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B'TSELEM - The Israeli Information Center for Human Rights in the Occupied Territories

Information Sheet

March 2002



Trigger Happy

Unjustified Shooting and Violation of the Open-Fire Regulations during the al-Aqsa Intifada



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B'TSELEM - The Israeli Information Center for Human Rights in the Occupied Territories was founded in 1989 by a group of lawyers, authors, academics, journalists, and Members of Knesset. B'Tselem documents human rights abuses in the Occupied Territories and brings them to the attention of policymakers and the general public. Its data are based on independent fieldwork and research, official sources, the media, and data from Palestinian and Israeli human rights organizations.

Introduction

On the afternoon of 27 September 2001, 'Ali Abu Balima, a mentally retarded thirty-year-old resident of Dir el-Balah, was walking near the road by the Kfar Darom settlement. A week earlier, the IDF had declared the road closed to Palestinians. The soldiers at the nearby army post fired several shots at Balima, killing him. On 17 December 2001, several children from the Khan Yunis refugee camp were playing with toy weapons made of plastic. IDF soldiers at a post some one hundred meters away fired live ammunition at them and killed twelve-year-old Muhammad Hanaideq. These are just two examples of the consequences of the IDF's open-fire policy during the al-Aqsa intifada.

Senior IDF officials have repeatedly rejected claims that soldiers fire without justification. At the beginning of the intifada, Chief of Staff Shaul Mofaz denied criticism that the IDF was using excessive force. He said that "soldiers are subject to a high degree of supervision," and that he had not noticed any exceptions that called for handling system-wide.¹ Following recent criticism by officers in the reserves, Mofaz repeated his contention. "I think that the army has proved that it also

knows how to handle exceptional cases, as rare as they are."² In response to B'Tselem's report that contained many cases in which innocent Palestinian civilians were injured, the IDF Spokesperson contended that, "IDF forces were ordered to return fire only toward sources of fire, and to refrain from returning fire toward holy places, hospitals, and the population not directly involved in the fighting."³

From the beginning of the intifada, on 29 September 2000, to the middle of March 2002, Israeli security forces in the Occupied Territories killed 1007 Palestinians, of whom 189 were minors and 213 members of the Palestinian security forces, and wounded thousands. Many of the casualties were unarmed civilians who were injured during dispersal of demonstrations near checkpoints or IDF positions, or by indiscriminate shooting at their homes.

Since the beginning of the intifada, B'Tselem and other human rights organizations have frequently charged that the IDF uses excessive force and that many of the Palestinian casualties are innocent civilians.⁴ Major General (Res.) and former head of the General

1. "Four Israelis Injured by Gunfire in the Occupied Territories," *Ha'aretz*, 13 December 2000.

2. "If the Refusal is Political, it is Insurrection," *Ma'ariv*, 3 February 2002.

3. Response of the IDF Spokesperson's Office to B'Tselem's report *Excessive Force: Human Rights Violations during IDF Actions in Area A*, February 2002, p. 80.

4. See, for example, B'Tselem, *Illusions of Restraint: Human Rights Violations during the Events in the Occupied Territories, 29 September – 2 December 2000*, December 2000; B'Tselem, *Excessive Force*; Human Rights Watch, *Center of the Storm: A Case Study of Human Rights Abuses in the Hebron District*, April 2001; Amnesty International, *Broken Lives: A Year of Intifada*, October 2001.

Security Service Ami Ayalon expressed similar criticism: "Firing at an unarmed youth is manifestly illegal. The number of children who have been killed over the past year and a half greatly worries me. On an individual basis, was each of these cases an instance in which there was no alternative and we had to shoot to kill? This question should trouble everyone."⁵

This report examines the IDF's open-fire policy during the current intifada. Following a review of the changes made in the Open-Fire Regulations and criticism of the lack of supervision of the soldiers in the field, the report will present examples of cases of unjustified shooting that illustrate the grave consequences of the IDF policy.

5. Ayalon made these comments in an interview with Channel 1 television, 1 February 2002.

The IDF Open-Fire Regulations

The Legal Basis

Until the outbreak of the al-Aqsa intifada, in late September 2000, the Open-Fire Regulations in the Occupied Territories were based on Israel's penal code. Soldiers were only allowed to fire live ammunition in two situations. One situation was when human life was in jeopardy, which was defined as "a real threat of the loss of human life or grave bodily harm." In this situation, soldiers were allowed to shoot to strike the assailant only, provided there was no other way to defend against the danger. The second situation was during the apprehension of a suspect, when soldiers were allowed to fire at the legs of a person suspected of committing a dangerous crime. The firing was allowed only as a last step, after giving warning and firing in the air, and when there was no danger that others would be injured.⁶

When the intifada began, the IDF defined the events in the Occupied Territories as an "armed conflict short of war." The new definition brought about a change in the Open-Fire Regulations. In particular, it artificially expanded the term "life threatening."

The sweeping change in the definition of the situation ignores the substantial number of actions by security forces such as dispersing demonstrations, making arrests, operating checkpoints, that are ordinary policing actions and were defined as such prior to the current intifada. The change in the Open-Fire Regulations' handling of these acts, which themselves have not changed, are unlawful, and the previous Open-Fire Regulations must continue to apply. Security forces' actions are also subject to the international rules on the use of weapons, which provide that security forces may use lethal force only where there is a real and immediate threat to life. Then, too, force is allowed only when strictly necessary and the use of non-lethal means was unsuccessful in removing the danger.⁷

Even after the IDF's withdrawal from areas in the West Bank and Gaza Strip, pursuant to the Oslo Accords, Israel continues as the occupier in the Territories. Therefore, it is obligated to ensure the safety and wellbeing of the Palestinians living there.⁸ This obligation also applies during the current intifada.

6. On the Open-Fire Regulations during and after the first intifada, see B'Tselem, *The Use of Firearms by the Security Forces in the Occupied Territories*, July 1990; B'Tselem, *Activity of Undercover Units in the Occupied Territories*, May 1992; B'Tselem, *The Killing of Palestinian Children and the Open-Fire Regulations*, June 1993.

7. Code of Conduct for Law Enforcement Officials, Adopted by General Assembly Resolution 34/169 of December 1979; Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

8. Article 27 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 1949; article 43 of the Hague Regulations attached to the Hague Convention Respecting the Laws and Customs of War on Land, of 1907. See, also, "Statement by the International Committee of the Red Cross," Geneva, 5 December 2001, par. 2.

When combat actions take place in occupied territory, the occupier is subject to the laws of war. This obligation is in addition to the state's duty to comply with the relevant principles of international humanitarian law. The laws of war limit the actions that military forces are allowed to take in combat. One of their primary goals is to protect the civilian population to the greatest extent possible and to keep them out of the hostilities. The distinction between people who are not taking part in the hostilities and those who are, and between military objects and civilian objects, is one of the most fundamental elements of international humanitarian law. To ensure that these distinctions are maintained, the law prohibits attacks that are not directed at a specific military object. It also prohibits attacks by weapons that are not sufficiently precise to distinguish between military and civilian objects. It should be emphasized that the presence of non-civilians among a civilian population does not deny the civilians the protections granted to them, and that a breach of the rules by one side does not release the opposing side from its obligations.⁹

Changes in the Regulations

During the current intifada, the IDF changed the Open-Fire Regulations numerous times. The IDF has not

officially published the Regulations and most of B'Tselem's requests to the IDF Spokesperson to obtain information about the changes were not answered. Therefore, B'Tselem's information is based primarily on testimonies from soldiers who served in the Occupied Territories during the intifada, statements given by Israeli officials, and media reports.

According to press reports, the army is acting in accordance with a new compilation of open-fire regulations, which is referred to as Blue Lilac. They were prepared a few months before the intifada broke out. These regulations expand the range of situations in which soldiers may open fire, and give the commanders in the field increased flexibility and discretion. The new regulations allow, *inter alia*, firing at the legs of stone throwers, and sniper fire from ambush.¹⁰ In some areas, the procedure for apprehending suspects is nullified, and soldiers are allowed to fire without warning at Palestinian suspects.¹¹

At the beginning of the intifada, the IDF Spokesperson informed B'Tselem that, in one particular week, "the Open-Fire Regulations were changed and approval given to use live fire in cases when there was a threat to life in an action initiated by the IDF or in a preventive action."¹²

9. Articles 48-58 of the First Additional Protocol to the Geneva Conventions, of 1977. Israel did not sign the protocols, but these principles are part of customary law and therefore also apply to states that are not party to the protocols.

10. "Correction," *Ha'aretz*, 15 June 2001; "IDF Loosened Open-Fire Directives in the Occupied Territories," *Ha'aretz*, 7 August, 2001; "IDF Loosens Open-Fire Regulations," *The Jerusalem Post*, 9 August 2001.

11. "IDF Allows Firing without Warning in Parts of the Occupied Territories," *Ha'aretz*, 8 January 2001; "Intolerable Loosening of Open-Fire Regulations," *Kol Ha'Ir*, 11 May 2001.

12. Letter of 23 October 2001.

This wording does not explain the nature of the change, because firing in life-threatening situations has always been permitted. Therefore, the new regulations apparently enable firing in situations where there is no clear and present danger to life, or even in situations where there is no life-threatening danger at all.¹³

This conclusion is consistent with the comment of the head of the IDF's international law branch, Col. Daniel Reisner, that "the concept 'life-threatening situation' is now construed more broadly."¹⁴ In his testimony to B'Tselem, a soldier in the regular army stated that, "the term 'real threat' changes depending on the sector and the period. If the sector was calm for a few days, then we try not to kill so as not to heat up the sector."¹⁵

Following the Tenet Understandings, the IDF suspended Blue Lilac and tightened the Open-Fire Regulations for several weeks. The change was reflected in the statement that, "from now on, soldiers may open fire in life-threatening situations," and that only "a specific response to precise Palestinian gunfire that is defined as life threatening" is allowed.¹⁶ During this period, Chief of Staff Mofaz stated that, "soldiers are now permitted to open fire only when their lives are in jeopardy."¹⁷ These statements

clearly indicate that before and after the tightening of the Open-Fire Regulations, soldiers were also allowed to fire in non-life-threatening situations.

Furthermore, one soldier's testimony to B'Tselem indicates that the Open-Fire Regulations also change for public-relations reasons: "A change in the Regulations occurs during major political events, such as visits to the region by high-level officials, during which firing is not initiated unless the approved by the senior command. Regulations regarding the firing at Palestinian police also change, and soldiers are not allowed to fire at them unless the soldiers are in life-threatening situations, or the Palestinian police interfere with IDF operations."¹⁸

The fact that these extraneous considerations dictate IDF actions is particularly grave. The Open-Fire Regulations should be based on the situation in the field and the danger to the soldiers, and not on political considerations. Clearly, if it is possible to refrain from firing during the visit of high-level officials without endangering soldiers' lives, there is no reason not to continue this policy after the officials leave.

The Open-Fire Regulations in the Central Command are stricter, at least

13. On this point, see B'Tselem, *Illusions of Restraint*, pp. 8-10.

14. The comments were made at a press conference on 15 November 2000. The transcript appears on the Foreign Ministry's Website: www.mfa.gov.il.

15. The testimony was given to Lior Yavne and Ron Dudai on 12 November 2000.

16. "IDF Loosened Open-Fire Directives in the Occupied Territories," *Ha'aretz*, 7 August 2001; "IDF Tightened Open-Fire Directives," *Ha'aretz*, 20 September 2001.

17. "Mofaz at the Foreign Affairs and Defense Committee: The PA has Become a Terrorist Entity," *Ha'aretz*, 25 July 2001.

18. The name of the soldier is on file at B'Tselem. The testimony was given to Ronen Schnayderman on 27 November 2001.

partially, than those applying in the Southern Command. For example, the use of flechettes, the use of the Roger rifle to disperse demonstrations, and the shooting initiated by the army in “dangerous areas,” are only allowed in the Southern Command (for more on these subjects, see below). It seems that the differences result from arbitrary command decisions and not from constraints in the field.

Lack of Clarity of the Regulations

In addition to the problems inherent in some of the provisions of the Open-Fire Regulations, their transmission to the soldiers is also problematic. Where the provisions are intended to regulate the cases in which the soldiers are allowed to open fire, clear and unequivocal explanations of the provisions must be provided to the soldiers, and the Regulations must indeed reach every soldier in the field. These two requirements are necessary to reduce the number of casualties among innocent civilians. However, in many instances, the soldiers receive unclear and conflicting messages.

