ruling gives the military commander the leeway to deviate from the narrow restrictions established in the court decision of July 1989.<sup>87</sup> According to **B'Tselem** data, 26 businesses and seven homes were destroyed in al-Bureij following this incident.

On April 27, 1992, after the stabbing death of Rabbi Shimon Biran of the Kfar Darom settlement, Mahmud Ibrahim Ahmad, a resident of Dir al-Balah in the Gaza Strip, was arrested as a suspect in the case. That day, Ahmad's family received notice that an order had been issued for the demolition of their home and that they had one day to contest. However, the house was demolished less than 24 hours after the issuing of the order, at the instruction of Brig. Gen. Yom-Tov Samiah, Commander of IDF Forces in the Gaza Strip. This decision was made without the approval of Samiah's superiors and without the family being given the opportunity to appeal. Brig. Gen. Samiah was reprimanded by the OC Southern Command, Matan Vilnai.<sup>88</sup>

In the 1993 State Comptroller's Report, the Comptroller criticized the failure to follow procedure in the demolition and sealing of houses,<sup>89</sup> stating: "Any interested party has the right to forward a written query presenting his objections and claims to the IDF regional commander, 48 hours from notification to the house's residents regarding the intention to take action by the power of Regulation 119." However, "despite repeated instructions regarding the execution of said procedures on this issue, the said procedures were not executed in many instances and vital data relevant to the execution of the demolition or sealing were not mentioned by the authorities in the appropriate forms."

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86. HCJ 4112/90, *The Association for Civil Rights in Israel v. OC Southern Command*, Piskei Din 44 (4), pp. 626, 640.

87. On the significance of this ruling, see Prof. David Kretzmer, "HCJ Review of House Demolition and Sealing in the Occupied Territories," p. 332.

88. Reuven Pedatzur, *Ha'aretz*, June 11, 1992.

89. State Comptroller's Report No. 43, p. 870.

**Houses Completely Demolished on Security Pretexts (by month)**

Month	First Year			Second Year			Third Year			Fourth Year			Fifth Year		
	Gaza Strip	West Bank	Total	Gaza Strip	West Bank	Total	Gaza Strip	West Bank	Total	Gaza Strip	West Bank	Total	Gaza Strip	West Bank	Total
Dec. (From 9.12)	0	1	1	4	4	8	5	1	6	0	2	2	0	0	0
January	0	0	0	10	15	25	16	4	20	0	1	1	1	0	1
February	0	2	2	2	3	5	7	4	11	2	3	5	1	0	1
March	0	13	13	17	14	31	0	2	2	2	0	2	0	0	0
April	3	16	19	0	0	0	0	0	0	5	2	7	0	2	2
May	2	2	4	2	21	23	0	4	4	1	4	5	1	0	1
June	4	11	15	17	14	31	6	3	9	0	5	5	1	2	3
July	6	6	12	9	3	12	2	1	3	4	4	8	Since June 1992, it appears that no houses have been demolished by administrative order in the occupied territories under security pretexts.		
August	2	13	15	6	2	8	1	1	2	2	3	5			
September	0	0	0	5	0	5	8	7	15	1	1	2			
October	7	11	18	2	2	4	0	1	1	0	2	2			
November	6	23	29	2	0	2	11	2	13	0	2	2			
Dec. (to 8.12)	0	0	0	8	1	9	0	2	2	0	1	1			
<b>Total</b>	<b>30</b>	<b>98</b>	<b>128</b>	<b>84</b>	<b>79</b>	<b>163</b>	<b>56</b>	<b>32</b>	<b>88</b>	<b>17</b>	<b>30</b>	<b>47</b>	<b>4</b>	<b>4</b>	<b>8</b>
<b>Total demolitions since the beginning of the Intifada:    Gaza Strip: 191                    West Bank: 243                    Total: 434</b>															

During the sixth year, it appears that no houses were demolished by administrative order in the occupied territories.

**Houses Completely Sealed on Security Pretexts (by month)**

Month	First Year			Second Year			Third Year			Fourth Year			Fifth Year			Sixth Year		
	Gaza West Total Strip Bank			Gaza West Total Strip Bank			Gaza West Total Strip Bank			Gaza West Total Strip Bank			Gaza West Total Strip Bank			Gaza West Total Strip Bank		
Dec. (From 9.12)	0	0	0	1	1	2	1	0	1	0	9	9	2	0	2	0	1	1
January	0	0	0	8	5	13	2	13**	15	0	1	1	0	2	2	0	1	1
February	0	0	0	3	10	13	0	14**	14	0	7	7	0	1	1	0	0	0
March	0	0	0	2	2	4	0	4	4	1***	2	3	1	3	4	4	0	4
April	1	0	1	0	0	0	0	0	0	2	3	5	0	1	1	0	8	8
May	0	4	4	0	12	12	0	12	12	0	5	5	2	3	5	0	0	0
June	0	7	7	4	10	14	1	6	7	0	1	1	1	0	1	0	0	0
July	3	5	8	2	2	4	2	3	5	0	3	3	0	5	5	0	0	0
August	0	2	2	1	4	5	2	10	12	2	1	3	1	3	4	0	2	2
September	0	0	0	2	2	4	10	3	13	0	0	0	0	0	0	0	4	4
October	1	6	7	3	1	4	2**	3**	5	1	3	4	0	1	1	0	0	0
November	4	8	12	3	2*	5	3	4	7	2	0	2	0	1	1	1	0	1
Dec. (to 8.12)	0	0	0	1	0	1	0	5	5	0	1	1	0	0	0	0	0	0
<b>Total</b>	<b>9</b>	<b>32</b>	<b>41</b>	<b>30</b>	<b>51</b>	<b>81</b>	<b>23</b>	<b>77</b>	<b>100</b>	<b>8</b>	<b>36</b>	<b>44</b>	<b>7</b>	<b>20</b>	<b>27</b>	<b>5</b>	<b>16</b>	<b>21</b>

**Total sealings since the beginning of the Intifada:**

**Gaza Strip: 82**

**West Bank: 232**

**Total: 314**

\* Three additional houses were sealed and later demolished.

\*\* An additional house was sealed and later demolished.

\*\*\* Two additional houses that were sealed were later demolished.

## C. The High Court of Justice

The numerous petitions submitted throughout the years to the HCJ against the demolition or sealing of houses have raised various claims regarding the legality of demolition in principle, the manner in which it is carried out, and specific cases. The HCJ has consistently rejected these petitions.<sup>90</sup> More than 150 judgments have been handed down over the years in petitions against the use of Regulation 119.

To our knowledge, the HCJ has intervened in only four petitions to cancel these measures or limit their scope. In one case (HCJ 299/90), the HCJ determined that the suspect did not live in the house regarding which the demolition order was issued (afterwards an order was issued against the suspect's father's house). In another case (HCJ 802/89) the court ruled that the order was based on erroneous information and instructed the military commander to re-examine the case. In the Jibrin case (HCJ 515, 443/86), the Court instructed the military commander to seal a home instead of demolishing it. In 1993, in the petition of the mother of a Palestinian convicted of murder, the HCJ intervened and instructed that instead of demolition, the house be partially sealed (this case is discussed below). In all other rulings on this issue, the HCJ refrained from intervention, accepting the authorities' position that this measure is meant to deter others from similar acts.

The deterrent effect of house demolition and sealing itself has never been proven. In his book on the Intifada, Brig. Gen. (res.) Aryeh Shalev examined the effect of house demolition in the occupied territories on the extent of violent acts by Palestinians. He checked if numerous demolitions in a specific month led to a decrease in the number of molotov cocktails thrown in that region in the following month. Shalev found that the number of incidents did not decrease, and at times increased.<sup>91</sup> In any case, the deterrent effect notwithstanding, **B'Tselem** believes that "efficiency" cannot validate collective punishment or other human rights violations.

The Hague Regulations and the Fourth Geneva Convention both prohibit collective punishment. The Geneva Convention also prohibits "[a]ny destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons... except where such destruction is rendered absolutely necessary by military operations." However, the claim that Regulation 119 of the

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90. See Kretchmer, *ibid.*, p. 334 ff.

91. Aryeh Shalev, **The Intifada - Causes and Effects**, Jaffe Center for Strategic Studies, Tel Aviv University, 1991. pp. 111-114.

Defence (Emergency) Regulations contradicts these conventions has been rejected by the HCJ.<sup>92</sup> The HCJ maintains that Regulation 119 is part of local law which, according to the conventions themselves (Article 43 of the Hague Regulations and Article 64 of the Geneva Convention), takes precedence over the other articles of the conventions.<sup>93</sup> This position contradicts the widely-accepted view that an occupying power is limited by international law in exercising powers granted it by local law.<sup>94</sup>

The HCJ also rejected the claim that demolition and sealing of houses constitutes collective punishment. The HCJ dealt with this claim in the Dajles ruling, stating:

There is no basis for the petitioners' charge that the demolition of houses constitutes collective punishment. They claim that only the terrorists and the criminals themselves must be punished, while the demolition of a house injures other members of the family as well, leaving them homeless. Such an interpretation, were we to accept it, would void the regulation and its instructions of their content. All that would remain would be the possibility of punishing a terrorist who lives alone in a house... . The goal of this regulation is "to achieve a deterrent effect"... affecting, by its very nature, not only the terrorist but those around him, and of course the family members living with him... . He must know that his criminal acts have an injurious effect not only on him, but can bring suffering on his family as well.<sup>95</sup>

The HCJ thus ignored the clearly punitive aspect of demolition and sealing. This position is incongruous with the fact that Regulation 119 appears in the Defence Regulations in a section entitled "Miscellaneous Penal Provisions."<sup>96</sup> Professor David Kretzmer writes, "a measure the immediate goal of which is to cause suffering, or damage to property or is detrimental to a person's condition in any way, as a negative response to his unacceptable actions, must be considered a punitive measure."<sup>97</sup> The collective aspect is clear, since as stated, the suspect was in most cases not the owner. Moreover, in most instances, he was

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92. HCJ 897/86, *Jabar v. OC Central Command*, Piskei Din 41(2) 522.

93. On the debate regarding the applicability of the regulations in the West Bank, see note 19.

94. See Kretzmer, *ibid.*, p. 318.

95. HCJ 698/85, Piskei Din 40(2) 42.

96. On various contexts in which the authorities and the HCJ stressed the punitive aspects of this method, see Kretzmer, pp. 320-321.

97. *Ibid.*, p. 323.

in custody during the demolition or sealing, likely to serve a long prison term, while his immediate family and sometimes members of the extended family, were left homeless by the demolition.

In the Hizran ruling of March 23, 1992, the Supreme Court rejected a petition against the demolition of the houses of two people who had been convicted of the murder of Shlomo Yihyeh of Kadima.<sup>98</sup> The petitioners claimed that the authorities should destroy only the rooms used by the murderers rather than destroying the entire house. In this case, Justice Michael Heshin, in a minority opinion, deviated from previous rulings on this issue, maintaining that the security forces had to demolish only those rooms used by the convicted men and not the entire house, so as to avoid collective punishment. Justice Heshin reiterated this position, again in a minority opinion, in the petition against demolition of the home of the al-'Amrin family, whose son, Fuad, was indicted for the murder of Helena Rapp in May 1992. Justice Heshin objected to complete demolition of the house in which many family members lived, and recommended that only the part where the defendant resided be destroyed.<sup>99</sup>

On February 15, 1993, the HCJ accepted the petition of the mother of Muhammad Turqeman, who had been sentenced on December 16, 1992 to life imprisonment for the murder of Moti Biton in the Jenin area in October 1992. Turqeman, his mother, seven unmarried siblings and one married brother with his wife and son – a total of twelve people – lived in the three-room family home. The HCJ instructed that demolition be replaced by partial sealing. Justice Aharon Barak wrote:

Regulation 119 of the Regulations gives the military commander broad authority. However, all authority, as broad as it may be, must be used with reasonable discretion... . Indeed, in exercising his authority by Regulation 119 of the Regulations, the military commander must act according to the principle of proportionality... . In determining this proportionality he must consider, on the one hand, the unlawful behavior which Regulation 119 means to deter. On the other hand, he must consider the suffering which this deterrent measure will cause to those upon whom it will be used... . In the petition before us, one family lives in the structure. However, one can clearly distinguish between the eldest brother and the rest of the family. It seems to me that the demolition of the entire structure would constitute a "disproportional" and thus unreasonable measure, in

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98. HCJ 4772/91, 5359.

99. HCJ 2722/92, *Muhammad al-'Amarin v. IDF Commander in the Gaza Strip*.

terms of the murderous behavior of Muhammad Turqeman and the suffering that would be caused to the family of the eldest brother. In these circumstances, it seems that the reasonable path would be to rule in favor of partial demolition. As we have seen, this is not possible. Under these circumstances, the less drastic measure, though it too is extremely severe, must be taken – partial sealing. Two rooms should be sealed in such a manner that the eldest brother and his family will be able to continue to live at the site.<sup>100</sup>

In one case prior to this ruling, the HCJ determined that the military commander's decision to demolish a home was unreasonable, and, as in the Turqeman case, intervened only partially.<sup>101</sup> In the Turqeman case, the HCJ instructed that the demolition be converted to partial sealing on the grounds of "reasonableness" and "proportionality." However here as well, the HCJ did not invalidate collective punishment, but rather replaced one sort of collective punishment with another, albeit reversible and less extensive punitive measure. The court approved the punishment of the mother and her seven unmarried children, while it chose to prevent, for some reason, the punishment of the married brother and his family.

#### **D. House Demolition in the Course of Operations Against Wanted Persons**

In May 1993, **B'Tselem** published an information sheet on this subject (see **B'Tselem, House Demolition During Operations Against Wanted Persons**).

In September 1992, the security forces began employing heavy ammunition (primarily anti-tank missiles) against houses where wanted persons were suspected to have taken refuge. This policy was instituted following two incidents in 1992 in which security force personnel were shot to death during operations against Palestinians hiding out in homes in the occupied territories.

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100. HCJ 5510/92, *Hamza Muhammad Khalil Turqeman v. the Minister of Defense et al.*

101. The Jibrin case dealt with an order to seal two rooms and a kitchenette in the home owned by the convicted man's father. The HCJ ordered that the kitchenette, which was used by 23 people, not be sealed. In the ruling, it was stated that sealing of the kitchenette "could not stand up to scrutiny," though it was not stated why. (See Kretchmer, *ibid.*, pp. 341-342.)



*Photograph by Nitsan Shorer*

Between September 8, 1992 and November 8, 1993, security forces executed 21 operations against wanted persons in which houses were destroyed (four in the West Bank and 17 in the Gaza Strip). During these operations, 69 houses were demolished, 66 of them in the past year. This data includes only houses that were completely destroyed in operations in which at least one house was demolished, and does not include the dozens of houses damaged but not destroyed during such operations. In addition, the contents of many houses were damaged or destroyed as a result of massive firing during these operations.

In some cases, residents complained of degrading or unreasonable treatment by security forces during evacuation from houses prior to execution of the operations. Some residents stated that they were not permitted to eat or drink and that the men were blindfolded. In most cases, these residents were released following the operation and were apparently not suspected of any offense.

Most of the operations were executed even though security forces had not ascertained that armed wanted persons were actually in the houses. According to B'Tselem's data, in only ten of the 21 operations in which houses were destroyed were wanted persons found (a total of 27 wanted men): nine were killed, three escaped and fifteen were apprehended (one of whom died shortly afterwards as a result of smoke inhaled during the operation.) In one operation, a wanted person fired at soldiers from inside the house, killing one and wounding two others, before being shot and killed. In another operation, a 64-year-old Palestinian man was killed when, according to the IDF Spokesperson, he did not respond to soldiers' calls to halt. These operations involve fatal fire even when security forces are not in life danger, or have consciously placed themselves in a dangerous situation.

In July 1993, Atty. Dafna Szusz petitioned the HCJ on behalf of the Gaza Team for Human Rights (Protagoras), Hotline: Center for the Defense of the Individual, and five Palestinians from the Gaza Strip whose homes were damaged during operations against wanted persons. The petition demanded that this type of operation be discontinued, and that compensation and substitute housing be granted to injured parties.<sup>102</sup> The petitioners claimed that these operations – employed systematically and frequently – were unreasonable in the extreme, violated international law and arose from irrelevant considerations. According to the petition, the level of certainty that the anticipated danger would materialize, the extent of dangers posed to state security, and the proximity of the operation to the time of danger, were disproportionate to the suffering inflicted by such operations. The petition also argued that experience showed that the information on which the security forces based these operations was unreliable, since in the majority of cases no wanted persons were captured. These operations continued to be carried out despite their inefficacy, indicating that the respondents were guided by irrelevant goals and considerations. The true purpose of these operations, it was claimed, was punishment, or at the very least to deter the Palestinian population from "giving shelter" to persons wanted by the security forces.

In response to the petition, the state claimed that the HCJ had no place intervening in military activities of the security forces, since they were based on essential and real military needs, and that the security forces maintained a proper proportion between their ends and the type of operation. According to the state's claims, the security forces "grant maximum security to the security forces who take part in the operations, [afford] maximum security to the life of the local population during the operations, and reduce, as much as possible, the extent of damage to structures and property in the ownership of the local population." The procedure for undertaking such operations is classified. The response also stated that the IDF was taking steps to compensate the victims.

The petition was scheduled for September 12, 1993, at which time the High Court decided to postpone the hearing for three months. The petition has meanwhile been withdrawn following an agreement by the parties.

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102. HCJ 3810/93.

## **Compensation**

The use of heavy ammunition during operations against wanted persons has caused extensive damage, to the point of total destruction, to dozens of houses and their contents. Only in mid-May 1993, in response to appeals from the Gaza Center for Rights and Law, did the Civil Administration begin to send assessors to evaluate the damage.<sup>103</sup> According to the IDF Spokesperson's response to **B'Tselem's** May 1993 information sheet, Civil Administration clerks and legal advisors in the West Bank and Gaza Strip have been instructed to initiate contact with and assist the owners of the houses.