In his testimony to B’Tselem, a soldier in the reserves stated that some of the orders he received were unclear:

A question was raised during the briefing whether every Palestinian bearing arms is life threatening. A clear answer was never given, and it was left to the soldier’s judgment. As for dispersion of demonstrations, we were not given any directives.¹⁹

An officer in the reserves, a company deputy commander, left his reserve-duty at the Qalandiya checkpoint in protest over defects in the performance of troops at the checkpoint, particularly the lack of clear procedures. He contended that he requested the commanders to provide him with organized regulations, but “the reply we got was not an answer. We sat there as the company’s commanders and made up the procedures... We decided what constituted the red line, when to fire and when not.”²⁰ A soldier in the regular army who was serving in the West Bank informed B’Tselem that, “We did not receive special orders regarding children. It was clear to me that, if a child is really young, we don’t fire at him. I don’t know what age makes him a ‘child.’”²¹

During the intifada, the media reported several times about senior officers’ concern regarding the ambiguous messages being transmitted to soldiers and the consequences of the sweeping

19. The name of the soldier is on file at B’Tselem. The testimony was given to Ronen Schnayderman on 19 July 2001.

20. The comments were made in an interview on Voice of Israel radio on 25 February 2002.

21. The name of the soldier is on file at B’Tselem. The testimony was given to Lior Yavne and Ron Dudai on 18 February 2002.

and extensive permission to open fire. The soldiers requested that the Chief of Staff issue an unequivocal order as to what is allowed and what is forbidden regarding firing in the Occupied Territories. According to a senior IDF official, “We have to make sure that soldiers don’t think that a total ‘Lebanonization’ of the open-fire rules applies here.” The official also mentioned his concern that the commanders in the field would not implement the directives precisely, and that the soldiers would not understand the rules.²²

The commander of the Military Police investigations unit, Col. Mickey Barel, stated the problem of the Open-Fire Regulations implemented by the IDF during the intifada. “I conclude that, from the investigations we conducted, there is clearly confusion over the Open-Fire Regulations. In some situations, soldiers did not exactly understand them, and at times it was comfortable for them not to understand. Sometimes the briefing was also flawed.” Barel emphasized the gap between the orders issued by the army command and the reality in the field. “It is like children in nursery school playing the game where one child whispers some words to another child, who repeats it to another child, and on and on. Each one has a different interpretation of what was said.”²³

One of the possible explanations for the soldiers’ confusion as to the situations in which they are allowed to open fire is that in the current intifada, the IDF has not distributed the Regulations to the soldiers in writing. This is in contrast to the first intifada and the period that followed it, in which every soldier was given a booklet describing the Open-Fire Regulations. As a result, the orders are given orally by commanders who received verbal orders from other commanders. This process allows for broad interpretation and the transmission of only some of the regulations. A reporter for *Ha’aretz*, Anshel Feffer, described how the officers in a reserve-duty infantry platoon serving in the Gaza Strip received a printed booklet describing the Open-Fire Regulations. The officers were ordered to summarize the booklet and orally transmit the rules to the soldiers.²⁴

The problem with oral briefings is clearly demonstrated by the comments of Rami Kaplan, a deputy company commander in the reserves, who described a briefing given by Brigadier General Yair Naveh, commander of IDF forces in the Gaza Strip at the time, at company headquarters. Naveh explained the open-fire procedures and presented a hypothetical scenario in which a woman and five children approach the fence in the Gaza Strip. Later it was found that those present in the room

22. “Argument in the IDF on Flexibility of the Open-Fire Regulations,” *Ha’aretz*, 21 March 2001. See, also, “Officers: Mofaz Must Act against Deviations in the Occupied Territories,” *Ha’aretz*, 11 January 2001.

23. “Military Police Investigations will Begin to Investigate after Everybody Finishes Fighting,” *Kol Hazman*, 2 March 2001.

24. “On Cloudy Nights They Open Preventive Gunfire,” *Ha’aretz*, 10 February 2002.

understood Naveh's comments differently. Kaplan understood Naveh to justify firing at them because of the suspicious circumstances involved. Others felt that Naveh stated that the soldiers should not fire at them, even if the suspicious circumstances could justify opening fire.²⁵ Regardless of Naveh's original intention, this case illustrates the problem with oral briefings in comparison with written orders.

Statements made by senior officials in the Judge Advocate General's office indicate that the IDF considered distributing the Open-Fire Regulations to soldiers in the Occupied Territories in writing, but rejected the proposal. According to the Judge Advocate General, Brigadier General Menachem Finkelstein, "The question of whether every soldier should receive the text of the Open-Fire Regulations is one that I mull over... As of now, we still rely on the commanders to explain the Regulations... If we find that the soldiers still do not know the rules, we may have to consider preparing a booklet."²⁶

Unlike this cautious wording employed by the Judge Advocate General, the Deputy Judge Advocate General expressed, in an internal discussion, great concern over the consequences of the lack of written regulations.

One of the main problems regarding the Open-Fire Regulations results

from the fact that they are for the commanders and not the soldiers, and the commanders make their own interpretations, which is not the case with the red and green booklet. When the commanders have to brief the soldiers, we have a problem as to uniformity of information.

He added and admitted that, "I think that the Judge Advocate General's office did not do enough to instruct the troops in the field."²⁷

In the same discussion, the head of the IDF's international law branch, Col. Daniel Reisner, stated that he does not think such a booklet is necessary. "The principles of the open-fire rules are not resolved... It is assumed that in war, everything is allowed... Taking into account that we have to prepare the army to occupy Area A, we thought about preparing a booklet. We didn't do it because the only distinction we have to make is the distinction between attacking military and civilian installations."

This flaw in briefing is particularly grave in light of the nature of IDF activity in the Occupied Territories. The soldiers operate within a civilian population, the majority of which is not involved in attacks, or in attempts to attack Israeli soldiers or civilians. In some cases, the soldiers are in combat against forces that

25. "The Black List of Captain Kaplan," *Ha'aretz*, 27 April 2001.

26. "Prolonged Silence of the JAG," *Kol Ha'ir*, 6 April 2001.

27. The comments were made during a discussion on the Open-Fire Regulations. Some of the minutes from the meeting, together with the investigation file on the circumstances of the killing of Khalil al-Mughrabi in Rafah in July 2001, reached B'Tselem's offices. B'Tselem does not know the date of the discussion.

are not formal army troops and the combat takes place in a situation where civilians are constantly present. In such circumstances, the lack of clear orders to the soldiers on when shooting is allowed significantly increases the chance that innocent persons will be injured, thus making the training and supervision of the troops more important than at any other time.

In addition to the flawed briefing of the soldiers, the failure to publicly publish the Regulations also shows disregard for the lives of Palestinians in the Occupied Territories. An order that allows soldiers to shoot to kill any person who enters a certain area will inevitably result in injury to innocent persons who are unaware of the regulation. A regulation that soldiers must fire at every Palestinian who is bearing a weapon leads to similar results.

According to Col. Reisner,

There is a genuine operations problem in disclosing the Open-Fire Regulations... We know that they [the Palestinians] are trying to learn the loopholes and exceptions in our open-fire regulations so as to exploit them against us... This is not done to cover or conceal, but to protect and prevent.²⁸

However, this reason cannot justify the failure to publish the Regulations.

Publication may indeed make it more difficult for the IDF to operate in the Occupied Territories, but in light of the extensive injury to innocent persons since the outbreak of the intifada, it is incumbent on the IDF to publish at least the general principles that apply to the soldiers, if not the precise details. As Reisner noted, the Palestinians study the Open-Fire Regulations in any event, but their study generally occurs after Palestinians are injured. The military censor has approved numerous publications that provide details on this subject, thus questioning the security justifications raised for not publishing the Regulations.

The publication of the Open-Fire Regulations would also significantly contribute to the soldiers' awareness of the prohibitions and limitations binding them and would resolve the problem of the lack of uniformity in the orders transmitted in the field. Publication would also facilitate an examination of their legality.

Policy of Immunity

At the beginning of the current intifada, the IDF changed its policy, and it no longer automatically investigates every case in which IDF soldiers kill Palestinian civilians in the Occupied Territories. The IDF Spokesperson stated that, since an "armed conflict" is involved, the Judge Advocate General's office would order an

28. The comments were made at a meeting of the Knesset's Committee for the Advancement of the Status of Children, 29 November 2000. Col. Reisner repeated this point in a lecture he gave at a conference at the Hebrew University Law Faculty on 11 December 2001.

investigation only in cases where there is a “suspicion of serious violation of the binding rules of conduct.”²⁹ The Deputy Minister of Defense, Dalia Rabin-Filosof, made similar comments in reply to a parliamentary query:

The IDF does not criminally investigate every case of death connected to the hostilities. However, according to its regulations, the IDF is required to conduct internal de-briefings, and criminal investigations are conducted in cases where there is a suspicion – either as a result of the internal de-briefing or another source – that serious offenses have been committed.³⁰

Despite this commitment, the Military Police investigations unit has opened almost no investigations into cases where soldiers fired in violation of the Regulations. As of November 2001, the Military Police investigations unit investigated only fourteen cases of illegal shooting.³¹ This number is very small in light of the testimonies given to B’Tselem and the information received from other human rights organizations, residents of the Occupied Territories, and the media, which mention many other cases in which there

was at least a significant likelihood that the Open-Fire Regulations were violated. The military correspondent of *Ha’aretz*, Amos Harel, wrote during the first months of the intifada that, “in practice, judicial monitoring of the military actions of the lower ranks in the field is simply non-existent.”³²

The decision to open a Military Police investigation into a certain event is made by the Judge Advocate General’s office, which examines the case after a de-briefing in the field indicates that soldiers ostensibly violated the Regulations.³³ A process in which the army decides whether to investigate itself is flawed. In one case that was exposed by B’Tselem, it was clear that an eleven-year-old child had died as a result of the violation of procedures and illegal shooting. Despite this, the Judge Advocate General’s office decided not to request a Military Police investigation, and to present an imprecise, to say the least, version of the events.³⁴

The Military Police investigations that were initiated were not frank and serious attempts to reach the truth. From conversations with several Military Police investigators, B’Tselem learned that the Military Police investigations unit does

29. On this point, see B’Tselem, *Illusions of Restraint*, pp. 18-20.

30. Parliamentary query 2287, 25 July 2001.

31. “For the First Time since the Beginning of the Intifada, Officer who Shot Palestinian is Prosecuted,” *Ha’aretz*, 22 November 2001. The IDF Spokesperson did not respond to B’Tselem’s repeated requests for figures on the number of Military Police investigations.

32. “The Army is Acting like a Blindfolded Boxer,” *Ha’aretz*, 12 December 2000.

33. “Military Police Investigations,” *supra*, footnote 23.

34. B’Tselem, *Whitewash: The Office of the Judge Advocate General’s Examination of the Death of Khalil al-Mughrabi*, 11, on 7 July 2001, November 2001.

not have Arabic-speaking investigators. In the large majority of cases, therefore, no testimonies from Palestinians are taken. As a result, the investigations were based solely on soldiers' testimonies, thus affecting the credibility of the investigations.

To the best of B'Tselem's knowledge, in only two cases were indictments filed for unjustified shooting, and they were filed more than a year after the incidents occurred.³⁵ In one case, an officer ordered the firing of warning shots at a Palestinian who was riding a donkey in the area of the Beit Hagai settlement, in November 2000. The shots seriously injured the Palestinian. In the second case, which occurred in January 2001, soldiers fired without justification at a Palestinian vehicle near the Beit Furiq checkpoint. A twenty-two-year-old Palestinian woman was killed. If the IDF had handled these cases with the severity they warranted and prosecuted the soldiers shortly after the incidents occurred, the IDF handling would have had a deterrent effect.

In several cases, the IDF chose not to open a criminal investigation, but initiated disciplinary proceedings against soldiers who violated the procedures. Col. Yossi Telraz, who until recently served as Deputy Judge Advocate General, defined IDF disciplinary proceedings as "being the responsibility of commanders who have no legal training, and the rules of procedure as detached from the rules of procedure and evidence that

are customarily applied in the courts."³⁶ Furthermore, the officer-judge in disciplinary proceedings is often personally acquainted with the defendant, and the sentences that are allowed to be imposed are much lighter than those that may be imposed by a military tribunal. Unlike the sentences of military tribunals, the decisions in disciplinary proceedings are not made public, which greatly diminishes their value as a deterrent and as a means to learn from past experience.

In the absence of Military Police investigations, the de-briefings carried out by officers in the field following cases in which there is a suspicion of the illegal use of weapons gain increasing importance. In response to the killing of an innocent person who was killed in his home, Col. Ilan Paz, commander of Ramallah Brigade, stated, "Every such event will be investigated up to the level of the major-general heading the command... Where we find violations, we shall treat them with the full severity of the law."³⁷ However, testimonies of soldiers indicate that the de-briefings are superficial and the conclusions are not passed on to the soldiers in order to enable them to learn from the case. In his testimony to B'Tselem, a soldier doing regular army service told B'Tselem that,

I know that a few weeks ago a mentally ill Palestinian was shot and killed in compliance with the directives that we

35. "For the First Time since the Beginning of the Intifada, Officer who Shot Palestinian is Prosecuted," *Ha'aretz*, 22 November 2001; "Indictment against Soldier who Killed Palestinian in Nablus," *Ha'aretz*, 16 January 2002.

36. "Not Likely I'll Return to the Army," *B'Mahaneh* [IDF Magazine], February 2002.

37. "Still No Eradicating of Streets in Ramallah," *Ha'aretz*, 30 April 2001.

received. The fellow did not know what was happening around him, and he wandered near the fence. But I know about that from the newspaper – nobody de-briefed us on the subject.³⁸

An officer in the reserves spoke about the problems and consequences of de-briefings of shooting cases:

I know that sometime in the past we killed a pregnant woman or a man. I still don't know if it was a woman or a man. The de-briefing only involved the troops who were there, and not the command echelon – the rank of company commander and above. You have to understand that since we reached the line [of confrontation], with all the incidents that have taken place, de-briefings have been non-existent. The de-briefing must be written and handled in an orderly manner, it must be conducted by the command echelon and not the forces who were involved in the incident. This does not happen. This does not happen, and the lessons are not being learned, and if you say that the car of Abu Ala [a high-level Palestinian Authority official] was fired at, I wouldn't be surprised.³⁹

Criticism of IDF investigations was also voiced in the Knesset's Foreign Affairs and Defense Committee. MK Ran Cohen presented five incidents that involved a suspicion of violation of the Open-Fire Regulations. Although five Palestinian policemen and three Palestinian women were killed in these incidents, no conclusions were reached or measures taken in any of the cases. MK Cohen stated that “all the investigations were superficial and made in an attempt to cover-up [the incident].”⁴⁰

The consequences of this policy on soldiers' conduct are grave. Soldiers in the reserves who served in the Gaza Strip told a *Ha'aretz* reporter about a “trigger-happy” atmosphere. One of them summarized the situation, as follows: “It is not like it was once, when you had to account for every bullet that you fired. Now the soldiers have freedom of action, they can act almost without limitation.”⁴¹

A policy of immunity also characterized IDF actions in the past.⁴² During the first intifada, the Judge Advocate General's office applied a policy of leniency that was referred to as “the intifada quotient.” Amnon Straschnov, who was the Judge

38. The name of the soldier is on file at B'Tselem. The testimony was given to Lior Yavne on 16 April 2001.

39. The comments were made in an interview with Voice of Israel radio, 25 February 2002.

40. “Criticism in Knesset on IDF De-Briefings in the Occupied Territories,” *Ha'aretz*, 31 October 2001. For other inquiries into IDF operations and the failure to open investigations, see “The IDF Presents: Files in the Dark,” *Yediot Aharonot*, 19 January 2001.

41. “Don't Give Us Orders,” *Ha'aretz*, 1 March 2001.

42. See HaMoked: Center for the Defence of the Individual, *Fleeing Responsibility: The Military's Handling of Palestinian Complaints against Soldiers*, 1997.

Advocate General at the time, admitted that, in implementing this policy, the Judge Advocate General's office did not prosecute many soldiers suspected of having committed offenses against Palestinians. In other cases, soldiers were charged with less serious offenses, and were not prosecuted to the full extent of the law.⁴³ The current policy is worse, because with the exception of rare cases, the IDF does not initiate Military Police investigations, so the Judge Advocate General's office does not have the opportunity to reach decisions regarding the failure to prosecute or to relate to the charges set forth in the indictment.

The Knesset's Constitution, Justice, and Law Committee is now debating the government's proposed bill that would provide the state with a sweeping exemption from Palestinian compensation claims arising from acts of the security forces in the Occupied Territories, even in cases in which the soldiers acted negligently.⁴⁴ An exemption from paying compensation, at a time when almost no criminal sanctions are taken against soldiers who violate the Regulations, would completely nullify the soldiers' duty of caution. The exemption would give the state no incentive, except for the good will of those involved, to prevent injury to innocent persons.

43. Amnon Straschnov, *Justice under Fire* (Tel-Aviv, 1994), pp. 157-176 (in Hebrew).

44. Proposed Torts (State Liability) (Amendment - Claims Arising from Actions by the Security Forces in Judea and Samaria and the Gaza Strip) Law, 5761 - 2001.

Unjustified Shooting: Examples

Following is a sample of patterns of unjustified shooting that exemplify the problems inherent in the Open-Fire Regulations. Some of these patterns, particularly shooting during the dispersal of demonstrations and in checkpoint areas, are the continuation of a policy that was in effect prior to the current intifada and took the lives of many victims. Other patterns, such as firing at Palestinians approaching certain areas, or shooting at pre-determined targets, are the result of new regulations.

1. Dispersal of Demonstrations

During the first months of the al-Aqsa intifada, Palestinians held hundreds of demonstrations near IDF posts.

Demonstrations of this sort eventually became less frequent, but did not stop altogether. During some of these demonstrations, Palestinians threw stones and petrol bombs at soldiers, and on occasion, armed Palestinians from within or outside of the demonstrating crowd fired live ammunition at soldiers. It should be emphasized that, based on the view from B'Tselem's observation posts, Palestinian demonstrators did not open fire in the vast majority of demonstrations.

The soldiers' respond to these demonstrations by using excessive and disproportionate force, leading to many casualties, including children. Israel justifies its policy of response on the grounds that Palestinians located within the demonstration shoot at soldiers. However, this same policy was also employed in the past, and then too, it resulted in many deaths. Israel, which was well prepared for such events, failed to change its policy, and made no effort to develop non-lethal means to disperse demonstrations or to train soldiers to deal with demonstrations of this type. As a result, soldiers are forced to deal with these demonstrations primarily by using rubber-coated metal bullets and live fire, leading to a large number of casualties among Palestinians.⁴⁵

Live Fire

In the past, the Open-Fire Regulations stipulated that the security forces were required to disperse demonstrations using tear gas and rubber-coated metal bullets. Live fire in such circumstances was permitted only when soldiers were in clear and immediate life-threatening situations. The new regulations that went into effect at the beginning of the current intifada permit the soldiers, at least in some sectors and

45. See B'Tselem, *Illusions of Restraint*, pp. 5-16.

during certain periods, to use live fire at stone-throwers.⁴⁶

A fourteen-year-old resident of Khan Yunis described to B'Tselem what happened when he and his friends threw stones at the IDF post near Khan Yunis:

A few children and I got as close as we could to the army post, getting to about twenty meters from the fence that surrounds it. The soldiers fired tear gas, stun grenades, rubber bullets, and even live fire at us. We threw stones at the post, but they did not even reach the post because we did not manage to get close enough.⁴⁷

The extensive use of live fire in circumstances of this kind, in which no lives are in jeopardy, constitutes excessive and disproportionate use of force. The broader context in which these events take place is irrelevant to this determination.

In his testimony to B'Tselem, a soldier in the regular army told of a procedure that the IDF used in a certain sector of the West Bank. Soldiers would enter in jeeps to areas where friction was common. Their objective was to provoke Palestinians to throw stones and petrol bombs. When Palestinians approached, soldiers who had taken up positions at preplanned positions would shoot at them. The

stated goal of this procedure was to move the demonstrations further away. In fact, however, the soldier said,

It is a kind of sport, to “remove” as many petrol-bomb throwers as possible. It is an obsessive search. It’s called “strive to make contact.” What bothers me is, if the jeeps had not entered, there would not have been any disturbances of the peace.⁴⁸

In such circumstances, allowing live fire is even more problematic.

In addition, during the intifada, the IDF made wide use of lethal weapons as a “means to disperse demonstrations.” Early in the intifada, the new Open-Fire Regulations allowed the use of Roger rifles to disperse demonstrations involving stone throwing. The Roger fires twenty-two-inch-diameter bullets and was originally used for sport. The IDF fitted it with a scope and used it for sniper fire.

Although the Roger fires live ammunition, for a long time the IDF was unable to clearly define it. At the beginning of the intifada, it was defined as a non-lethal weapon and was permitted for use in dispersing demonstrations. *Kol Ha'Ir*, a local Jerusalem paper, published an internal document written by the head of security in

46. “Open-Fire Regulations against Stone Throwers Eased,” *Ha'aretz*, 15 October 2000; “IDF: Firing at Petrol-Bomb Throwers only with Brigade Commander’s Approval,” *Ha'aretz*, 31 October 2000.

47. The name of the soldier is on file at B'Tselem. The testimony was given to Nabil Mekherez on 27 November 2001.

48. The name of the soldier is on file at B'Tselem. The testimony was given to Lior Yavne and Ron Dudai on 18 February 2002.

the IDF operations branch that explicitly stated the Roger could not be considered non-lethal and should be used only when the circumstances justify live fire.⁴⁹ According to *Ha'aretz*, the Central Command stopped using the Roger several months into the intifada. The commanders had concluded that, in many cases, soldiers had used the Roger to shoot Palestinians without justification, when soldiers' lives were not in jeopardy. In the Southern Command, on the other hand, the army decided to continue its use, even though it led to many casualties. Only in December 2001 did the Judge Advocate General determine that the Roger was not a "non-lethal" weapon and, therefore, its use had to be circumscribed.⁵⁰

Rubber-Coated Metal Bullets

For many years, the IDF has been using rubber-coated metal bullets (hereafter: rubber bullets) for dispersal of demonstrations in the Occupied Territories. B'Tselem has repeatedly warned against the IDF's widespread use of these bullets and the erroneous treatment of them as non-lethal, despite their great destructive potential and the large number of casualties, including many children, they have caused.⁵¹

According to the previous IDF regulations, the minimum firing distance for rubber bullets is forty meters, they are to be

aimed "only at the legs of a person identified as one of the rioters or stone throwers," and shooting at a group of children is forbidden. Strict adherence to these orders is imperative to minimize the lethal potential of this weapon; therefore, it is vitally important to brief the soldiers about the regulations. Despite this, one IDF soldier told B'Tselem that the directives provided to the soldiers are far from complete. According to the soldier,

We were given no instructions regarding the distance from which it is permitted to fire rubber bullets. In effect, we are not supposed to shoot at the upper body of stone throwers. In the case of children, we shoot at the ground with the assumption that we will hit their legs. In the case of youths and adults, we can shoot directly at their legs.⁵²

Over the course of the intifada, B'Tselem documented many incidents in which soldiers fired in contravention of the regulations and with no real attempt to prevent killing or grave bodily harm.⁵³ A study undertaken by Physicians for Human Rights (U.S.A.) at the beginning of the intifada demonstrated that many Palestinians sustained head and eye injuries from rubber bullets. The organization determined that injuries of this kind indicate that the weapon was used in violation of the law.⁵⁴

49. "Illegal IDF Use of Sniper Rifle to Disperse Demonstrations," *Kol Ha'ir*, 23 November 2001

50. "Use of the Roger Rifle in the Territories to be Limited," *Ha'aretz*, 27 December 2001.

51. See B'Tselem, *Death Foretold: Firing of "Rubber Bullets" to Disperse Demonstrations in the Occupied Territories*, December 1998.

52. The name of the soldier is on file at B'Tselem. The testimony was given to Ronen Schnayderman and Lior Yavne on 24 December 2001.

53. See B'Tselem, *Illusions of Restraint*, pp. 11-12.

54. Physicians for Human Rights, *Evaluation of the Use of Force in Israel, Gaza and the West Bank: Medical and Forensic Investigation*, November 2000, p. 8.

The findings of the State Commission of Inquiry into the Events of October 2000 [when 12 Israeli Palestinians and one Palestinian from the Occupied Territories were killed by police fire during several days of unrest], headed by Justice Theodore Or, questioned the ability to implement the limitations intended to turn rubber bullets into a non-lethal means. Ammunitions experts on behalf of the Police and the IDF who appeared before the Or Commission stated that the rubber bullets cannot be aimed with sufficient precision to strike specific demonstrators. IDF experiments show that bullets shot from a range of forty to fifty meters miss the intended target by two to six meters. The director of the IDF's central ammunitions laboratory testified before the Commission that there was a "good chance" that fire aimed at a person standing in a group at a distance of forty meters would strike those standing near him, while the chance of the bullet hitting the targeted person was "moderate." According to this expert, "It is difficult to aim at a specific person, and certainly not at the head or legs." Even the chief firing officer of the Police testified to the Commission regarding experiments that demonstrated that the firing of rubber bullets is inaccurate because the bullets have a tendency to veer and strike lower than the intended target. The officer reported to the Commission that he had distributed written instructions

that rubber bullets should be fired only in flat field conditions.⁵⁵ Major General Mickey Levi, who invented the device for shooting rubber bullets, appeared before the Commission and confirmed that there is a risk in using rubber bullets, and that they should not be categorized as non-lethal.⁵⁶

Members of the Commission sharply criticized the use of rubber bullets, determined that they are dangerous, and expressed doubt regarding the ability to overcome the technical limitations of rubber bullets, such as the great degree of veering in flight and their tendency to lose altitude even when fired by a skilled sniper. High-ranking Police members predicted that the Commission would recommend prohibiting the use of these bullets, or impose severe limitations on their use, for example allowing only the senior command echelon to authorize their use.⁵⁷ In December 2001, it was reported that, as a result of the Or Commission hearings, Attorney General Elyakim Rubinstein would examine IDF and Border Police procedures regarding the use of rubber bullets.⁵⁸

In addition to the problems inherent in this ammunition, testimonies given to B'Tselem suggest that many soldiers alter rubber bullets to make them more lethal. They dismantle the pack containing three rubber bullets, which is meant to be shot by the soldiers, and fire single bullets rather

55. "Experts to the Or Commission: Rubber Bullets not Accurate," *Ha'aretz*, 18 October 2001.

56. "Commander of Jerusalem District: I Invented Rubber-Bullet Device and Tried it on My Own Body," *Ha'aretz*, 17 October 2001.

57. "Police Fear Prohibition Against Use of Rubber Bullets," *Ha'aretz*, 7 November 2001.

58. "Rubinstein to Examine Procedures for Use of Rubber Bullets," *Ha'aretz*, 20 December 2001.

than the three-pack. Thus, the bullet moves at greater velocity, increasing the likelihood of fatal injuries. One regular army soldier informed B'Tselem that, "I do not know a single soldier who does not separate the bullet's components, because it is impossible to hit the target if the bullet isn't dismantled first."⁵⁹ Another soldier told B'Tselem:

When our battalion commander taught us about rubber bullets, he said that they are fired bound together in threes, which is ineffective for the most part, because they are too heavy. But if we separate them, they can kill. He added, winking: "I'm not hinting at anything." The guys laughed and said to him: "You're not hinting – you are telling us." He did not correct them. One day, I got into the "Storm" jeep used as a Command vehicle by Company A in the battalion. I saw lots of separated rubber bullets in the vehicle. I asked the driver about that, and he said that everyone separates the bullets, even the Company commander (who travels with the driver). He added that he also thinks that the battalion commander separates the bullets. From discussions with the guys, it is clear to me that the rule is ignored and everyone fires rubber bullets that have been separated. I don't think that anyone doesn't do it. I always ask people about this, and they are shocked by the question. It is clear to them that the bullets are separate when fired.⁶⁰

Sample Cases

The following three testimonies describe the circumstances of the deaths of two children by live fire and of the injury of another child by rubber bullets during IDF actions to disperse demonstrations. In the first case, a child was shot to death during confrontations in Khan Yunis. The second testimony describes an event that occurred near Rachel's Tomb in Bethlehem. The third testimony describes the shooting of rubber bullets by soldiers in Abu Dis.

Death of Wail 'Ali Redwan, 15, resident of Khan Yunis

*Testimony of Sharif Muhammad Hamed Redwan, 19, resident of Khan Yunis*⁶¹

On Saturday [23 November], I went to the funeral of the five children from the al-Astal family. It took place at the cemetery east of the Neve Dekalim settlement. After the funeral ended, I heard gunfire coming from west of the cemetery. My friends Rami Mahmud al-Qara and Muhammad Abu Jam'a and I rushed to see what was happening. When we got there, I saw dozens of people throwing stones at the army post, which was located on the fence of the settlement.

Wail 'Ali Redwan was among the stone throwers. He was standing about one

59. The name of the soldier is on file at B'Tselem. The testimony was given to Ronen Schnayderman and Lior Yavne on 24 December 2001.

60. The name of the soldier is on file at B'Tselem. The testimony was given to Lior Yavne and Ron Dudai on 29 October 2000.