In November 1993, in response to another letter from **B'Tselem**, the Office of the Coordinator of Activities in the Territories stated that following every operation in which houses are shelled, two assessors are dispatched, one from the Public Works Department and one from the Ministry of Defense, to write an assessor's report. The report is submitted to a Staff Claims Officer, who meets with the claimants to negotiate compensation. The letter stated that by November 11, 1993, 177 such claims for compensation had been submitted to the Civil Administration. Sixty-two cases were closed after a settlement had been reached regarding damages. It was not stated what the sum of this compensation was. Negotiations are still underway regarding the rest of the claims.

The letter also stated that the administration's policy is that every resident whose house had been damaged or destroyed would be compensated, even if wanted persons had been found in the house. However, excluded from this policy was anyone "who willingly assisted the wanted persons by providing refuge or in any other way, thus connecting himself to the illegal activities of the wanted persons."<sup>104</sup> While the general policy, as conveyed by the Office of the Coordinator, is reasonable, the exception is not. The interpretation of

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103. In response to **B'Tselem's** queries regarding compensation to families whose houses had been subject to gunfire during operations against wanted persons, we were told by the West Bank Legal Advisor, in February 1993, that the matter was being examined. The Legal Advisor in the Gaza Strip (where most of the operations occurred) responded that the claims regarding damage to property were being examined, though he suggested that complainants approach the Staff Officer for Complaints in the Civil Administration to submit a complaint prior to completion of the examination. (Letter from the West Bank Legal Advisor to **B'Tselem**, February 9, 1993, and letter from the Gaza Strip Legal Advisor to **B'Tselem**, February 3, 1993).

104. Letter from Maj. H. Raik, assistant to Head of the Economics Branch, on behalf of the Deputy Coordinator of Activities in the Territories, November 15, 1993.

the term "willingly assisted" is highly problematic since it cannot be assumed that civilians can object to armed persons' demands for shelter. Moreover it is not clear how, under such circumstances, it can be determined who provided assistance willingly or unwillingly. Additionally, even if one member of the household did assist the wanted persons either by providing shelter or in any other way, to leave the entire family homeless constitutes collective punishment.

## Restrictions on Movement

From the outset of Israeli military rule in the West Bank and the Gaza Strip in 1967, these territories were proclaimed closed areas. Passage to and from the territories is now monitored, according to official explanations, for security reasons. Entrance of Palestinian residents of the territories to Israel (for work, medical treatment or other reasons), or travel abroad, require permission from the authorities. Final approval must generally be given by the GSS. The authorities may also impose collective limits on freedom of movement for short or long periods, by declaring a specific area a closed military zone or imposing curfew or closure.

### A. Curfew

Curfew entails prohibiting residents living in the area delineated by military order from leaving their homes for the order's duration. Curfew is the harshest collective limitation on freedom of movement, as it restricts people to the confines of their homes, disrupting daily life almost completely. Regulation 124 of the Defence (Emergency) Regulations, 1945, and Article 89 of the Order Concerning Security Regulations (No. 378) 5730-1970, authorize a military commander to impose curfew at his discretion. These instructions do not stipulate a maximum duration for curfew, nor do they provide any procedure to appeal the decision to impose it.

In recent years, curfews have been imposed on Palestinian villages, towns and cities following clashes and violent incidents, preceding arrests and searches for suspects, weapons or explosive devices, during house demolitions of suspected security offenders to prevent clashes, and following incidents in which the security forces expect tempers to flare. According to an HCJ ruling, curfew may not be used as a punitive measure, and can only be instituted when the security need is absolutely clear.<sup>105</sup>

On December 1, 1991, a curfew was imposed on the area of Ramallah, al-Bireh and 'Ein Yabrud following the shooting of Tzvi Klein,

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105. HCJ 660/88.

a resident of the Jewish settlement of Ofra. Klein was critically injured and died the following day. The curfew purported to allow the security forces to search for suspects in the vicinity of the incident. The general curfew, affecting hundreds of thousands of Palestinians, lasted two consecutive weeks. ACRI appealed to the HCJ charging that the curfew, imposed upon such a large population and for such an extensive period of time, was illegal in that it was a reaction rather than a preventative measure, disrupting the balance between security needs and the livelihood of the population for which the authorities were responsible.<sup>106</sup> On December 15, 1991, the day before the hearing of the appeal was set, and until January 28, 1992, the full curfew was replaced by a partial curfew in effect from 17:00 until 04:00. On January 27, 1992, the curfew was extended to the end of February 1992. Following an appeal to the HCJ by Christian, Muslim and Jewish clergy charging that the curfew disrupted the residents' freedom of religious practice and prevented them from observing their holidays, the HCJ intervened in an exceptional decision and ruled that the nightly curfew be lifted on February 11, 1992 instead of on February 27, 1992.<sup>107</sup>

During the curfew, there were many instances of damage and destruction of property belonging to the residents under curfew, by Jewish residents of the occupied territories. It should be noted that the security forces have never used the authority vested in them by Regulation 124 against Jewish settlements in the occupied territories.

In the course of 1992, the number of curfew days decreased. Starting in October 1992, however, following a number of violent incidents, the use of prolonged curfews returned. Following are a number of examples:

On October 25, 1992, after reservist Shmuel Gersh was shot to death by Palestinians in Hebron, a full curfew, which lasted until November 1, was imposed on the city. During the curfew, more than 200 Palestinians in Hebron who violated the curfew were arrested and fined.<sup>108</sup> Most of the Arab communities in the Gaza Strip were under curfew from October 9 to 19 following massive demonstrations by the population in identification with the Palestinian prisoners' strike and ensuing clashes. Rafah refugee camp was placed under night curfew for one day and under full curfew for the following eight days. Gaza City, Khan Yunis, Beit Lahiya and the Jabalya, Shati, Nusseirat and

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106. HCJ 5630/91, *Rita Jacobian and the Association for Civil Rights in Israel v. OC Central Command*, submitted December 12, 1991.

107. HCJ 5820/91, *Father Samuel Panus et al. v. Maj. Gen. Dani Yatom et al.*

108. *Ha'aretz*, November 1, 1992.



*Photograph by Nitsan Shorer*

### Communities Frequently Placed Under Curfew

	1988		1989		1990		1991		1992		1993	
	No. of Community days	Community										
<b>West Bank</b>												
Refugee Camps	Tulkarm	124	Tulkarm	158	Tulkarm	84	Nur a-Shams	84	Balata	42	Balata	5
	Balata	123	Nur a-Shams	100	Askar	69	Tulkarm	78	Deheisheh	33	Deheisheh	5
	al-Am'ari	114	Balata	99	Deheisheh	58	Jenin	77	Askar	27	Tulkarm	3
	Jilazun	94	'Askar	94	Ein Beit al-Ma	57	Deheisheh	71	Al-'Arub	12	Askar	2
	'Ein Beit al-Ma	68	Jenin	54	Balata	56	Balata	63	Nur a-Shams	12	Gaza	2
Villages and Towns	Qalqiliyah	111	Danabeh	70	Qabatiya	56	Qabatiya	94	Ramallah	22	Hebron	18
	Anabta	75	Nablus	60	Nablus	49	Anabta	90	Anabta	21	Beit Liqiya	6
	Danabeh	67	Beit Wazen	43	Anabta	40	Awarta	68	Dir Istya	18	Sa'ir	4
	'Azun	63	Tulkarm	42	Hebron	39	Jenin	64	Salfit	18	'Ubediyah	3
	Nablus	58	Jneid	40	Jenin	37	Azun	62	al-Bireh	16	Rafidiyah	3
<b>Gaza</b>												
Refugee Camps	Shati	149	Rafah	109	Jabalya	66	Jabalya	43	Rafah	55	Jabalya	19
	Jabalya	134	Shati	86	Rafah	64	Khan Yunis	42	Khan Yunis	36	Rafah	17
	al-Bureij	117	Jabalya	85	Shati	56	Shati	38	Nusseirat	31	Shati	10
	Nusseirat	107	Nusseirat	84	Nusseirat	53	Nusseirat	34	Shati	28	Khan Yunis	9
	Khan Yunis	85	al-Bureij	80	Khan Yunis	47			Jabalya	24	al-Bureij	7
Villages and Towns	Jabalya	25	Beit Hanun	43	Rafah	59	Khan Yunis	43	Khan Yunis	47	Khan Yunis	13
	Dir al-Balah	23	Rafah	37	Khan Yunis	32	Beit Lahiya	37	Beit Lahiya	21	Beit Lahiya	10
	Khan Yunis	23	Jabalya	34	Gaza City	31	Dir al-Balah	30	Dir al-Balah	18	Jabalya	9
	Beit Hanun	22	Khan Yunis	33	Beit Hanun	28	Gaza City	30			Rafah	8
	Rafah	20	Abasan	29	Dir al-Balah	19					Dir al-Balah	6

Source: 1988-1990 data - The Jerusalem Media and Communications Centre (JMCC): *No Exit, Israel's Curfew Policy in the Occupied Palestinian Territories*, p. 112; 1991 data - partial lists of the JMCC and B'Tselem data for January to mid-November 1991; 1992--1993 data - JMCC.

Khan Yunis refugee camps were also placed under full curfew for six to eight days.<sup>109</sup> In December 1992, following various violent incidents, most of the Palestinian areas of residence in the Gaza Strip and part of those in the West Bank were placed under prolonged full curfew. Thus, for example, Khan Yunis was under curfew for seventeen days in December, ten of them consecutive.

Despite the decrease in the number of curfew days imposed on the occupied territories during the past two years, a pattern emerges: prolonged curfew is imposed following clashes and violent incidents, often for a week or longer. When the curfew is lifted, large forces of IDF soldiers are placed in the population centers, making severe clashes almost inevitable.

A nightly curfew has been in effect by standing order in the Gaza Strip since May 1988 (except for the period between February 17, 1989 and May 12, 1989), forbidding Gaza residents to be outside their houses between the hours of 8 p.m. and 4 a.m.

## **B. Exit Permits for Travel Abroad**

Palestinian residents of the occupied territories who wish to travel abroad usually exit the area via the Allenby and Adam bridges to Jordan or through the Rafah pass to Egypt.

Since the beginning of the Intifada, Palestinians wishing to travel abroad have been required to apply for permission from the Civil Administration. The Administration's decision is also contingent upon authorization from the GSS, which without providing reason, may assign a Palestinian "refused exit" status, or condition travel abroad on the travelers' staying outside the territories for a certain period of time. In September 1991, the stipulation requiring Civil Administration approval prior to travel abroad was cancelled; a Palestinian resident of the territories wishing to travel abroad could purchase an exit card at the post office and proceed directly to the border. However, many travelers, upon presenting their exit card to border officials, were notified that they were "refused exit," and had no choice but return home. Beginning August 2, 1993, a new procedure was enacted by which travelers could verify their travel status ahead of time at a local branch of the Civil Administration.

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109. UNWRA data.

Travelers via the bridges are required to pay a 118 NIS exit fee to cross the border. The assistant to the Coordinator of Activities in the Territories told **B'Tselem** that the fee was lowered from 364 NIS in March 1993.

According to Hotline: Center for the Defense of the Individual, approximately 70 percent of travelers who were initially refused exit and applied to the Hotline for assistance, were eventually permitted to exit the territories. A similar rate of applications processed through **B'Tselem** were granted after our intervention. Thus it seems that many persons are simply assigned "refused exit" status without justification, and when a human rights organization intervenes on their behalf, the authorities respond that "there is no objection to his exit."

During 1992-1993, Hotline petitioned the HCJ on behalf of 26 Palestinian residents of the territories who were not permitted to travel abroad or whose exit was conditioned upon staying outside the territories for a long period of time (from nine months to three years). All except one of the petitioners were granted permission to leave the territories before the petition was heard.

Testimony gathered by **B'Tselem** indicates that the GSS – which determines whether a person may leave the territories or under what conditions – often takes advantage of its authority to exert pressure on families of wanted persons or on residents of certain communities, or to recruit collaborators through conditioning permits on assistance to the authorities.<sup>110</sup>

An unpublicized instruction implemented *de facto* and applying to all male Palestinian residents of the territories between age 16 and 35, made their travel conditional on their remaining abroad for at least nine months.

In June 1992, Atty. Dafna Szusz petitioned the HCJ on behalf of eleven Palestinians whose travel was conditioned on prolonged stays abroad (nine months to three years). During the various stages of the petition, all of the petitioners except one were gradually allowed to leave the territories without any stipulations. During the hearings, the authorities admitted that a sweeping guideline existed regarding males ages 16 to 35 wishing to travel abroad, requiring them to stay abroad for at least nine months. The authorities were obliged to submit these guidelines in writing to the Court and to Atty. Szusz. At this stage, the final petitioner received permission to travel, before an exhaustive hearing had been conducted on the matter. The State announced that the category whose travel was restricted would be limited to males age

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110. On conditioning the granting of permits as a means of recruiting collaborators, see **B'Tselem. Collaborators in the Occupied Territories: Human Rights Abuses and Violations**. January 1994, pp. 33-37.

16 to 25, and pledged to publicize the procedure for members of this group wishing to travel abroad at all Civil Administration offices. In a letter to **B'Tselem** the Ministry of Defense confirmed that the category had been narrowed, and characterized the change as a goodwill gesture to the Palestinians in the framework of the reopening of the peace negotiations in Washington.<sup>111</sup>

**Response of Lieut. Col. Shmuel Ozenboi, Assistant to the Coordinator of Activities in the Territories:**

Travel abroad of Judea, Samaria and Gaza area residents, whether or not they are included in the restricted age category, is prevented only on the basis of real concern that the resident's exit from the territories will endanger the security of the area.

It should be emphasized that the limitations on exit are reviewed by the authorities from time to time and are based on current negative security material.

In many cases a resident who is refused exit applies to the authorities for permission to exit for medical, educational and other reasons, and the authorities indeed permit him to travel *ex gratia*. This stems from consideration for the circumstances and the essence of the request. Such compliance should not be viewed as invalidating the original denial of exit.

### **C. Closure**

Imposition of closure on Palestinian residents of the occupied territories means prohibiting their entrance or exit to and from the area delineated in a closure order. Full closure on the occupied territories prevents Palestinian residents of the occupied territories from entering Israel proper and East Jerusalem, as well as travel between the West Bank and the Gaza Strip. Such closures have been imposed following attacks on Israelis within the Green Line and on Israeli national and religious holidays, such as Independence Day and Yom Kippur.

While Israel is entitled to control its borders as well as entry into its domain from the occupied territories, it may not abandon its international responsibility to safeguard the welfare of the Palestinian

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111. Letter from Oded Ben-Ami, Communications Consultant to the Minister of Defense, January 18, 1994, in response to **B'Tselem's** inquiry.

population under its control. This obligation includes guaranteeing the right of the residents of the occupied territories to earn a livelihood, study, practice their religion, and receive medical treatment and continued care.

Collective closure on the occupied territories prevents Palestinians who are dependent for their income on work in Israel from reaching their places of work. According to the Central Bureau of Statistics, some 116,000 Palestinian residents of the occupied territories were employed in Israel in 1992, approximately 70,000 of whom were registered in the Labor Bureau and held work permits. The remainder were employed on a daily and itinerant basis, without work permits. According to one official source, 36% of the total work force of the West Bank and 38% of the work force in the Gaza Strip worked in Israel in 1992, and comprised 35-40% of the national income of the Gaza Strip and 20% of that of the West Bank.<sup>112</sup> Workers who lose their income because of closure are not compensated, although they are charged social security premiums at a rate identical to that of Israeli workers.

Another result of the closure is the creation of "divided families," in which one member of the couple holds the blue identity card of a Jerusalem resident while the other carries an orange identity card of a resident of the occupied territories. The closure prevents the family member who resides in the territories from entering East Jerusalem, where the other family members reside.

The closure also denies residents of the West Bank and the Gaza Strip access to East Jerusalem, the medical, educational, and cultural center for residents of the occupied territories. In addition, restriction of movement of Palestinians between the West Bank and the Gaza Strip or between certain areas in the West Bank severely interrupts the routines of many Palestinians who study or work in the territories outside their area of residence.<sup>113</sup>

The closure is not territorial, but rather imposed according to nationality. Thus, closure does not include the residents of the Jewish settlements in the occupied territories, who may at all times travel freely between the occupied territories and Israel.

On May 25, 1992, the Gaza Strip was closed off after 15-year-old Helena Rapp was stabbed to death in Bat Yam by a resident of the

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112. *Ha'aretz*, September 26, 1993, article by Professor Tzvi Zussman, head of the consultant team appointed by the Finance Minister. Zussman submitted a report on economic relations between Israel and the future autonomous area in July 1993.

113. **B'Tselem**, *The Closure of the West Bank and the Gaza Strip*, April 1993.

Nusseirat refugee camp in the Gaza Strip. The closure was imposed for 72 hours, but Moshe Arens, then Minister of Defense, later announced it would be extended "until further notice."<sup>114</sup> Starting June 8, 1992, a very limited number of workers were permitted entry into Israel. These workers had to meet a series of rigid criteria determined by security officials: they had to be at least 28 years old, employed in groups of ten or more, and their employers were required to transport them to their place of work and back. This instruction did not include residents of the Nusseirat refugee camp, for whom the closure remained fully in effect.

During the months after the closure was imposed, ACRI and the Workers' Hotline petitioned the HCJ to lift the closure from the Nusseirat refugee camp, claiming that there was no longer a security reason to deny thousands of workers their livelihood, and that the closure constituted collective punishment.<sup>115</sup> In response to the petition, OC Southern Command Matan Vilnai stated that the closure was intended to reduce the danger of injury to Palestinians.<sup>116</sup> Before the hearing, the State announced that the closure would be lifted. However, the closure continued for residents age 25 and under, and ACRI petitioned the HCJ again on behalf of several residents who studied in the West Bank or worked in Israel, and on behalf of Gaza Center for Rights and Law. An additional petition was submitted by the Workers' Hotline. The closure was gradually eased, and before any of the petitions were heard, an agreement was reached between Atty. Shlomo Lecker, representing the Workers' Hotline, and the authorities, according to which young workers who were married or the sole wage-earner in their family would be allowed to work in Israel.