61. The testimony was given to Nabil Mekherez on 27 November 2001.

hundred meters from the fence and sixty meters from us. I told Rami and Muhammad that I was going to get Wail. I was afraid he would get killed because he was standing in an area where there was no cover. Suddenly, I heard explosions from stun grenades. They shook the area. Several soldiers who were outside the army post had thrown the grenades from twenty meters east of where Wail was standing. Alongside the soldiers were two tanks and several jeeps. I also saw two snipers hiding behind concrete blocks that were next to the post. The snipers fired single shots at the stone throwers.

I walked toward Wail. As I did, the soldiers opened heavy fire. I looked in the direction from which the firing was coming and then saw Wail, who was fifty meters west of me, bend over and check his leg (I later learned that he had been hit in the leg by a rubber bullet). Then he raised his head and stood straight up. As he did, a bullet hit him in the head. I think that a sniper hit him. Wail did not have a stone in his hand when he was shot. He had only bent over to check his leg.

Because the gunfire was so intense, we couldn't get to Wail quickly enough to help. We had to crawl along the sand. When we reached him, we picked him up and carried him several hundred meters. On the way, we lost our grip and he fell because we had to bend over as we walked; otherwise, we would have been hit by the bullets. Near the Nimsawi neighborhood,

we put Wail into an ambulance. It was around 1:30 P.M.

I think that during the demonstration, Wail saw soldiers throwing the stun grenades, but he didn't notice the snipers who had been hiding behind the concrete blocks. From where I was standing, I was able to see the snipers draw their weapons and fire occasionally.

Death of Kipah Khaled 'Abdallah, 13, resident of the Daheishe refugee camp

Testimony of a thirteen-year old child, an eighth-grade student, resident of the Daheishe refugee camp⁶²

I live with my father, mother, and four brothers and sisters in the Daheishe refugee camp. My uncle Khaled lives next door. His eldest son, Kipah, was my best friend. He was my age, and the two of us were in the eighth grade at the school for boys in the camp.

On Sunday [25 November], at about 10:50 A.M., we walked to school together, as usual. We were in the afternoon session, which began at 11:00. When we reached the schoolyard, we were told that a protest march was being organized for three grades (seventh, eighth, and ninth) against Israel's policy of murdering innocent people and children. The march was scheduled to begin at the square of the Church of the Nativity.

62. The name of the child is on file at B'Tselem. The testimony was given to Suha Zeyd on 26 November 2001.

Kipah and I got to the square together with the other students at about 12:10 P.M. We marched to the Red Cross headquarters and then to Rachel's Tomb, where we started throwing stones. After a while, we ran into a big area located behind a pottery shop, where there is a blacksmith's workshop. It was rocky, so it was good cover from the bullets of the Israeli soldiers who were firing at us. They also fired tear gas and rubber bullets. Because there was so much tear gas, we had trouble breathing. It was also hard to see what was happening.

At some point, our friend Adham Abu Salim was hit in the right leg by a rubber bullet. We carried him to the road and put him into a Ford car. Then we went back to the area behind the pottery shop. I was standing about fifteen meters from Kipah, who was next to our friend Rami. About 150 meters away was an Israeli bulldozer. It was coming at us from the direction of Rachel's Tomb. The bulldozer stopped at the gas station, around seventy meters from us. About six soldiers got out of the bulldozer and opened fire at us. One of them aimed his rifle and fired. The bullet hit Kipah in the chest and came out of his back. I saw him fall to the ground.

Rami yelled for us to come over. Several other boys and I went to him, and I saw Kipah lying on the ground drenched in blood. We picked him up and ran to a Red Crescent ambulance that was fifty

meters away. The paramedic got out of the ambulance and put Kipah inside. Rami went in the ambulance while the rest of us followed on foot to the hospital in Beit Jala.

Later on, Kipah was taken to al-Moqassed Hospital. He died there. The doctors said that Kipah died from a bullet that entered the left side of his chest and struck his heart.

I was greatly shaken by the announcement that he had died. He was my cousin and friend. I went to his funeral today and felt that we had abandoned him at the cemetery. I'll always love and remember him.

Wounding of Ibrahim Ghassan Ibrahim Par'on, resident of al-'Izarriya

*Testimony of 'Omar 'Abd al-Raza' 'Issa Par'on, 13, school pupil, resident of al-'Izarriya*⁶³

I am in the eighth grade. Since the beginning of summer vacation, I have been working at the Jerusa Internet Center cafeteria along with my two brothers, Mamun, who is 22, and 'Al'a, who is 18. I work from 10:00 A.M. to 8:00 P.M. I help them sell sandwiches and drinks to customers.

On Wednesday [1 August], I was working as usual. Around 4:30 P.M.,

63. The testimony was given to Suha Zeyd on 7 August 2001.

several young men came to the area near the Center, which is about 200 meters from the Abu Dis intersection. They began to place stones on the road and burn tires to provoke the Israeli soldiers. They did it because eight Palestinians had been killed in the Israeli shelling of Nablus the day before.

Around 5:00 P.M., three army jeeps came from the main road of al-'Izariya. One of them stopped near the Abu Dis intersection, about fifty meters from where the young men were. Two other jeeps stopped near the house of the 'Ariqat family, which was seventy meters from where the young men were. About ten soldiers got out of the jeeps. The Palestinians started throwing stones at them. The soldiers fired at them. From where I was standing, at the doorway of the Internet Center, about twenty meters from where the Palestinians were, I saw the soldiers firing and three of the young men being hit by bullets. Two were struck in the leg and the third in the back. They were taken to two ambulances and then to the hospital.

The confrontation continued. Around 6:00 P.M., the soldiers threw stun grenades at the Palestinians, and they fled. My friend Ibrahim ran into the Internet Center and stood alongside me at the entrance after the door, which could be operated electrically, closed. At that moment, somebody wanted to leave the Center. He opened the electric door. I saw an Israeli soldier standing twenty meters

from the door. He aimed his rifle at us. Before the door closed, a bullet hit Ibrahim in the temple. The soldier who fired the bullet was around thirty years old. He was wearing a green army uniform and a green beret. He was dark-skinned and of medium height.

I saw him fire the rifle and hit Ibrahim, who hit a table in the Center as he fell. His face was bloody. I was in shock and just stood where I was. I didn't know what to do. The soldiers continued to fire at the Palestinians, who had run behind the Center. The firing was aimed at the Center, so I lay on the floor. Ibrahim was lying next to me, and blood was flowing from his head. A guy named Abu Lui, from Abu Dis, who was a manager of the Center, carried Ibrahim out the door while the gunfire was still raging. Ibrahim was taken to al-Moqassed Hospital. We remained trapped on the second floor of the Center. The confrontation lasted until 10:00 P.M., at which time the soldiers left the area, enabling us to leave the Center and go home.

2. Shooting at Checkpoints

During the al-Aqsa intifada, the IDF placed an unprecedented number of checkpoints in the Occupied Territories. The hundreds of checkpoints compelled many drivers to turn around to avoid delay, and they tried to reach their destination by an alternate route or dirt roads made since the beginning of the intifada. In addition, thousands of

Palestinians have been forced to bypass the checkpoints on foot. IDF officials are well aware of this daily reality, and the soldiers meet it with tacit consent.

This situation calls for strict regulations on firing at vehicles or pedestrians attempting to bypass checkpoints. Gunfire should be prohibited unless a real and immediate threat to the soldiers' lives exists. However, there have been many incidents at and near checkpoints in which soldiers shot at pedestrians and cars and injured innocent Palestinians.

Furthermore, the IDF regularly changes the location of the checkpoints and establishes many temporary checkpoints. Therefore, it has a responsibility to properly mark them so they can be identified from afar. In at least one case, presented below, a checkpoint was apparently positioned in a way that made it impossible for drivers to discern it from a distance sufficient to enable them to stop. The driver was forced to brake suddenly, which may be the reason that the soldiers fired at him.

Even before the al-Aqsa intifada, the checkpoints were a focal point for unjustified shooting by soldiers. During the first intifada, B'Tselem documented many cases in which soldiers positioned at checkpoints violated the Open-Fire Regulations and shot at Palestinians who posed no threat

to life. In subsequent years, many such incidents also occurred.⁶⁴ One noteworthy incident occurred on 10 March 1998, when soldiers at the Tarqumiya checkpoint opened fire on a van transporting innocent Palestinian laborers, killing three.

The frequency of these cases and the great potential for harm to the innocent should have made the IDF aware of the problem and led to steps that would ensure adherence to the Open-Fire Regulations and that such incidents do not recur. Despite this, the findings of an IDF internal investigation indicted that such measures were not taken.

An internal report written by the IDF's control and monitoring branch approximately one year after the outbreak of the al-Aqsa intifada sharply criticized various aspects of soldier's performance at checkpoints. The report found, *inter alia*, that the Open-Fire Regulations relating to checkpoints were unclear and could not be implemented. For example, regarding the Neve Daniel checkpoint in the West Bank, the report stated that the Open-Fire Regulations were not sufficiently clear to the soldiers. Regarding a checkpoint in the Gaza Strip, "there is no command, no reporting procedure, and no Open-Fire Regulations." The IDF Spokesperson confirmed the findings of the report and stated that they indicate the "need to more

64. See B'Tselem, *Firing at Vehicles by the Security Forces in the Occupied Territories*, February 1994; B'Tselem, *Builders of Zion: Human Rights Violations of Palestinians from the Occupied Territories Working in Israel and the Settlements*, September 1999, pp. 21-26.

professionally assimilate the regulations relating to treatment of the local population.”⁶⁵ Despite this, there has been no improvement in the situation.

Sample Cases

The following testimonies describe shootings at Palestinian civilians at checkpoints. In the first case, soldiers shot at a vehicle from a short distance. In the second case, soldiers opened fire at Palestinians who bypassed a checkpoint on foot, and in the third case, soldiers fired at a taxi driver who crossed a checkpoint on foot after his passengers had gotten out of the cab. The driver put down on the ground a plastic bag that one of the passengers had forgotten. After he walked a few steps, soldiers shot him. The soldiers did not give warning or fire warning shots before shooting at the Palestinians in any of these cases.

Wounding of Majid Amjad Jilad, resident of Tulkarm

*Testimony of Jamal Bassem 'Ali Shabrur, 48, married with five children, tree merchant, resident of Tulkarm*⁶⁶

On Friday [3 August], at 4:00 P.M., I drove to Bal'a. In the car with me were my wife, two of my children, and my grandson Majid. It was quiet in Tulkarm, and nothing unusual had taken place in the town that day. After driving for a few

minutes along the main road leading from Tulkarm to Nablus, when we were about three kilometers from Tulkarm, I came across a dirt roadblock near the Nur Shams refugee camp. The dirt piles blocked most of the road, leaving a space of only two meters on the shoulder of the road on which cars could cross. There were no soldiers around, so we were able to cross it without any problem.

At 4:15, we reached Bal'a. We went to visit my sister and my wife's brother. My small children and Majid enjoyed playing with my relatives. At 8:15, we got back into the car and started back to Tulkarm. I was driving, my wife was sitting in the seat next to me, and the three children were in the back seat. Majid was standing behind my seat, and when I told him to sit down, he said that he wanted to see the road. We reached the area of the dirt piles near the Nur Shams refugee camp. There is a big bend in the road about thirty meters before the roadblock, so it is impossible to see the roadblock until just before you get to it.

I was going about 70 km/h, and when I got around the bend, I saw an armored vehicle near the roadblock, and five soldiers were standing alongside it on the road. Even though it was getting dark, the soldiers did not set up any lights so they could be seen. When I noticed them, I was around thirty meters away. I slammed on my brakes. The car stopped

65. "IDF Roadblocks do not Prevent Attacks and Only Create Friction with Palestinians," *Kol Ha'Ir*, 2 November 2001.

66. The testimony was given to Raslan Mahagna on 5 August 2001.

after about five meters. When it stopped, I heard shots being fired at us. Four bullets hit the left side of the front windshield, and one hit the car's left bumper. One of the bullets grazed my shoulder, hit my grandson's elbow, and pierced his abdomen. At first, I didn't realize that he had been wounded; I only heard the children crying and my wife screaming. I turned the car around and drove toward 'Anabta. The soldiers did not fire any more and did not chase us. A car that was two hundred meters behind me also made a quick U-turn and fled toward 'Anabta.

While I turned around to go to 'Anabta, I saw Majid leaning on the seat, blood flowing from his hand and abdomen. My wife told me that he had been wounded and called out his name. He told her that he had pains in his abdomen. My two sons were crying and screaming all the time, even though they had not been hit. I drove very fast, and we got to the 'Anabta municipal building, where there is a medical clinic. I carried Majid in my arms to the first floor, where the clinic is located. The two medics who were there began to treat him and called the Red Crescent in Tulkarm to get an ambulance. Then they put him into a taxi and took him toward Tulkarm, meeting the ambulance at the dirt roadblock near a-Shams, where the soldiers had fired at my car. I drove in my car to Tulkarm, but this time I went via Bal'a and Dir al-Gasun because I was afraid to return to

the dirt roadblock. On the way, I called my eldest son, 'Amar, and told him what had happened and that Majid had been taken to the hospital in Tulkarm. 'Amar reached the hospital before I did. When I arrived, at 9:00, Majid was already in surgery.

Death of Radwan Ibrahim Yusef Shtiyeh, 37, resident of Sallem

Testimony of Tab'a al-'Aziz Taher Muslam, 52, married with seven children, construction worker, resident of Sallem⁶⁷

On Monday [2 July], about 4:00 P.M., I was sitting on the patio of my house, which is in the southern part of Sallem. I saw Radwan Shtiyeh driving his taxi along the dirt road joining the village and the bypass road leading to Alon Moreh. There were four passengers in the taxi. He was taking them to the junction of the two roads, where mounds of dirt block the road. When he got to the junction, he let the passengers out so they could cross the roadblock on foot and continue their trip to Beit Furiq.