After three IDF soldiers were shot to death in the Shuja'iyah neighborhood in Gaza on December 7, 1992, a closure was imposed on the entire Gaza Strip. On December 13, 1992, a general closure was imposed on the West Bank as well, following the kidnapping of Sgt. Maj. Nissim Toledano by Hamas activists. The closure was progressively removed starting December 20, 1992 in the West Bank, and December 22, 1992 in the Gaza Strip.

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114. *Al HaMishmar*, June 3, 1992. High ranking IDF and Civil Administration officials opposed the decision. MKs Yossi Sarid and Yair Tsaban demanded that the Minister of Defense lift the closure and stated that "dissociating the residents of the West Bank from their sources of income in Israel and the creation of unbearable economic and human hardship will merely exacerbate terrorism and harm internal security."

115. HCJ 3257/92, HCJ 3013/93 and HCJ 3040/92.

116. *Ma'ariv* and *Al HaMishmar*, June 22, 1992.

An unlimited closure was imposed on the West Bank and the Gaza Strip at the end of March 1993, after fifteen Israelis (nine civilians and six security force personnel), were killed by Palestinians over the course of the month, ten in the occupied territories and five within the Green Line. The prolonged closure, without employment solutions or compensation for the unemployed, exacted a dear price from the residents.

As time passed, tens of thousands of work permits were issued, primarily according to the needs of the Israeli economy, with priority given to those sectors most affected by the closure, such as agriculture. Until April 27, 1993, "exceptional" permits were given to 20,500 workers only, approximately 11,100 of whom were residents of the Gaza Strip, and the remainder, West Bank residents.<sup>117</sup> For a variety of reasons, including partial distribution of permits, bureaucratic complications, lack of communication between employer and employee and strikes by the Palestinian organizations, the actual number of workers who entered Israel to work was much smaller.<sup>118</sup> This number, according to press reports from a variety of sources published throughout the closure, has changed from time to time.<sup>119</sup>

Monies allocated to create temporary jobs for the unemployed in the occupied territories did not offer a significant solution to unemployment: few people were actually employed in these jobs, and the salaries paid were extremely low.

The Ministry of Defense informed **B'Tselem** that beginning June 27, 1993, men fifty years of age and older would be permitted to enter Israel without an entry permit between 5:00 a.m. and 7:00 p.m.; the entry permit did not allow one to work in Israel without a valid work permit. On October 22, 1993, it was decided that men forty years of age and older, youths age 15 and under accompanied by an adult with a permit, and women, would not need a permit to enter Jerusalem. It was also decided that certain groups of workers, including medical staff,

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117. The statistics were given to **B'Tselem** on April 28, 1993 by Lt. Col. Hanan Rubin, spokesperson of the Coordinator of Activities in the Territories.

118. According to press reports from this period, the number of Palestinians who actually entered Israel was approximately half the number of permits issued.

119. On July 5, 1993, Minister of Economy Avraham Shohat reported in the Knesset's Economy Committee that 60,000 Palestinian residents of the territories were working in Israel; at the July 11, 1993 Knesset session it was reported that 47,000 Palestinians were working in Israel (*Hadashot*, July 12, 1993); in August it was reported that the number was approximately 30,000 (*Yediot Aharonot*, August 6, 1993); in October it was reported that some 25,000 were permitted to enter Israel (*Ha'aretz*, October 10, 1993).

Jerusalem municipality employees, electric company employees, and UNRWA workers, would be eligible to receive an entry permit to Jerusalem valid for one year "dependent on security checks." It was also decided that students, merchants, truck, taxi and ambulance drivers, as well as journalists, would be allowed to receive an entry permit to Jerusalem valid for one year (for students, the permit would be valid for the academic year). In December 1993, 27,600 entry permits into Israel were granted (18,000 to residents of the West Bank and 9,600 to residents of the Gaza Strip), in addition to work permits issued through offices of the Labor Bureau. These permits were granted for the purpose of medical treatment and court summons, as well as to those in the above-mentioned groups.

The Ministry of Defence also stated that spouses in "divided families" where the center of the family life is in Jerusalem would be able to receive a permit for entering and lodging in Jerusalem for a period of up to a year.<sup>120</sup> Hotline reported that the easing of restrictions on "divided families" was a result of both its queries to the authorities on this matter, and two petitions submitted to the HCJ by Atty. Andre Rosenthal on the organization's behalf.

ACRI has stated that since the beginning of the closure, the efficiency of the office of the Legal Advisor in Gaza has been gradually decreasing regarding handling and response to exit applications from the Gaza Strip, especially for medical treatment in East Jerusalem or within the Green Line, or for studies in the West Bank or abroad. According to ACRI, the authorities' responses are long in coming, and only in rare cases, following numerous memos, is permission granted. ACRI has also noted a trend by which people whose travel was approved by the Civil Administration arrive at the Civil Administration offices to receive their permit, and are informed that they have been assigned "refused exit" status. In addition, ACRI has been receiving a growing number of complaints of the GSS conditioning issuance of permits on collaboration with the authorities, and withholding permits from those who refuse, most of whom are students studying abroad.

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120. According to a letter from Oded Ben-Ami, Communications Consultant to the Minister of Defence.



*Photograph by Nitsan Shorer*

## Chapter Six

### Pressure on Families of Wanted Persons

Over the past two years, family members of persons wanted by the security forces have reported that security forces have attempted to pressure them into turning-in family members. Pressure tactics include violent searches and "night visits" in the families' homes, arrest of family members, confiscation of identity cards, and demands that members of the family appear daily at a Civil Administration office at a fixed hour.

The Civil Administration confirmed that its representatives often visit homes of the families of wanted persons, generally accompanied by a representative of the security forces, and order family members of wanted persons to repeatedly appear at their offices. In a conversation with **B'Tselem** representatives, the military governor of Tulkarm, Colonel Amit Ziyad, stated, "I wish we could do it nightly, but we have a personnel problem."<sup>121</sup>

#### Sample Cases

1. Testimony of 'Abd al-Jabar Shaqr 'Abd a-Rahman, as related to **B'Tselem** fieldworker Suha 'Arraf on October 8, 1992 in the village of Qarawat Bani Zaid, Ramallah District:

On September 25, 1992, at 7:00 a.m., I was sitting outside when I suddenly saw a young woman with a gun. I thought that it was my daughter making fun of me. I looked closely and saw that it was not my daughter but an undercover soldier in make-up, wearing a dress and a white kerchief. The undercover soldiers arrived in a white Volkswagen. One of them drove and the others hid in the car. I looked up and saw several of them on the roof and several others by the door. In all there were between four and eight of them, dressed as women and men. They fired a shot, and then four jeeps arrived, carrying many soldiers.

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121. Stated in a meeting with **B'Tselem** at the Salfit Civil Administration office on September 2, 1993.

The undercover soldiers waited until the arrival of the jeeps. My son, Na'im, had a broken leg and was sleeping up on the roof. They took him down to the yard and beat him. They also brought down the women who were upstairs. The women shouted, "Shame on you." They beat my children and my wife and my brother's wife.

The soldiers entered my house and began breaking everything. They even overturned the plants. They threw grenades and smoke grenades into our water cistern, from which we and our neighbors drink.

My son is wanted. They came looking for him. I told them I did not know where he was, so they went over to my mother's house. There they also broke furniture and some of the walls. The soldiers took me, my son, my brother and his son. My son was held for ten days; we were released on the same day.

2. Testimony of Ahmad Fayeze Hamdan, resident of Khan Yunis refugee camp, age 27, as related to **B'Tselem** fieldworker Bassem 'Eid on January 21, 1992:

Approximately two months ago a GSS man named "Abu F." arrived at my house at 1:00 a.m. accompanied by soldiers. They searched the house. My brother Mahmud, who is married and has a child, lives with me, and is wanted. Mahmud was not at home. The soldiers also entered the home of my brother Riyad, age 34, who is married and has ten children.

After the search, "Abu F." asked me where Mahmud was. I told him that he was not home. I work in Ashdod in a construction firm. "Abu F." cursed us, took my identification documents as well as those of my brother Riyad, and told us to report the following morning to a GSS man name "Abu H." at the Civil Administration.

Our identification documents remained with "Abu H." for nearly a month. During that month, we appeared at the Civil Administration building from 09:00 to 19:00. After that they returned our identification documents, but we continue to appear daily at the Civil Administration building from morning to evening. Sometimes we are called in for questioning – perhaps once a week. He beats, curses and asks questions like, "Where is Mahmud?"

Riyad Fayeze Hamdan, Mahmud's brother: I am a construction worker in Ashkelon. For the past two months I have not worked at all. In addition to our reporting [to the Civil Administration],

the soldiers visit our house about twice a week to search for Mahmud.

3. Testimony of Maher Khalil Talmas, resident of Gaza, age 27, as related to **B'Tselem** fieldworker Bassem 'Eid on January 21, 1992:

I have lived in Gaza for eight years. On December 31, 1991, I was ordered to appear before "Abu H.," a GSS man at the Civil Administration. When I arrived, "Abu H." asked me about my brother Ibrahim, who is 22-years-old and wanted. I told him that I did not know since I no longer live in Khan Yunis. "Abu H." ordered me to appear daily at the Civil Administration until my brother turned himself in. Every day I travel from Gaza to Khan Yunis and pay ten shekels for transportation there and back. I work in Gaza in a plastics factory, and since then until today I have not worked other than on Fridays and Saturdays. I can barely afford the travel expenses.

4. On July 7, 1993, **B'Tselem** fieldworker Bassem 'Eid recorded the testimony of Nariman Halmi Ghanem, age 17 and resident of Eimtin in the Tulkarm District, whose brother was wanted by the security forces. Ghanem said that soldiers and Civil Administration personnel arrived at her family's house on July 3, 1993. The men from the Civil Administration questioned her and her father's wife, age 19. According to Ghanem's testimony, despite the women's protest, each was questioned alone in a room with her investigator. Ghanem testified that during the conversation personal statements were made which were irrelevant to her brother's whereabouts, and that the Civil Administration representative threatened that if the wanted man would not be turned in, the family's home would be destroyed since it had been "built without a permit." Ghanem stated that on July 5, 1993 soldiers and Civil Administration personnel again arrived at the house and searched it, removing clothing from the closets and scattering it about. Afterwards they arrested the father of the family and took him with them.

In response to **B'Tselem's** inquiries, the office of the Coordinator of Activities in the Territories denied these claims. According to Major Tikki Rotem, the investigator was not alone with the women, and personal issues were not raised during questioning. Rotem also denied the threat regarding the demolition of the house. She noted that the father of the family was detained for failing to appear at the Civil Administration offices after having been summoned several times. The family reported that they were not summoned to present their version of the incidents before the claims were denied.

5. Testimony of 'Abd a-Latif Ibrahim Ahmad Rub'a, 61, resident of Haja village in the Qalqilyah District, as recorded by **B'Tselem** fieldworker Bassem 'Eid on August 22, 1993 in the village.

On August 19, 1993, at around 2:00 p.m., I was awoken by "Captain Y.," a representative of the Civil Administration in Qalqilyah, who told me to stand with my hands up, facing the wall. I stood up and did so. The captain searched the room and then left. I followed him into the second room where I saw "Captain H." with other soldiers, two of whom had cameras. "Captain Y." asked me where my son's weapon was. I said that I didn't know. "Captain H." and several other soldiers took the clothing out of the closets and scattered them across the floor. One of the soldiers broke two closet doors.

I have three daughters, age 17-20. They were doing the laundry at that time. "Captain Y." told them to enter the room. After they entered the room, he told them that he wanted to photograph them. I intervened and said that this was illegal. They are allowed to search but are forbidden to photograph young women. I also told him that our morals forbid that young women be photographed by a strange man. "Captain Y." said that he could take the girls to the office and photograph them and bring them back. I told him that under no circumstances would I allow him to take them and that the law forbids it. "Captain Y." told me that he is the law and that he decides.

The two soldiers with the cameras photographed; each took two pictures. The cameras were Polaroids, and the two soldiers took out the photographs and showed them to "Captain Y." I also saw the photographs. "Captain Y." gave the four photographs to "Captain A." and he placed them in his bag. The entire incident lasted about half an hour. Afterwards the soldiers and the Civil Administration people left.

## **Detention, Administrative Detention and Incarceration**

Most Palestinian detainees and prisoners who are residents of the occupied territories are held in IDF detention facilities. Others are held in Israeli Prison Service (IPS) facilities or in Israel Police holding cells. Some detainees are held in military holding facilities at the Civil Administration outposts in the cities of the occupied territories.

The population of detainees and prisoners is comprised of four categories: detainees prior to trial, detainees pending conclusion of judicial proceedings, administrative detainees, and sentenced prisoners.

In 1993, hundreds of Palestinian prisoners were released as a "good will gesture" in the framework of the peace negotiations. According to the authorities, the criteria for release included age, health status, the offense, and length of the sentence already served.

According to the Ministry of Defense, 262 prisoners were released from IDF and IPS facilities on May 27 and 28, 1993, of them 184 West Bank residents and 78 Gaza Strip residents. Among those released were 23 sick or handicapped prisoners, three persons over the age of sixty, and 236 minors. On October 25 and 26, 1993, 617 prisoners were released from IDF and IPS facilities in the framework of the Taba peace talks. They included 315 residents of the Gaza Strip and 302 residents of the West Bank.<sup>122</sup>

### **A. Detention Facilities**

#### **1. IDF Detention Facilities**

The IDF operates six military detention facilities where Palestinians are held, two of which (Meggido and Ketziot) are in Israel, and four of which (Far'ah, Dhahriyyah, Tulkarm and the Beach Camp (Ansar III)) are in the territories. These facilities hold detainees prior to trial, detainees

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122. In addition, on January 7, 1994 (after the conclusion of the period surveyed in this report) 101 prisoners were released, 47 from the Gaza Strip and 54 from the West Bank. Letter from Oded Ben-Ami, Communications Advisor to the Minister of Defense, January 8, 1994, in response to B'Tselem's inquiry.

pending conclusion of proceedings. sentenced prisoners and administrative detainees.

According to the IDF Spokesperson, more than 105,000 Palestinians were imprisoned in military detention facilities from the beginning of the Intifada through the end of November 1993.<sup>123</sup>

***Number of Palestinian Detainees and Prisoners held in IDF Detention Facilities During the Fifth and Sixth Years of the Intifada***

	Dec. 30, 1991	Jan. 5, 1992	March 19, 1992	May 3, 1992	Oct. 4, 1992	Dec. 30, 1992
Sentenced	4,409	4,435	4,431	4,803	3,951	4,337
Detainees awaiting trial	617	614	746	630	552	622
Detainees pending completion of legal proceedings	2,227	2,219	1,946	1,882	2,033	1,394
Administrative detainees	348	349	244	270	201	510
<b>Total</b>	<b>7,601</b>	<b>7,617</b>	<b>7,367</b>	<b>7,585</b>	<b>6,737</b>	<b>6,863</b>

	Jan. 3, 1993	May 5, 1993	Aug. 11, 1993	Sept. 26, 1993	Nov. 9, 1993	Dec. 1, 1993
Sentenced	4,326	3,862	4,301	4,191	3,681	3,570
Detainees awaiting trial	596	602	452	399	350	358
Detainees pending completion of legal proceedings	1,396	1,731	1,349	1,360	1,070	976
Administrative detainees	512	312	264	277	182	125
<b>Total</b>	<b>6,830</b>	<b>6,507</b>	<b>6,366</b>	<b>6,227</b>	<b>5,283</b>	<b>5,029</b>

123. Statistics on numbers of detainees and prisoners in IDF facilities are relayed to **B'Tselem** at intervals in writing and by telephone from the IDF Spokesperson's Information Branch.

According to a 1993 report by the US State Department on Israel and the occupied territories, the conditions of imprisonment in IDF prison facilities "do not meet minimal international standards and endanger the health of the prisoners."

In late December 1992, Israeli-Palestinian Physicians for Human Rights wrote to the Coordinator of Activities in the Territories through Atty. Shlomo Lecker, demanding that external (i.e. not military) physicians be permitted to enter military detention centers. The PHR query was issued after the request of a prisoner who demanded to be examined by a private physician was denied. The organization demanded a confirmation of the right of prisoners in Ketziot and Meggido to receive visits by external physicians for medical examinations and treatment.<sup>124</sup> In August 1993 it was reported that the IDF would allow external physicians to examine security prisoners at military detention facilities who so requested.<sup>125</sup>

Human rights organizations have received complaints from prisoners at the Ketziot detention facility regarding harsh prison conditions and poor medical treatment. In September 1993, Israeli-Palestinian Physicians for Human Rights and four prisoners at Ketziot petitioned the HCJ, through Atty. Shlomo Lecker, demanding that the prison facility either be shut down or its conditions be improved to match those found in facilities within Israel. The petitioners charged that regarding Ketziot, the authorities had ignored all law and practice on prisoners' rights and procedure for running a prison in Israel. The petition is still pending.

## **2. IPS Facilities**

The IPS operates 21 prisons, six of them in the occupied territories. These facilities hold sentenced prisoners and detainees pending conclusion of proceedings, and have also occasionally held administrative detainees who for medical or other reasons could not be held in Ketziot.

According to the IPS Spokesperson, 5,437 Palestinian detainees and prisoners were held in IPS facilities from the beginning of the sixth year of the Intifada (December 9, 1992) until the end of October 1993. They included 1,302 security detainees, 3,385 security prisoners, 62 criminal detainees, and 688 criminal prisoners.<sup>126</sup>

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124. *Al HaMishmar*, December 30, 1992.

125. *Ma'ariv*, *Al HaMishmar*, August 11, 1993.

126. Letter from IPS Spokesperson Dubi Ben-Ami to **B'Tselem**, January 25, 1994.

On October 31, 1993, 3,903 Palestinian residents of the occupied territories were imprisoned or detained in IPS facilities, of them 936 security detainees, 2,514 security prisoners, 31 criminal detainees and 422 criminal prisoners.