The passengers got out and started to walk. Radwan was standing near his car, about fifty meters from the other mounds of dirt, which are on the Sallem side. He waited to see if Israeli soldiers would come and order them to turn around and go back to where they came from. After a

67. The testimony was given to Hashem Abu Hassan on 8 July 2001.

while, he took out a sack and began to walk toward the others, who were a ways in front of him. After he got their attention, they went back to take the sack. He put the sack on the side of the bypass road and returned to his taxi. After he walked about five meters, Israeli soldiers, who were on a small hill, ambushed him. They were positioned between two olive trees about 150 meters from the road. The shooting lasted about a minute. There was no contact between Radwan and the soldiers before the shooting. The soldiers had not called out to him or ordered him to stop or anything. After the shooting, they did not even go over to Radwan, who was lying there in his blood. Instead, an army vehicle from the checkpoint on the Nablus-Beit Furiq road arrived at the scene.

When I saw that Radwan had been shot, I immediately went over to him. When I got there, the soldiers did not let me or several residents [who had arrived] take care of him. When we refused to obey their orders, they aimed their weapons at us. There were four soldiers at the scene. Two of them got out of the vehicle and the other two remained inside. They eventually let us put him inside his car, and he was taken to the hospital in Nablus. Later, several other army vehicles arrived at the site and stayed there.

Death of Mo'in Subhi Sa'id Abu Lawi, 38, resident of a-Diq

Testimony of 'Issam Yusef Mahmud 'Ali Ahmad, 41, married with six children, official in the Palestinian Authority's Salfit office of the Ministry of Religious Affairs, resident of a-Diq⁶⁸

My job at the Ministry of Religious Affairs is around twenty-five kilometers from my home. When the al-Aqsa intifada broke out, the Israelis blocked the main road to Salfit, so I have to drive via a dirt road to get to work. In the past, the trip along the main road took twenty minutes, but now it takes an hour and a half. Also, since the intifada began, I only go to Nablus, which I need to do for my work, in urgent cases because it takes three hours to drive from Salfit to Nablus, provided it is possible to go via Burin. If that road is closed, we have to go via the Jordan Valley road (Jaftlik Road), and the trip can take more than four hours.

On Sunday [19 August], I wanted to take two of my children to Nablus for eye examinations. We left our house at 7:30 A.M. I drove to my office in Salfit to get permission to take the day off. We reached Salfit at 8:15, and, after taking care of the matter at the office, we went to the taxi stand to get a taxi to Nablus. I did not

68. The testimony was given to Raslan Mahagna on 21 August 2001.

want to go in my car because the road is in bad condition and is often blocked, so people wanting to go to Nablus often have to cross the checkpoints on foot and then get into other cars.

We got into the taxi and sat in the back seat. Three passengers were sitting in the middle seat. One of them was Mo'in Abu Lawi. I had never met him before. He told me that he, too, was born in a-Diq, but moved to Salfit after he got married.

When we got to the Hawareh checkpoint, we had to wait for an hour and a half until the soldiers checked our identity cards and searched the taxi thoroughly. They told us that the road was blocked and that the area had been declared a closed military area, so we would have to turn around. The driver turned the taxi around and went onto a dirt road that bypasses the Hawareh checkpoint and leads to Burin. At 10:40, we reached the dirt roadblock near Burin. At that point, we got out because the taxi could not continue; it was impossible for vehicles to pass.

Whoever wants to continue to Nablus walks to a dirt roadblock about three kilometers down the road, where taxis wait to take passengers to Nablus. An army encampment lies three hundred meters to the left of the road. The encampment has several tents, a tower, and armored personnel carriers. The travelers have to climb a hill on the right side of the road,

while trying to stay out of the soldiers' view so as not to get shot. People have been shot going over the hill.

My children, Mo'in, the other passengers in the taxi, and I began to climb the hill. I walked alongside Mo'in, and we talked on the way. He told me that he was going to Nablus to buy merchandise for his shop and to replace some defective merchandise. He was carrying the defective goods in two pink sacks. After walking for about thirty minutes, we reached the top of the hill and a path leading directly to the second dirt roadblock. Mo'in told me that he was in a hurry and was going to walk faster than the rest of us. I told him to be careful and make sure that the soldiers didn't see him.

He rushed off. After a few meters, he jumped over a stone wall that was about a meter and a half high. I looked behind us at a donkey that was carrying items belonging to an elderly woman who had trouble walking. Suddenly, I heard a loud volley of bullets. I looked in front and then my daughter, who was shaken, said that the man who was walking in front of us was lying on the ground and bleeding badly. Mo'in was lying around three meters from me, and I saw blood gushing from his neck. He did not move. I think he died immediately. I wanted to go to him, but three soldiers appeared. Their faces were painted and they had on uniforms and helmets. They were six meters away from us. They aimed their

weapons at me and threatened, in Arabic, that if I went over to him, they would shoot me. I still wanted to go to Mo'in to see how he was. The soldiers threw a stun grenade at us. We ran toward the nearby village, 'Iraq-Burin. Before fleeing, I saw one of the soldiers kick Mo'in, who was lying on the ground, all over his body and yell at him, "Get up, dog."

When we got to the village, we told the residents what had happened. They called the Red Crescent for an ambulance. A journalist who was there to cover a shooting that had occurred earlier that day ran to the scene of the incident. I continued to the dirt roadblock and then [by taxi] to Nablus. When I reached Nablus, around 1:00 P.M., I learned that Mo'in had died from the shooting, and that residents from the village had taken his body to the dirt roadblock. From there, an ambulance took him to the hospital in Nablus.

Somebody told me that, two hours before Mo'in was killed, soldiers had shot two people in the same area, striking one in the ear and the other in the midsection.

I should mention that Mo'in did not make any suspicious movement, and the soldiers had no reason to shoot him. All he did was walk innocently with two sacks of defective goods that he wanted to exchange in Nablus.

3. "The IDF Return Fire on the Source of the Shooting"

*"You hear shooting... nothing effective [not close]. You jump, start shooting, there is nowhere to shoot. You shoot at suspicious points, which are more or less a bush here, a bush there. But soldiers sometimes 'act responsibly,' and shoot at suspicious solar water heaters, suspicious television antennas, suspicious satellite dishes... but they pick up al-Jazeera broadcasts and get ideas... I dunno – so soldiers shoot... It's an incident that they report later on Galei Tzahal [IDF Radio]: 'Shots were fired at the Morag hothouses. Our forces returned fire on the source of the shooting.' I don't know about sources of shooting, and I was there."*⁶⁹

During the intifada, many Palestinians were injured by soldiers who purportedly fired in "response to Palestinian sources of shooting." The IDF justifies injuries under such circumstances, maintaining that they were caused during exchanges of fire between the security forces and armed Palestinians, often during IDF actions in Area A. IDF officials reject claims that firing in these circumstances was initiated by the IDF or that IDF return fire was indiscriminate. The IDF Spokesperson repeatedly emphasizes that the soldiers return fire only on the source of the shooting. Brigadier General Yair Naveh, until recently commander of IDF forces

69. From a reserve soldier's testimony to B'Tselem. The name of the soldier is on file at B'Tselem. His testimony was given to Eyal Raz and Ron Dudai on 28 February 2002.

in the Gaza Strip, adamantly rejects claims of indiscriminate use of force and “a light trigger finger,” claiming “never, but never, we always were reacting, we always only shot back.”⁷⁰

No one argues that armed Palestinians often fire on IDF soldiers. However, the claim that in all cases soldiers merely respond to the sources of shooting is a far from accurate description of the reality. First, there are cases in which soldiers initiate fire, and are not merely responding. Second, IDF return fire is not aimed exclusively at Palestinian sources of shooting.

Initiated Shooting

Testimonies taken by B’Tselem from both soldiers and Palestinians indicate that contrary to the claims of Brigadier General Naveh and other sources, there are cases in which IDF soldiers initiate the shooting, without any shots having been fired from the Palestinian side. A conscript soldier who served in the Gaza Strip stated in his testimony to B’Tselem that:

While I was at the post, there were a number of cases of shooting. I thought that it was an exchange of fire, but afterwards I understood from talking with other soldiers that it was just soldiers shooting out of boredom. Soldiers at two different positions

would coordinate opening fire, and afterwards they would say that they were under fire. It is important for me to state that I am not talking about single shots, but massive shooting. In the beginning, I was sure that they had really fired at our post, but afterwards I understood, as stated, that it was shooting out of boredom. From conversations with my friends who were at posts in other areas, it became clear to me that it occurs in those places as well. My friends who were at the post in the Strip told me that they emptied entire crates of ammunition out of boredom.⁷¹

Ariel Shatil, a reserve soldier, told *Yediot Aharonot* that, “They say, ‘The Palestinians are shooting at us and we are responding.’ It’s not true. There was one officer there who said to the soldiers guarding at the lookout: ‘Too quiet for you? You’re not sure? Fire a couple of rounds.’ Every night they would shoot. We start and they shoot back.”⁷²

Palestinian testimony also indicates that there are cases in which soldiers open fire even when there was no prior shooting by Palestinians. On 1 February 2002, B’Tselem fieldworker Nabil Mekherez was shot in the arm by IDF-initiated gunfire while at home in Khan Yunis. Hosni al-Jarami, a resident of the Balata refugee camp, described shooting

70. “Brigadier General Yair Naveh: I Wouldn’t be Surprised if They Told me that a Car Bomb Exploded,” *Ma’ariv*, 3 November 2000.

71. The name of the soldier is on file at B’Tselem. His testimony was given to Lior Yavne and Ronen Schnayderman on 26 December 2001.

72. “Officers’ Letter 2002,” *Yediot Aharonot*, 25 January 2001.

originating from the IDF post located at Jabel a-Tor approximately 500 meters from the camp, on 19 August 2001. The shooting killed his neighbor, Saleh Zeidan. Al-Jarami said:

The soldiers at the military post at Jabel a-Tor tend to shoot blindly at the Balata refugee camp, sometimes for even no reason. They shoot when someone shoots at them, but they shoot at the camp even when no one is shooting at them. This shooting takes place often, and usually it is innocent civilians who are killed and injured, and not those who are shooting.⁷³

‘Adel ‘Atiya Yusef al-Ar’a, 48, resident of Khan Yunis, told B’Tselem that on 7 May 2001, IDF soldiers shot a number of tank shells at his house, which was located approximately 450 meters from the Ganei Tal settlement, severely damaging his house. In addition, the shooting terrified the pupils in the nearby elementary school and they ran away. Some of them fainted and were injured as they fled, and ambulances evacuated them from the site. According to al-Ar’a:

I would like to emphasize that this shelling was not preceded by any shooting on the Palestinian side. Sometimes, armed people in civilian dress do indeed shoot at the Israeli post from the lot located about three hundred

meters to the north, or to the south at a distance of about three hundred meters from the main road. That is enough for the soldiers to respond with gunfire and shelling. Sometimes, the soldiers think that anything that moves constitutes a shooting target, even if it is a dog or other animal.⁷⁴

Return Fire not Aimed at the Source of the Shooting

Even in cases when Palestinians open fire at IDF soldiers, the soldiers must respond in a manner that prevents as much as possible harm to civilians not involved in the fighting. However, testimony given to B’Tselem reveals that in at least some cases, soldiers fire indiscriminately. This indiscriminate shooting may be a result of recklessness. But some of these shooting incidents result from implementation of directives that explicitly permit return fire not aimed exclusively at the source of the shooting.

An example is the order to return fire on places from which Palestinians have fired in the past, even if it has not been determined with certainty that Palestinians had indeed fired from these places just prior to the IDF fire. *Ha’aretz* reported that Chief of Staff Shaul Mofaz ordered that, in response to Palestinian fire against soldiers, soldiers in Gaza return fire on predetermined targets.⁷⁵ A soldier in the regular army related in

73. The testimony was given to Hashem Abu Hassan on 25 August 2001.

74. The testimony was given to Nabil Mekehrez on 7 May 2001.

75. The IDF Spokesperson chose not to deny this report, and found it sufficient to respond that he “does not relate to what is mentioned in closed IDF forums.” See “Mofaz: Excessive Force Used in Shooting that Led to Death of Infant Iman Haju,” *Ha’aretz*, 10 May 2001.

a testimony he gave to B'Tselem that the orders call for return fire when Palestinians shoot at soldiers, but “if the source of fire is unidentified, return fire should be aimed at specific locations known to be abandoned or at places from which shots are fired on a regular basis.”⁷⁶ A reserve officer who served in the West Bank made similar comments in his testimony to B'Tselem:

During a briefing at the beginning of duty, the deputy brigade commander told us (among other things) from which places the Palestinians usually shoot at us. He said that if they fire at us, it likely comes from those places. Although he did not say so explicitly, it is very probably that many soldiers understood that in every case, return fire should be aimed at the sites marked by the deputy commander.⁷⁷

An air force journal that is an official IDF publication painted a similar picture. An article in the journal stated that following exchanges of fire at the northern entrance to al-Bireh (AYOSH Junction), air force personnel prepared for their mission and reviewed the “target bank,” which was composed of pre-determined targets. The preparation was described as follows:

Lieutenant Colonel H. informs the

Cobra Flight Command on alert that there is a good chance that they will be called out on a mission shortly [...]. Meanwhile, the intelligence people start supplying targets. The targets are buildings from which our forces have been fired on in the past.⁷⁸

Another problematic directive is the permission given to soldiers to open fire even when they are unable to identify the source of fire. The IDF Spokesperson confirmed a report that, “to deter further firing,” IDF regulations allow “opening fire immediately in response to unidentified fire.”⁷⁹

A soldier in the regular army who served in the Gaza Strip told B'Tselem that, “In theory, the orders given to us state that it is forbidden to shoot if the source of the shooting is not identified.” In practice, however, “If they shoot at you from one building, and you shoot at the entire neighborhood [...] the soldiers will probably not tell the commanders. But I find it hard to believe that the senior commanders are not aware of this phenomenon.”⁸⁰ He added:

I know from discussions with other soldiers that when fired on, they return with heavy, disproportionate fire, even if they do not exactly identify the source of the shooting. A

76. The name of the soldier is on file at B'Tselem. The testimony was given to Lior Yavne and Ron Dudai on 18 February 2002.