On September 27, 1992, the Palestinian prisoners held in IPS facilities began a hunger strike in protest of the conditions of their imprisonment. The demands included closing the solitary confinement wings and discontinuing the use of prolonged solitary confinement, access to reasonable medical care, lengthening family visits, and improvement in the quality and quantity of food. The strike ended on October 11, 1992, following an agreement reached in negotiations between representatives of the prisoners and an investigation team appointed by Minister of Police Moshe Shahal. The team included the chairman, the Minister's advisor, two representatives of the Ministry of Police, the Deputy Coordinator of Activities in the Territories, representatives of the Prison Service and representatives of the GSS. The committee agreed to some of the demands and rejected the others. Among those accepted were: lengthening weekly visits from thirty minutes to 45; shortening lines for medical examinations and operations; placing heaters in the cells; easing restrictions on family visits; allowing children up to the age of six direct contact with their imprisoned parents (without the usual partition used during visits); permission to bring in sport clothing and reading material; bringing radios and televisions to the prison, with special approval; permission for prisoners to study in the Open University by correspondence; and permission to bring in warm clothing for the winter. Among the demands rejected: holding patriotic ceremonies; receiving gift packages; conducting all visits without barriers or bars; reduction of the number of prisoners in a cell.

Mandela Institute, an organization dealing with the rights of Palestinian prisoners and detainees, has stated that many terms of the agreement were not implemented, even one year after settlement. According to Mandela, there is great variation between conditions in the various jails, and implementation of the terms of the agreement was selective. Moreover, according to the organization, the demands regarding quality of medical care were not satisfactorily fulfilled.



*Photograph by Nitsan Shorer*

### **3. Israel Police Facilities**

Palestinian detainees may be held in police detention facilities either in Israel or the occupied territories. These include the detention facility in the Russian Compound in Jerusalem, the Kishon detention facility, the Sharon detention facility, the Judea District detention facility in the Ramallah area, as well as detention cells in police stations throughout the West Bank and the Gaza Strip. Prisoners are meant to be held in police facilities for a short period until they are transferred to IDF or IPS facilities. In fact, due to crowding in these facilities, prisoners pending the conclusion of proceedings and even sentenced prisoners may be held by the police.

Our statistics on the number of detainees in Israel National Police facilities are incomplete. **B'Tselem** requested statistics on the number of Palestinian detainees held in each of the above police facilities during the Intifada and specifically during the past two years. Data requested also included the number the number of Palestinian detainees in the Russian Compound on a given day, and the number of minors among them. The police replied that the data were unavailable.<sup>127</sup> We did receive statistics regarding detainees pending conclusion of proceedings and sentenced prisoners in the beginning of the sixth year of the Intifada (December 10, 1992). On that date, 83 Palestinian detainees (of a total 627) pending conclusion of proceedings and 42 sentenced Palestinians (of 322 in total) were being held in police detention facilities. In the course of 1992, 507 Palestinians pending conclusion of proceedings were held in police facilities, while in 1993, the total was 458. The total number of Palestinian detainees and prisoners in each of the past two years was not available.<sup>128</sup>

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127. Letter from Chief Inspector Yoni Tzioni, head of the Investigation and Prosecution Division of the Investigations Department in the Israel National Police, to **B'Tselem**, July 12, 1993.

128. Letter from Chief Inspector Yoni Tzioni, December 29, 1993.

## B. Detainees

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge... and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody... .

- Article 9(3), *International Covenant on Civil and Political Rights*

The right to personal liberty is recognized in Israel and in all democratic societies as one of the most fundamental of human rights. In the occupied territories, by contrast, detention and prolonged holding of a detainee are commonplace. Since the beginning of the Intifada, there have been more than 105,000 detentions, over 10,000 of them during the sixth year.<sup>129</sup>

It must be noted that Israeli law applies to Palestinian residents of East Jerusalem, while military orders apply to Palestinian residents of the West Bank and the Gaza Strip.

### 1. Detention Before Trial

"Detention before trial" begins from a person's arrest until charges are pressed.

According to Article 78 of the Order Concerning Security Regulations, any soldier may arrest without a warrant "any person contravening the provisions of this order or who, there is reason to suspect, has committed an offense under this order." The probability of the suspect's having committed the offense and the severity of the offense are not taken into consideration. The order includes a wide variety of offenses, some of which are defined vaguely, such as, "an act which may harm public peace." The police also has the authority to arrest persons in the occupied territories.<sup>130</sup>

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129. Letter from Captain Avital Margalit, Head of the IDF Spokesperson's Branch, Information Section, to **B'Tselem**, January 5, 1994.

130. In Israel, for comparison, a police officer may detain a person without an arrest warrant only when at least one of the eight alternatives listed in Section 3 of the Criminal Procedure Order (Detention and Search) [New Wording] 5729-1969, dealing with the severity of the alleged offense and the degree of certainty that the person actually committed it, applies.

Security forces have often used violence during arrests, many of which are made in private homes in the middle of the night, in the presence of the arrested person's family, including his children. Violent searches, as well, have often been carried out at the time of arrest, causing damage to personal property.

Until recently, any Palestinian detainee – no matter his age or the severity of the offense – could be held for eighteen consecutive days before being brought before a military judge for review of the detention.<sup>131</sup> During the long detention period prior to judicial supervision, security forces often attempt to elicit a confession, through the use of prolonged and harsh physical and emotional pressure, often to the point of abuse and torture. (See chapter 8 on interrogations.)

On January 19, 1992, ACRI petitioned the HCJ, demanding shortening of maximum detention periods for Palestinian residents of the territories.<sup>132</sup> The petitioners stated:

The fundamental principle of every proper legal system is that the suspect, like the defendant, is considered innocent as long as his guilt has not been determined by an authorized court. This fundamental principle applies to the legal system in the territories as well. Prolonged periods of detention, exceeding the maximum periods necessary for preparation prior to presentation before a judge, for purposes of interrogation, indictment and trial, are a serious, unreasonable and unjustifiable infringement upon the fundamental rights of suspects and defendants.

Before hearing the petition, the state agreed to amend the military order so that minors<sup>133</sup> and detainees suspected of "minor" offenses (as listed in the addendum to the amendment) would be brought before a

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131. In Israel, for comparison, a police officer may instruct that a person be held in detention for up to 48 hours from the time of arrest, after which the detainee must be brought before a judge. Minors fourteen years of age or older must be brought before a judge within 24 hours; minors under the age of fourteen must be brought before a judge within twelve hours. This applies to Jewish residents of the occupied territories as well, even those suspected of committing an offense in the territories. While the Order Concerning Security Regulations theoretically applies to all persons in the occupied territories, Israeli law is applied *de facto vis-a-vis* Israelis, through the law for extension of the validity of the Defence (Emergency) Regulations (Judea and Samaria and the Gaza Strip – Offenses in the Administered Territories – Jurisdiction and Legal Aid).

132. HCJ 346/92, *the Association for Civil Rights in Israel et al. v. the Commander of IDF Forces in Judea and Samaria et al.*

133. "Minor" is defined here as under age eighteen, as opposed to most legislation in the occupied territories that defines a minor as one under sixteen.

judge within eight days of arrest.<sup>134</sup> In late March 1993, new orders were issued in place of the amendment. The new orders stipulated that the maximum period of detention prior to being brought before a judge would not exceed eight days for adults as well, except for an adult regarding whom "the police officer had reason to assume that he had committed one of the crimes listed in the first addendum."<sup>135</sup>

### **Meeting With an Attorney**

According to Article 78C of the Order Concerning Security Regulations, the detainee must be allowed to meet with an attorney if he or the attorney requests such a meeting. The order allows for incommunicado detention until the fifteenth day of detention, if the person responsible for the investigation has stipulated such in writing, for reasons relating to the security of the region or the needs of investigation. A police officer of the rank of Chief Superintendent or higher may extend the period of incommunicado detention for another fifteen days.

A military judge-jurist (of the rank of Captain at least) may prevent such a meeting, for the same reasons, for an additional thirty days, and the president of the military court or the acting chief justice may extend it by thirty additional days if the IDF commander in the region has stated in writing that special security reasons in the region necessitate this. In all, a meeting between a detainee and his attorney may be prevented for ninety days. During the Intifada, 15-day periods of incommunicado detention have been the norm, and extensions of this period have also been commonplace.

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134. The offenses listed in the appendix include offenses for which the punishment does not exceed five years' imprisonment, offenses not involving a threat or damage to the security of the region or the security of IDF forces or soldiers, and throwing of stones which did not cause bodily harm. The amendment was executed in the West Bank through Order 1379 on October 26, 1992 and in the Gaza Strip through Order 1082.

135. The offenses in the first appendix include intentional causing of death or attempt to commit such a crime, attack on an IDF facility, carrying firearms, ammunition, a bomb, etc., throwing objects in a manner that obstructed or could obstruct traffic in a transportation artery, at a person or property with intent to injure, or at a moving vehicle with the intent to injure people; grave espionage; providing shelter to a person suspected of causing death; attacking a person providing services to the IDF or its branches; executing an attack which caused real damage; and kidnapping. The amendment was executed in the West Bank through Order 1391 on March 24, 1993 and in the Gaza Strip through Order 1093 on March 25, 1993.

According to ACRI's 1992-93 Annual Report, meetings of detainees pending conclusion of proceedings with their attorneys at the military jail in Meggido were reduced to early morning hours only. Following ACRI's appeal to the Military Judge Advocate General's office, this limitation was rescinded.<sup>136</sup>

Recently, the HCJ determined that a detainee's right to meet with an attorney is a fundamental right, derived from the right to personal liberty (Article 5 of the Basic Law: Individual Freedom and Honor).<sup>137</sup> This decision was rendered in an appeal by a resident of Rafah, who was detained and interrogated about involvement with the Peoples' Front for the Liberation of Palestine. After the authorities decided to prevent the detainee's meeting with an attorney, initially for fifteen days and then for another fifteen days, the detainee petitioned the HCJ. In the HCJ hearing, at which the petitioner was not present, the authorities claimed that there is no need to inform detainees in the Gaza Strip of the denial of this right. This claim was rejected, and the HCJ determined *inter alia* that the detainee has the right to be informed that his right has been violated or revoked. The HCJ maintained, however, that in this case the decision to prevent the meeting was justified.<sup>138</sup>

#### **Extension of Detention**

Extension of detention takes place in military courts, or before a military judge at prison facilities, in close proximity to the detention cells. Often the detainee is not represented by an attorney and his family members are not allowed to be present.

In 1993, courtrooms adjacent to a number of detention facilities were opened to enable the holding of public hearings.<sup>139</sup> In other facilities, the situation remains unchanged. In the Gaza jail, hearings are still regularly held in the facility, often with the detainee receiving no legal representation.

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136. The Association for Civil Rights in Israel, **1992-1993 Annual Report**, p. 39 (Hebrew).

137. HCJ 3412/91, *Sufian 'Abdallah v. the Commander of IDF Forces in the Gaza Strip*. The verdict was rendered on May 7, 1993.

138. Based on a summary of the court decision as published in *Halishka*, Israel Bar Association, November 1993 (Hebrew).

139. *Ha'aretz*, January 8, 1993.

Near the end of 1991. ACRI Attorney Joshua Schoffman visited the Dhahriyyah detention facility to represent a client whose detention was coming up for extension. The decision was to be made in the facility itself. During his visit, Schoffman noted serious faults which he enumerated in a letter dated November 18, 1991, to Brig. Gen. Ilan Schiff: No suspicion or other grounds were recorded in the remand order issued by the military judge; the spaces on the remand form designated for detailing the suspicion and for recording comments by the prosecutor or interrogator read "see confidential report attached"; the proceedings were held inside the jail, in a dark, narrow room, where the judge, translator and police representative sat, with barely room enough for the attorney and suspect; the detainee was not permitted to meet his attorney while under interrogation and conditions did not allow for such a meeting to take place before or during the proceedings; the proceedings were held in an location inaccessible to the public, in disregard of the principle of public hearing, thus preventing family members, journalists and other observers from watching; the file load was heavy and only a few minutes were devoted to each case. Deputy Military Advocate General David Yahav responded that the authorities intended to make changes in the situation. According to Yahav's letter, the Court administrative offices had been instructed to summon attorneys "whose identity is known" to remand proceedings; it had been decided to erect courtrooms in detention facilities, in order to allow family members to observe the proceedings; the possibility of holding these proceedings at military courts for detainees (starting with those at Dhahriyyah) whose interrogation has been completed was being examined. Yahav added that "appended in the registration rooms, where the detainee is first admitted into the prison, is a table of rights and obligations (in Hebrew and Arabic), notifying the detainee of his right to meet with an attorney... . Police representatives in the facility have been instructed to ask the detainee who his attorney is... . To the best of my knowledge, at the start of proceedings for extension of detention, the judge asks the detainee whether he is represented, and if the detainee responds positively, and it transpires that for some reason the attorney was not summoned, the judge extends the detention for only a number of days and makes sure that the attorney is summoned for the next court session for extension of detention." On March 23, 1993, Yahav stated that the construction of a facility suitable for holding a public hearing had been concluded near the Beach camp prison.

### **Length of Detention Prior to Indictment**

Until October 1992, a suspect could be detained for six months, by court order, without an indictment being filed against him.<sup>140</sup>

Following the ACRI petition the situation changed: a judge-jurist is authorized to issue detention orders up to thirty days in duration against a detainee who has not yet been indicted.<sup>141</sup> The detention of a person who has been held without indictment more than three months by order of a judge-jurist can only be extended if the regional legal advisor submits a request to the Military Appeals Court, which may extend the detention for three months.<sup>142</sup>

### **Notification of Families, Locating of Detainees**

In response to **B'Tselem's** query, the assistant to the Minister of Defense, Haim Israeli, stated the IDF's position:

The following procedures exist to allow for tracking the imprisonment of residents of the territories in detention facilities:

- A. A detainee receives a blue postcard upon admission into the detention facility.
- B. Lists of detainees are published in the various districts [at the Civil Administration offices].
- C. The Red Cross also tracks the location of detainees through its visits.<sup>143</sup>

In fact, many families do not know of the detention of their family members or where they are being held, and the postcard method does not suffice. Many families do not receive the postcard since mail in the territories is extremely slow. Often, by the time the postcard arrives, the information is not current, particularly when the card is sent from a holding facility, where prisoners generally remain for a short period of

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140. In Israel, by comparison, the court is authorized to extend detention for fifteen days when an indictment has not been filed; an additional 15-day detention is also permitted. After thirty days, the detention may be extended only under exceptional circumstances in which the Attorney General has submitted a request for extension of detention. A minor's detention may be extended for two periods, neither of which may exceed ten days. Extension for over twenty days requires a special request by the Attorney General.

141. Amendment 68 to the Order Concerning Security Regulations, Order No. 1378, October 20, 1992. In the Gaza Strip - Amendment 70 to the Order Concerning Security Regulations, Order No. 1081, October 11, 1992, Section 2 (F) 1.

142. *Ibid.* Section 2 (F) 2.

143. Letter from Haim Israeli, September 22, 1992.

time. According to Hotline, the primary source of information regarding whereabouts of detainees is not the postcards or the lists but rather the Red Cross and other organizations such as the Hotline, as well as released detainees, whose fellow inmates have requested them to notify their families of their whereabouts.

The Hotline has reported that 20% of the appeals for assistance to the organization in the past two years were requests by families to receive information regarding the location of a family member who had been detained. According to the Hotline's activity report for 1993, 26% of all appeals since 1988 were of this nature, while there was an increase in such requests in 1993 relative to 1992 (in 1992 there were 112 such requests, of a total of 1,005 requests for assistance; in 1993, 410 of a total 1,527 requests.) According to the report, while the organization's success rate at locating detainees is very high (approximately 90%), "the problem of failure of the authorities to provide information on prisoners in a short period of time and without delay, as the law stipulates, still exists... . In most cases, the detainees are being held in the investigation wings of the GSS, in facilities controlled by the military, the Police or the Prison Service (a facility within a facility)."<sup>144</sup>

## **2. Detention Pending Conclusion of Proceedings**

Detention pending conclusion of proceedings is detention after indictment, by order of a judge-jurist. For Palestinian residents of the territories, there is no time limit for detention pending conclusion of proceedings. Detention after indictment is routine in the occupied territories, and even for minors, this measure is commonplace.<sup>145</sup>

Following the above-mentioned ACRI petition, an amendment was made stipulating that a detainee pending conclusion of proceedings, who has been in detention for one year since indictment and whose trial has not been concluded, may submit (once every six months) a request for re-examination "if new facts have been revealed or circumstances have changed which may alter the previous decision of a

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144. Hotline: Center for the Defense of the Individual, *Activity Report*, December 1993, p. 12.

145. For comparison, in Israel, detention pending the conclusion of proceedings is approved only in cases specifically defined and detailed in Section 21A of the Law of Criminal Procedure [Amendment 15]. If proceedings have not been completed within one year of the indictment, the detainee must be released. In exceptional cases, the Supreme Court may extend this period, for up to three months each time (Section 54 of the Criminal Procedure Law).

### **Imprisonment for Failure to Appear**

In April 1992, a new order was issued, making failure to obey a "special summons" a criminal offense.<sup>146</sup> The order stipulates that a person who does not appear for interrogation as stated in the summons signed by an IDF officer can expect up to seven years' imprisonment. The summons is considered delivered if it has been given either to the person to whom it is addressed or to a family member living with him, who appears to be eighteen years of age, in addition to publication of an announcement in the Civil Administration office in the district where he lives, "and the delivery of the order will be considered executed thirty days from the completion of said actions, except if he can prove that he was not informed of the order."

On August 10, 1992, ACRI Attorney Neta Ziv-Goldman wrote to Military Advocate General, Brig. Gen. Ilan Schiff, regarding the new order. She wrote *inter alia*, that "as a result of this regulation, the family members of a person against whom the order has been issued are placed in a difficult position – they are presumed to have conveyed the army's delivering of the order. In addition, they will probably be asked to testify and incriminate a family member in trial for failure to obey the order, when the question of whether or not knowledge of the order reached the person summoned is being discussed... ." Ziv-Goldman detailed the flaws in the order, in its implementation and in the summons form, including: a. "There is no definition of the interrogation for which the person is being summoned, and the order is not conditional on whether the person summoned is suspected of an offense of any kind; b. Any IDF officer of any rank is authorized to instruct a person to comply with the summons; c. It is unclear how it is determined that the person for whom the order was issued actually lives at the location [to where it was delivered], as it is known that persons wanted by the security forces are often absent from their homes for extensive periods of time; d. The form is not clear enough and does not indicate an exact place where the person must appear. e. In instances where family members refused to accept the order, violence was used against

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146. Amendment of Article 73A of the Order Concerning Security Regulations. In the West Bank: Amendment no. 67, Order no. 1369 issued April 28, 1992; in the Gaza Strip: Amendment no. 68 to the Order Concerning Security Regulations, Order no. 1076 issued April 30, 1992.

them, although the form itself includes an option of refusal to accept the order."

In addition, Ziv-Goldman wrote that "the regulation... creates great uncertainty regarding the status of many residents in the area, since it is so broad, vague and all-inclusive. The regulation has significant ramifications in the area of criminal law as well as in the personal-familial area. We believe that the current version of the regulation infringes on the rights of the residents of the area more than necessary and that it must be altered to meet reasonable legal standards."

In his letter of response, dated October 15, 1992, the Deputy Military Advocate General, Col. David Yahav, wrote that "the military courts function according to the laws of evidence used in Israel, including regulations... concerning testimony by a spouse against a spouse or a parent or a child against each other... . Policy is that the regulations [of the order] should be used... only for someone who is needed for interrogation regarding serious crimes... . According to internal procedures, the approval of a high-ranking officer is necessary for issuing a special summons... ."

"A special summons is given to a family member when there is reason to believe that the person does live in the house. The essence of the offenses for which the person is being asked to appear for interrogation as well as before whom he must appear will be noted on the special summons form. Instructions have been given to clarify and specify the place of appearance. Verification of appearance as requested will be given to one who appears with the special summons – on the order... . Every claim concerning unacceptable behavior on the part of soldiers during presentation of the order will be examined, and where necessary, disciplinary or legal steps will be taken against those involved. The meaning of Amendment 67 is that a suspect who does not comply with a special summons ostensibly transgresses Article 73A(B) of the order, and is now suspected of this offense. As stated, the amendment has been used until now selectively and to a limited extent."

judge-jurist."<sup>147</sup> In addition, the detainee and the prosecution may appeal a decision regarding detention, release or a request for re-examination, before the Military Appeals Court. The right to appeal is granted, other than to the Military Prosecutor, only to detainees pending conclusion of proceedings or to those who have been in detention for at least three months (as opposed to the immediate right to appeal given to all detainees in Israel).<sup>148</sup>

Detainees pending conclusion of proceedings are usually detained for protracted periods, sometimes even years, before their trial is completed. The State Comptroller's last Annual Report included grave findings regarding delays in sentencing detainees:<sup>149</sup>

The documents indicate that there is a problem, which has continued in the area for years, of failure to conclude legal proceedings within a reasonable time frame. Among frame detainees pending conclusion of proceedings, many have been detained for long periods... . In January 1992, 35 detainees from the area had been detained for more than two years; in April 1992, 174 detainees pending conclusion of proceedings had been detained in the Meggido jail for more than three years... . It is clear that this situation is unacceptable and constitutes an obstruction of justice.

According to the Comptroller's report, the delay in sentencing results from repeated postponements of hearings due to failure to bring detainees to hearings or failure of witnesses, including soldiers and police, to appear.

A particularly serious case was that of Hamid Taqatqeh, a resident of Beit Fajr in the Bethlehem district. He was held without trial in the Hebron jail for more than two years because of a bureaucratic mistake on the part of the Military Advocate General's Office. Taqatqeh was arrested in March 1991, along with other residents of the village. The IDF Spokesperson claimed that an order for Taqatqeh's detention pending conclusion of proceedings had been issued in April 1991. However, his case was not heard until April 1993, when he was brought to the military court in Hebron and issued a new indictment, since the original, supposedly filed regarding his case, was not found.

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147. *Ibid.*, Note 141 above, Section 2 (K).

148. *Ibid.*, Section 2 (L).

149. Report No. 43, p. 871. (Hebrew)

The judge, Maj. Michal Rappaport-Rahav decided to extend his detention pending the conclusion of proceedings, despite the request of his attorney, Mussa Alqam, to release him immediately.<sup>150</sup>

## C. Administrative Detainees

A basic tenet of the rule of law is that a person may not be punished or denied his freedom or his property without legal proceedings. Legal proceedings means that his issue will ultimately be legally decided by a regular court.

– Prof. Amnon Rubinstein

*Constitutional Law of the State of Israel, (Hebrew), p. 281*

[...] Administrative detention is tainted by the unacceptable restriction it imposes on human freedom. In the IDF-administered territories, a sort of right to appeal before an Appeals Committee has been enacted. However, this committee is comprised of military personnel, and its authorization cannot turn administrative detention into judicial detention... I fear that the essence of administrative detention lies in the degree of trust placed in the courts that they will not act arbitrarily, and in the degree of lack of faith in the administrative authorities overall and the military authorities in particular...

– Former Supreme Court Justice, Haim Cohn  
*The Law (Hebrew), pp. 549-551*

In October 1992, **B'Tselem** published a comprehensive report on administrative detention. (See **B'Tselem, Detained Without Trial, Administrative Detention in the Occupied Territories Since the Beginning of the Intifada.**)

Administrative detention is detention without trial, by order of a military commander. According to the Order Concerning Administrative Detentions (Temporary Provision), a military commander may order that a person be placed in administrative detention for up to six months, and lengthen the duration of the order for another six months. There is

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150. *Kol Ha'ir*, April 16, 1993.

no limit on the number of orders which can be issued, consecutively or not, against a single person.<sup>151</sup>

The current order, from 1988, broadens the authority of the military and limits the rights of the detainee in comparison with the previous regulations from 1980, stipulated in Chapter E1 of the Order Concerning Security Regulations. According to the new order, any military commander may issue the order, while in the 1980 regulations, only the regional commander was authorized to do so. The previous regulations stipulated that the detainee be brought before a military judge within 96 hours of his detention, and that the detention be reviewed at least once every three months. Administrative detention is currently not subject to any judicial supervision unless an appeal is submitted. The appeal may be heard weeks and even months after the arrest.

The stated justification for administrative detention is prevention, meaning that the authorities believe that a specific detention is necessary in order to prevent a future security threat. It is forbidden to use administrative detention as a punitive measure. The Supreme Court has emphasized that "an administrative detainee has not been convicted of any crime and is not serving a sentence. He has been jailed by decision of the administrative military authority as an unusual emergency measure, for definitive security reasons."<sup>152</sup>

For the authorities, use of this measure is easier and more expedient than criminal proceedings, and it "saves" having to present evidence and undertake judicial proceedings. Through the use of administrative detention, the authorities may detain persons who could not be brought to trial, for lack of evidence, or when the authorities prefer not to reveal their sources.

In January 1992, *Ha'aretz* daily published part of an interview, which was not approved for publication in the military journal *Bamahaneh*, with Col. Dr. Emmanuel Gross, Chief Justice of the Military Court of the Southern Command. *Ha'aretz* quoted Gross as describing administrative detention as a drastic measure which is used in a wholesale and unsupervised fashion. According to the article, Col. Gross said that administrative detention is often used in instances where there is insufficient evidence to bring the person to trial, and that judicial

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151. In August 1989 the maximum period for an administrative detention order was extended from six months to twelve months, with the requirement for judicial supervision once every six months left intact. In December 1991, the maximum period of an administrative detention order was again reduced to six months.

152. HCJ 253/88, *Sajadiya et al. v. the Minister of Defense*, Piskei Din 42(3), 801.

review exposed improper use of the measure. In his estimation, in 30% of the cases, judges accepted appeals from administrative detainees and instructed that they be released or that the length of their detention be shortened. Gross also said that military judges had repeatedly warned that the situation in which a shortage of investigators results in use of this measure, could not be reconciled with. Nonetheless, he commented, the IDF continues to use administrative detention for this very reason.<sup>153</sup>

According to the IDF Spokesperson, there has been a gradual decrease in the number of administrative detainees during recent years. On November 1, 1989, there were 1,836 administrative detainees. On November 1, 1990, there were 715, and on November 1, 1991, 449. There was an additional drop in the number of administrative detainees over the course of 1992.<sup>154</sup> Towards the end of 1992, however, after the increase in armed attacks by Palestinians against security forces, massive detentions in the occupied territories led to a sharp increase in the number of administrative detainees. The end of 1993 saw a significant drop in the number of administrative detainees.

Date	No. of Administrative Detainees	Date	No. of Administrative Detainees
8.12.91	390	18.12.92	259
5.1.92	349	11.1.93	528
19.3.92	224	28.2.93	312
23.4.92	222	17.5.93	312
3.5.92	270	7.7.93	301
26.6.92	303	11.8.93	264
4.10.92	201	26.9.93	277
16.11.92	249	9.11.93	182

153. *Ha'aretz*, January 13, 1992.

154. Statistics from the IDF Spokesperson's Office, January 27, 1993.

## **Sample Cases**

**Tayil Ibrahim Hassan Faraj**, of Talfit in the Nablus District, was administratively detained for the fourth time on August 11, 1992, for five months, for being "known as a senior Fatah activist in Talfit." Faraj had previously been in administrative detention three times: November 1988 – May 1989, September 1990 – March 1991, and September 1991 – January 1992. According to the "non-classified information form" presented to Faraj's attorney on the day of the hearing regarding his appeal of the last order, he had never been detained under a regular detention order and no legal proceedings had ever been taken against him.

On August 20, 1992, an administrative detention order for six months was issued for **Majdi Hamad Tawfik 'Asari**, from 'Arabeh in the Jenin District. Majdi was arrested at his home four days later. His attorney, Walid 'Asalia from Umm al-Fahem, submitted a request to the military court in Jenin to release him on bail. On August 27, 1992, 'Asalia was informed that an administrative detention order had been issued. 'Asalia sent the authorities a letter regarding his client, and on September 9, 1992, the Deputy Military Advocate General David Yahav responded in writing that he had decided "to view your letter as an appeal regarding the administrative detention" and to have a date set as soon as possible for a hearing. On October 11, 1992, after no date had been set for a hearing, 'Asalia wrote to the Legal Advisor at Ketziot requesting that a date be set; ultimately the hearing was scheduled for November 2, 1992, nearly two and a half months after the detention order was issued. In a letter from Yahav to 'Asalia, it was stated that "it is regrettable that there has been such a delay in setting a date for hearing the appeal. The reason for the delay, according to the court officer, was that the court was waiting for more appeals to accumulate, as (only) a small number of appeals had been submitted." Some ten days before the hearing, the attorney wrote requesting the classified information in the file, but was sent only a copy of the administrative detention order. On the day of the hearing, the attorney received a "non-classified information form," which included the name of the detainee, his identification number, his year of birth, his address, the dates of previous imprisonments, the dates of previous detentions and the dates of previous administrative detentions ('Asari had been held in administrative detention for five months in 1988). At the appeal, it was decided (upon the agreement of representatives of the security establishment) to reduce the period of detention by one month.

On September 1, 1992, **Ahmad Suleiman Qatamesh** of al-Bireh in the Ramallah District was arrested. According to security officials, he had been wanted by the security forces for sixteen years on suspicion of directing the headquarters of the Peoples' Front for the Liberation of Palestine in the occupied territories. However, the indictment filed against him at the military court in Ramallah included only the following

accusations: "service in an illegal organization (gathering reports, operations' orders and organizational dispatches); possession of reading material (possession of publications, dispatches and reports belonging to the organization); refusal to give finger prints; and changing of a document (falsification of an identity card)." In the remand proceedings at the Ramallah military court in December 1992, the military judge, Lt. Col. Shlomo Isaacson, instructed that he be released and kept under house arrest. Military judge Col. Dani Gweta of the Military Appeals Court reversed this decision and ordered that his detention be extended pending conclusion of proceedings against him. After Qatamesh had been in detention for more than a year, military judge Maj. Michal Rappaport-Rahav instructed that he be released on bail. The military prosecutor appealed this decision. After the Military Appeals Court rejected the appeal, Qatamesh was placed in administrative detention, which does not require legal proceedings.<sup>155</sup>

## D. Sentenced Prisoners

Sentenced Palestinian prisoners are those who have been convicted in a court (generally military) and have been sentenced to a prison term. There are five military courts in the occupied territories: Ramallah, Nablus, Hebron, Jenin, and Gaza. The judges and prosecutors are officers in regular or reserve duty who have been appointed by the OC Central Command, at the recommendation of the Military Advocate General. This network is not separate from the IDF but rather functions within it.

The military court has the authority to try three types of crimes: security offenses according to security legislation, criminal violations according to local law, and criminal violations according to security legislation (traffic laws, drugs, planning and construction, etc.). Palestinian residents of the occupied territories are tried in military courts, while residents of Israel and Jewish residents of the occupied territories are tried in courts in Israel, even for crimes committed in the occupied territories. There is no juvenile court system in the occupied territories, and minors are tried in the regular military courts.

According to IDF statistics, from January 1, 1988 to October 1993, 81,549 Palestinian residents of the occupied territories were tried in military courts, in 71,343 files opened during that period. Of those accused, 2,555 (approximately 3%) were acquitted, and 78,994 (nearly 97%) were convicted.<sup>156</sup>

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155. *Kol Ha'ir*, October 22, 1993.

156. The data were transmitted to B'Tselem by telephone by the IDF Spokesperson's Office Information Branch, on November 16, 1993.

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## Interrogations

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

– *Article 5 of the Universal Declaration of Human Rights*

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

– *Article 2(2) of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

A public servant who does one of the following is liable to imprisonment for three years:

1. uses or directs the use of force or violence against a person for the purpose of extorting from him or from anyone in whom he is interested a confession of an offence or information relating to an offence;
2. threatens any person, or directs any person to be threatened, with injury to his person or property or to the person or property of anyone in whom he is interested for the purpose of extorting from him a confession of an offence or any information relating to an offence.

– *Article 277 of Penal Law*

The government of Israel, like many other governments, has tried to use the claim of security needs and state of emergency to justify employing interrogation methods which contravene international prohibitions. However, international law itself, including instruments to which Israeli is a party, stipulates that no circumstances – including a state of public emergency – may justify use of torture.

Interrogations of Palestinian residents of the occupied territories are conducted in IDF detention facilities, Israeli Prison Service (IPS) jails, police stations and police detention facilities. Interrogators are either GSS agents (in military, Police and IPS facilities), IDF soldiers (in several of the military detention facilities) or Israel Police personnel. Confessions are recorded by the police. In all cases, no matter the identity of the interrogator, it is the police who actually record the confessions.

The 1987 Landau Commission Report authorized GSS interrogators to use, in addition to psychological pressure, "a moderate measure of physical pressure" during interrogation. A classified section of the Landau report details the permissible means of interrogation in the section "Instructions to the GSS Interrogator."<sup>157</sup>

In 1991, **B'Tselem** published a comprehensive report on the interrogation of Palestinians during the Intifada, and in 1992 a follow-up report was released. **B'Tselem's** research revealed disturbing findings regarding interrogation methods used both by GSS and military interrogators. (The Landau recommendations apply only to the GSS. Military interrogators are prohibited from using force, under other legislation.) According to **B'Tselem's** findings, interrogators routinely use methods which violate international law prohibiting torture, abuse and degrading behavior in interrogation. These methods include: prevention of sleep, verbal abuse and degradation, binding in painful positions, covering of the head with a sack, prolonged confinement in tiny cells ("closets"), exposure to cold ("refrigerator") and beatings. The methods described in the 1991 report were still prevalent as of the beginning of 1992, and only minor changes had been implemented.<sup>158</sup>

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157. Journalist Gideon Alon reported in *Ha'aretz* on August 20, 1992 that after publication of the Landau Commission Report, Professor David Liba'i, today Minister of Justice, said the following: "I read the report, astounded, concerned, saddened and embarrassed. I slept restlessly. The Commission deviated from its authority in the solutions it recommended. It dealt with the creation of new norms which it is the legislator's job to define. The Commission did this based on erroneous interpretation of the law... . The Commission's interpretation of the law is liable to have very grave practical results, since according to the legal foundation which in the Commission's opinion justifies moderate violence on the part of GSS interrogators, it is possible to justify daily use of violence in police interrogation of criminal violations as well... . The law and the State explicitly prohibit physical pressure. The language used by the Commission is sweeping and general. It is dangerous to democracy and we must consider the repercussions that this may have... ."

158. In addition, during 1992 the Public Committee Against Torture in Israel received a number of complaints from persons who were interrogated in different facilities, that loud music had been played in the facilities for hours on end. PCATI director Hanah Friedman wrote to the Ministry of Justice that the playing of the loud music "is meant to purposefully prevent sleep and rest, to undermine the interrogated person's sanity and drown out shouting." In her letter of December 1993, the Vice State Attorney for Special Tasks, Rachel Sukar responded: "This is not a method of torture... the music played is not for the interrogated persons only, but also for the staff... ." During 1993 PCATI received no further complaints regarding this method.

These findings were confirmed by other human rights organizations, attorneys, released detainees and journalists.

Research by **B'Tselem** and other human rights organizations has revealed that prison staff, policemen, soldiers, judges and physicians are often party to torture, either actively or passively, by ignoring abuse that has come to their attention.

In May 1992, the Red Cross issued a press release entitled, "Israel: ICRC Position on Treatment of Palestinian Detainees Under Interrogation," which stated the following position:

To obtain information and confessions from the detainees, means of physical and psychological pressure are being used that constitute a violation of the Convention [the Fourth Geneva Convention].

In September 1992, an article published in the Hebrew daily *Davar*, on the State Comptroller's report regarding GSS interrogations, stated:

The State Comptroller's report on GSS interrogations was recently completed after a year of investigation. The report apparently includes findings regarding many deviations from the interrogation procedures permitted by the Commission of Inquiry, headed by Justice Landau, which determined the GSS's interrogation methods. The State Comptroller and GSS are currently in dispute as to whether to publicize certain sections of the report. The GSS, backed by Prime Minister Rabin, vehemently opposes this.

Those familiar with the Comptroller's investigation are under the impression that, despite the understanding that Ben-Porat and her staff exhibited towards the pressures on the GSS interrogators, who work in unique conditions, the report confirms many of the difficult findings of "B'Tselem" reports on GSS interrogations, published a year and a half ago and half a year ago.<sup>159</sup>

The findings of the State Comptroller's report remain classified.