77. The name of the soldier is on file at B'Tselem. The testimony was given to Yehezkel Lein on 20 May 2001. On this topic, see, also, B'Tselem, *Excessive Force*, pp. 15-17.

78. “Battalion Commander: Commander, Over and Out,” *Air Force Journal*, December 2000.

79. “IDF: Change in Firing Regulations Allows Self-Defense,” *Ha'aretz*, 8 August 2001.

80. The testimony was given to Lior Yavne and Ronen Schnayderman on 26 December 2001.

few days ago, I spoke with a friend of mine who was fired at. He told me that they returned massive fire in the direction of the shooting without identifying it precisely. When I told him that he easily could have hit bystanders, he said that he didn't care. I think this occurs very frequently.

Ariel Shatil, a reserve soldier, told *Yediot Aharonot* that, "I was supposed to protect an experimental post [in the Gaza Strip]. In response to mortar fire at the post, we have to fire a 0.5 inch machine gun in the direction of Beit Hanun. The shots penetrate the thin walls and the windows, and it kills people, and you do not know whom you are killing."⁸¹ A soldier who did military duty in the West Bank provided information on another phenomenon when soldiers return fire. He described to B'Tselem the procedure of "punitive firing," which was common practice in a certain sector. According to this procedure, every time a single shot was fired at a nearby settlement, the soldiers would randomly mark a number of houses and fire at them.⁸²

Because exchanges of fire often take place within crowded towns and villages, there is great likelihood that civilians who are not involved in the fighting will be injured. Palestinians who fire at IDF soldiers from within a civilian population flagrantly violate international law, but

their action does not absolve the IDF of its obligation to comply with the law. Regulations that allow firing that is not aimed exclusively at the sources of fire significantly increase the risk that innocent persons will be injured and completely ignore rules of international law that Israel undertook to uphold.

Sample Cases

In the past, B'Tselem has documented a number of cases in which innocent Palestinians were hit by IDF fire while in their homes or on the street, even though no Palestinians were firing from their immediate surrounding area.⁸³ As noted, B'Tselem has no specific information regarding the orders that are given to soldiers in every location. It is impossible, therefore, to determine whether the injury to these civilians resulted from implementation of problematic orders, such as those described above, or from the soldiers' failure to comply with reasonable orders.

This notwithstanding, the frequency of cases in which innocent Palestinians were injured by IDF firing when no Palestinians were shooting from their immediate surrounding area indicates that soldiers have been firing indiscriminately. Two testimonies that describe cases of this kind are presented below.

81. "Officers' Letter 2002," *Yediot Aharonot*, 25 January 2001.

82. The testimony was given to Lior Yavne and Ronen Schnayderman on 24 December 2001.

83. See B'Tselem, *Excessive Force*.

Death of Yusef Hussein a-Sheik 'Abd Muqbal Shalbi, 60, resident of the Nur a-Shams refugee camp

*Testimony of Kamal Yusef Hussein Shalbi, 33, son of the deceased, married with two children, resident of the Nur a-Shams refugee camp*⁸⁴

I live in my late father's house with my stepmother and my siblings. All together, we are fifteen persons living in four rooms. My father worked for Herut, a plumbing company located in Rishon Letzion.

On 13 October 2001, Israeli tanks entered Tulkarm and its environs, including the area around Nur a-Shams. There was lots of gunfire between the Israelis and Palestinians, who were firing at the Israeli tanks in the Iktaba neighborhood. The neighborhood lies on a hill facing the camp, and from there the soldiers could observe all the houses in the camp. The armed Palestinians hid in the camp's narrow alleyways, from which they fired at the Israeli soldiers. The Israelis responded with massive gunfire that injured several residents and damaged a number of houses in the camp.

On Monday [22 October], at 4:45 P.M., my father went to the mosque for evening prayers. Then he came home and went into his room. My wife, my two children, and I were in our room, and my five sisters (aged 11-18) were doing their homework in another room. Exchanges of gunfire

continued intermittently. Through the rear windows of the house, we saw several armed young men from the camp running from alley to alley. To protect us from the shooting, we closed the windows and doors facing the Iktaba hill.

At about 6:30 P.M., I went to my father's room and stayed with him for fifteen minutes. Then I left because he wanted to say his night prayers. I went to my sisters' room and saw them preparing their lessons. After a few moments, I heard an intense burst of gunfire and felt our house shaking from top to bottom. Then I heard my sisters crying and screaming. I ran to their room. When I entered, I saw they were drenched in blood.

My father apparently stopped in the middle of his prayers and left his room in panic. He saw my sisters and went to the entrance of the house to call our neighbor, 'Issam Fahmawi, who had taken a first-aid course and used to treat the wounded in the camp in cases like this. My father turned on the light outside, opened the front door and called to 'Issam. At that moment, an intense burst of fire came from the Iktaba neighborhood. Many bullets hit my father and he fell to the ground, with his left hand grasping the railing. The intense gunfire continued. It was my father's body that prevented bullets from entering the house.

84. The testimony was given to Raslan Mahagna on 5 November 2001.

I left my bleeding sisters on the floor and went out the back door to get to my father. The firing was still going on when I reached the steps, so I couldn't go up the steps to get to my father. Two young men from the camp crawled up the steps and dragged my father by his feet down to the yard. They checked his pulse and did not feel a heart beat. He was already dead. Then they quickly carried him to the camp and he was then taken to the hospital, but he was, as I said, already dead.

Several young men and I went to my sisters. We took them outside and carried them some three hundred meters into the camp. We put them in cars and took them to the emergency room at the government hospital in Tulkarm. They were treated for several hours and then released. They had only suffered light bullet wounds to the upper body. My sister Hanan was injured more seriously. A fragment entered her neck and the doctors have not yet removed it because they fear that removal would aggravate the injury.

Neither my father nor I ever took part in politics. We were never arrested or interrogated, not in this intifada nor in the previous one. My father was devoted to his work, and the owner of the company where he worked called us to offer his condolences.

Death of Wafa Muhammad As'ad Nasif, 28, resident of Artah

*Testimony of Luay 'Azam Sadqi Kamal, 15, student, resident of Artah*⁸⁵

I live with my father and three younger siblings in Artah, which is just south of Tulkarm. Artah is in Area A, which is under complete Palestinian control. Our house is adjacent to the high school for boys and has two stories. We live on the second floor. My mother, who was thirty-four when she died, was a housewife. My father is the sole supporter of our family.

The hardship we have suffered since the beginning of the intifada grew much worse when Israeli troops entered Tulkarm about three weeks ago. They entered with tanks and also took up positions in our village. The day after they entered, the soldiers took over a four-story building in the village that belonged to 'Abd al-Qarim Abu Rabi'a. They removed the occupants and used it as their headquarters. The building is about five hundred meters from our house and looks out over the whole village and even some parts of Tulkarm.

Last week, they took over another building, which was near the Rabi'a building. There were usually five tanks and a few armored personnel carriers parked near these two buildings.

85. The testimony was given to Raslan Mahagna on 14 November 2001.

There have been daily exchanges of fire ever since the Israeli incursion began, with the Palestinians firing from a distance of about five hundred meters from our house. The tanks and armored personnel carriers also penetrated into our area. They would pass our house and continue to the house of the governor of Ramallah, which is south of our village. Some of the houses were severely damaged by the Israeli gunfire. Our house was not hit by either bullets or tank shelling.

On Tuesday [13 November], I woke up, as usual, at 7:00 A.M. and went to school with my three siblings. It was quiet. My father went to work and my mother remained at home alone. At 1:30 P.M., we returned home from school, had lunch, and started to do our homework. My mother was busy with her housework. My father returned at 4:30, had dinner, and went to sleep.

Around 6:00 P.M., my siblings and I were sitting on the patio with our mother. The patio faces the buildings that the Israeli army had occupied. Suddenly, we heard the sound of bullets fired at the Israeli positions. Then the Israelis responded with massive tank shelling. When the shooting started, we went inside the house. Then the tanks began to move south through the village, and came close to our house. The shooting quieted down after a half an hour or so, but the tanks continued to move through the village.

The shooting stopped at about 6:45. My mother went to the patio to check if the walls had been hit. My three siblings

went with her. When she was about two meters from the patio door, which had remained open when we went back into the house, we heard more gunfire. I heard my mother scream and I saw her fall to the floor. I went to her and saw blood under her right shoulder. None of my siblings were injured. We screamed and called for help. My father, who was in the shower, came and turned my mother onto her back. I saw that she was bleeding in two places.

My mother lost consciousness. My uncle, who lives next door, came and called the Red Crescent in Tulkarm. The ambulance arrived about a half an hour later, even though it usually takes only three minutes. The Red Crescent stayed in constant contact with my uncle. They said that they were trying to get to the house, but the tanks and soldiers had closed off the area. When it finally arrived, my mother was unconscious but had a pulse. We knew that because one of our neighbors who had come to the house was a nurse [and had checked her pulse].

It was about 7:15 when they took my mother to the hospital. The doctors said that she was dead on arrival. They told us a bullet had penetrated the right side of her chest and struck her lung. She died of internal bleeding.

The exchange of fire during which my mother was killed lasted for about five minutes. When we looked at the walls of the house, we did not see any damage from bullets or shell fragments.

Flechette Shells: An Illegal Weapon

Since the beginning of the al-Aqsa intifada, the IDF has used flechettes against Palestinians in the Gaza Strip. Flechettes are an anti-personnel weapon that is generally fired from tanks. The shell explodes in the air and releases thousands of metal darts 3.75 mm in length, which disperse in a conical arch three hundred meters long and about ninety meters wide. The IDF uses flechette shells that are 105 mm in diameter and are fired from tanks. The primary military advantage of the flechette over other munitions is its ability to penetrate dense vegetation very rapidly and to strike a relatively large number of enemy soldiers.

The IDF used flechettes in Lebanon against the Hizbullah and the other militias fighting against Israel. The flechettes killed and wounded dozens of Lebanese civilians, who were not involved in the hostilities, including children.⁸⁶ In this intifada, at least eight civilians have been killed as a result of the use of flechettes.

Official Israeli sources justify the use of flechettes. The IDF Spokesperson claims that the use of this weapon is permitted under international law, and that “the use of various types of weapons is done according to the judgment of commanders in the field, and based on the threat posed to the security forces.”⁸⁷

These claims cannot justify the IDF’s use of flechettes in the Gaza Strip. Flechettes are not expressly forbidden in international humanitarian law under all circumstances, but other rules of humanitarian law render their use in the Gaza Strip illegal. One of the most fundamental principles is the obligation to distinguish between those involved in the hostilities and those who are not involved in the fighting, and to avoid to the extent possible injury to those who are not involved in combat.⁸⁸ This principle leads to the prohibition on the use of imprecise weapons that are likely to cause civilian injuries.⁸⁹

86. See B’Tselem, *Israeli Violations of Human Rights of Lebanese Civilians*, January 2000, pp. 67-68.

87. Amos Harel, “Serious Defects and Non-Implementation of Orders in an Incident in which the IDF Killed Three Bedouin Women,” *Ha’aretz*, 13 June 2001.

88. See articles 48-58 of the Additional Protocol to the Geneva Convention, of 1977.

89. *Ibid.*, article 51(4).

The long killing range of the shell makes its use in populated areas, such as the Gaza Strip, a type of indiscriminate firing that creates a particularly high danger of innocent civilian casualties. In addition, during combat in a built-up area, the likelihood of errors in identifying the source of light-weapons fire is particularly great. Because of the duty to limit as much as possible the damage to innocent civilians, added caution is required when selecting the military response, including the type of ammunition.

The great danger that flechettes posed to civilians not involved in the hostilities led the OC Central Command to forbid their use in the West Bank.⁹⁰ Given that most of the incidents of gunfire in the Gaza Strip occur in or near populated areas, the use of flechette shells should also be prohibited in Gaza, particularly given the variety and sophistication of the weapons available to the IDF. The failure of the OC Southern Command to prohibit this weapon is particularly troubling.

90. Amos Harel, *supra*, footnote 87.

4. “Danger Zones”

During the intifada, new regulations were issued that permit soldiers to open fire, automatically, at any Palestinian who approaches areas in the Gaza Strip referred to as “danger zones.” B’Tselem does not know which areas come within these regulations or the period of their application. According to media reports and soldiers’ testimonies, typical places are IDF posts, settlements, roads used by Israelis, and the fence separating the Gaza Strip from Israeli territory.⁹¹

In his testimony to B’Tselem, a reserve soldier who served in the Gaza Strip said that,

There were special open-fire regulations regarding particular roads. According to these regulations, at night, the order is to shoot to kill, with no warning, any figure approaching the road. The order was given even though many Palestinian houses and fields where children played were located near the road.⁹²

Another soldier related in his testimony to B’Tselem that according to the Open-Fire Regulations:

If a person in civilian dress carrying a weapon approaches the fence separating Area A from Area C, the

order is to shoot him the moment he approaches the fence. I am not sure, but if I am not mistaken, the order is to shoot to kill. If an unarmed person in civilian dress, but who is carrying a load that may be an explosive, is walking near the fence – the order is to shoot him. If an adult is walking near the fence – the order is to shoot him. If he is a uniformed Palestinian policeman – of course the order is not to shoot, unless he shoots first.

Regarding unarmed civilians, women, and children – the order is not to shoot at them immediately if they approach the fence, unless they are carrying something that appears to be an explosive. Then the order is to shoot them. In any case, it is better to call the post commander before shooting.

At night, the order is to shoot at any suspicious figure. In practice, on dark nights it is not possible to identify the figure as suspicious or not; therefore, the order is to shoot every figure walking around near the fence at night. On clear nights, an attempt is made to identify who it is, and whether he is carrying a weapon or a package.⁹³

Avi Hayyim, a battalion commander in the reserves, who served in the

91. “Gaps in the Fence Separating the Gaza Strip and Israeli Territory,” *Ha’aretz*, 24 January 2001; “Shooting at Netzarim Junction Pedestrians Permitted,” *Ha’aretz*, 22 February 2001.