On November 30, 1992, *Davar* reported that changes would be introduced into the Landau instructions, based on the State Comptroller's findings, and due to the deaths of Palestinian detainees in GSS facilities and the conclusions drawn from them.<sup>160</sup>

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159. *Davar*, September 25, 1992.

160. *Davar*, November 30, 1992.

Police Chief Superintendent Menachem Nidam, former commander of the Russian Compound detention facility, testified in court on the conditions in which Palestinian detainees under GSS interrogation are held at the Russian Compound. In his testimony, given at the trial in the "minorities department case" on November 17, 1992, he stated, "The detainees are generally outside the cells, in a small courtyard, tied up – some from behind and others in front. They are sometimes tied to a piece of iron attached to the wall, with their heads covered... . At times I saw the detainee standing this way for hours, but I don't know if it was for an entire day. [In response to a question on the size of the cell:] Something like – it's difficult to say – very small. It's difficult to lie down in it. To sit – barely possible. It's also narrow, but I don't know if it's low. It's narrow, but in terms of height, I can't recall. It's very narrow. [In response to a question on the odor from the cells:] They smell of urine and mold. It's a very strong odor.

### **Petition of the Public Committee Against Torture in Israel (HCJ 2851/91)**

In May 1991, attorney Avigdor Feldman petitioned the HCJ on behalf of the Public Committee Against Torture in Israel and Morad 'Adnan Salahat against the Government of Israel, the Prime Minister, and the Chief of the GSS. The petition demanded that the "Instructions to the GSS Interrogator" be made public, and that GSS interrogators be prohibited from acting according to them. The petitioners contested the legality of the instructions according to both Israeli and international law, and claimed that permitting physical force based on the "defense of necessity" was also illegal, due to the fact that torture is prohibited universally, absolutely and unconditionally, even in exceptional circumstances.<sup>161</sup> The illegality, the petitioners claimed, is even more patent when it becomes established "as a practice permitted by, and

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161. Article 22A(a) of the Penal Law thus defines "defense of necessity": A person is not criminally responsible for an action or oversight that was immediately needed in order to prevent the danger of severe injury to his life, liberty, body or his property or that of others, stemming from a given situation, granted that he had no other way to prevent it, and the injury that he caused was not unreasonable relative to the injury which he sought to prevent.

even recommended by a State." The petitioners also charged that the lack of distinction between physical and emotional torture the end of which is "to elicit a confession or other evidence for the court from the person being interrogated." and use of these same measures "to prevent imminent, real and substantive danger, unpreventable by any other means." was inconsistent with the "defense of necessity."

On August 12, 1993, the HCJ rejected the petition on the grounds that GSS interrogators operated according to internal instructions, which are subordinate to legislation, and therefore "subject to annulment if they are in violation of the law." The court did not express an opinion regarding the legality of the instructions and determined that such an examination could only be carried out *vis-a-vis* a specific case. The court determined that government, Knesset and State Comptroller supervision over GSS actions and the transfer of investigations against GSS interrogators to an independent body in the Ministry of Justice (which was not yet in practice at the time), constitute "additional assurance that in particular incidents, in which there is reason to determine that GSS interrogators did not act properly, criminal indictments will be filed against them. This will allow for norm-setting in difficult cases as well, by way of concrete deliberation." The petitioners subsequently submitted a request for an additional hearing before a five-judge tribunal.

## The New Procedure

In the framework of the petition by the Public Committee Against Torture in Israel, the Chief of the GSS submitted an affidavit to the HCJ on April 25, 1993, regarding changes recently effected in the procedures for interrogating security detainees. The specific procedures appeared in a second, classified, affidavit.

The new procedure purports to limit the powers granted GSS interrogators in the classified section of the Landau Report. In an interview with the daily *Ha'aretz*, Minister of Justice Professor David Liba'i, commented:

I believe these principles allow for effective interrogation by the security services, while achieving the proper balance with the rights of the individual, and dignity of the interrogated person. The principles prohibit torture and use of physical violence.<sup>162</sup>

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162. *Ha'aretz*, June 10, 1993, interview by Micha Friedman.

The affidavit states that the new procedure was issued on April 22, 1993, by decision of the Ministerial Committee previously established to evaluate the issue, and that it includes measures permitted by the Landau Commission. According to the affidavit, the new procedure clarifies which measures interrogators may use, specifies in which types and at what stages of interrogations each measure may be employed, and stipulates which rank may approve the use of a given means. It was stated that the new procedure includes "the obligation to take into account the state of the interrogated person's health," and states that "no permission [to use any given means] may be used for a goal other than... impelling those being interrogated to provide vital information which there is reason to believe they are withholding."

In addition, "the procedure also explicitly clarifies that denying food from the person being interrogated, denying him drink, denying him the right to relieve himself and exposing him to heat or cold, are prohibited." The affidavit also stated that "even if there is a need to employ an unusual measure from among those enumerated in the procedure, the interrogator must act gradually." In other words, he must at first attempt, as much as possible, to use means of psychological pressure to accomplish his goal. Only if these means do not achieve their goal, may the interrogator use additional means of pressure permitted by the procedure."

In fact, the new procedure incorporates few changes, allowing still for psychological and physical degradation and torture. The primary modification was that, under the new procedure, the use of certain means was conditioned on the existence of certain suspicions, and approval by officers of a specified rank. However, it is GSS personnel who both determine the degree of severity of suspicion and approve the use of the various methods. Without external intervention, supervision or knowledge, GSS personnel may determine both if the suspicions against the interrogated person are severe enough to warrant isolating him from any contact with the outside world for up to two weeks (after which he may receive a visit from a representative of the Red Cross), and if the means of interrogation approved by the Landau Commission may be used during his interrogation.

According to testimony given to **B'Tselem** by released detainees, under the new procedure as well, almost all the means used prior to its incorporation are still employed. Testimonies and statements gathered in attorneys' offices and human rights organizations support this finding.

The lack of improvement stems largely from the fact that the new procedure is based on the principles set by the Landau Commission. The inherent danger in permitting such methods, is already recognized in Israeli criminal law, which unequivocally prohibits public servants

from using any sort of violence, or threatening to use violence as a means of extracting a confession or information. (See box at the beginning of the chapter.)

## **Proposed Anti-Torture Legislation**

During the 12th session of the Knesset, three MKs from the Hadash party (Tamar Gozansky, Hashem Mahamid and Muhammad Naf'a) submitted a bill proposing to add an explicit prohibition against torture to the Penal Law. The proposal was based on the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recently ratified by Israel. In January 1992, a preliminary vote was taken in the Knesset, in which a majority of ten against nine MKs decided to transfer the proposal for discussion before the Knesset Law and Constitution Committee. The proposal was not discussed during the months preceding the elections to the 13th Knesset. Following the elections, an anti-torture bill was again submitted by nine members of parliament from the Hadash, Meretz, Labor and Shas parties (MKs Tamar Gozansky, Tawfiq Ziyad, Hashem Mahamid, Naomi Hazzan, Haim Oron, Avraham Poraz, Yael Dayan, Nuaf Masalha and Shlomo Benizri). The proposal defined torture as "an act perpetrated by a public servant or other official, or with his approval, encouragement or silent consent, through which a person was intentionally caused severe physical or emotional pain or suffering: (1) with the goal of extracting from him or a third person information or a confession, to punish him for an act committed by him or a third person, or to intimidate him or coerce him or a third person; (2) or for any reason rooted in discrimination of any sort."

The bill also included a minimum punishment for offenders, and stipulated that "a public servant who knows that a torture offense has been committed and who does not proceed with all reasonable steps to prevent or end torture, shall be tried in the same manner as the perpetrator." The proposal was set for a preliminary vote, but at the request of Minister of Justice David Liba'i, no vote was taken.

Israeli-Palestinian Physicians for Human Rights and the Public Committee Against Torture in Israel initiated a meeting between David Liba'i and representatives of several organizations. Liba'i was presented with 3,000 signatures in favor of anti-torture legislation. Liba'i, as chairman of the Ministers' Legislative Committee, recommended the establishment of a committee of experts headed by the Attorney General, to look into the proposal. The issue has been since "frozen" and such a committee has not yet been convened.

In December 1991, ten policemen from the Minorities Department of the Jerusalem Police District were charged with the abuse of a Palestinian detainee, Isma'il al-Ghul from Ras al-'Amud in East Jerusalem. Al-Ghul had given a false confession after being subjected to abuse of the following type: beating on the bare soles of the feet with a baton, solitary confinement, forced standing for hours with hands tied behind the back and denial of sleep for days. Al-Ghul confessed to murder, incriminated others and even reenacted the crime which he did not commit. He was released on the 53rd day of detention, when another person was indicted for the murder to which al-Ghul had confessed. The charges against the interrogators included the forceful extraction of information, obstruction of judicial proceedings, deceit and breach of trust. Those indicted included the department head, the department's interrogations officer and other members of the police force in detective and interrogation positions. Their trial has not been concluded.

### **Supervision of GSS Interrogators**

In November 1992, MK Naomi Chazan submitted a parliamentary interpellation to the Minister of Defense: "How are GSS interrogators and the security forces supervised in general, and in the Tulkarm detention facility in particular?" Minister of Defense Yitzhak Rabin responded: "The interrogations are conducted by interrogators in GSS facilities. A veteran senior interrogator is in command of each interrogation team and directs and directly supervises the interrogations. Above the team leader is the Head of the Regional Interrogators Division, who also supervises the work of the interrogators in the team, in terms of both the professionalism as well as the various procedures in the interrogation. Simultaneously, a professional GSS staff dealing with interrogations monitors professionalism, adherence to procedure, and documentation. The GSS deals with and treats every complaint by an interrogated person, from the simplest to the most grave, and investigates these to the fullest extent. In cases where there are deviations, and there are few, the full rigor of the law is brought to bear."

During the past two years, it has been repeatedly proposed that the Police Investigations Division in the Ministry of Justice deal with

complaints against GSS interrogators as well. In response to our query on this issue, Haim Israeli, Assistant to the Minister of Defense, wrote on December 20, 1992, that "to the best of our knowledge, a unit has yet to be established in the Ministry of Justice in which GSS personnel will be interrogated by the Israel Police (resembling the Police Investigations Division). Establishing such a unit would necessitate, in our understanding, a legislative amendment as well." On September 6, 1993, the daily *Hadashot* reported that the Police Investigations Division would "begin shortly" to deal with complaints against GSS interrogators. In January 1994 legislation was indeed passed, authorizing this division to investigate complaints against GSS investigators.

### **Physicians**

According to the 1975 Tokyo Proclamation, adopted by the World Medical Association, physicians "shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures... ."

On December 1, 1992, MK Naomi Chazan submitted a parliamentary interpellation to the Minister of Defense regarding the authority of physicians in prison facilities which have GSS interrogation wings. She inquired whether physicians, who determine the ability of the detainee to undergo interrogation, had been apprised of the classified section of the Landau Commission Report of 1987, which defines what is permitted and forbidden in interrogation.

In response, Minister of the Environment Yossi Sarid, (writing for the Minister of Defense), stated that "the physician is not briefed on the contents of the secret report. The examination is carried out according to accepted medical criteria and does not take into consideration the needs of the interrogation. In principle, the physician has the authority to limit the duration of the interrogation or conditions of the interrogation."

Thus, a physician must approve a detainee's admission into the facility including the interrogation wing, in which psychological and physical pressures are used, without knowing what measures are employed. The physician is given authority "in principle" to limit the conditions of interrogation – conditions with which he is, as stated, unacquainted.

## Death Cases

Since the beginning of the Intifada, nine Palestinian residents of the occupied territories have died during or shortly following interrogation. Four of them died during the past two years:

1. **Mustafa 'Abdallah Mustafa al-'Akawi**, 36, of Wadi Joz in East Jerusalem, was arrested on January 22, 1992, and died in his cell in the GSS interrogation wing of the Hebron jail on February 4, 1992. On the morning of his death, he was brought before a judge for extension of his detention, and complained that he had been tortured by his interrogators. The judge discerned wounds on al-'Akawi's body, instructed that he be given a medical examination, and extended his detention by eight days.

The autopsy revealed that al-'Akawi died of a heart attack and that he had suffered from arteriosclerosis. According to the American pathologist who was requested to participate in the autopsy, al-'Akawi's death "was precipitated by the emotional pressure, physical exertion and freezing temperatures he was forced to withstand." According to a letter to **B'Tselem** dated August 6, 1992 from Eitan Haber, Advisor to the Prime Minister, the investigation file was closed because "the pathologist's post mortem examination did not suggest a connection between the interrogation and/or its character, and the heart attack that caused his death. It must be emphasized that there was a police investigation of the case."<sup>163</sup>

2. **Hazem Muhammad 'Abd a-Rahim 'Eid**, 23, of al-Bireh, was arrested on June 22, 1992 and taken to the interrogation wing of the Ramallah prison. He was transferred to the Hebron prison on July 5. On July 8 he was found dead in his cell. He apparently committed suicide by tying a blanket around his neck. In a letter dated August 6, 1992, to **B'Tselem** from Eitan Haber, it was stated that "the case at hand involves a rioter who was detained on June 22, 1992 after intelligence information had accumulated regarding his active involvement in the possession of arms, riots and terrorist actions. For purely technical reasons, Hazem 'Eid was transferred to the Hebron prison, where, after his interrogation, he confessed to possession of arms for [the purpose of carrying out] terrorist actions and even revealed their location. Upon transfer to his cell at the conclusion of the interrogation, Hazem committed suicide by hanging. Here as well, needless to say, the circumstances of his death were investigated, and

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163. See **B'Tselem, Interrogation of Palestinians During the Intifada**, follow-up to March 1992 **B'Tselem** Report, page 54.

even though this was a case of suicide, the possibility that the interrogation played a role was investigated. In any case, the detainee apparently had emotional-internal reasons for suicide for reasons it is not appropriate to specify here." The investigation file was closed on October 4, 1992.

3. **Mustafa Barakat, 23**, resident of 'Anabta, died in the GSS interrogation wing of the Tulkarm military prison facility on August 4, 1992, on the second day of his detention. Barakat resided in Jordan from 1990-1992, where he studied interior design. Upon his return to the territories in July 1992 he was told to appear at the Civil Administration office on August 2, 1992. Upon arriving, Barakat was returned home and told to appear again the following day. On the morning of August 3, 1992, he again appeared at the Civil Administration office with a Ventolin inhaler – Barakat suffered from childhood asthma and carried the inhaler at the recommendation of his sister. That day he was detained and taken in for interrogation. Though Barakat suffered his first asthma attack while being interrogated, the interrogation continued. Two pathologists who participated in the autopsy, Dr. Yehuda Hiss from the Abu Kabir Forensic Institute, and Dr. Edward McDonough, an American pathologist who participated on behalf of Barakat's family, determined that the direct cause of death was an acute attack of bronchial asthma.<sup>164</sup>

4. **Aiman Sa'id Hassan a-Nassar, 23**, died on April 2, 1993 in Barzilai Hospital in Ashkelon. He had been arrested on March 20 during an IDF operation against wanted persons in the Dir al-Balah refugee camp, in the course of which the IDF fired missiles at houses in the camp. A-Nassar, who was wanted by the security forces, hid in a nearby bunker along with other wanted persons. IDF forces threw gas and smoke grenades into the bunker. A-Nassar was taken into custody and brought to the GSS facility in the Ashkelon Prison. On March 25, he was admitted to the Respiratory Intensive Care Unit of Barzilai Hospital, in serious condition and suffering from smoke inhalation. He was diagnosed with an accumulation of fluids (oedema) in his lungs. Investigation proceedings were initiated in the Ashkelon Magistrate's Court regarding the circumstances of a-Nassar's death.

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164. See **B'Tselem**, *The Death of Mustafa Barakat in the Interrogations Wing of the Military Detention Center in Tulkarm*, September 1992.

## **Response of the Ministry of Justice to this Chapter (Letter from Shai Nitzan, Senior Deputy to the State Attorney)**

We have reviewed the draft of the report dealing with GSS interrogations and following is our response

1. The beginning of the chapter cites "B'Tselem" reports from 1991 and 1992. We see no need to respond again to the claims made in those reports. Therefore our response will address only new claims raised in this report regarding GSS interrogations.
2. In the beginning of the chapter it is claimed that Israel employs interrogation methods which contravene international law prohibiting use of torture. It is also claimed that Israel explains the use of torture by reasons of a state of emergency and security needs. This claim is unfounded. We would like to emphasize that the Chief of the GSS explicitly stated in his affidavit to the HCI that the Landau report expressly prohibits use of torture. The position of the State of Israel has been and remains, that the procedure of allowances for GSS interrogators does not contradict the 1984 Convention Against Torture or other prohibitions in international law. This position was stated by the State in HCI 2851/91 cited in the report. The State's position remains, that the claim that the "procedure of allowances" contradicts the Convention and international law is unfounded.
3. As for the quote from the "Davar" newspaper regarding the State Comptroller's report on interrogations by the GSS, we believe it should be clarified that to date this report has not been completed and of course nothing has yet been publicized regarding its content.
4. On pages 135-137 of the report, describing the elements of the "new procedure" for GSS interrogators from April 22, 1992 as detailed in the affidavit of the Chief of the GSS to the HCI, you unfortunately chose not to address a number of very important elements included in the procedure, which the Chief of the GSS addressed in his affidavit.
  - a. For example, it was not stated that wherever the Ministerial Committee believed that the old procedure was unclear or that there was a possibility that an allowance could

be interpreted in a manner broader than intended, the Committee changed the wording of the procedure in order to clarify the allowances and prevent as much as possible misuse of the procedure and deviation from the permissible.

b. It was also not stated that the new procedure emphasizes that no allowance may be used to degrade, harm or torture persons under interrogation.

c. It was not stated that the procedure obligates the interrogator to consider whether the measure he means to use is proportional to the danger expected from the suspected activity which is the subject of the interrogation.

d. It was not stated that the new procedure stipulates that the allowances may be used only regarding interrogated persons suspected of serious crimes, which do not include offenses of "disturbing the peace." These and other omissions may mislead the reader. We therefore believe that these points should be included in the report.

5. On page 136 of the report it was stated that the new procedure incorporates "few" changes and that it still allows degradation and psychological and physical torture. We would like to emphasize that the changes made in the procedure are neither few nor minor, as is evident from the affidavit of the Chief of the GSS. The procedure expressly prohibits torture of a person under interrogation and the employment of any measure for the purpose of degrading or torturing a person under interrogation. In this context, see the first affidavit of the Chief of the GSS, submitted to the HCI on November 8, 1993, which refers to the explicit prohibition in the Landau report against use of physical torture, abuse, or severe violation to the dignity of the interrogated person, negating his very humanity. This prohibition obligates the GSS, and is expressly inherent in the procedure of allowances. We believe this should be stated in the report.

6. On page 136 of the report it is claimed that the new procedure grants the GSS exclusive authority to determine the severity of the

measures it is allowed to use during interrogation. In this context we wish to emphasize that the GSS is indeed permitted to use the measures allowed in the procedure when the conditions under which they may be used according to the procedure exist.

7. Due to confidentiality of the new procedure we are of course unable to address in detail the claims made in the report regarding the measures used by the GSS during interrogation. However, we would like to reiterate what has been stated above, that the procedure does not allow in any way the torturing of persons under interrogation.

8. Regarding the circumstances of the death of Mustafa 'Akawi cited in the report, as the report states, the police investigation did not establish a connection between the manner in which the GSS investigation was conducted and the death of the above. Nonetheless, in the course of the police investigation it was revealed that a GSS interrogator did not act as expected of him regarding holding detainees in custody and therefore, disciplinary measures were taken against him, despite that, as stated, no connection was found between his actions and the death of the above.

Sincerely,

Shai Nitzan

Senior Deputy to the State Attorney

## Chapter Nine

# Family Separation and Unification

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

– Article 16(3), *Universal Declaration of Human Rights*

States Parties shall ensure that a child shall not be separated from his or her parents against their will... . Applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

– From Articles 9(1) and 10(1) of the *Convention on the Rights of the Child*

Unity of the family is a human right recognized, *inter alia*, in the 1989 International Convention on the Rights of the Child, which was signed by most nations of the world. Israel ratified this convention in August 1991. Articles 17 and 23 of the Covenant on Civil and Political Rights also emphasize the status of the family as a protected unit. Article 74 of the First Protocol of the Geneva Convention (to which Israel is not a party) declares that State Parties involved in a conflict will permit, as much as possible, "the reunion of families dispersed as a result of armed conflicts." Most legal systems in the world recognize the civil right to be united with one's first-degree relatives and also provide protection for the family of a foreign resident within the country's borders.

The Israeli authorities do not recognize the right of split Palestinian families to determine the family unit's residence in the occupied territories. This position was approved by the HCJ in the 'Awwad case, when Justice Shamgar determined that family unification is "an act of benevolence on the part of the authorities, rooted in humanitarian considerations."<sup>165</sup> This stand disregards the fundamental right to family and family life, a right firmly grounded and reflected in Israeli law. This is expressed in Section 4A of the Law of Return which grants

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165. HCJ 397/85, 263, 'Awwad *et al.* v. Commander of the Civil Administration in the Ramallah Area *et al.*, Piskei Din 40 (2) 281, p. 285.

citizenship not only to a Jew who moves to the State of Israel but also to his/her non-Jewish spouse, children and grandchildren.<sup>166</sup>

Since 1967, a number of categories of uprooted persons and separated families have emerged. Many non-residents whose families are residents of the territories applied for family unification, in order to attain residency status. According to the Civil Administration, from 1967 to the end of 1993, 83,000 applications for family unification were approved, approximately 65,000 in the West Bank and 18,000 in the Gaza Strip.<sup>167</sup>

**A. Palestinians uprooted in 1967:** Following the Six-Day War, many Palestinian families found themselves split up, with some family members in the territories occupied during the war, and others, outside of them. In September 1967, a curfew was imposed on the occupied territories and a census was taken. Those who registered received an identification card, and children under the age of sixteen were listed on their parents' cards. Only holders of an identification card or those listed on their parents' cards were recognized as residents by the authorities. Those who had fled the fighting, worked in other countries, studied in universities abroad or were not present in the occupied territories on the set date for any other reason, were uprooted from their homes, and not allowed to return except in exceptional cases. According to Meron Benvenisti, 200,000 Palestinians exited the West Bank between June and September 1967. Many other residents of the West Bank and the Gaza Strip were abroad during the Six-Day War.<sup>168</sup> The September 1967 census perpetuated the plight of split families. Many of those uprooted applied for family reunification. The numbers provided by the Civil Administration do not differentiate between approval of family unification for uprooted persons and other categories.

**B. Residents Who Lost Residency Status:** Many other Palestinians, registered in the census and recipients of resident status, lost their status by staying abroad for studies, work and other reasons, for a period longer than that allowed by military regulations.<sup>169</sup>

**C. Spouses and Children:** Over the years, new split families have been created as a result of marriages between residents and non-

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166. This trend is apparent in court rulings as well. See, for example, HCJ 805/80, *Stein v. Stein*, Piskei Din 35 (4) 512, p. 520.

167. Conveyed by phone by Lt. Col. Shmuel Ozenboy, Assistant to the Coordinator of Activities in the Territories, on February 14, 1994.

168. Meron Benvenisti, *A Judea and Samaria Lexicon*, Jerusalem, 1987, p. 21.

169. *Yediot Aharonot*, October 12, 1993, reported that according to Palestinian and Norwegian sources, this category includes approximately 50,000 people.

residents. Tens of thousands of people (mostly women), married to residents of the occupied territories, remain non-residents. The majority are residents of Arab countries while some are residents of European and other countries. Generally, the children of these couples are also included in this non-residents group. According to the Civil Administration:

Over the years there has been a significant change in the nature of applications for family unification, which, relating to new families created after the war, have deviated from the original purposes of the said policy. As a result, there has been a constant increase in the extent of this phenomenon, which has reached thousands of requests annually. This has created a complicated problem with security-related, political and economic repercussions. The policy was therefore reevaluated and in 1984, the authorities decided that it was no longer acceptable that every resident of the area who wished to do so could marry a woman from the outside and bring her into the area, or that any woman who married a resident from outside of the area could bring him in.<sup>170</sup>

Non-residents may not themselves apply for family unification. The application must be submitted to the Civil Administration by a resident family member while the person for whom the application is submitted is outside of the occupied territories at the time of application. Application involves significant financial expenditure and is a protracted process. Clear criteria for approval of applications were not publicized, and the authorities have left the decision to approve or reject an application entirely to their discretion. Over the years, most applications have been denied.

Since 1984, the policy has been that "only in special and exceptional cases, for humanitarian or administrative considerations and when no security-related obstacle exists, are applications for family unification accepted."<sup>171</sup> Marriage has not been considered a viable cause for family unification, and "humanitarian or administrative considerations" have never been defined. Approval of applications for family unification has been bartered for agreement to collaborate, and in some cases, when the applicant refused to collaborate, approval was withheld as a pressure tactic. In recent years, some 1,000 requests for family unification have been approved annually. According to the Civil Administration, approximately 10,000 people received family unification between 1984 and 1993.

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170. Response from Lt. Col. Hanan Rubin to B'Tselem from January 25, 1993.

171. In above letter from Lt. Col. Hanan Rubin.

The authorities' position on this issue, according to which family unification is not a right, has forced many families to live apart. One spouse, usually the wife, and the children, make regular visits, usually during the summer months between July and September. These family visits require visitation permits from the Civil Administration, conditioned on signing a guarantee to pay NIS 5,000 if the visitor remains in the occupied territories after the permit expires.<sup>172</sup>

A regular visitation permit is valid for three months, and a reapplication can be resubmitted only after a 3-month period abroad. Many family members, who refused to comply with these terms and remained in the territories, became liable to deportation. In 1989, some 100 women and 150 children, Jordanian citizens, were deported after having remained with the father of the family without a valid permit.

Due to this situation, the Association for Civil Rights in Israel and the National Council for the Child petitioned the HCJ in 1990 on behalf of fifteen West Bank residents whose spouses and children were deported to Jordan in this context.<sup>173</sup> The petitioners requested that their family members be recognized as residents and that those deported be allowed to return. Before the hearing took place, an agreement was reached between the parties according to which wives of residents and their children up to the age of sixteen, whose presence in the territories was "illegal," would receive "permanent visitor" status. This status would allow them to stay in the territories for six months, after which they could renew the permit every six months, for payment, without having to leave. In addition, it was agreed that the deportees would be allowed to return, that "permanent visitors" would be granted education and health services, and that the fees for permit renewal would be reduced.

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172. On the eve of the summer visit period in 1993, an announcement was published in the press by the Civil Administration regarding conditions for receiving a visitation permit. It stated that anyone who wanted to submit a request for a visitation permit must leave NIS 1,000 on deposit, which would be returned 21 days after the visitor's departure. Dalia Kerstein, from Hotline: Center for the Defense of the Individual, claimed to the Coordinator of Activities in the territories that this condition was one which the public would not be able to meet due to the difficult economic situation in the occupied territories. According to a response from the Assistant to the Coordinator of Activities in the territories, from June 6, 1993, it was decided to cancel this condition "in response to the requests of many residents and because of the difficult economic situation in the territories."

173. HCJ 1979/90.

However, the authorities interpreted the agreement narrowly. In June 1991, the IDF announced that "permanent visitor" status would only be granted to visitors who were in the West Bank on June 5, 1990 or were deported in 1989, and not to women who had married and entered the occupied territories after that date.

Moreover, in many cases the agreement was breached. Human rights organizations dealing with the problems of separated families received numerous complaints from residents that they had received notice from the authorities that their wives and children must immediately leave the territories, despite the fact that even according to the authorities' interpretation, these families were included in the June 1990 agreement.<sup>174</sup>

Because of the narrow interpretation of this obligation, the problem of separated families persisted. Palestinian and Israeli human rights organizations decided to coordinate their efforts on this issue.<sup>175</sup> Representatives of the organizations agreed that individual appeals would be transferred to the Hotline for the Defense of the Individual, while ACRI would act on the legal-theoretical front. From October 1991 to May 1992, Hotline submitted 56 petitions to the HCJ, through Attorney Andre Rosenthal, on behalf of 350 families. A number of other petitions were submitted by other organizations and individuals. Most of the individual petitioners received interim orders stipulating that they would not have to pay the guarantee sum, and that their family members would be allowed to remain in the territories until the petition was settled. ACRI submitted a general petition to the HCJ regarding the status of spouses who had entered after June 1990.<sup>176</sup> The petition requested that the entire family be given permanent residency status or that alternatively the June 1990 agreement include all family members with no time limitation, including those who were not in the territories on the set date. The petitions were linked and a group hearing was set for November 29, 1992.

Prior to the date set for the hearing, another agreement was reached according to which the previous agreement was expanded to include

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174. See B'Tselem, *Renewal of Deportation of Women and Children from the West Bank on Account of "Illegal Residency."* Information sheet, October 1991.

175. This coalition includes ACRI, al-Haq, the Alternative Information Center, B'Tselem, DCI, Hotline: Center for the Defense of the Individual, Palestine Human Rights Information Center, Quaker Service Information and Legal Aid Center, Attorney Andre Rosenthal, UNWRA, the Women's Action Committees, the Women's Project for Human Rights.

176. HCJ 4494/91.

first-degree family members of residents, who had entered the occupied territories for a summer visit in 1991 and 1992, until August 31, 1992. The new agreement was broader than its predecessor in that it included husbands (while the other included only wives) as well as residents of the Gaza Strip (where the previous agreement applied only to residents of the West Bank). An announcement from the State Attorney's Office on November 11, 1992 stated that "the above agreement, like that of 1990, is not a permanent agreement but rather a special agreement for a limited period, which as stated does not change the general policy on the issue of family unification... . The respondent sees the agreement as reached outside of the letter of the law, not abandoning the normal policy and the principles on which it was based." The problem as a whole remained unsolved, as the status of those family members not present in the territories during the specified time period, even if they had resided there prior or subsequently, was not determined. The agreement included first-degree relatives only, narrowly defined by the authorities as not including children age sixteen or older or other family members who are not "first-degree" according to the authorities' definition even if they are dependent on the resident or lack any nuclear family of their own.

Even after this agreement was reached, the authorities continued at times to refuse to grant or extend visit permits to those entitled to them according to the agreement. In many cases, the intervention of human rights organizations was required for renewal of the permit, often after the family members had already been ordered to leave.

Like its predecessor, this agreement did not include male residents of East Jerusalem, for whose wives declared Ministry of Interior policy is to allow for family unification. Applications of men married to East Jerusalem residents are denied. In these cases, the children are granted the status of city residents if it is proven that they and their mothers live there on a permanent basis. In May 1993, ACRI petitioned the HCJ on behalf of a British citizen married to an East Jerusalem resident and his wife, against the Ministry of Interior's policy on this issue. ACRI was also a plaintiff. The petitioners claimed *inter alia* that this policy constitutes discrimination on the basis of sex. An interim order was issued, allowing the petitioner to return and receive temporary residency status. The petition is still pending.

The issue of the separation and unification of Palestinian families has been under discussion in the peace negotiations. In late June 1993, the Coordinator of Activities in the territories announced that "permanent visitors" would be allowed to submit requests for family unification. On August 23, 1993, regarding twenty petitions submitted to the HCJ by Attorney Andre Rosenthal concerning visitation permits for residents'

family members, the State Attorney's Office announced that approximately 6,000 "permanent visitors" would be allowed to apply for family unification.<sup>177</sup> It was stated that the decision would be made over the course of the year and approval would be given where "no specific security pretext" warranted denial of the application.

As for the future, the announcement stated that an annual quota for granting family unification in a number of categories would be issued, according to an "internal classification to be determined," subject to examination according to the circumstances. These categories would include marriage, "humanitarian considerations" and "administrative reasons." Applications would have to be filed when the person who was the subject of the application was outside of the occupied territories (except if he or she was included in the 1990 and 1992 agreements), and he or she would be allowed to enter the territories only after the permit was granted. While the original announcement spoke of a quota of 2,000 people annually, it was later announced that this meant 2,000 applications (an application generally includes spouse and children under 16). This announcement for the first time recognizes marriage among the categories meriting family unification. In an August 1993 statement, it was announced that "according to the new policy, a substantial portion of the quota would be applied to this category."<sup>178</sup>

The position of **B'Tselem** and other human rights organizations is that spouses and minor children of residents have the right to enter the territories and live there as residents. This is also true for other family members who can prove that they are dependent on the resident or live with him as one family unit. **B'Tselem** emphasizes that family unification is a fundamental right, the realization of which should not be subject to any quota.

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177. HCJ 4495/92 and nineteen other petitions: *Sahil Rashad 'Abdallah Hassan Hadara et al. v. the Commander of IDF Forces in the Gaza Strip Area et al.* Some of the petitions were submitted by the coalition of human rights organizations.

178. In early January 1994 (after the conclusion of the period surveyed in this report), the Office of the State Attorney informed Attorney Rosenthal that family members who had entered between November 1992 and August 1993 would not be obligated to leave in order to request family unification. Their requests would be answered as part of the annual quota of 2,000 families.



## Sample Cases

### A. The Salahat Family

Muntaha Faiq Muhammad Handiyah, a resident of Jordan, was married on January 10, 1987 to Hani Hassan Muhammad Handiyah Salahat, a resident of Talouza in the Nablus District. Handiyah entered and exited the occupied territories on occasion after she was married, as Civil Administration permits allowed. The couple has two children. On November 3, 1991, she entered the occupied territories on a permit which was valid for one month. It was extended on December 3, 1991 for another two months. Subsequently, the Civil Administration refused to grant her an extension. On March 23, 1992, representatives from the Civil Administration arrived at the Salahat family house and demanded that Handiyah leave the territories immediately. Handiyah and the couple's two children left for Jordan. **B'Tselem** wrote to the West Bank Legal Advisor on April 22, 1992, stating that this deportation was a gross violation of authorities' commitment to the HCJ. The Assistant to the Legal Advisor responded on June 3, 1992:

Mrs. Salahat left the area on February 1, 1989, and from that day until November 3, 1991, she did not enter the area. We do not see under what criterion of the criteria for... interpreting the agreement this incident falls. Therefore there is no reason to instruct the Civil Administration to allow her to remain in the area according to the commitment to the HCJ.

**B'Tselem** again wrote on June 22, 1992 and referred the authorities to the birth certificate of the couple's daughter Fatmah, which clearly indicates that Handiyah gave birth in Nablus on February 9, 1991. On July 26, 1992, the Assistant to the Legal Advisor announced that Handiyah would be granted a visitation permit.<sup>179</sup>

### B. The Isma'il Family

On October 28, 1993, **B'Tselem** appealed to the West Bank Legal Advisor regarding Rahhab Rashad Muhammad al-'Amlah, who is married to a resident of Hebron:

Mrs. al-'Amlah and her husband, Muhammad 'Abd al-Hafaz Salam Isma'il... were married in 1987. The couple has two children: Maharan (b. November 4, 1988) and Nariman (b. November 29, 1989). Mrs. al-'Amlah is not a resident of the West Bank though

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179. See also *Ma'ariv*, September 11, 1992.

she has lived there since she was married. According to Mr. Isma'il, their request for family unification (No. 135/91) was approved and they were summoned to the Civil Administration office in Idna on October 14, 1993 in order to receive the identity card. When the couple arrived at the office, they were told by "Captain S." that Mrs. al-'Amlah must leave the territories. Mr. Isma'il took his wife and two children to the Jordan bridge. We request that you investigate this matter fully, instruct that Mrs. al-'Amlah and her children be allowed to return immediately, and clarify to the Administration officials in Idna what policy, according to you, has been used for more than two years which states that the spouses of residents of the occupied territories should not be deported.

After **B'Tselem's** intervention al-'Amala was permitted to return to the territories but has not yet been given an identity card.