92. The name of the soldier is on file at B’Tselem. The testimony was given to Ronen Schnayderman on 19 July 2001.

93. The name of the soldier is on file at B’Tselem. The testimony was given taken to Lior Yavne on 16 April 2001.

Gaza Strip, described the regulations regarding danger zones to a reporter from *Ha'aretz*.⁹⁴ According to Hayyim, there are unequivocal orders to shoot to kill anyone who approaches the fence, even if the person is clearly unarmed:

Anyone who approaches the fence must be killed because the suspicion is that he is a terrorist on his way to lay an explosive charge. Experience shows us that they go on their missions without weapons exactly because of the fact that the IDF do not rush to strike unarmed persons.

A particularly grave order is the one that the battalion commander mentioned – soldiers must shoot to kill even if they are able to shoot to wound the individual. Hayyim said that he rebuked a non-officer commander [NOC] who had ordered shooting at the legs of a Palestinian who was fifteen meters from the fence, on the Palestinian side. The NOC, who identified an unarmed person approach the fence, thought that he was a “hapless worker trying to sneak into Israel to go to work,” so he only wounded him. The commander determined that the NOC had erred and should have shot to kill the man.

The order to kill anyone who approaches “danger zones” greatly increases the chance that innocent persons will be injured. In effect, it constitutes a death

sentence for every person who approaches, whether deliberately or by mistake, a settlement’s fence, certain roads, or the fence along the border. The order is particularly grave because of the reality in the Gaza Strip, where IDF posts and settlements are located in the heart of a densely-packed civilian population, and the IDF does not mark the “danger zones” in order to warn persons approaching the area.

An order of this kind also completely ignores the fact that many Palestinians try to sneak into Israel to go to work and not to injure Israeli soldiers or civilians. The comments of Rami Kaplan, who served as a deputy battalion commander in the Gaza Strip, indicate that senior IDF officers are well aware that innocent persons are injured:

There are penetrations into our sector every other day. The infiltrators that we captured were always a wretched group, unarmed of course, and the interrogations showed that they were not terrorists, but workers who violated the closure to earn a living, with the Israeli employer collecting them on our side. The interminable penetrations of workers were too much for the battalion and brigade to contend with, so to settle the matter, the division commander established the policy of killing infiltrators. The reason he gave was

94. “Don’t Give Us Orders,” *Ha'aretz*, 1 March 2001.

that this was the only way to stop the stream of infiltrators and deter others. I felt that the only crime the Palestinians committed was sneaking into Israel to make a living. Because of their financial hardship, they were willing to risk even death to get through. These factors did not especially bother Naveh [commander of IDF forces in the Gaza Strip at the time], an officer whom I really admired.⁹⁵

The IDF did not change this order even after it led to the death of innocent persons. For example, on 2 March 2001, Mustafa Rimlawi, 42, who was mentally retarded, was shot on the Karni-Netzarim Road. The IDF Spokesperson's statement immediately following the incident contended that,

IDF soldiers tonight thwarted a terrorist attack against civilians and IDF soldiers moving along the Karni-Netzarim Road. IDF Forces in the midst of an operation identified a terrorist place a charge on the road, and opened fire at him.⁹⁶

The IDF later admitted that no terrorist charge was found at the site in which Rimlawi was killed, but it justified his killing on the grounds that, "by wandering around the area at night, he turned himself into a suspect."⁹⁷

Sample Cases

The following are two testimonies describing the shooting of innocent Palestinians who apparently mistakenly entered "danger zones." In the first case, 'Ali Abu Balima, who was severely mentally retarded, was shot while wandering near a road on which the IDF had forbidden Palestinians to enter. In the second case, soldiers fired at a group of children who were playing in the afternoon near the fence of the Neve Dekalim settlement. The gunfire killed twelve-year-old Ahmad Abu Mustafa, who died three days later from his wounds.

Death of 'Ali Salameh Salman Abu Blima, 30, resident of Dir al-Balah

*Testimony of Muhammad Ibrahim 'Awad Sa'id, 46, married with seven children, laborer, resident of Dir-al-Balah*⁹⁸

On Thursday [27 September 2001], at about 3:00 P.M., I was at home, on a-Shuhada Street, which is located east of the greenhouses of Kfar Darom. Suddenly I heard the sound of gunfire. I went up to the second floor and looked westward to the Israeli army post next to the greenhouses. I saw a young man walking east along the road that the Israelis had closed a week earlier following the incident in which five Israeli soldiers

95. "The Black List of Captain Kaplan," *Ha'aretz*, 27 April 2001.

96. IDF Spokesperson's statement, 2 March 2001.

97. "IDF Admits: The Palestinian Killed Yesterday did not Lay an Explosive Charge," *Ha'aretz* Internet Edition (www.haaretz.co.il), 3 March 2001.

98. The testimony was given to Nabil Mekherez on 5 October 2001.

were wounded and the Palestinian Munir Mustafa Abu Musa was killed.

Then I heard two more gunshots. The man continued to walk. Then I heard a fourth shot, which hit him in the left leg. He grabbed his leg and crossed over to the left side of the road. He went into an open field and was about three meters from the shoulder of the road. Then the soldiers fired a fifth bullet. It struck him in the right leg, and he fell to the ground. He was about two hundred meters west of my house. He tried to sit, but the soldiers continued to fire. Over a course of about five minutes, eight bullets hit him.

Then two girls from the Abu Majasib family, who live near us, tried to help him, but the soldiers fired in their direction and they ran home. They returned after the firing had stopped and got within fifty meters of him, but again the soldiers opened fire and they ran home again. The young man lay on the ground for ten minutes, until a Red Crescent ambulance arrived.

The ambulance came from the east of him. The medical team began to treat him while he was still lying on the ground. After a few moments, the soldiers at the army post began to shout at the medical team and ordered them to leave the area quickly. The medical team bandaged his leg, put him in the ambulance, and took him to Shuhada al-Aqsa Hospital, in Dir al-Balah.

At the time, I didn't know anything about the young man who had been wounded. However, later when I went to the hospital and asked who he was, I learned that he was my sister's son 'Ali. Seven bullets had hit him in the leg and one struck him in the hip. Because his injuries were serious, he was moved to a-Shifa Hospital, in Gaza. Five minutes after reaching the hospital, he died from extensive abdominal bleeding.

Wounding of Ahmad 'Abd Abu Mustafa, 12, resident of Khan Yunis

Testimony of Alham 'Abd al-Qarim Ibrahim Abu Mustafa, 27, single, resident of Khan Yunis⁹⁹

On Friday [9 November], at about 3:50 P.M., I was standing on the roof of our house looking westward. There is a strip of sand between the edge of the camp and the fence of the Neve Dekalim settlement. On the fence are two army posts, one on the west and the other on the north. I saw about eight children playing in the sand near some houses. They were around eighty meters east of the fence. It was quiet and there hadn't been any confrontations that day.

At 4:00 P.M., I saw three children going toward an asphalt road next to the fence. The road is used by the army. One of the children went onto the road, stood there, and then started walking back. When he was one meter east of the road, I heard

99. The testimony was given to Nabil Mekherez on 10 November 2001.

the sharp sound of a shot being fired. The child fell. I do not know from which of the army posts the shot came, because, in addition to the post on the west, there is an observation post located on a crane.

Immediately afterwards, I heard another shot. It was apparently aimed at another one of the children, who was standing two meters east of the child who had been shot. The second child fled and left the other child lying on the ground. When he got closer, I could identify him. It was fifteen-year-old Anwar 'Ali Abu Mustafa. The other children, who were playing in the sand further to the east, ran toward the houses.

I left the house and went toward the sand fields. An Israeli tank charged from the north along the sand. When I reached the children who had run away, I asked them who was the child lying alongside the road. They said that he was Ahmad Abu Mustafa, a neighbor and relative of mine. I continued across the sand to save the child. A young man whom I didn't know joined me. He told me that nobody was there, but I told him that I was sure there was. I explained that the child fell in a low spot and that it was impossible to see him from the houses.

A jeep and tank came from the south and stopped twenty meters from the child. I wanted to get closer, but the people warned me not to because the soldiers

would shoot at me. Fifteen minutes had passed since the child had been hit. Then his mother arrived. A voice called out on a loudspeaker. I do not know if it was from one of the army posts or from the tank. The speaker said, "Approach, approach, take the child and go." We advanced quickly, a bit awkwardly because we were concerned they would shoot us, and I waved my white kerchief [*kafiyeh*] at the army all the time.

As we moved forward, I shouted maybe ten times "Ahmad," but he did not respond. When we got right next to him, he moved his head a bit. He was lying on his right side. His head was bleeding and there was a blob of dried dark-red blood the size of an egg on the back of his head. His mother screamed, "My son is dead." I told her, "Don't worry, your son is alive. He'll be all right with the help of the Almighty." I grabbed him by the waist so that his mother would not see the blood flowing from his head, she lifted his legs, and we started to carry him. She was screaming all the time. She asked the young men who were in a play area not far away to help and to call an ambulance. I was in shock. I screamed when I first saw the boy lying on the ground. After we had carried him for about five meters, a young fellow ran up to us and took him from us, and then some other young men came and carried him. I became hysterical and shouted, "Ahmad is dead, Ahmad is dead." I don't remember anything after that.

5. Firing at Persons Carrying Weapons

Another change that was made in the Open-Fire Regulations during the al-Aqsa intifada allows soldiers to initiate fire at Palestinians bearing arms. The several testimonies that B'Tselem obtained relating to this subject indicate there are different regulations that change regularly.

At the beginning of the intifada, a soldier in the regular army told B'Tselem about a change in the Open-Fire Regulations: "If we see an armed Palestinian in Areas B or C, we must shoot to kill. If he is in Area A, we are allowed to shoot only if he opened fire."¹⁰⁰

In April 2001, *Ma'ariv* reported that, following gunfire by a Palestinian in Hebron, which killed the infant Shalhevet Pass, the Open-Fire Regulations were changed in several locations in the Occupied Territories. The new regulations allow soldiers to shoot to kill armed Palestinians.¹⁰¹ A few months later, the IDF Spokesperson confirmed a *Ha'aretz* report that the regulations allow soldiers to fire at "a Palestinian carrying a weapon in suspicious circumstances."¹⁰²

In a testimony given to B'Tselem several months ago, a soldier in the regular army stated that the orders he received called for soldiers to initiate fire at armed Palestinians dressed in civilian clothes, but not at Palestinian police if they do not open fire.¹⁰³ But a soldier who recently did reserve duty in the West Bank said in his testimony to B'Tselem that the regulations expressly allow soldiers to fire at any armed Palestinian:

Unlike in the past, whenever we see armed Palestinians now, we are allowed to open fire. If there are Palestinian police among them, they are also legitimate targets. The section of the Open-Fire Regulations on ambushes states that we should fire at every armed Palestinian that we see, even if he does not constitute a life-threatening danger to us and even if he is not doing any act that endangers the lives of others. The firing is done at the order of the commander in the field.¹⁰⁴

During the IDF action in Beit Rima in October 2001, the soldiers acted in accordance with such an order and fired at Palestinian policemen who were not involved in the fighting and were fleeing. Col. Yair Golan, who commanded the

100. The name of the soldier is on file at B'Tselem. The testimony was given to Ron Dudai on 9 December 2000.

101. "From Now On Soldiers Allowed to Kill Snipers and Armed Persons," *Ma'ariv*, 2 April 2001.

102. "IDF: Change in Shooting Directives Will Enable Self-Defense," *Ha'aretz*, 8 August 2001.

103. The name of the soldier is on file at B'Tselem. The testimony was given to Lior Yavne on 16 April 2001.

104. The name of the soldier is on file at B'Tselem. The testimony was given to Ronen Schnayderman on 27 November 2001.

action, said, “When we enter a village, we have to deal with every armed person. We fired at armed individuals and at those who fired at us.”¹⁰⁵ On 20 February 2002, IDF forces attacked Palestinian police checkpoints. The commander of IDF forces in the West Bank, Brigadier General Jeri Yitzhak, justified the attack on policemen who were at the checkpoints. He argued that, “The Palestinian policemen are responsible for manning points along the road intended to prevent terrorist from crossing into territory under our control, but they do nothing to thwart the terrorist attacks.”¹⁰⁶

The order to shoot without warning every armed Palestinian fails to take into account the current situation in the Occupied Territories. Many Palestinian policemen are not engaged in the fighting against the IDF and do not endanger the soldiers’ lives. Also, at times it is difficult to implement an order to fire at armed persons in Areas B and C, but not in Area A, because the border between them is not always clear.

Furthermore, widespread implementation of this order increases the likelihood that unarmed civilians will be harmed. First, it is possible that soldiers will mistakenly identify objects as weapons and fire at the innocent persons holding them. For example, an electrician from Ramallah was holding a drill when soldiers shot him to death. The soldiers thought that

he had a weapon in his hands. Second, in certain circumstances, it is very likely that innocent bystanders would be injured. In cases like this, if the armed individual is not involved in the fighting, shooting him would be disproportionate to the harm caused to civilians.

Sample Cases

The first testimony presented below describes IDF gunfire at a Palestinian policeman who was not involved in the fighting during the IDF action in Beit Rima in October 2001. The second testimony describes the shooting of a child who was holding a plastic pistol.

*Testimony of Mahmud Yusuf Suliman ‘Ali Ahmad, 42, married with two children, resident of a-Diq, Salfit District, police officer in the Palestinian national security forces*¹⁰⁷

On Tuesday [23 October], I finished my vacation and returned to the checkpoint. I arrived at 4:00 P.M. That was not my time to be on guard, so I sat with the others and we talked until 10:00 P.M. It was very quiet in the area; there was no firing or shelling. They didn’t inform us about any special preparations being made by the Israelis. Many of the village residents were picking olives in the nearby groves. At 10:00 P.M., we divided up into shifts.

105. From a de-briefing that he gave on 24 October 2001. See the IDF Spokesperson’s statement of the same day. Regarding the IDF action in Beit Rima, see B’Tselem, *Excessive Force*, pp. 23–48.