## Collaborators in the Occupied Territories – Human Rights Violations and Abuses

In January 1994, **B'Tselem** published a comprehensive report on human rights abuses and violations *vis-a-vis* Palestinians suspected of collaboration with the Israeli authorities. The report charged that Palestinian political organizations and activists are responsible for severe abuses of human rights. It also described human rights violations by the Israeli authorities regarding methods of recruitment and operating of Palestinian collaborators.

According to data of the IDF Spokesperson, **942** Palestinians were killed by Palestinians for suspected collaboration, between the beginning of the Intifada on December 9, 1987 and November 30, 1993. According to the Associated Press, **771** Palestinians were killed by Palestinians on these grounds during this period, **293** of them during the past two years. In addition to the hundreds of killings, interrogations of suspected collaborators by activists have routinely included use of torture. Also commonplace were cruel means of punishment against suspected collaborators, such as shooting in the legs and bone-breaking. Palestinian political organizations and their activists have defined the term "collaborator" very broadly, often including, for example, criminal offenders and persons whose behavior was considered immoral or deviant, such as prostitutes or women suspected of extra-marital relations. Many victims were falsely suspected or mistakenly identified, and numerous others were killed for personal, business and inter-organizational conflicts as well as disputes within or among families under the guise of charges of collaboration.<sup>180</sup>

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180. According to the Ministry of Defense, 35-40% of those killed were connected in some way to the authorities, including civil servants. Some one half of those killed were suspected of abetting the authorities, but were not officially tied to them. Some 10-15% were killed for criminal activity, "especially drugs and prostitution." A small number of Palestinians were killed "because they violated the directives of the uprising," or, for example, were involved in sale of videos in defiance of the orders of the Islamic organizations." (Haim Israeli, Assistant to the Minister of Defense, in a letter to **B'Tselem**, September 21, 1993.) According to Palestinian journalist Zuheir a-Daba'i, in an interview to the *Jerusalem Post* on May 8, 1992, at least 60% of those killed on suspicion of collaboration were not tied in any way to the Israeli authorities.

**B'Tselem's** research indicates that punishment of suspected collaborators by activists has been carried out without serious examination of the suspicions against them and with no process that meets minimal legal standards. **B'Tselem** believes that no punishment may be handed down without due process, and that in no case may torture and punishments constituting human rights violations, such as capital punishment and other cruel forms of punishment, be used.

The activists who perpetrated these deeds and the political organizations with whom they are identified are responsible for these grave abuses. These organizations, which demand political recognition and regard themselves as the legitimate representatives of the Palestinian population in the occupied territories, are not exempt from the obligation to respect human rights.

Some of the abuses were committed at the instruction of the organizations, others by their explicit or implicit agreement. The directorships of these organizations have not dissociated themselves from activists involved in killing, torture or cruel punishment of suspected collaborators. Rather they continue to maintain organizational and financial ties with the squads involved in these activities.

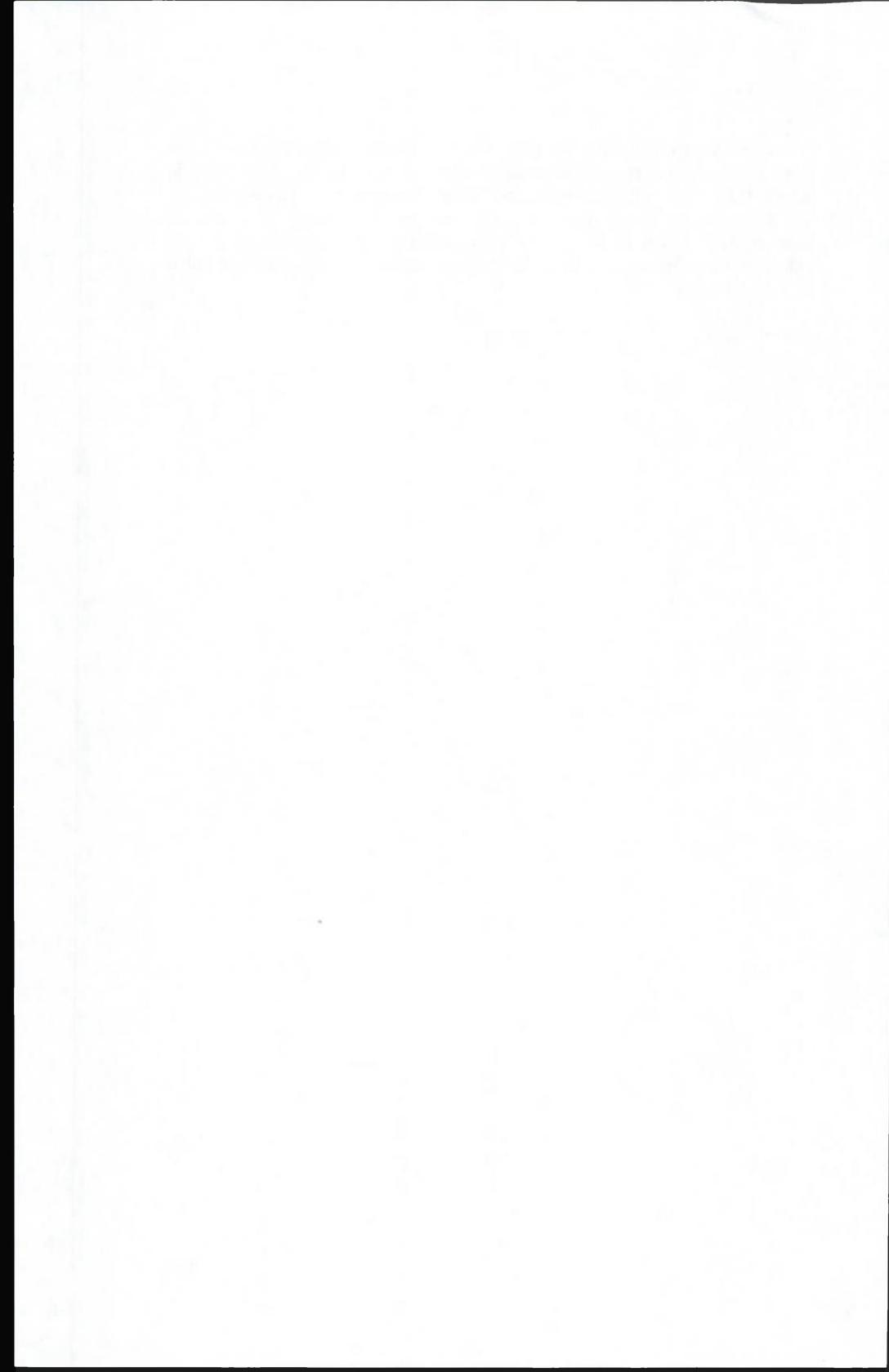
While Israel is not directly responsible for the killing and torture of suspected collaborators, various acts and omissions on its part regarding collaboration violate international law and fundamental legal principles.

In recruiting collaborators over the years, Israel has employed internationally prohibited means, which also violate rules of proper administration. These methods include conditioning services necessary to Palestinian residents on collaboration with the authorities as well as other means of extortion and coercion.

Many of the acts committed by collaborators in their capacity as state agents constitute human rights violations. An example of this is the use of torture and other prohibited interrogation methods by collaborators who participate in security force interrogations of Palestinian detainees.

Israel is also obligated to prevent criminal offenses by collaborators committed outside the realm of their profession as collaborators, and to prosecute those who commit illegal acts. Collaborators have often been involved in criminal offenses, from forgery to violent crimes. Collaborators have made unlawful use of weapons provided by Israeli authorities for purposes of self-defense, threatening, injuring and even killing other Palestinians. The official policy on this issue is inconsistent. In many of these cases the authorities have apparently chosen to ignore such acts and refrain from enforcing the law *vis-a-vis* collaborators.

Israel's duty to ensure the security and well-being of all residents of the territories without prejudice or preference also obligates it to provide protection for all Palestinians who have been suspected of collaboration, whether they actually worked with security forces or have been exposed to danger for other reasons. The number of victims killed on these grounds during the Intifada indicates that Israel has failed to protect them.



## IDF Spokesperson's Response

17 FEBRUARY, 1994

### Response to the "Betzelem" Report 1992-1993

During the period covered by the "Betzelem" report, the nature of the Intifada changed. In its initial stages, the Intifada had been characterized by mass protests. It may presently be described as consisting of armed violence carried out by terrorist organizations.

The IDF is guided by the principle of apprehending perpetrators of violence while making every effort to prevent harming the population at large. The IDF regards human life as sacrosanct and deeply regrets any loss of life.

#### Orders Governing Use Of Arm

Despite "Betzelem"'s attempt to claim that there can be no justification for firing on residents of the territories, other than in instances when life is endangered, it is noteworthy that in most democratic countries the law recognizes the necessity of resorting to fire in carrying out an arrest, even when the apprehender is not in danger.

IDF regulations governing the use of force are those generally accepted (by law enforcement agencies) in the first against crime (as distinguished from the harsher measures generally accepted in dealing with civilian insurrection against military rule).

From the details of the cases presented by the "Betzelem" report itself, it is evident that fire was employed against suspects of dangerous crimes. Moreover, IDF Military Police investigations have revealed that in many instances the "facts" presented in the testimonies collected by "Betzelem" were inaccurate, and that the soldiers had solid grounds to suspect that the fugitive involved had committed violent crimes. Conclusions should therefore not be drawn regarding the cases presented in the "Betzelem" report until the investigations have been completed.

IDF orders governing the opening of fire in the territories permit the use of fire in the following instances:

- A. In an encounter with armed terrorists, and in other instances where there is a tangible threat to the lives of IDF soldiers.
- B. When employing the Standard Operating Procedures for apprehending a suspect and subject to other conditions. In such instances the intent is to

stop the suspect and not kill him.

C. In the case of riots, using plastic and rubber bullets and subject to limitations and the judgement of the commander in the field.

#### Investigation of Fatalities in the Territories

Every case of fatality in the territories, is investigated by senior Military Police investigators. The findings of the investigation are then received by a review mechanism of the Judge Advocate General's Corps (including final authorization by the Judge Advocate General himself).

This procedure expresses the IDF's desire to give each case the most thorough treatment possible by the highest level of the military justice system, even at the expense of prolonging the procedure.

The 183 indictments issued against 260 enlisted men and officers (including a number of senior officers) since the beginning of the Intifada, attest to the objectivity and impartiality in the examinations of the investigation files, and to the, at times, difficult decisions which were made in their wake.

In this context we must appreciate the difficulties and dangers involved in conducting a criminal investigation in the midst of a hostile population in the Territories, not to mention the lack of cooperation on the part of the indigenous residents (as exemplified by systematic refusals to permit autopsies, and the rapid burial of corpses before forensic specialists can examine them to ascertain the cause of death). Under such circumstances there is no alternative other than to close a number of files involving deviation in the use of arms.

We must likewise note that there have been instances in which soldiers operated according to regulations except for minor deviations which have no connection with the fatality. In such cases disciplinary proceedings are initiated against the soldiers involved.

#### Investigations of fatalities of Juveniles

Cases involving fatalities of juveniles are investigated and reviewed with particular thoroughness and assiduity and when circumstances warrant judicial proceedings are undertaken against soldiers.

The IDF imposes the most stringent limitations on its soldiers in the cases of civil disturbances in which women and children are present. In such cases soldiers are instructed to employ extra precautions. These instructions are anchored in the IDF's orders for the use of firearms which forbid firing on children.

#### The Military Courts in the West Bank and in the Gaza Strip

The courts in the West Bank situated in Jenin, Nablus, Tul Karem, Ramallah and the Military Court of Gaza handle heavy case loads.

Since 1988 trials of 80,000 defendants have been completed.

Despite this heavy load, the Military Courts are exigent in holding trials in accordance with procedure while strictly protecting the rights of the accused and respecting the principle that in exercising legal judgement the courts have no obligation other than that of upholding the law. Military Courts operate in accordance with procedure, substantial law and rules of criminal evidence employed in the courts of Israel.

Since 1993 the trend has been for a decrease in the number of civil disturbance trials and an increase in trials for acts of terror. Such trials are difficult, highly complex matters which require protracted periods of time until a judgement can be issued.

The courts are making every effort to conclude the cases of defendants who have been detained for a relatively long period, even though in most instances postponement of hearings are due to the request of the defence counsels, who seek to fully exhaust negotiations with the prosecution.

Last year the courts adjusted themselves to new legislation which reduced the period of time which a detainee may be held until he must be arraigned before a judge (i.e. Eight days from the day of arrest except those arrested for particularly serious crimes as specified in the amended clause).

Since its establishment in April 1989, approximately 5230 appeals and petitions to appeal verdicts and sentences were submitted to the Military Court of Appeals. Many rulings were made including guide rules on general legal issues.

It is noteworthy that in the last year 64% of the submissions to the Military Court of Appeals were by defence counsel.

#### IDF Detention Facilities

1993 saw a reduction in the number of detainees as compared to 1992. If in December 1992, 6830 individuals were incarcerated in detention facilities, on December 1 1993, there were about 5000 detainees.

In all facilities detainees are enabled to meet regularly with their lawyers. Special structures were constructed which can accommodate five such meetings simultaneously.

In coordination with the detention facility administration, three days a

week are allocated for meetings with lawyers.

During the years 1990 - 1993 conditions of detention improved. Structures for family visits were built in each facility, detainees were permitted to possess radios, food rations based on IDF nutrition tables were improved and modified to the tastes of the detainees, closed-circuit TV was installed, etc.

Time allotted for family visits was extended. Buildings for visits from lawyers and Red-Cross officials and courtrooms were constructed in the facilities.

Living conditions were improved. Libraries for inmates use were installed and visits of private physicians authorized.

#### Demolition of Houses

As mentioned in the "Betzelem" report, no houses of territory residents were demolished by orders in 1993, and there were but few instances of the sealing up of homes.

As to destroying houses in the course of operations to apprehend wanted terrorists, the IDF distinguishes both in theory and practice between innocent local residents and perpetrators of terrorism, and has established operating procedures to minimize harm to life and property.

Thus prior to breaking into a house known to be sheltering wanted terrorists, the IDF takes maximal precautions to prevent casualties. The residents are warned verbally to leave the building beforehand and the IDF permits the terrorists to leave and surrender themselves in order to prevent needless bloodshed.

The purpose of these operating procedures, which were established as a result of cases in which IDF soldiers were killed or wounded when they entered houses in which armed terrorists were hidden, is to significantly reduce the level of risks to which IDF soldiers are exposed and to spare lives of innocent locals.

In the course of such operations the IDF captured large quantities of material (including handguns, explosives, automatic weapons).

The very possession of such weapons by terrorists could very well have resulted in casualties among IDF personnel and innocent residents.

In cases where property is damaged as a result of IDF operations,

property owners have the right to receive compensation from the Civil Administration.

The Civil Administration assigns assessors to evaluate the extent of damage caused by each operation.

Even in cases when owners of damaged property do not approach the Authorities of their own initiative, the Civil Administration contacts them to inform them of the opportunities available to receive compensation.

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## **B'Tselem Publications**

### ***Monthly Information Bulletins***

May 1989	Data, Confiscation of ID Cards, Death Cases
June 1989	Plastic Bullets, Curfew, Settlers, House Demolitions
July 1989	Death Cases, Settlers, Deportations
August 1989	Detention Facilities
September 1989	Death Cases, Administrative Detention
October 1989	Banned Books and Authors
November 1989	Soldiers' Trials and Restrictions on Foreign Travel
January 1990	Cases of Death and Injury of Children
February-March 1990	Censorship of the Palestinian Press in East Jerusalem
April 1990	IDF Posts on Private Homes, Purimshpiel in 'Abud, Followup Investigation: The Death of Rafaida Abu Laban
May 1990	The Military Judicial System in the West Bank, Follow-up Report Update June-July 1990 - Violence Against Minors in Police Detention
August 1990	Limitations on Building of Residences on the West Bank
September-October 1990	Closure of Schools and Other Setbacks to the Education System in the Occupied Territories
October 1990	Loss of Control: The Temple Mount Events - Preliminary Investigation
November 1990	House Sealing and Demolition as a Means of Punishment
January-February 1991	Human Rights in the Occupied Territories During the War in the Persian Gulf
Update June 1991	The Death of a Youth: Mahmud 'Alayan; Maltreatment by an Income Tax Clerk; Pressure on Families of Wanted Persons

September-October 1991	Renewal of Deportation of Women and Children from the West Bank on Account of "Illegal Residency"
January 1992	Limitations on the Right to Demonstrate and Protest in the Territories
April 1993	The Closure of the West Bank and Gaza Strip: Human Rights Violations Against Residents of the Occupied Territories
May 1993	House Demolition During Operations Against Wanted Persons
June 1993	The Killing of Palestinian Children and the Open-fire Regulations
February 1994	Firing at Vehicles by Security Forces in the Occupied Territories

### ***Comprehensive Studies***

September 1989	Demolition and Sealing of Houses in the West Bank and the Gaza Strip as a Punitive Measure During the Intifada
November 1989	The Military Judicial System in the West Bank
December 1989	Annual Report 1989 Violations of Human Rights in the Occupied Territories
February 1990	The System of Taxation in the West Bank and Gaza Strip as an Instrument for the Enforcement of Authority During the Uprising
July 1990	The Use of Firearms by the Security Forces in the Occupied Territories
November 1990	Collective Punishment in the West Bank and the Gaza Strip
March 1991	The Interrogation of Palestinians During the Intifada: Ill-Treatment, "Moderate Physical Pressure" or Torture?
January 1992	Bi-Annual Report 1990-1991 Human Rights Abuses in the Occupied Territories

March 1992	The Interrogation of Palestinians During the Intifada: Follow-up to March 1991 B'Tselem Report
May 1992	Activity of Undercover Units in the Occupied Territories
October 1992	Detained Without Trial: Administrative Detention in the Occupied Territories Since the Beginning of the Intifada
June 1993	Deportation of Palestinians from the Occupied Territories and the Mass Deportation of December 1992

***Case Studies***

September 1992	The Death of Mustafa Barakat in the Interrogation Wing of the Tulkarm Prison
January 1993	Khan Yunis, December 1992
November 1993	The "New Procedure" in GSS Interrogation: The Case of 'Abd A-Nasser 'Ubeid

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