106. “IDF Bombed Palestinian Headquarters in the West Bank and Gaza Strip,” *Ha’aretz*, 21 February 2002.

107. The testimony was given to Raslan Mahagna on 31 October 2001.

There were eight policemen at the checkpoint... I was to begin my shift at 6:00 A.M. and would be working alone. During the day, one guard is enough because Haris, the commander, generally remains awake during the day and helps whoever is standing guard at the checkpoint.

Sinan and Shadi went to the checkpoint, and we spread out in the olive groves. Each of us found a place and went to sleep. We were about fifteen meters from each other. Haris stayed awake. Suddenly I felt Kamel push me with his hand. He was in a panic, and called out to me, "Abu 'Odey, Abu 'Odey, get up, the army, the army." I hadn't heard any gunfire. Startled, I got up and went to Sinan to wake him. Then I heard shooting. I saw that Kamel had been hit and had fallen to the ground. I took my shoes, which were near the bed, and my weapon and rushed to the path between the neighboring houses and the olive grove where we slept. I hid behind the wall that separated the grove and the path. I started to tie my shoes. The gunfire increased. It seemed to me that the Israeli army had come through the olive grove from 'Abud village, and not from the army checkpoint on the main road, near the Halamish settlement.

While I was tying my shoes, Haris ordered me to help him carry a wounded person to the nearby house. I ran towards him and we carried Ashraf Shawaneh into the house of a person named Yusef. The house was on the main road about thirty meters from the checkpoint. 'Abd al-Mu'ati

was with us. It was around 2:10 A.M. when we got to the house. We did not know what happened to the other policemen who were sleeping in the olive grove. I also did not know what happened to Kamel, who had woken me up and had been hit and had fallen near where Sinan had been sleeping. Haris reported to headquarters by radio transmitter. He told them about the person who was wounded and had been taken to the house, and he asked them to call an ambulance. Then that we heard the sound of heavy equipment approaching the checkpoint. They [the soldiers and equipment] came along the main road from the direction of Halamish and entered the village.

Then we heard a person call out in Arabic over a loudspeaker that the village was under curfew. I looked out the window of the house we were in and saw around thirty to forty vehicles, including armored personnel carriers and other armored vehicles, approaching. Because we were armed and in uniform, we decided to flee and leave the wounded man in the house. We had already notified headquarters and we assumed they would summon an ambulance. Haris, al-Mu'ati, and I jumped out the back window of the house. We started to walk quickly through the olive groves toward the ravine. We wanted to get to Beit Rima from the rear of the village. Each of us had our weapons and we were about five meters from each other as we walked. Haris and al-Mu'ati were on the right, and I walked on the left. The sound of gunfire increased, and

there was shooting from all directions at the entrance to Beit Rima and at the center of the village.

We walked some five to six hundred meters. I was very scared, but Haris encouraged us and he told me not to be afraid. Then I heard the sound of a helicopter circling above. I didn't dare look up, nor did Haris and al-Mu'ati. Haris told us to walk at a regular pace so that they wouldn't pay any attention to us. It was dark and the helicopter didn't light up the area. Suddenly the helicopter opened heavy fire at us. We were the only people in the olive grove. I felt that I had been struck in the left leg, and I fell to the ground. I saw that Haris and al-Mu'ati also fell down. The three of us were apparently hit at the same time. I did not lose consciousness, but I felt intense pain in my leg. The helicopter continued to fire at us. Haris and al-Mu'ati fell around twenty meters from me, with al-Mu'ati being a bit closer to me. Despite the pain, I didn't make any sound because I wanted the soldiers in the helicopter to think that we were dead. That way, they would stop shooting at us. The helicopter gunfire lasted around twenty minutes, and then the helicopter left. But we continued to hear the sound of gunfire, and its intensity even increased.

Haris called out my name. I told him that I was all right. He also called to al-Mu'ati, and he, too, said he was all right. Those were the only words that we

spoke among us. I think it was already after 3:00 A.M. I felt that I couldn't get up, and Haris and al-Mu'ati also remained lying on the ground. I took advantage of the break and threw my weapon to the side. I think that I lost consciousness, because I awoke to the muezzins' call to morning prayers from the mosques in the nearby villages. It was around 4:20 A.M., because the muezzin makes his call to prayers at that time.

When I awoke, I heard al-Mu'ati gasping loudly, and I had a feeling that he was dying. I heard Haris report via the radio transmitter that we were about to die. Then both he and the radio transmitter were silent. I didn't make a peep because I played dead, out of fear that the helicopters would fire at us again. I still heard the sound of helicopters but did not see them.

Death of Muhammad Jaman Mahmud Haneidaq, 15, resident of Khan Yunis

*Testimony of Muhammad 'Adballah Jam'an Haneidaq, 15, tenth-grade student, resident of Khan Yunis*¹⁰⁸

On Monday [17 December], around 3:00 P.M., I was on a dirt road near my house. This road crosses the Sea Road and reaches the southern edge of the Khan Yunis refugee camp. An army base is at the end of the dirt road, at the fence of the Neve Dekalim settlement. I was

108. The testimony was given to Nabil Mekherez on 19 December 2001.

about one hundred meters north of the base. It was the second day of 'Eid al-Fitr, and the road was full of kids enjoying the holiday. We were chasing each other and playing games with plastic toys shaped like weapons. We were imitating the events of the intifada.

My friend and relative Muhammad Jam'an Haneidaq was about two meters from me. He had a plastic gun and was playing with others from our family near one of their houses. Muhammad spoke with his cousin Muhammad Hamdan Haneidaq, who also had a plastic gun. Then he bent over and filled the gun's magazine with plastic bullets, aiming the gun at the ground, like adults do.

Suddenly I heard two shots, one after the other. I think they were fired from an

M-16, whose sound I had come to recognize. I saw Muhammad Jam'an Haneidaq fall to the ground. He was lying on his back with his face looking toward the army base. He called out five times, "Save me, save me." I rushed over to him, while the other children screamed in panic and ran into the side streets and alleyways. My cousins Jam'an Muhammad Haneidaq and Muhammad Hamdan Haneidaq, our neighbor Zohir Abu Nimmer, and I picked him up and took him to a nearby car, a Peugeot 404, that was some twenty meters south of us. Two men, Nahed Saqinah and Ghassan al-Salibi, took him and put him into the car. We got into the car with Muhammad, who wasn't moving at all, and drove to Nasser Hospital, which was about seven hundred meters away. At the hospital, they told us that he was dead.

Conclusions

Several months ago, a high-ranking officer in the Bethlehem area told journalist Nahum Barnea: “I don’t give my soldiers orders of the type ‘don’t harm the innocent.’ In the situation that has arisen, whoever gives such an order has said the equivalent of ‘don’t shoot at all.’ [...] We try to shoot at those whom we have identified, but not always.”¹⁰⁹

While the IDF Spokesperson and other official sources attempt to describe a picture in which the IDF does not harm the innocent, it appears that the officer’s comments provide a more accurate description of reality. Even if the security establishment does not intend to injure innocent Palestinians, the many cases in which such civilians have been injured renders the lack of intent irrelevant. These are not “exceptional” cases; they are the unavoidable result of a policy.

This report has presented a number of sample patterns of unjustified shooting, among them firing live ammunition at stone-throwers, firing rubber-coated metal bullets, which cause serious injuries, shooting at civilians approaching checkpoints, and shooting at unarmed civilians while in their homes or passing in

the street during an “exchange of fire.” These shooting patterns have caused widespread injury to innocent persons during the intifada.

The responsibility for harming the innocent does not rest exclusively with the soldier who fires the shots. The greater part of the responsibility rests with the senior commanders and the policymakers. They are responsible for formulating regulations that permit shooting in cases in which soldiers are not in life-threatening situations, for sending unclear signals as to the cases in which it is permissible to open fire, and for effectively granting immunity to soldiers who open fire illegally.

The head of the international legal branch of the IDF, Colonel Daniel Reisner, said during a discussion in the Knesset that, “IDF soldiers are forced to deal with very difficult ethical questions [...] I received a report from personnel in the field, that when they identified armed children, even though the regulation was to shoot to hit, they shot at the legs, just in order not to kill the child, even though the child was shooting at them. But that is not all the cases. It is an ethical decision

109. “Our Forces Returned Fire,” *Yediot Aharonot*, 27 April 2001.

110. The comments were made at a meeting of the Knesset’s Committee for the Advancement of the Status of Children, 29 November 2000.

of the soldier in the field.”¹¹⁰ The boundaries establishing what is permissible and what is forbidden when shooting must be defined clearly and explicitly, and not left to the complete discretion of the individual soldier in the field. Colonel Reisner’s attempt to place the entire weight of responsibility on the individual soldier in the field who, in his opinion, is supposed to act according to his conscience and not according to binding regulations, shirks the responsibility of the highest levels of the IDF’s command and legal echelon.

Therefore, B’Tselem urges Israel to:

- Avoid opening fire in cases where

soldiers’ lives are not in jeopardy;

- Distribute to the soldiers written Open-Fire Regulations that clearly and unequivocally state the circumstances in which they are allowed to open fire;
- Inform the public about the basic principles, at least, of the Open-Fire Regulations;
- Conduct an in-depth investigation of all cases in which soldiers shot Palestinian civilians who were not involved in fighting, and prosecute those responsible.

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To
"B'Tselem"- Ms. Yael Stein- Advocate

Re: **The IDF Spokesperson's Response to the Report Regarding
"Unjustified Shooting & Regulations for Opening Fire"**

Following is our response to your report regarding "Unjustified Shooting & Regulations for Opening Fire".

We are in the middle of an armed and violent conflict, involving unprecedented terror that the IDF soldiers are fighting to thwart and prevent.

The IDF and its soldiers face this violent fighting every day, hour after hour, having to contend with a very large number of terror attacks, assaults and violent incidents. So far there have been over 11,000 terror attacks (!) and incidents.

As we have explained in the past, the IDF does not publicize the content of its regulations for opening fire. This due to operational regulations which impose limitations on the soldiers' activity, and there is cause to fear that hostile elements will take advantage of them in order to harm our fighting forces.

Because of this, we will refrain from referring to the regulations for opening fire as they are described in the report. We stress that this does not construe an admission of denial of the content of the regulations as described in your report.

However, we can say and we wish to stress, that the regulations for opening fire do not permit shooting automatically, but are designed to cope with the threat the soldiers face in various situations. Thus, the soldier facing a threat must employ a certain amount of discretion and check whether the case before him poses a threat or danger, and is not to shoot automatically.

In addition, the report also states that the military legal system does not really oversee deviation from the regulations for opening fire. With all due respect, this claim is simply wrong.

Any case brought to our attention regarding a death or injury resulting from IDF soldier shooting, even when not brought as a formal complaint, is examined with the relevant command officials.

The operational investigation material and its findings are brought before the Military Advocate General. In cases where there is suspicion of a transgression, which justify the opening of an investigation, the Military Advocate General instructs that an investigation be opened by the Investigative Military Police: They will investigate the circumstances of the incident, and at the conclusion, the necessary steps are taken.

To this day, some 100 Investigative Military Police inquiries have been opened to examine various complaints against IDF soldiers. Of these, 21 investigations were opened to examine various shooting incidents in which Palestinian residents were either killed or wounded.

It is to be pointed out that these 21 cases are ones in which, after an initial examination it appears as though there is suspicion of offences justifying criminal investigations, all this after inquiries and examinations were held regarding some 150 shooting incidents. In the rest of the cases, the outcome of the investigations did not justify opening a criminal investigation and in some cases disciplinary or command steps were taken by the commanding officers.

Thus actual judicial supervision over IDF activity in the continuous armed conflict of the past 17 months exists.

Moreover, after concluding some of the Investigative Military Police investigations, **indictments** have been filed against eight soldiers, in four different affairs:

1. An indictment has been filed against a soldier who fired towards a vehicle that bypassed a military checkpoint near Beit Dajan. According to the indictment, the shooting caused the death of a female passenger in the vehicle.
2. An indictment has been filed against an officer who ordered to shoot towards a Palestinian riding on a donkey and who posed no apparent threat to IDF forces. According to the indictment the Palestinian was wounded.
3. An indictment has been filed against 2 soldiers who beat a Palestinian on the way to Bethlehem.
4. An indictment has been filed against 4 soldiers who beat and threatened Palestinians with weapons near Samoa. Three soldiers were convicted and punished severely.

It is to be pointed out that the Military Advocacy's intention is to bring more indictments whenever appropriate.

Regarding the 15 cases mentioned in your report, 12 of the cases are known to the military advocacy and are in various stages of examination. One of the cases, the death of Muin Abu Levai on August 19 2001 near Nablus is currently being investigated by the Investigative Military Police.

Three other cases (Ibrahim Faruon, Ahmad Abu Mustafa and Ali Ahmad) were brought to our attention for the first time in your report and will be examined with the due thoroughness.

What emerges from the above, is that there is real judicial supervision over the activity of our fighting forces, all this during fighting. This is the place to stress that we are not talking about an "Intifada" (a popular uprising, mainly involving disturbances and demonstrations) as you stated in your report's headline, but a real armed conflict (terror attacks on civilians and soldiers) characterized by hundreds of shooting attacks, throwing grenades, planting bombs and other such attacks using fire arms and directed against IDF forces, as well as Israeli civilians not taking part in the fighting.

To sum-up, we stress that IDF forces are instructed and directed to harm only those fighting against them, and in any incident in which someone innocent is hurt, a thorough investigation is held and the circumstances are brought before the relevant legal officials. In certain cases, they instruct to take actual legal steps against those responsible.

On the other hand, the hostile Palestinian factors direct their attack in advance against innocent civilians who do not pose a threat to their assaults, and who's only sin is their being Israeli.

It is distressing that the "B'Tselem" organization does not direct its criticism toward the Palestinian side and requests it to avoid intentional attacks against the innocent, and investigate and prosecute those responsible for these attacks.

Sincerely
**Major
Public**



Efrat

yours,
**Segev
Relations**